



Agenda for

48th GST Council Meeting

17th December 2022

Volume – I





**GST Council Secretariat
New Delhi**

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

25th November, 2022

OFFICE MEMORANDUM

Subject: Notice for the 48th Meeting of the GST Council scheduled to be Convened on 17th December, 2022

The undersigned is directed to refer to the subject stated above and to convey that the 48th Meeting of the GST Council will be held on **17th December, 2022** through virtual mode (Video Conferencing). The schedule of the Meeting is as follows:

- **Saturday, 17th December, 2022:** 11:00 A.M. onwards

2. In addition, an **Officers Meeting** will be held on 16th December, 2022 as per the following schedule:

- **Friday, 16th December, 2022:** 11: 00 A.M. onwards

3. The agenda item and other details for the 48th Meeting of the GST Council will be communicated in due course of time.

4. Kindly convey the invitation to Hon'ble Members of the GST Council to attend the Meeting of the GST Council.

Sd/-

(Tarun Bajaj)

Secretary to the Govt. of India and ex-officio Secretary to the GST Council

Tel:011 23092653

Copy to:

1. PS to the Hon'ble Minister of Finance, Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.
2. PS to the Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said Meeting.
3. The Chief Secretaries of all the State Governments, Union Territories of Delhi, Puducherry and Jammu and Kashmir with the request to intimate the Minister in charge of Finance/Taxation or any other Minister nominated by the State Government as a Member of the GST Council about the above said meeting.
4. Chairman, CBIC, North block, New Delhi, as a permanent invitee to the proceeding of the Council.
5. Chairman, GST Network.

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Discussion on Agenda Items

Agenda Item 1: Draft Minutes of the 47th Meeting of GST Council held on 28th & 29th June, 2022

The 47th meeting of the GST Council was held on 28th & 29th June, 2022 at Chandigarh under the chairpersonship of the Hon'ble Union Finance Minister, Ms. Nirmala Sitharaman. 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, the States, the GST Council Secretariat and the GSTN who attended the meeting is at **Annexure-2**.

2. The following agenda items were listed for discussion in the 47th meeting of the GST Council as stated below:

1	Confirmation of Minutes of GST Council Meetings
	i. 45 th Meeting of GST Council held on 17 th September, 2021
	ii. 46 th Meeting of GST Council held on 31 st December ,2021
2	Ratification of the Notifications, Circulars and Orders issued by the GST Council and decisions of GST Implementation Committee for the information of the Council
3	Issues recommended by the Law Committee for the consideration of the GST Council
	i. Issuance of clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional Notification
	ii. Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted duty structure
	iii. Authority to issue recurring SCN in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to State and vice versa
	iv. Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices
	v. Notifying clause (c) of Section 110 and Section 111 of the Finance Act, 2022
	vi. Issuance of clarification on various issues pertaining to GST
	vii. Issue of compulsory registration for supplier supplying goods or services through ECOs under Section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use e-Commerce platforms
	viii. Refund of unutilized Input Tax Credit on account of Export of Electricity
	ix. Annual Returns for FY 2021-22
	x. Clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1
	xi. Comprehensive changes/amendments in FORM GSTR-3B
	xii. Proposal for amendments to CGST Rules, 2017
	xiii. Re-credit of amount in electronic credit ledger after recovery of erroneous refund
	xiv. Extension of limitation under Section 168A of the CGST Act, 2017
	xv. Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and extension of due date for filing FORM GST CMP- 08 for Q1 of FY 2022-23
	xvi. Refund of accumulated ITC to Duty-Free Shops
	xvii. Exemption from IGST and Cess on imports/domestic procurement of goods by AA/EPCG/ EOU and for doing away with e-Wallet

	viii. Amendment in CGST Rules for handling of pending IGST refund claims
	xix. Errata
	xx. Consent based data sharing for non-GST purposes
4	Issues recommended by the GSTN i. Development of New Return System ii. Extension of REAP and LEAP Projects beyond 31.03.22 for FY 2022-23 iii. Status of Establishing Multiple Invoice Registration Portals (IRPs) to cater to the requirement of extending e-Invoicing to all the Businesses
5	Performance Report of the NAA (National Anti-profiteering Authority) for the 2 nd quarter (July to September, 2021), 3 rd quarter (October to December, 2021) and 4 th quarter (January to March, 2022) for the information of the Council
6	Issues recommended by the Fitment Committee a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relation to goods - Annexure I to the Agenda b) Issues where no change has been proposed by the Fitment Committee in relation to goods - Annexure II to the Agenda c) Issues deferred by the Fitment Committee for further examination in relation to goods - Annexure III to the Agenda d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relation to services - Annexure IV to the Agenda Recommendations made by the Fitment Committee on issues related to Tour and Hospitality Sector, and on positive list of services to be specified in Sr. No. 3/3A of Notification No. 12/2017-CT(R) as given at Annexure-IVA and Annexure-IVB, respectively to the Agenda e) Issues where no change has been proposed by the Fitment Committee in relation to services - Annexure V to the Agenda f) Issues deferred by the Fitment Committee for further examination in relation to services -Annexure VI to the Agenda
7	C-PACE Project for Ease of Doing Business in India
8	Review of revenue position under Goods and Services Tax
9	Report of Group of Ministers on feasibility of implementation of e-way bill requirement for movement of gold and precious stones.
10	Proposal to apportion IGST amount of Rs.27,000 crore for the financial year 2022-23 on ad hoc basis
11	Amendments to provisions relating to GSTAT in CGST Act, 2017
12	Ad-hoc Exemption Orders issued under Section 25(2) of Customs Act, 1962 for

	information
13	Recommendations of the 16th IT Grievance Redressal Committee for approval/decision of the GST Council
14	Interim Report of the Group of Ministers (GoM) on Rate Rationalisation for consideration of the GST Council
15	Report of Group of Ministers (GoM) on GST System Reforms
16	Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

Preliminary discussion

3. The Secretary sought the permission of the Chair to initiate the proceedings and welcomed all the Hon'ble Members of the Council and delegates to the 47th meeting of the GST Council at Chandigarh. He extended thanks to the Chandigarh Administration, Government of Haryana and Government of Punjab for hosting the meeting.

3.1 At the outset, on behalf of the Council, he thanked the former Members of the Council i.) Shri Yumnam Joykumar Singh, ex-Member from Manipur; ii) Shri Manpreet Singh Badal, ex-Member from Punjab; iii) Shri Subodh Uniyal, ex-Member from Uttarakhand for their contribution in the GST Council.

3.2 He further extended warm welcome to the incoming Hon'ble Members of GST Council to 47th meeting of the GST Council.

1. *Sh. Sukh Ram Chaudhary, Hon'ble Minister for MPP and Power, Himachal Pradesh;*
2. *Dr. Sapam Ranjan Singh, Hon'ble Minister for Medical, Health & Family Welfare Department and Publicity & Information Department, Manipur;*
3. *Sh. Harpal Singh Cheema, Hon'ble Finance Cum Excise and Taxation Minister, Punjab;and*
4. *Sh. Prem Chand Agarwal, Hon'ble Finance Minister of Uttarakhand*

3.3 The Secretary stated that the Hon'ble Members of the Council were aware that a GoM was formed on "feasibility of implementation of e-way bill requirement for movement of Gold and precious stones" with Sh. K. N. Balagopal, Hon'ble Minister of Finance, Kerala as the Convener and Hon'ble Members from States of Bihar, West Bengal, Punjab, Gujarat and Karnataka as Members of the GoM. The GoM had submitted its recommendations in the form of a report which was placed as an agenda item before the Council. He thanked all the Hon'ble Members of the GoM for their valuable recommendations.

3.4 The Secretary stated that the GST Council in its 45th meeting at Lucknow, formed a GoM on GST System Reforms under the Chairmanship of Shri Ajit Pawar, Hon'ble Deputy Chief Minister, Maharashtra, to analyse, study and come up with ways and means to minimize tax evasion and offer

other suggestions that can help avoid frauds in GST. The GoM comprised Hon'ble Members from Haryana, Assam, Tamil Nadu, Delhi, Andhra Pradesh, Chhattisgarh and Odisha. The GoM had submitted its interim report which was placed before the Council for deliberations in the present agenda. The Secretary thanked all the Hon'ble Members of this GoM for their valuable recommendations.

3.5 The Secretary also stated that in 45th meeting at Lucknow, a GoM on Rate Rationalization was formed with Sh. Basavaraj S. Bommai, Hon'ble Chief Minister, Karnataka as Convener and other Hon'ble Members from Bihar, Goa, Kerala, Rajasthan, Uttar Pradesh and West Bengal as Members. The GoM had submitted its interim report which was being placed in this Council meeting for deliberations. He thanked all the Hon'ble Members of this GoM for their valuable recommendations.

3.6 The Secretary further pointed out that the GST Revenue had set new records this year. The gross GST revenue collected in the month of April, 2022 was Rs.1,67,540 crores which was 20% higher than the GST revenues in the same month last year. The gross GST revenue collected in the month of May, 2022 was Rs.1,40,885 crores which was 44% higher than the GST revenues in the same month last year. This trend showed clear improvement in the compliance behaviour due to various measures taken by the tax administration like nudging taxpayers to file returns timely, and strict enforcement action taken against errant taxpayers who had been identified based on data analytics and artificial intelligence. He thanked all the States, UTs and Central formations for their remarkable efforts in GST revenue augmentation.

3.7 The Secretary stated that he met the officers of the States and UTs on 27th June, 2022 and discussed all the agenda items with them. He then sought the permission of the chair to proceed with the agenda items as follows:

Agenda Item 1: Confirmation of the Minutes of the 45th and 46th Meeting of the GST Council

4. The first agenda item pertained to confirmation of the minutes of the 45th GST Council meeting held on 17th September, 2021 and the 46th meeting of the GST Council held on 31st December, 2021. The Secretary stated that some comments had been received from few States which were basically editorial changes and had been carried out.

4.1 The Hon'ble Member from Tamil Nadu stated that the request for incorporation of his written speech in the draft Minutes of 45th Council Meeting should be considered.

4.2 The Secretary clarified that the Secretariat had received the intimation from Tamil Nadu for including his speech in Draft Minutes but generally GST Council takes the gist of the speech and not the speech per se.

4.3 Accordingly, the Council adopted the Minutes of the 45th and 46th meeting of the GST Council along with the amendments.

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

5 The Secretary stated that the second agenda item pertained to ratification of the Notifications, Circulars, and Orders issued by the GST Council and the decisions of the GST Implementation

Committee (GIC) for the information of the Council. He stated that the GIC decisions are also implemented through Notifications, Circulars, and Orders. The Council took note of the decisions of the GST Implementation Committee (GIC) and ratified the same. Further, the Notifications, Circulars and Orders issued by the States which were *on the same subject as the* above Notifications, Circulars and Orders were also ratified.

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

6. The Secretary took up the next Agenda on issues recommended by the Law Committee for the consideration of the GST Council. He informed that these agendas were discussed in detail in the Officers' Meeting held on 27th June, 2022 and there was an agreement in the Officers' meeting on most of the issues. He further informed that Agenda items 3(iv), (vii) and (xii) may require deliberation of the GST Council. Thereafter, Principal Commissioner, GST Policy Wing made a detailed presentation (attached at **Annexure-3**) giving overview of the recommendations made by the Law Committee on the said agendas.

Agenda Item 3(i): Issuance of clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional Notification

7. The Principal Commissioner, GST Policy Wing informed that vide Circular No.135/05/2020-GST dated 31.03.2020, it had been clarified that refund on account of accumulated ITC in cases of inverted duty structure would not be applicable in cases where input and output supplies were same. The Council was informed that representations had been received seeking clarification with regard to the applicability of para 3.2 of the said Circular in cases where the supplier supplies goods at a lower/nil rate under a concessional rate notified by the Government.

7.1 It had been recommended by the Law Committee (LC) to clarify that the refund of accumulated input tax credit on account of inverted duty structure as per sub clause (ii) of the first proviso to Section 54(3) of the CGST Act, 2017 is admissible in cases where input and output goods are same and the accumulation of input tax credit is on account of rate of tax on input supplies being higher than the rate of tax on output supplies at the same point of time. This applies to cases where the rate differential is due to concessional rate notified by the government and is not applicable to cases where output supply is either Nil rated or fully exempted.

The Council agreed with the recommendation of the Law Committee along with the proposed Circular.

Agenda Item 3(ii): Amendment in formula prescribed in sub-rule (5) of rule 89 of the CGST Rules, 2017 for calculation of refund of unutilised Input Tax Credit on account of inverted duty structure

7.2 The Principal Commissioner, GST Policy Wing informed that the Hon'ble Supreme Court of India in case of UOI v. M/s VKC Footsteps vide its Order dated 13.09.2021 had upheld the vires of Rule 89(5) of the Central Goods and Services Tax Rules, 2017 but had taken cognizance of the anomalies in the formula prescribed under Rule 89(5) of CGST Rules, 2017. The Hon'ble Supreme Court had upheld the exclusion of ITC availed on input services from the computation of Net ITC. However, the Apex Court had noted that the formula prescribed in Rule 89(5) assumed that the tax payable on inverted rated supply of goods and services had been paid by utilising input tax credit on inputs only and that there had been no utilisation of the ITC on input services, such assumption skewed the formula in favour of revenue. The Apex Court had, therefore, urged the GST Council to reconsider the formula.

7.3 The issue was deliberated by the Law Committee and in the absence of any empirical data, Law Committee had recommended to consider utilisation of ITC on account of inputs and input services for payment of output tax in the same ratio in which the ITC has been availed on inputs and input services during the said tax period and to use this deduction to revise the formula prescribed in rule 89(5) as suggested by the Hon'ble Supreme Court. Accordingly, Law Committee recommended the following amendment in formula prescribed in rule 89(5):

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services)}.

The Council agreed with the recommendation of the Law Committee.

Agenda Item 3(iii): Authority to issue recurring SCN in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to State and vice versa

7.4 The Principal Commissioner, GST Policy Wing informed that references had been received regarding diverse practices in the field on the issuance of recurring Show Cause Notices (SCNs) arising out of investigation initiated and finalized by Central Tax authorities against taxpayers under State Administration and vice versa. Due to cross-empowerment, an enforcement action against a taxpayer assigned to State Tax authorities can be initiated by the Central Tax authorities and vice versa.

7.5 The Law Committee recommended that all consequential action relating to such cases like appeal, review, adjudication, rectification and revision would lie with the authority which had initiated the enforcement action. However, the refund arising out of such cases may be granted only by the jurisdictional tax authority.

7.6 Further, the Law Committee recommended that the recurring Show Cause Notices in such cases may be issued by the concerned jurisdictional tax authority.

7.7 The Hon'ble Member from Andhra Pradesh gave the suggestion that information on investigation initiated against any taxpayer should be provided on the GSTN portal. Further, he stated that if investigation was already initiated against a taxpayer by State officials then instead of initiating a new investigation, information should be passed on by the Centre to the concerned State and vice-versa.

He stated that this will ensure greater efficiency and would also eliminate parallel investigations and thus would make the tax administration more taxpayer friendly.

7.8 The Secretary clarified that if investigation is initiated by Centre then any information available with State will be passed on to Centre and vice versa.

The Council agreed to the proposal of the Law Committee. It was also recommended that the decision may be communicated to all States, either through a Circular or a communication from the GST Council Secretariat.

Agenda Item 3(iv): Clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transaction involving fake tax invoices

7.9 The Principal Commissioner, GST Policy Wing drew the attention of the Council towards the Circular proposing clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake tax invoices. He informed that where invoices were issued without corresponding supply of goods/services, there was confusion regarding issuance of notice for tax demand and invocation of penalty and therefore, it was proposed to clarify the basic principles and the applicability of the provisions of law in such cases.

7.10 The Hon'ble Member from Kerala expressed his apprehension that the proposed Circular might promote fake invoicing, that prosecutions were launched after quantifying the duty demand whereas the proposed Circular stated otherwise, and thus, it would reduce the deterrence for issuance of fake invoices thereby causing loss to the exchequer of both Centre and States.

7.11 The Principal Commissioner, GST Policy Wing clarified that the proposal did not prohibit prosecution and the people issuing fake invoices would continue to be liable for penalty and prosecution. The Circular clarifies the applicability of legal provisions in cases where only fake invoices are issued without corresponding supply of any goods or services. In such situations, GST cannot be levied as there is no supply. But simultaneously, it is proposed that penal actions can be taken under Section 122 of the Act. Further, such person is liable for prosecution under Section 132 where the amount involved is more than the specified amount under the said provision.

7.12 The Secretary further emphasized that in such scenarios as discussed, there would be no tax demand but penalty and prosecution provisions would continue to be applicable and that the intention of the Circular was not to dilute the provisions but to strengthen them.

7.13 The Chairman, CBIC stated that while booking cases where fake invoices were issued without corresponding supplies, all entities in the value chain were asked to pay tax and penalty due to lack of clarity as to who was liable to pay tax and against whom prosecution could be undertaken. He stated that the proposed Circular clarified all such situations.

7.14 The Hon'ble Member from Karnataka welcomed the clarification and stated that the Circular would help concentrate on the violations and reduce the time taken for prosecution. One concern raised by the Hon'ble Member was that some companies took registration exclusively for issuing fake invoices and then closed down. Therefore, such companies need to be watched closely.

7.15 The Secretary stated that the sequential filing of GSTR-1 and GSTR-3B had been initiated to check the fake invoices and he informed the Council that more proposals were being made in the meeting for strengthening the system.

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

Agenda Item 3(v): Notifying clause (c) of Section 110 and Section 111 of the Finance Act, 2022

7.16 The Principal Commissioner, GST Policy Wing informed the Council that Section 110 (c) and Section 111 of the Finance Act, 2022 needed to be notified with effect from a date as recommended by the Council.

7.17 He stated that vide Section 110 (c) of the Finance Act, 2022, Section 49 (10) of CGST Act was substituted to provide for transfer of any balance of CGST/IGST in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person. As there is no provision of transfer of any amount from or to SGST / UTGST electronic cash ledger, the amendment is required to be notified only by the Centre at the earliest. The relevant changes in Form GST PMT-09 have been elucidated in the Agenda. Further, to implement the said amendment Law Committee recommended insertion of a new sub-rule (14) in Rule 87 of CGST Rules to allow for transfer of unutilized balance in CGST & IGST cash ledger to a distinct person, without going through refund procedure, subject to the condition that such transfer will not be allowed if unpaid liability exists in the electronic liability register of the said registered person.

7.18 The Principal Commissioner, GST Policy Wing informed the Council that Section 111 of The Finance Act, 2022 was regarding the retrospective amendment of interest provisions as per earlier decision of the Council. Vide the said amendment, Section 50 (3) of the CGST Act, 2017 was proposed to be amended retrospectively w.e.f. 01.07.2017 in order to clarify that where ITC has been wrongly availed and utilised, the registered person shall pay interest only on such input tax credit which is wrongly availed and utilized. Further, the rate of interest chargeable under Section 50(3) of CGST Act shall be 18% (instead of 24%) with retrospective effect from 01.07.2017. The manner of calculation of interest as per this provision is to be provided through Rules and the Law Committee recommended insertion of new Rule 88B for calculation of interest on delayed payment of tax.

7.19 The Principal Commissioner, GST Policy Wing proposed that they may be notified by the Centre at the earliest. Regarding the rest of the provisions of the Finance Act, 2022 which States are required to pass, the Council was informed that a tentative date of 01.10.2022 was decided in the Officer's meeting.

7.20 The Secretary requested the States to notify the provisions of the Finance Act, 2022 by 1.10.2022.

The Council agreed to the proposal that -

- a. **Section 111 and clause (c) of Section 110 of Finance Act, 2022 may be notified by the Centre at the earliest.**
- b. **new rule 88B with effect from 01.07.2017, may be inserted for providing for method of calculation of interest [for Section 111].**
- c. **sub-rule 87(14) may be inserted [for clause (c) of Section 110]**
- d. **01.10.2022 to be date of Notification of the other provisions of Finance Act 2022**

Agenda Item 3(vi): Issuance of clarification on various issues pertaining to GST

7.21 The Principal Commissioner, GST Policy Wing informed that there are different practices about certain GST related issues and the Law Committee has recommended that these issues may be clarified by issuance of a Circular.

7.22 Clarification on the issues pertaining to refund claimed by the recipients of supplies regarded as deemed export

He informed that the first issue was regarding whether ITC availed by the recipient of deemed export supply for claiming refund of tax paid on such deemed export would be subject to provisions of Section 17 of the CGST Act, 2017. The Law Committee clarified that it would not be subject to Section 17 of CGST Act. Further, it was clarified that the ITC so availed was not to be included in the Net ITC for computation of refund of unutilized ITC under Rule 89(4) and Rule 89(5) of the CGST Rules, 2017.

7.23 Clarification on various issues of Section 17(5) of the CGST Act

7.23.1 The second issue pertained to interpretations of Section 17(5). In this regard, one of the issues was whether proviso at the end of Section 17(5)(b) of the CGST Act is applicable to entire clause (b) or only to sub-clause (iii) of clause (b). The Law Committee clarified that the proviso after sub clause (iii) of Section 17(5)(b) is applicable to all the sub clauses under clause (b) of Section 17(5).

7.23.2 The other issue was whether “leasing” referred in sub-clause (i) of clause (b) of sub-section(5) of Section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. The Law Committee clarified that the word leasing referred to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items and accordingly, availment of ITC was not barred for other items under the said sub clause in case of leasing.

7.23.3 Another issue was whether various perquisites provided by employer to its employees as per contractual agreement, were liable for GST. The Law Committee clarified that any perquisites provided by employer to its employees in accordance with the terms of contract were in lieu of services provided by the employee and as per Schedule III of the CGST Act, the same would not be subjected to GST.

7.24. Clarification on utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

7.24.1 The third issue was regarding utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and any other liability other than tax. The Law Committee recommended that amounts available in electronic credit ledger can be used for making payment of output tax only. It cannot be used for paying any tax under Reverse Charge Mechanism (RCM) or any interest, penalty, fees or any other amount payable under the said Acts. However, the amount available in electronic cash ledger may be used for making payment towards tax, interest, penalty, fees or other amount payable under the GST Law. A draft Circular in the regard was placed before the Council.

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

Agenda Item 3(vii): Issue of compulsory registration for supplier supplying goods or services through Electronic Commerce Operators (ECOs) under Section 24(ix) of CGST Act, 2017 and allowing Composition dealers to use E-commerce platforms

7.25 The Principal Commissioner, GST Policy Wing stated that the issue was regarding compulsory registration for suppliers supplying goods or services through Electronic Commerce Operators (ECOs) irrespective of their threshold annual turnover. In offline mode, exemption from registration is given to suppliers whose threshold is below specified value of aggregate turnover. This disparity between the online and offline suppliers affects small businessmen who are unable to use Electronic Commerce Operators (ECOs) as a platform for supply of goods and services. Representation was also received to allow the composition dealers to supply through Electronic Commerce Operators (ECOs). For supplying through Electronic Commerce Operators (ECOs), they need to take normal registration instead of using the option of composition scheme.

7.26 These issues were discussed in the Law Committee and it was observed that the requirement of mandatory registration was made because registration is required for any inter-state supply, irrespective of the threshold turnover. Now, inter-state supply is also possible through Electronic Commerce Operators (ECOs) but it would require mandatory registration. Thus, the proposal was that the suppliers having turnover less than the threshold limit can be considered for waiver of mandatory registration, if they are making only intra-state supply. However, they would be required to declare their PAN and principal place of business so that it can be verified from the PAN that the turnover is less than the threshold limit. After getting the PAN and place of business declared, a system would be put in place so as to communicate the same to Electronic Commerce Operators (ECOs) so that they ensure these suppliers make only intra-state supply. The details of these supplies made by the unregistered persons through their PAN will be given in the GSTR 8 filed by the Electronic Commerce Operators (ECOs). In cases where the total supply approaches the threshold limit, it would be flagged to the concerned supplier to take registration and to officers for information. Further, the suppliers would not be required to pay any tax upto supplies of specified threshold limits and Electronic Commerce Operators (ECOs) would not deduct TCS till the suppliers cross the threshold limit. Further, the agenda note also proposes that composition dealers be allowed to make intra state supplies through Electronic Commerce Operators (ECOs), which is presently restricted.

7.27 The Principal Commissioner, GST Policy Wing sought in principle approval of the Council regarding these agendas and stated that post approval, the Law Committee could be authorized to work out further modalities. Also, corresponding changes in GSTN portal would be required. In the officers' meeting, it was decided that if the Council approves, 1st January, 2023 would be notified as date of

implementation. Further, the Law Committee recommended a condition that for each PAN, only one principal place of business in one State can be declared. There was a view that that an offline person can carry out business in 2 or 3 states making intrastate supplies within those states and his threshold limit will be considered by aggregating all places of business.

7.28 The Secretary informed that if the agenda gets approved it would be a significant decision for small traders. He further informed that MSMEs had been approaching with the request to allow them to do business online without registration and that post-COVID online mode has become the prevalent mode for doing business. The change would address the concern of MSMEs and also bring parity between offline and online suppliers. Regarding the proposal of calculation of threshold turnover of a person registered in 2 or 3 states by aggregating all his supplies, the Secretary informed that this was not part of the agenda but requested the Council to consider the same. He informed that a small offline dealer can give PAN details in different states and can do business without registration provided the aggregate turnover in all states does not exceed the threshold limit. The Secretary requested the Council that the same modality may be allowed in online mode as the aggregate turnover can be calculated through online mechanism provided, they make only intra-state supply. He further informed that reservations were raised by some officers that this may be done later. The Secretary requested that if Council agrees, in-principle approval may be given as it would take around 6 months to implement and to put necessary safeguards in place to prevent any misuse.

7.29 The Hon'ble Member from Kerala welcomed the proposal but raised the concern that even at present e-commerce traders are not filing proper tax returns and that persons were escaping the tax net due to peculiar nature of e-commerce transactions. The concern raised was that a big company having a turnover of more than Rs10 Cr can form smaller units and thereby evade taxes. The Hon'ble Member stated that the systems are not updated enough to check this and that the requirement of mandatory registration should continue as their experience shows that taxes are not getting paid even by bigger companies.

7.30 The Hon'ble Member from Haryana sought clarification of what will happen if a person had a PAN in Kerala but was doing business in Haryana through Amazon and business in Gujarat through Flipkart. In such scenarios how would turnover be tracked. Further, what will happen if such person defaults since the person is unregistered and there is no physical existence in States of Haryana and Gujarat. The Hon'ble Member from Bihar welcomed the proposal and requested for strict monitoring of these suppliers.

7.31 The Hon'ble Member from Karnataka stated that this would create a level playing field between offline and online suppliers. He stated that it is important to have a centralized monitoring system in such cases. The Principal Commissioner, GST Policy Wing informed that all these unregistered persons would be required to make a PAN based declaration on the portal along with Mobile No., place of business etc. before using the Electronic Commerce Operators (ECOs) platform for making supplies. The Electronic Commerce Operators (ECOs) would ensure that no inter-State supply would be made and the supply made by unregistered person (PAN wise) would be declared in their monthly GSTR FORM 8. The aggregate of total turnover made through different Electronic Commerce Operators (ECOs) would be done PAN wise. In online mode, there would be a PAN based trail.

7.32 The Hon'ble Member from Karnataka raised the issue of using multiple PANs by different members of same household. The Secretary stated that the same situation exists in the offline mode also. The Hon'ble Member stated that in offline mode, there is a possibility of physical verification whereas the same doesn't exist online mode. The Secretary stated that in these cases principal place of business is declared. Therefore, if different PANs are catering to same principal place of businesses, it

can be checked. He also requested GSTN to ensure that the principal place of businesses are geo-tagged while updating the system, so as to address the concerns of Hon'ble Member from Karnataka.

7.33 The Hon'ble Member from West Bengal welcomed the proposal and stated this will encourage MSME sector. It was further suggested that there was a need for putting in place a centralized monitoring system along with strengthening of system reforms.

7.34 The Hon'ble Member from Tamil Nadu suggested that for cross-validation, a check could be made that when they register their principal place of business, the supplier could be asked to make a self-declaration as to whether they were registering for first/multiple places of business with the same PAN. And a penalty provision could be made, if it is found later that were having at multiple places of business which were not registered.

7.35 The Hon'ble Member from Odisha welcomed the proposal and stated that it would encourage small traders. The Hon'ble Member from Haryana sought clarification on when integration and verification of supplies through multiple Electronic Commerce Operators (ECOs) could be made. The Secretary informed that using IT, tracking across multiple ECOs would be done.

7.36 The Hon'ble Chairperson stated that it would encourage the small traders and was a positive step. She stated that the proposal to enable the unregistered traders to make supplies through Electronic Commerce Operators (ECOs) may be implemented from 01.01.2023, after ensuring preparedness and required checks on the system. The Council approved the Agenda item. Council also recommended that the details of the scheme may be worked out by the Law Committee. The scheme would be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by Electronic Commerce Operators (ECOs).

Agenda Item 3(viii): Refund of unutilised Input Tax Credit on account of Export of Electricity

7.37 The Principal Commissioner, GST Policy Wing stated that reference had been received from Ministry of Power wherein they had highlighted the problem faced in filing of refund of unutilised Input Tax Credit (ITC) on account of export of electricity and has requested to expedite the refund of input tax credit to the electricity exporters.

7.38 The electricity being an intangible good, the export of electricity is neither covered by any Shipping Bill/ Bill of export nor is there any requirement of filing EGM in respect of export of electricity, due to which the exporters of electricity are not able to file the refund claim of unutilized ITC on the GST Portal.

7.39 It was also mentioned that electricity is exported through transmission lines which are laid either underground or on pillars attached/fixed to the ground thereby implying that the export of electricity takes place by land. Further, relevant date in case of export of goods by land, has been specified at Explanation (2)(a)(ii) under Section 54 of the CGST Act, 2017 as the date on which such goods pass the frontier. Considering the intangible nature of supply of electricity, it may not be possible to determine the actual date on which the specific unit of electricity exported can be considered as passing the frontier. Therefore, as suggested by Ministry of Power, it is proposed to consider the last date of the month, in which energy has been exported as per monthly Regional Energy Account (REA), as date on which the electricity exported has passed the frontier. The same may be clarified through a circular.

7.40 He further stated that to enable the electricity exporter to apply for unutilised ITC, the requisite amendments were proposed to be made in the Rule 89 of the CGST Rules, 2017 and statement in FORM GST RFD-01 as detailed in the Agenda note.

7.41 Till the time such statement is developed and deployed on the portal, the exporter of electricity may be allowed to file refund claim on account of export of electricity in “Any Other category”, in FORM GST RFD-01 along with details in statement 3B and 3A (in pdf format).

The Law Committee has recommended amendment in Rules as detailed in agenda note and for issuance of a Circular clarifying the various issues and procedure for filing of refund claim pertaining to export of electricity.

The GST Council approved the proposal of Law Committee along with the draft Circular.

Agenda Item 3(ix): Annual Returns for FY 2021-22

7.42 The Principal Commissioner, GST Policy Wing presented the Agenda item and stated that Section 44 of the CGST Act provides for filing of Annual Return (GSTR-9/9A) and Annual Reconciliation Statement (GSTR-9C) by specified taxpayers for every financial year. Vide Notification no. 56/2019 –CT dated 14.11.19, the Annual Return GSTR-9 & Annual Reconciliation Statement GSTR-9C were simplified for the FYs 2017-18 & 2018-19 by making few entries optional. Further, vide Notification No. 79/2020-CT dated 15.10.2020, said forms were simplified for the FY 2019-20 by making certain entries/tables optional. Moreover, the said forms for FY 2020-21 were simplified vide Notification No. 30/2021-CT dated 30.07.2021. Rule 80 of the CGST Rules, 2017 was amended in light of the amendments in Section 35(5) and Section 44 of the CGST Act.

7.43 The Law Committee examined the changes in Annual Return forms, and suggested that in the long run, the annual return should cover the features of proposed changes in GSTR-3B. Accordingly, the annual return forms (GSTR-9 and GSTR-9C) for FY 2021-22 may be notified with minimal changes to the forms notified for FY 2020-21. The Law Committee examined the relaxations provided in FY 2020-21 and has recommended modifications / continuation / discontinuation of such relaxations based on their present relevance as detailed in the said Agenda. Further, the Aggregate Annual Turnover (AATO) threshold for granting exemption from filing annual return in FORM GSTR-9/9A, which was Rs.2 crore for FY 2020-21, may be continued for FY 2021-22 also.

The GST Council approved the agenda item and recommended –

- a. **To continue with most of the relaxations as provided for FY 2020-21, barring a few as detailed in agenda note, such as seeking HSN details in Table 17 of GSTR-9, as requirement of reporting HSN in invoices were changed w.e.f. 01.04.2021.**
- b. **AATO threshold for granting exemption from filing annual return in FORM GSTR-9/9A, which was Rs. 2 crore for FY 2020-21, may be continued for FY 2021-22 also**

Agenda Item 3(x): Clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in GSTR-3B and statement in GSTR-1

7.44 The Principal Commissioner, GST Policy Wing informed that w.e.f. 12.12.2020, GSTR-3B was getting auto-generated on the portal by way of auto-population of ITC from GSTR-2B (auto-generated inward supply statement) and auto-population of liabilities from GSTR-1 (Outward supply statement), with an editing facility to the registered person. However, some infirmities were observed in the information furnished by the registered person in relation to inter-State supplies effected to unregistered person, composition taxable persons and UIN holders. The Law Committee recommended that the issue regarding information to be furnished by the registered person may be clarified by issuance of a Circular. It would also require some label changes in GSTR-3B. The Law Committee has further recommended that Settlement of reversals of ITC and ineligible ITC may be done by Department of Revenue (DoR) & Goods & Services Tax Network (GSTN) on the basis of Table 4(B)(1) and 4(D)(2) of FORM GSTR-3B.

The Council agreed with the recommendations of the Law Committee along with the proposed Circular as detailed in the agenda note read with the *errata* relating to the said agenda note. The Council also recommended that Settlement of reversals of ITC and ineligible ITC may be done by Department of Revenue (DoR) & Goods & Services Tax Network (GSTN) on the basis of Table 4(B)(1) and 4(D)(2) of FORM GSTR-3B.

Agenda Item 3(xi): Comprehensive changes/amendments in FORM GSTR-3B

7.45 A sub-committee of officers were constituted by the Law Committee to deliberate on issues pertaining to IGST settlement and ITC reversals. The said sub-committee of officers submitted its report on various data requirement for the purpose of IGST settlement under Section 17 of the IGST Act, 2017. A note was also received from Gujarat on issues relating to unutilized balance in IGST fund and changes in format of GSTR-3B required for the purpose of IGST settlement. Amendments in CGST Act were recommended by the GST Council in its 43rd meeting to align the GST law with the GSTR-1/2B/3B return filing system. Accordingly, based on the recommendations of GST Council, amendments have been made in the return related provisions of the CGST Act, through the Finance Act, 2022 and will come into effect once the said provisions of the Finance Act, 2022 are notified. The proposed changes ensure that the GSTR1-GSTR 2B linkage remains intact and as far as possible, the GSTR-3B should be auto-generated consequent to furnishing details in GSTR-1.

The proposal, inter-alia, seeks modification in Table 3 of GSTR-3B for allowing auto-population of values from GSTR-1 into GSTR-3B in specific rows; modification in Table 4 of GSTR-3B for capturing line wise reversals for streamlining the process of settlement of IGST revenues; providing for amendment tables for reporting of various amendments in outward supplies, input supplies liable to reverse charge and ITC for the previous tax periods; and some amendment in GSTR-1 to capture the details of supplies made through Electronic Commerce Operators(ECOs) in separate Table 14, 15, 16.

The GST Council recommended that the proposal for comprehensive changes in FORM GSTR-3B to be placed in public domain for seeking inputs/suggestions of the stakeholders. Thereafter, Law Committee to examine the suggestions and bring before the GST Council for approval. The exercise may be done in a time bound manner.

Agenda Item 3(xii): Proposal for amendments to CGST Rules, 2017

7.46 The Principal Commissioner, GST Policy Wing informed the Council that proposals were made for amending various provisions of the CGST Rules, 2017. Amendment is proposed in sub-rule (4) of rule 21A, Explanation 1 after rule 43, rule 46, rule 87, rule 89, FORMS related to amendment in rules, and in FORM GSTR-3B. The details of various amendments is detailed in Agenda note.

7.46.1 Regarding Rule 21A, it was informed to the Council that there was a provision for centralized system-based suspension of registration in case of registered persons who had not filed 6 or more returns and whose turnover was more than Rs.50 lakhs. Further, there would be a large number of people whose turnover was below the Rs.50 lakhs limit but were not filing the returns and action in this regard needs to be taken. However, it was considered imperative that there should be automatic revocation of suspension when all the returns get filed. Law Committee discussed this and suggested changes in Rule 21A providing for automatic revocation of suspension in all cases of automatic suspension once all the returns get filed. After bringing in automatic revocation of suspension, the limit for automatic suspension is proposed to be lowered to Rs.20 lakhs immediately and then to Rs.5 lakhs after three months and to NIL after another 3 months. It was stated that this would expedite the return filing and would also help in cleaning the tax payer base.

7.47 The Secretary clarified that the system automatically suspends such registrations where returns are not filed for 6 months continuously and after that, if the registrant seeks revocation of suspension, the same is required to be done manually. Hence, it was thought that as suspension is being done manually, there should be a system for automatic revocation of suspension once the returns are filed. It would be a step towards ease of doing business. Further, reducing the mandatory monetary limit from Rs. 50 lakhs to Rs. 20 lakhs immediately and then to Rs. 5 lakhs would instill financial discipline in people.

7.48 The Hon'ble Chairperson noted that this will simplify the process of comeback of tax payers.

7.49 The Hon'ble Member from Haryana requested that the financial limit for suspension of registration should be kept at Rs.50 lakhs till modality was put in place for automatic revocation of suspension by the system. Also, if suspension is done manually by an officer then it should not be revoked automatically. The Secretary informed that GSTN is ready with the suspension utility and revocation utility and that whenever the system is rolled out, the facility would be ready to revoke the suspension as soon as returns get filed.

7.50 On the point raised by Hon'ble Member from Haryana that automatic revocation be not done in case of manual suspension of registration, GSTN stated that necessary check would be introduced in system, if it was already not enabled.

7.51 The Principal Commissioner, GST Policy Wing further clarified that the changes proposed in Rules were only in respect of cases where registration is cancelled by the system and not by the officer. He informed that all the amendments were agreed to in the Officer's meeting. He further informed that Maharashtra has given a suggestion in respect of rule 46 that specific declaration to be incorporated under proposed clause (s) of rule 46 and it was agreed to. It was also suggested that changes in GSTR-1 to capture the details of supplies through ECOs may be carried out on priority.

The Council agreed to the amendments in the CGST Rules as detailed in the agenda note and the suggestion given by Maharashtra in respect of rule 46. The draft of the amendments to be finalized in consultation with the Union Ministry of Law & Justice.

The Council also recommended that as regards Centralized suspension for non-compliance in terms of clause (b) or clause (c) of sub-section(2) of Section 29, the turnover limit may be reduced to Rs. 20 Lakh immediately, Rs. 5 Lakh after 3 months and to Nil after another 3 months.

Agenda Item 3(xiii): Re-credit of amount in electronic credit ledger after recovery of erroneous refund

7.52 The Principal Commissioner, GST Policy Wing mentioned that at present Rule 86 of CGST Rules provides for re-credit of amount in electronic credit ledger (ECL) only in two situations i.e., rejection of refund of unutilized ITC and sanction of refund of excess payment of tax. He informed that in this regard, GSTN has developed a new functionality in FORM GST PMT-03A to make re-credit of amount in ECL independent of refund process so as to enable tax authorities to re-credit ITC in ECL, on deposit of amount of erroneous refund by taxpayer in cash. To provide for re-credit of amount in ECL where the amount of erroneous refund has been paid by the taxpayer, in cases of refund of unutilised ITC or in cases of refund of IGST in contravention of Rule 96 (10) of the CGST Rules, the Law Committee recommended for insertion of sub-rule (4B) in Rule 86 of CGST Rules for prescribing that where a registered person deposits the amount of erroneous refund sanctioned in cash, an amount equivalent to amount deposited shall be re-credited to the electronic credit ledger. The Law Committee recommended Notification of FORM GST PMT-03A along with the proposed Circular.

The Council agreed with the recommendations of the Law Committee along with the proposed Circular and the Form GST PMT-03A.

Agenda Item 3 (xiv): Note for extension of limitation under Section 168A of the CGST Act, 2017

7.53 The Principal Commissioner, GST Policy Wing mentioned that requests were made to extend the period of limitation under Sections 73/74 and Sections 54/55 on account of problems being faced by the taxpayers as well as tax administration in respect of demands and refunds getting time barred due to long period of lockdown/restrictions. He informed that the issue was deliberated by the Law Committee in its meeting held on 11.04.2022 and 07.05.2022. The Law Committee observed that Centre as well as State governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices, from time to time during COVID period. Further, it was a conscious policy decision not to do enforcement actions in the initial period of implementation of GST Law, thereby no action for scrutiny, audit etc. could be undertaken during initial period of GST implementation. Since the due date of filing Annual return for FY 2017-18 was 5th/7th February, 2020, based on which limitations for demand under the Act are linked, and since the onset of COVID happened immediately after that, thereby, audit and scrutiny for FY 2017-18 were impeded due to various restrictions during COVID period. The Law Committee, accordingly, recommended that limitation under Section 73 for FY 2017-18 for issuance of order in respect of demand linked with due date of annual return, may be extended till 30th September, 2023 under the powers available under Section 168A of CGST Act. Law Committee further took a view that no such extension is required for timelines under Section 74 of the Act, as the Act provides for sufficient limitation time of 5 years in respect of such cases, i.e. much beyond the period affected by COVID-19.

7.54 Principal Commissioner, GST Policy Wing further informed that Law Committee also observed that taxpayers may also have faced difficulties in timely filing of the refund claims during the COVID period. Besides, the tax officers were also hampered in issuing SCN during COVID period, in respect of erroneous refunds sanctioned. Therefore, Law Committee also recommended that time period from 01.03.2020 to 28.02.2022 may be excluded from the limitation period for filing refund claim by an applicant under Section 54 and 55 of CGST Act, as well as for issuance of order / demand in respect of erroneous refunds under Section 73, by exercising power under Section 168A of CGST Act.

The Council agreed with the recommendations of the Law Committee along with the proposed draft Notification under Section 168A of CGST Act, subject to the vetting by the Law Ministry.

Agenda Item 3 (xv): Waiver of late fee for delay in filing GSTR-4 for FY 2021- 22 and extension of due date for filing GST CMP-08 for Q1 of FY 2022-23.

7.55 Every registered composition taxpayer is required to furnish a return for every FY in GSTR-4 besides furnishing a quarterly statement containing the details of payment of self-assessed tax in GST CMP-08. The self-assessed tax paid by the taxpayer and declared in quarterly statements is auto-populated on the portal in table 5 of GSTR-4. If no liability is declared in table 6, it was presumed that no liability is required to be paid, even though taxpayer may have paid the liability through GST CMP-08. In such cases, liability paid through GST CMP-08 was treated as excess tax paid and was moved on the portal to Negative Liability Statement for utilization of same for subsequent tax period's liability. The Law Committee took a view that amount in negative liability statement needs to be debited on the portal as a remedial action and it was also decided wherever the amount available in negative liability

statement had been utilized by the taxpayer for paying the liability of subsequent financial year, such amount needs to be debited from electronic cash ledger (ECL) of the concerned taxpayer. In case the liability had already been paid through challan or by adding in the liability of the subsequent period, the same was advised to be claimed as refund.

7.56 The Principal Commissioner, GST Policy Wing mentioned that on account of representations received from taxpayers stating that they are suddenly facing cash crunch for paying the remaining amount as per GSTR-4 return by the due date i.e., 30.04.2022 the Law Committee had recommended that late fee may be waived for delay in filing GSTR-4 for FY 2021-22 for the period 01.05.2022 till 30.06.2022 and this was subsequently approved by the GST Implementation Committee.

7.57 Considering the large number of representations from the taxpayers regarding difficulty being caused due to negative balance in ECL, the status of issue was placed by GSTN before the Law Committee. The Law Committee recommended that the negative balance in cash ledger as on date may be nullified by passing a credit entry of equal amount in the System and that list of all such cases may be sent to tax authorities for necessary verification and recovery, if any. Also, that where the taxpayer has paid the liability twice, he may seek refund. GSTN had sought time up to 8.07.2022 for deployment of the said functionality and therefore, the Law Committee recommended to extend the waiver of late fee for delay in filing GSTR-4 for FY 2021-22 till 28.07.2022 and also, recommended to extend the due date for filing of GST CMP-08 for the 1st quarter of FY 2022-23 till 31.07.2022.

The Council agreed with the recommendations of the Law Committee along with the proposed draft Notifications. GSTN has also been asked to expeditiously resolve the issue of negative balance in Electronic Cash Ledger being faced by some of the composition taxpayers.

Agenda Item 3 (xvi): Refund of accumulated ITC to Duty-Free Shops(DFS)

7.58 The Principal Commissioner, GST Policy Wing stated that the Hon'ble High Court of Bombay in the case of M/s Flemingo Travel Retail Limited vs UOI vide order dated 7.10.2019 and Hon'ble High Court of Kerala in the case of CIAL Duty free and Retail Services Ltd. Vs UOI vide order dated 22.09.2020 have held that supply of goods by Duty Free Shops is in the nature of zero-rated supply and therefore, refund provisions as mentioned in Section 54(3) of CGST Act, 2017 and Rule 89 of CGST Rules, 2017 are applicable. However, the legal provisions including Rule 95A of CGST Rules, 2017 which were implemented as per the recommendations of the GST Council, did not consider the supplies made by Duty Free Shops to international passengers as zero-rated supplies as they were based on the presumption that in case of sale by Duty Free Shops, it is the passenger who was the exporter and not the Duty Free Shops. Therefore, there was a legal anomaly between the law pronounced by the Hon'ble High Court of Bombay and Hon'ble High Court of Kerala (duly accepted by the department) vis-a-vis the legal provisions. In view of this, there was an imminent need to take suitable policy measures for correcting this legal anomaly for the period since 01.07.2019, when rule 95A and related Notifications were brought into effect. It was desirable that rules and Notifications be amended to align them with the decision of Hon'ble High Courts to treat the supply of goods by Duty Free Shops to international passengers as zero-rated supply.

7.59 However, for the future period, the issue was placed before the GST Council to consider whether there was any need to amend the Act/ Rules for restricting the refund to Duty Free Shops on account of supplies made by them to international passengers either at Arrival Terminal or also in respect of sales made at Departure Terminal or both. The policy measures/options were discussed by the Law

Committee and the following recommendations of the Law Committee were placed for deliberations and approval by the GST Council:

- i. To align rules and Notifications with the decision of Hon'ble High Courts to treat the supply of goods by Duty Free Shops to outgoing international passengers as zero-rated supply by:-
 - a. rescinding rule 95A of the CGST Rules, 2017 and Circular No. 106/25/2019-GST dated 29.06.2019 ab initio;
 - b. To rescinding Notification No. 10/2019-Integrated Tax (Rate), Notification No. 11/2019-Central Tax (Rate) and Notification No. 11/2019-Union territory Tax (Rate) all dated 29.06.2019
- ii. For future, there is a need to exclude refund in respect of ITC on inputs/ input services pertaining to Duty Free Shops at Arrival Terminal by amending Explanation to sub-section(3) of Section 17 of CGST Act by including certain transactions under paragraph 8(a) of Schedule III of CGST Act in the value of exempt supply. The Law Committee recommended:-
 - b. To amend sub-section(3) of Section 17 of CGST Act,2017 by substituting the existing explanation with the explanation proposed in the Agenda.
 - c. Post amendment in sub-section(3) of Section 17 of CGST Act, the supplies from Duty Free Shops at arrival terminal to the incoming passengers to be prescribed through the Rules so that value of such supply are not excluded for calculation of "value of exempt supply" for the reversal of ITC.

The GST Council approved the proposal of the Law Committee.

Agenda Item 3 (xvii): Proposal for continuing with exemption from IGST and Cess on imports/domestic procurement of goods by Advance Authorization (AA)/Export Promotion Capital goods (EPCG)/ Export Oriented unit (EOU) and for doing away with e-Wallet

7.60 The Principal Commissioner, GST Policy Wing stated that the agenda item 3(xvii) was regarding an earlier decision of the GST Council, as per which in-principle approval was given by the GST Council to grant exemption from IGST and cess etc. on the imports made under AA/EPCG/EOU schemes and procurement at concessional rate for merchant exporters. Further, the Council had decided to implement the e-Wallet scheme for exporters and the implementation of the same had been deferred. The Council was informed that the technical issues pertaining to its implementation were examined by Directorate General of Export Promotion, CBIC and they had observed that the implementation of the scheme would be huge and complex and would require numerous linkages between Directorate General of Foreign Trade, GSTN, ICES, Customs etc. and this would put extra burden upon compliance requirement. They have recommended to discontinue the scheme. It was further informed to the Council that the scheme was suggested to address the issue of capital blockage in the initial phase of GST implementation and that at present, the issue has been addressed by exemption from tax/concessional rate available to AA/EPCG/EOU license holders and merchant exporters and by faster refunds both under IGST route and as well as that pertaining to un-utilized input tax credit on account of zero-rated supply. The Law Committee recommended that the present Notifications exempting IGST and Cess etc.

on the imports made under AA/EPCG/EOU schemes may be continued and E-wallet scheme may not be pursued further.

The Council agreed to the proposal and accordingly recommended that-

- a. **Present refund mechanism to exporters have been stabilised and streamlined, with exporters now being fairly acquainted with the refund processing under GST. Present Exemption Notifications of IGST and cess etc. on import of goods under AA/EPCG/EOU scheme may be continued.**
- b. **E-wallet scheme may not be pursued further.**

Agenda Item 3 (xviii): Amendment in CGST Rules for handling of pending IGST refund claims

7.61 The Principal Commissioner, GST Policy Wing mentioned that at present, the processing of refund of IGST paid on account of export of goods under provisions of Section 16(3)(b) of IGST Act is system based and is done in accordance with Rule 96 of CGST Rules. Rule 96(4) provided for withholding of refunds only in two specified situations and it does not provide for withholding the refund on account of exporter having being identified as a risky exporter by the system. The Law Committee recommended amendment in Rule 96(4) to include this scenario. Further, Rule 96(5) provided for transmission of intimation of withholding of IGST refunds to the jurisdictional proper officer, applicant and the common portal only in case where it is withheld under sub- section (10) or (11) of Section 54 and not in other cases. The Law Committee recommended to omit sub-rule (5) and to insert new sub-rules to provide for transmission of intimation of all IGST refunds withheld to the jurisdictional proper officer through common portal. Further, under Rule 96(1) the shipping bill filed by exporter is deemed to be an application of refund and therefore, any mismatch in the data furnished by the exporter in GSTR-1 results in the refund getting processed only on rectification of such mistake. In such cases, the refund claims get pending due to mistake made by exporter. Law Committee recommended adding a proviso to Rule 96(1) to provide that shipping bill may be deemed to be an application for refund under this sub-rule only when there are no mismatches in the data furnished in shipping bill and GSTR-1. Further, it was also recommended by the Law Committee that the proposed amendments may be carried out retrospectively w.e.f. 01.07.2017.

The Council agreed to the proposal as detailed in the agenda note for making necessary amendments in Rule 96 of the CGST Rules to provide for transmission of IGST refunds on the portal in a system generated FORM GST RFD-01 to the jurisdictional GST authorities, which are suspended/ withheld; and to provide for such refunds to be dealt by jurisdictional GST officer in a manner similar to refunds filed in FORM GST RFD-01 to enable processing of such pending refunds. Council also recommended to make such changes retrospectively w.e.f. 01.07.2017.

Agenda Item 3 (IX): Errata for information of the Council.

Agenda Item 3 (xx): Consent based data sharing for non GST purposes

7.62 Currently, the GST eco-system contains rich data about taxpayers that can be used to provide various services in a targeted fashion, e.g. making credit available to business entities, especially, the MSME. Various initiatives including flow based lending based on the invoices issued by the suppliers are in works, like Trade Receivables Discounting System (TReDS) under the Factoring Regulation Act. Currently, TReDS accesses invoices through a complex process. With access to invoice based data, the business flow can be radically simplified for the taxpayers. Similar other initiatives like sharing data through the system of Account Aggregators brought in place by Reserve Bank of India for consent based sharing of financial data are in pipeline.

7.63 The proposal of amending the GST Acts to allow sharing of supply data with the consent of the supplier and the recipient with these systems, was discussed by Law Committee and it suggested that the “Amendment to be done in CGST/SGST Act to this effect which will incorporate due safeguards for indemnity and non-liability of GSTN/GST authorities (without prejudice to any action under GST Law). The proposed amendment to ensure the provision for non-disclosure clause.”

7.64 The Law Committee proposed to insert new Section 158A in the GST Acts to enable sharing. The exact mode of obtaining consent and sharing of data would be outlined in rules.

7.65 Accordingly, the Agenda item was put up before the Council to seek its approval in order to carry out the proposed amendments in the respective GST Laws and it was also proposed that in the meantime, consent based data sharing module may be implemented with appropriate safeguards. This Agenda item was agreed to in the Officers Meeting held on 27th June 2022.

The Council approved the recommendation of Law Committee.

Agenda Item 4: Issues recommended by GSTN

8. The Secretary requested the CEO, GSTN to explain the Agenda Item 4. The CEO, GSTN informed that there were three technical items in the agenda. Thereafter, he gave a detailed presentation on this agenda which is attached as **Annexure-4**.

Agenda Item 4(i): Development of New Return System.

8.1 First Agenda item related to the Development of New Return System. The CEO, GSTN made a reference to the briefing made in the year 2020 by Sh. Nandan Nilekani, wherein it was advised that rather than implementing the New Return System, it was desirable to implement the features of new return in the present return. He also informed that over the past one year, some new elements to the present return system were implemented so as to enrich it extremely and align it with the features of New Return System. He also invited the attention to the table which was placed in the agenda at Page No.246 & 247, wherein a comparison of the benefits which had accrued due to New Return System was made. He further emphasized that as the present return was already almost aligned with the features of New Return System, now there was no need to develop a New Return System as per the design of the year 2018.

The agenda item was unanimously approved by the Council.

Agenda Item 4(ii): Extension of REAP and LEAP Projects beyond 31.03.2022 for the F.Y 2022-23.

8.2 The CEO, GSTN mentioned that this proposal is of commercial nature. He informed that GSTN started working on Time and Material (T & M) model of developing modules about two years ago and satisfying results had been achieved in this regard as GSTN was able to develop the modules in two-third of the time and at the same cost. He further mentioned that extensions were taken time and again.. He further informed that GSTN had worked for over two years and developed enough expertise in development of modules under T & M and requested that the decision making for further implementation of projects on T & M be left to the GSTN Board, headed by the Secretary. He also proposed that these decisions are commercial in nature and need not come any further to GST Council. However, the Council will be informed in case there is any major change in strategy, billing or budget. He further submitted that if GSTN is able to re-model the projects on various modules within the same budget then that day to day financial decision could be left to the Chairman of GSTN who is also Secretary.

The agenda item was unanimously approved by the Council.

Agenda Item 4(iii): Status of Establishing Multiple Invoice Registration Portals (IRPs) to cater to the requirement of extending e-invoicing to all the Businesses.

8.3 The CEO, GSTN informed that Council had given permission to induct 4-5 Members from private sector for the Invoice Registration Portal (IRP) for e-invoicing and that the selection process for which had already been completed. He further proposed to bring one more Invoice Registration Portal (IRP) of NIC. NIC was already running one Invoice Registration Portal. He further submitted that in the next six months, total six Invoice Registration Portals (IRPs) would be active and proper implementation of the same with multiple players would ensure that entire B2B invoicing space gets digitized. This would lead to instant reporting of transactions as IRP captures all the information of the invoice. Further, GSTN was developing a facility so that the details of e-invoice can be shared both with buyers and suppliers instantly. The facility of IRP would make the details of invoice available to all including the administration as well. He further submitted there are other associated benefits of digitization which are expected to flow in future.

The agenda item was unanimously approved by the Council.

Agenda item 5: The Performance Report of the NAA (National Anti-Profiteering Authority) for the 2nd quarter (July to September, 2021), 3rd quarter (October 2021 to December, 2021) and 4th quarter (January, 2022 to March 2022) for the information of the Council.

9. The performance Report of the NAA (National Anti-Profiteering Authority) for the 2nd quarter (July to September, 2021), 3rd quarter (October 2021 to December, 2021) and 4th quarter (January, 2022 to March, 2022) were put up for the information of the Council. The Council unanimously accepted the same with the chair reminding the Council that the term of NAA was to come to an end in November, 2022.

Agenda Item 6: Issues recommended by the Fitment Committee (FC) for the consideration of the GST Council

10. The Secretary introduced the agenda item relating to the recommendations of the Fitment Committee. These recommendations had been given in six Annexures where the first three related to goods and the other three related to services. The first Annexure provided details of the items (goods) where some tax rate change was being recommended; the second Annexure lists items (goods) where no tax rate changes were being recommended and the third Annexure contained deferred items (goods) where the decision would be taken by the Fitment Committee after further deliberations and thereafter approval of the Council would be sought. Categorization on similar lines had been made in fourth, fifth and sixth annexures pertaining to services.

10.1 The Secretary to the Council stated that the recommendations of the Fitment Committee were discussed in detail in Officer's Meeting on 27.6.2022 and large number of recommendations were agreed to by all. However, on some of the items, the officers had some suggestions and expressed their views. The Secretary sought the permission of the chair to mention those items before the Council and stated that if any Member feels that there were some other items which need to be discussed; the same could be taken up. He asked Joint Secretary, TRU to take the Council through items numbers 6, 9 and 14 of Annexure I to the Agenda.

10.2 Joint Secretary, TRU started the discussion with item No.6. He stated that there was a request for limited period exemption from IGST for defense items imported by the private vendors, since the procurement by Government for defense and defense PSUs were also exempt. He explained that this was a very small list of specified items and this exemption would be only for a period of five years lapsing in 2024. He clarified that this is an end use- based exemption where Joint Secretary from Ministry of Defense certifies that these imports are for defense forces and they fall under the specified list.

The Council agreed with the proposal to change the applicable rate of IGST to NIL on specified defense items imported by private entities/vendors when end user is the Defense forces.

10.3 He further stated that item number 9 is about increasing GST rate from 12% to 18% on Tetra Pak. He explained that all packaging material falling under corresponding chapter are liable to GST @ 18%. Therefore, Tetra Pak as compared to other packaging material was an outlier and also merits the standard rate. Because of its inputs' nature and consequences to environment, Fitment Committee opined that GST on Tetra Pack should be taken to 18% which would also help in correcting inversion on this item.

The Council recommended the proposal to change the tax rate on Tetra Pak (Aseptic Packaging Paper) from 12% to 18%.

10.4 Joint Secretary, TRU informed that item number 14 pertained to cut and polished diamonds whereby the industry had requested for increase in the tax rate from 0.25% to 1.5%. He stated that earlier GST rate reduction to 0.25% was sought by the industry as cut and polished diamonds were largely exported so the tax incidence would not be having much impact. Over a period of time, the inverted duty structure had impacted this sector and hence the request was to increase the duty rate from 0.25% to 1.5%. He pointed out that the issues related to inversion were already before the concerned Group of Ministers (GoM) and hence, Fitment Committee felt it prudent that this matter should be deliberated and addressed by the GoM on rate rationalization. However, some concerns were raised by the state of Gujarat and accordingly, he requested the Hon'ble Member from Gujarat to raise the same before the Council.

10.5 Hon'ble Member from Gujarat informed the Council that the diamond industry was a major sector in Surat providing employment to thousands of people. There was import of services and capital goods at the rate of 18% which results in the accumulation of ITC. Accordingly, industry had requested a hike in tax rate from 0.25% to 1.5% and this might be agreed to enable utilizing of ITC which had accumulated due to the inverted tax structure on diamond industry.

10.6 The Chairperson asked whether both the industry and the state of Gujarat sought to raise the tax rate to 1.5% to which Member from Gujarat informed in affirmative.

10.7 Hon'ble Member of Karnataka informed the Council that if the state of Gujarat was keen to increase the tax rate from 0.25% to 1.5% and industry also wanted the take hike, then the same need not be referred to GoM and the Council could decide the issue.

10.8 The Secretary informed that there was acute inversion in diamonds. So, 1.5% would only correct the inversion and if the Council agreed, it may not be referred to the GoM.

The Council recommended the proposal to change the tax rate on cut and polished diamonds from 0.25% to 1.5%

10.9 Hon'ble Member from Kerala requested that there was an exemption for orthopedic implants and he requested to extend the exemption to cochlear implant (Artificial electronic ear) as this was a device for helping the hearing disabled. Joint Secretary, TRU informed the Council that cochlear implant was already at the concessional rate. The Fitment Committee had taken up items where there was a confusion between 5% and 12% and had recommended deserving items to be taken to 5%.

10.10 Hon'ble Member from Madhya Pradesh agreed with the proposal to reduce the tax rate on ostomy items used regularly in the medical field to 5% and also on all items under Orthopedic implants (CTH 9021, except hearing aids which attract NIL GST rate) which were important for assisting the handicapped. He further stated that the Fitment Committee on item number 5 of the agenda, under Chapter 23 had suggested a tax rate of 5% for items like cattle feed, cottonseed oil cake, rice bran oil etc. He informed the Council that the animal husbandry is done on a large scale in the state of Madhya Pradesh. In the 20th national count of the cattle done in 2019, Madhya Pradesh stood at 3rd place in the whole country. He stated that increasing the rate on cattle feed would burden the people involved in the animal husbandry and this would increase the price of the dairy items as well. So, he recommended that the cattle feed items be kept exempted from the GST.

10.11 Joint Secretary, TRU explained that different rates on items of Chapter 23 (animal feed, their inputs, oil cakes etc.) have led to disputes. He informed the Council that in this chapter head there are large number of items including manufactured items which entailed large number of inputs and ITC. Also, there are disputes regarding cattle feed and its inputs; and other items which do not fall in the category of cattle feed but are inputs in the said chapter. Fitment Committee has opined that 5% nominal tax rate on this chapter (except dog or cat food falling under CTH 2309) would reduce litigation on these issues and with 5% tax rate, the manufacturers would get refund of ITC, if they had any accumulated credit which otherwise, they would not get in exemption. However, Fitment Committee had not explicitly recommended this rate change but had recommended that GoM on Rate Rationalization may consider uniform rate of 5 % on entire Chapter 23 (except dog or cat food falling under CTH 2309). Further, as per the interim report, the GoM had not recommended any increase in the cattle feed in Chapter 23 at this stage. Hence, the issue raised by Hon'ble Member from Madhya Pradesh stood addressed. Hon'ble Member of Karnataka also added that GoM had taken this concern into account.

10.12 Joint Secretary, TRU proceeded to item number 97 in Annexure II to the Agenda relating to scrap. He stated that genesis of this issue lies in the 45th Council meeting in Lucknow. There also Fitment Committee had placed this agenda item. He explained that there were two issues involved, one was that what should be the rate on the scrap particularly on metal scrap because presently it attracts 18% tax rate and request was to reduce it to 5%. Fitment Committee was not in agreement with the request because of the reason that there is huge import of scrap in the country and the revenue involved is about 45,000 crores and in fact this had increased subsequently. The Council had opined that because of this huge revenue implication, bringing down the tax rate from 18% to 5% would not be desirable. He reiterated the minutes of the 45th Meeting of the Council where this opinion was expressed.

10.13 He further stated that the other issue involved is of reverse charge on scrap. There is significant evasion in scrap and scrap traders vanish without paying the taxes on the tax invoice. The manufacturers complain that they are suffering on this account that their suppliers were not paying the tax and corresponding ITC became ineligible. So they requested for the reverse charge mechanism on scrap. On this matter, the Fitment Committee was of the view that the reverse charge mechanism was not possible. Reverse charge could apply only at the beginning of supply chain. However, it was suggested that a meeting with the industry could be held for the issue requires re-examination. After the 45th Council meeting, the Fitment Committee examined this issue in great length over three meetings. The trade submitted that if Reverse Charge Mechanism (RCM) is there, they would be able to take the credit and it would not create any additional obligation if suppliers were not filing GST return. So, they would be absolved of any liability that may arise on account of non-payment of taxes by the scrap dealer. However, Fitment Committee examined the issue and found that scrap entailed a supply chain with number of suppliers involved. There was a lot of aggregation which happens in supply chain of scrap. It was not the case here that only one scrap dealer would supply to one manufacturer but there were number of scrap dealers collecting scrap and they would give it to the dealer who aggregated and then it would go to some other dealer for further aggregation. Therefore, there were multiple supply chains some of which originated from imports. On imports the taxes were paid by the importer. So, if importer had paid tax of 18% and again if manufacturer would be asked to pay on reverse charge, then this would lead to a 36% tax on the scrap, out of which on about 18%, ITC would be available but other 18% would become the absolute cost. So, bringing scrap under reverse charge was not possible. Accordingly, when this was examined by Fitment Committee, it was *ab initio* opined that it was not feasible to introduce reverse charge in case of scrap. Another aspect was that the iron and steel were such items that if scrap dealers were taken out of this chain then there would issues with ITC in the subsequent supply chain and the compliance issue would also be there. Continuing with forward charge on scrap has help GST administration keep a check on supply chain. These were the prime factors on the basis of which the Fitment Committee had opined that reverse charge on any supply in the chain after the first stage was not feasible.

10.14 Hon'ble Member from Karnataka stated that issue of scrap dealers should be handled more stringently since major evasion happens in this item. Trade of scrap had a little complicated supply chain but if there could be a reverse charge mechanism and a proper detection of the supply chain could be done, large revenue would be generated. He informed that just because of the complexity there was a leakage of huge revenue. He stated that there were large number of imports of scrap and there was no track of the supply chain after imports. Supposing 5000 tones was imported, then it was important to track as to whom it had been supplied and how much had been converted to other items to be used in manufacturing. He suggested to do a detailed study on metal scrap, where it was used in manufacturing and in which industries. If this could be tracked, then there could be a reverse charge leading to generation of higher revenue. He expressed that this issue was pending for the last five years and

leading to large amount of tax evasion. He exhorted to the Council to give a serious thought for the reverse charge mechanism so that the tax evasions on scrap could be checked.

10.15 The representative from Punjab informed that their Vidhan Sabha budget session was ongoing. Thus, the Hon'ble Member from Punjab would be joining later. He stated that tax evasion on scrap was a major issue in the state of Punjab because they had a huge scrap market at a place called Mandi Gobindgarh. They referred to the minutes of the 45th meeting of the Council, where the Hon'ble Chairperson had stated that this issue could be taken up at the next meeting after due consultation. He further stated that they were not part of the Fitment Committee and neither they nor the industry had been consulted on the issue. So, the position of the Punjab is that if this issue of reverse charge could be deferred now and only after due consultation this issue may be decided.

10.16 The Secretary informed that previous day, he had a small meeting with all his officers and he was told that the industry had been consulted and even representatives of the industry came and had a discussion with Chairman, CBIC. However, since Hon'ble Chief Minister of Karnataka and representative from Punjab had raised this issue of reverse charge, he suggested that the Fitment Committee could again take up the issue of reverse charge and Punjab could be called to be a part of deliberations. He informed the Council that the industry had been consulted but Fitment Committee could interact with industry once again and come up with the solution so that RCM could be looked into.

There was an agreement on all other recommendations made in Annexure I, II and III in the Fitment Agenda and the Council recommended accordingly.

10.17 Joint Secretary, TRU introduced the next item in the Agenda (Annexure- IV to Agenda) of the Fitment Committee. He stated that Nepal and Bhutan were landlocked countries, and their imports and exports took place from the Indian ports and seaports. In the case of imports to Nepal and Bhutan, the containers moved from the seaport to Nepal and Bhutan and after the cargo had been offloaded, then empty containers moved out from these countries and came back to the port in India. Here, the issue was regarding the applicability of GST on activities associated with transit cargo to Nepal and Bhutan. The exemption Notification exempts the supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) but when the empty container come from Nepal after dropping the cargo, services related to transport of such containers were not being exempted because the Notification wording only specifies onward cargo to Nepal. However, the intention was to exempt both inward and outward cargo to Nepal and Bhutan as this was only transiting in India for the purpose of import and export. All the empty containers which came from Nepal/Bhutan after dropping import consignment and any service relating to them should not be taxed. He informed the Council that this matter was discussed in Officer's meeting and there was in principle agreement, but the issue was raised as to what was transit cargo and how it was happening. He further informed the Council about the procedure in Custom to deal with the cargo and it could be looked into, as the issue raised is more of enforcement rather than a policy issue.

10.18 Hon'ble Chairperson asked the states like Assam, Bihar, West Bengal, UP and Sikkim who share borders with either Nepal or Bhutan, to offer their comments as they were going to be directly impacted by these recommendations.

10.19 Hon'ble Member from Uttar Pradesh submitted that they did not have any issue with the transit of cargo and the empty containers coming back but he raised the point to ensure the genuineness of such cargo through proper verification.

10.20 Hon'ble Member from Bihar also agreed to the concerns of the U.P.

10.21 Hon'ble Member from Tamil Nadu stated that the concerns of neighbouring states with Nepal and Bhutan, should be fully addressed before implementing this rather than taking the risk. He submitted that the mechanism could be in the form of a SOP which explained the process and procedures involved for the ease of comprehension.

10.22 The Secretary noted the comments of the Hon'ble Members and informed that concerned states would be informed of the SoP followed by Customs.

10.23 Joint Secretary, TRU proceeded with item number 11 pertaining to Goods Transport Agency (GTA) services and informed that the previous day some issues were raised about Goods Transport Agency services. It currently attracted 5% tax rate without Input Tax Credit (ITC) when on reverse charge and 12% with ITC on forward charge. But when a GTA service provider availed the route of paying GST with ITC at 12%, he was barred from taking 5% under Reverse Charge Mechanism route ever again. So, the issue was being raised about providing flexibility to GTA so that in a particular year if they wanted to shift to 5% tax rate without ITC from the 12% rate, they could do so. This flexibility was there in other services also. So, the Fitment Committee recommended that this flexibility should be there in this sector also to facilitate the trade. Fitment Committee had proposed that a GTA can opt both the routes- to operate under forward charge or under Reverse Charge Mechanism but he had to express his intention before the beginning of a financial year. A GTA opting to pay GST under forward charge may be allowed to pay GST@ 12% with ITC on some consignments while simultaneously availing 5% rate without ITC on the other consignments during a financial year provided he pays GST on forward charge basis on all its services during that financial year. This modality would provide greater flexibility to GTAs while not compromising the revenue.

10.24 On item number 19 (Annexure IV to the Agenda), Joint Secretary, TRU informed the Council about the issue of clarification on the taxability of certain activities. He explained that “agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been declared to be a supply in para 5 (e) of Schedule II of CGST Act, 2017. GST applies on the activities of agreeing to do something or not agreeing to do something or tolerating something. If a person charged something for not participating in a bid where others were participating or someone charged for not opening a restaurant in one area where already another restaurant was operating on non-competing basis, then GST would apply as this was a supply of service. Similarly, if a train ticket was cancelled, it is a kind of facilitation service of allowing cancellation against cancellation charges and being a part and parcel of the main supply of passenger transport, will get the same tax treatment.

Similarly, if someone tolerates an act of someone against consideration under an implied or express agreement then GST would apply.

However, this provision was being applied in various kinds of situations leading to unwarranted litigation. Even if some damages were to be paid for breach of contract or an employee, who was under bond and left a company on payment of bond amount, Show Cause Notices for the recovery of tax on damages and notice pay had been issued.

10.25 The issues arising out of taxation of activities by way of “agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” were deliberated in detail. It was felt that the entry was being very widely and at times erroneously interpreted. Fitment Committee recommended that the issues involved may be clarified by way of the enclosed draft circular. The draft circular is based on the basic principles of GST law, Indian and international jurisprudence and international VAT/GST guidelines and practices.

10.26 Joint Secretary, TRU discussed the agenda regarding the items on Annexure IVA relating to tour and hospitality sector. The Hon'ble Member from Delhi queried regarding liability of GST by an employer hiring a vehicle for the employees as to whether it would be under Reverse Charge Mechanism or otherwise. If a company hired the vehicle for its employee on both time charter and voyage charter basis, then how will it be differentiated. Joint Secretary, TRU informed that on the previous day he had explained in the officers' meeting that the motor vehicle Act did not differentiate between vehicles on the basis whether they were given on time charter or voyage charter. The same vehicle can be hired for transport from point A to B or it can be hired for a period of time. Where the contract is for renting a vehicle for a specified period of time, Reverse charge mechanism would apply. Further, Joint Secretary, TRU informed that since this was only clarificatory in nature and it shall be circulated among the state officers before issuance, if they have any input or suggestion, the same can be added.

The Council agreed on this.

10.27 He further explained Annexure IVA to the Agenda related to recommendations of Fitment Committee on issues related to tour and hospitality sector, which had suffered severely in the Covid pandemic. He informed that there were 3 proposals before the Council. One is that due to place of supply provisions in respect of accommodation and other services, ITC is not available to tour operators and hence GST should be charged to such an extent that is fair and reasonable, and the rate should be rationalised to that extent. So, in- principle approval of the Council was being sought for Fitment Committee to engage with the trade and come up with suitable suggestions in the next Council meeting. The second issue was regarding an Indian tour operator conducting a tour for a foreign tourist partly in India and partly in neighbouring countries. GST dispensation at present was such that the entire tour gets taxed in India and hence, the tour operator pays tax even on the component which he was providing outside India. It was proposed before the Council that GST may be charged only on the domestic component of such composite tours. To avoid disputes/ misuse, valuation of the foreign and domestic components of such composite tours could be calculated based on the proportion of the number of nights for which tour was conducted outside and within India. To ensure that balance remains in favour of domestic tourism in such composite tours, it may be prescribed that this concession shall be provided for say maximum of half of the duration of the tour or actual period. The Council agreed with the proposal for charging GST only on domestic component in the manner as presented by the Fitment. The third issue was specifically related to Andaman and Nicobar Islands where the travel between two islands by vessel was exempt if it was by public transport other than predominantly for tourism purpose. Fitment Committee agreed that transport by vessels is a mode of transport rather than a luxury and approved the proposed clarification.

10.28 Hon'ble Member from Karnataka praised the margin scheme as this would give a boost to tourism but stated there were other businesses which were claiming to be categorised under marginal scheme. So the margin scheme should be very carefully drafted; otherwise, undeserving businesses would get benefited by such a margin scheme.

10.29 Hon'ble Member from Delhi agreed with the view of the Hon'ble Chief Minister from Karnataka and asked the Council some time to further study and examine the margin scheme before concluding it since only in- principle approval had been sought on this.

10.30 Hon'ble Member from Kerala raised the point that destination-based billing concept should not be diluted.

10.31 Hon'ble Member from Goa also agreed with the view of the Hon'ble Member from Kerala.

10.32 Hon'ble Member from Uttarakhand stated that they wished to be included in the discussions of Fitment Committee on this important issue of the place of supply. On which Joint Secretary, TRU informed the Council that place of supply was not being touched in this issue. The Chairperson directed that this topic should go back to the Fitment Committee and the States who had raised their concerns should be invited to speak in the Fitment Committee. Hon'ble Member from J&K also requested to be part of these consultations. Hon'ble Member from Tamil Nadu suggested to examine case studies in this regard to which the Council agreed. Accordingly, Council directed that proposal relating to margin scheme be re-examined by the Fitment Committee comprehensively taking all aspects into account.

10.33 Joint Secretary, TRU proceeded with the recommendations of the Fitment Committee on positive list of services to be specified in Sr. No. 3/3A of Notification No. 12/2017-CT(R) which were presented as Agenda in Annexure-IV B. He informed that this agenda flows from the previous GST council meetings. There were certain exemptions on pure services provided to the State governments, Central government, UTs or local authorities as their inputs for discharge of functions under the constitutional provision of Article 243G and 243W. Similarly, on composite supplies of goods and services provided to Central, State Governments, local authority and Union territories where the goods component was not more than 25%, similar exemption existed. He further added that in the previous Council meeting it was directed that inputs from each State should be taken based on which a positive list of services to be exempted had been drafted. In the relevant Notifications, 'public authority' word had been proposed to be inserted because in certain States, local authorities had been replaced by public authorities.

10.34 Hon'ble Member from Tamil Nadu informed that the services provided by the local bodies may be the most important services to the citizens, the list in the schedules listed about 29 services for the panchayats and 18 for the municipalities whereas the present list only had about 6 items. The proposed list excludes many items which involve manpower outsourcing. This will lead to huge expenditure to Exchequer. Most of the States were very heavily burdened by pensions and were unable to hire at the level that they used to do in the past. Tamil Nadu had also given Joint Secretary, TRU a paper stating that the local bodies provided services to citizens where there is no question of abuse as it is a public entity and subject to audit and scrutiny. GST on services or composite goods and services purchased by local bodies would be a huge burden on them and effectively on the State who finances these local bodies.

10.35 Hon'ble Member from Uttar Pradesh stated that such public services should be exempted, while commercial activity should be charged to tax. He suggested to bring cattle ponds into exempted list and added that the electric vehicles in urban areas should also be brought under exemption.

10.36 Hon'ble Member from West Bengal put forth that she agreed with Hon'ble Ministers because these pure service items were large in number and now it had been reduced to only 6. Further, this move would be a burden on exchequer as these services were provided by local bodies funded by the government.

10.37 Hon'ble Member from Haryana suggested to include vocational training in this list.

10.38 Hon'ble Member from Delhi also agreed with the views of the Hon'ble Member from Tamil Nadu.

10.39 Hon'ble Member from Andhra Pradesh also was of the view that due to burden of committed expenditure and pensions the local bodies were forced to go for outsourcing. He requested for exempting the entire outsourcing part of the functioning of local body.

10.40 Hon'ble Member from Telangana was also of the same opinion.

10.41 Hon'ble Chairperson directed that the proposal be sent back to the Fitment Committee to take the inputs from all the States which had voiced their concerns.

10.42 The Secretary informed the Council that item 63 in Annexure-V to the Agenda may be kept pending as some inputs from Gujarat were to be taken into consideration.

10.43 Joint Secretary, TRU explained the issue pertaining to tax rate on ropeways which was discussed in previous GST Council meeting. It was requested by Himachal Pradesh that ropeway travel should be brought down to rate of 5%. Himachal Pradesh had made presentation before the Fitment Committee. The two issues before the Fitment Committee were as to what should be the rate and what category of services should be taxed at lower rate. If they were to be considered as transport, whether tourism ropeway should be included or not. On this, the Fitment Committee recommended that like any other transport services, 5% GST rate with ITC only of input services should be allowed and Himachal Pradesh also agreed with this proposition because then it brings them on parity with other transport services. On the other issue of possibility of differentiating between ropeway for public transport versus ropeway for tourism, Fitment Committee opined that this kind of differentiation would lead to litigation.

10.44 Hon'ble Member from Himachal Pradesh thanked for putting the issue of ropeway in the Council. He stated that Himachal Pradesh had to go to Hon'ble Supreme Court for the various approvals for the laying of roads due to forest area issues. Himachal Pradesh had difficult terrain for example Kinnaur, Lahaul, Spiti, Chamba and other interior areas which were sometimes under cover of snow due to which even the agriculture produce could not be transported from the orchards. He emphasised that ropeway was not only important for tourism but crucial for normal transport. It was not luxury but necessity in a hilly state like Himachal Pradesh. Therefore, he requested the Council that the ropeway transport should be kept at 5% tax rate with ITC of input services. He further informed that Solar projects were at 5% GST while Hydro Projects were 18% GST thus making them unviable due to higher costs. He requested the Council to bring hydro projects to 5% GST rate.

The Council approved the 5% GST rate on transport of goods and passengers by ropeway with ITC of input services.

The Council agreed with all other items in Annexure IV, V and VI to the Agenda item No.6 and recommended accordingly.

Agenda item 7: Agenda note on C-PACE Project for Ease of Doing Business in India

11. In respect of agenda note on C-PACE Project for Ease of Doing Business in India, it was stated by the Secretary that the Ministry of Corporate Affairs was planning to launch a *Centre for Accelerated Exit* as a part of Ease of Doing Business for which they had requirement of Nodal Officers from the Department of Revenue and that two Officers were being nominated for this purpose for which approval was being sought from the Council who would take care not only of the Centre but also coordinate with the States towards ease of doing business.

Agenda item 8: Review of revenue position under Goods and Services Tax

12. Regarding review of revenue position under Goods and Services Tax, the Secretary stated that the revenue had shown a healthy trend. It had grown at about 30% in the last year while GDP was growing at the rate of 19.5%. In the current year too, revenue of Rs.1.67 lakh crores were collected in the first month April 2022 and Rs.1.4 lakh crores in the month of May and that the month of June would shows a similar trend. He stated that in the Financial Year 2018-19 revenue grew at 9% and then it was the COVID period but in 2020-21 growth was around 30%. An estimate had been made that if a revenue of Rs.1.55 lakh crores on average is collected, then growth would be about 25% and in case this average goes to Rs.1.60 lakh crores then growth would be 28%-29%. If the GDP goes up by 15-17 per cent, the buoyancy would be very high.

12.1 He observed that all around efforts were made by the States and all formations to increase the revenue and revenue had gone up.

Agenda Item 9: Report of Group of Ministers (GoM) on feasibility of implementation of e-way bill requirement for movement of gold and precious stones.

13. The Secretary requested the Hon'ble Member from Kerala to pilot item number - 9 of Volume-2 i.e., the report of Group of Ministers on feasibility of implementation of e-Way bill requirement for movement of gold and precious stones.

13.1 Hon'ble Member from Kerala thanked the Secretary and informed the Council in the 37th GST Council meeting held on 20.09.2019, a GoM consisting of Finance Minister of Kerala as the convener, the Hon'ble Deputy Chief Minister of Bihar, Gujarat, Finance Minister of Punjab, West Bengal and Minister for Home from Karnataka was constituted by the GST Council Secretariat vide O.M. dated 22.11.2019 and the mandate of the GoM was to examine the feasibility of implementation of e-Way bill requirement for movement of gold and precious stones or to suggest alternative ways and mechanism for controlling tax evasion.

13.2 The GoM suggested that states should be allowed to decide about imposition of the requirement of e-Way bill for intra-state movement of gold and precious stones within their States, with a minimum threshold of Rs. 2 lakh and the States could decide any amount above that amount as a minimum threshold and for filling up the e-way bill forms, only part-A of the e-Way bill would be required without any need for filling part-B of the e-Way bill to ensure security of transportation.

13.3 The Hon'ble Convenor further explained that the reasons of suggesting e-way bill was to enable the officials of field formation in the city to identify whether the gold being transported was inter-state or intra-state. Further, the GoM suggested that the E-invoicing should be made mandatory for B2B transactions by all taxpayers supplying gold/precious stones (goods of HSN 71) and having annual aggregate turnover above Rs.20 Crore. Further, the issue of levy on GST on reverse charge mechanism (RCM) basis on purchase of old gold by registered dealers/jewellers from unregistered persons may be referred to Fitment Committee for detailed examinations.

13.4 The Secretary invited comments from Bihar, West Bengal, Gujarat and Punjab who were the other Members and further stated that it was being left to the States to implement the eway bill and its threshold limit and only part-A of the e-way bill would be implemented. The Part-B which discloses the identity of the person/transporter would not be declared and this would ensure his security.

13.5 Hon'ble Minister from Odisha suggested that prescribing a minimum threshold should be left to the States. The Secretary clarified that the implementation was being left to the States and the States had the option to fix the threshold limit at Rs.5 lakhs or Rs.10 lakhs also. He further clarified that Centre was

giving liberty to the respective States and that it was up to the states to implement or not to implement the recommendations.

Decision: The GST Council approved the recommendations of the GoM.

Agenda Item 10: Proposal to apportion IGST amount of Rs. 27,000 crores for the financial year 2022-23 on ad-hoc basis

14. The Secretary invited the Joint Secretary (DoR) to present the agenda. Introducing the agenda item, Joint Secretary (DoR) stated that the normal IGST apportionment is done as per Section 17 of the IGST Act, 2017 which is based on the cross utilization of credit between IGST, CGST and SGST but it was observed that every month there was some amount of IGST left un-apportioned which mainly happened due to not utilization of the IGST credit in that month by the taxpayers. Accordingly, ad-hoc apportionment of the IGST, which remained in the Consolidated Fund of India, was done on regular basis. He further apprised the Council that Rs. 27,000 Crores is estimated to be left un-apportioned by the end of June, 2022. The apportionment will be done on ad-hoc basis, 50% to Centre and 50% to States/UTs and the proposal is put up before the Council for its approval.

14.1 Hon'ble Member from Delhi stated that the IGST amount should not be left un-apportioned in Consolidated Fund as had happened before in 2018. The Secretary assured due care would be taken.

14.2 Thereafter, the Hon'ble Chairperson stated that this had happened then because the Council did not have a formulation on the same at that time. She further stated that she went into depth to understand why it happened in 2018 and even though the financial year was over, she ensured that the error was corrected. She stated that there should be a way to share the IGST on real time basis rather than seeking the approval of the same from the Council every time.

Agenda Item 11: Agenda Note on amendments to provisions relating to GSTAT in CGST Act, 2017

15. The Secretary introduced Agenda item 11 which was a note on amendments to provisions relating to GSTAT in CGST Act, 2017. He stated that the Courts, the Standing Committee on Finance and other Committees had emphasised the need to set up the Tribunals. In the absence of Tribunals, people were being forced to file Writ Petitions and a number of cases had been decided by the High Courts and by the Hon'ble Supreme Court in place of Tribunals. He further informed that since the GST Tribunals would decide on matters pertaining to CGST, SGST and IGST which would affect the States and Centre and therefore, parity had to be maintained in the membership between States and Centre. The Secretary informed that that process would still take time because the Act needed to be amended and then the Rules were to be formulated and the process of selection of Members would take place. He invited JS DoR to make a presentation.

15.1 Joint Secretary, DoR gave a presentation before the Council which is attached as **Annexure-5**.

15.2 Hon'ble Member from Uttar Pradesh submitted that there should be a time bound exercise and they would proceed accordingly.

15.3 Hon'ble Member from Maharashtra could not attend the meeting however he had sent his written comments on this agenda vide letter dated 27/06/2022. He expressed sincere thanks for the invitation to Council meeting and placed his remarks on the behalf of the State of Maharashtra on the Agenda Item No.11 on Amendments to provisions relating to GSTAT in CGST Act, 2017. The letter stated that the said agenda refers to various important court rulings and the Tribunal Reforms Act, 2021, which require careful study and extensive examination. However, *prima facie*, following issues had been noticed and require careful consideration from the point of view of the States:

- a. Section 109(3): The constitution of members of Principal Bench reflects inadequate representation to the States,
- b. Section 109(6): There should be provision of one default Bench in States in the Law itself (sans Council nod afterwards) with further expansion in Benches requiring Council recommendation,
- c. Section 109(10): Increasing limit of 5 Lakh for a Single member bench.
- d. Section 109(12): Transfer to Technical Members (State) by President of PB should be within the State,
- e. Section 110(1) (d) :
 - i. The qualifying criteria for Technical Member (State) require a relook, especially with respect to selection from State cadre Group A officers.
 - ii. Also, States should be given liberty to decide the rank of the candidate for the purpose of appointment as Technical Member (State). This is especially because for Technical Member (Centre) no qualifying rank is specified.
 - iii. Further, “..or in the field of finance and taxation:” requires relook because, the word ‘finance’ includes treasury department, whose inclusion may not be intended. ‘Taxation’ should include VAT and GST.
- f. Section 110(2A): The selection of Technical Members (State) should mandatorily be from home State.
- g. Section 110(3): The balance between appointments of the number of Technical Members from the Centre and States and their balance at the location, within State and within country should be maintained from the inception of the Tribunal.
- h. Section 110(4): The Chief Secretary as a member of Search cum Selection Committee (ScSC), should be from the State of the Bench to which appointment of Technical Members of that State is being considered,
- i. Section 110(5A): Instead of recommendations of Panel of two names for one post of Technical Members, the ScSC should recommend only one name for one post of Technical Members,
- j. Section 110(9): There should be no reappointment of Technical members, the reason being that it would not give enough opportunity to others. Moreover, tenure period of 4-year as a Technical Member is fairly long period.

15.4 Hon'ble Member from Tamil Nadu recommended for constitution of a Group of Minister (GoM) to address the issues where legal, council and executive functions are blurred, within a time frame of 2 to 3 months and GoM could come back with a design which keeps the making of the Council in sight. That the Council represented the elective Members and the Council should not just do that because the court had ordered.

15.5 Hon'ble Member from Gujarat submitted that as the issue was long pending for the last five years, the formation of GSTAT should be taken up on priority. There must be State level Tribunal with High Court Judge. The Member further elaborated that right now the proposition was for the constitution of a National Tribunal and if they constituted a National Tribunal, there would be a number of issues regarding replacement, selection of Members as well as its functioning. He suggested that State level Tribunals should be constituted as all those issues could be addressed and the functioning would be much better.

15.6 Hon'ble Member from Delhi stated that Council was formed by the GST Law and the spirit of the GST Law was federal. That everything or any decision that they took, the outcome had to be Federal and not Central oriented. Regarding the formation of State level benches of Tribunals, he raised few observations such as whether the Technical Member would be from State or Centre Services, whether the Technical Member would be transferable from one state to another which appears to be Central not federal in structure. He also sought clarification regarding re-appointment of the Members. He further supported the view of the Hon'ble Member from Tamil Nadu to form a GoM which could consider all aspects specially how to keep the structure and character of the Tribunal Federal rather than Central and give its report in 3 months' time.

15.7 Hon'ble Member from Uttarakhand stated that all the Technical Members in the Tribunal in the State should be of the All India Service Officers of respective state or from the respective State Services (serving or retired) only.

15.8 The Hon'ble Chairperson stated that that agenda was first discussed in the Law Committee in which some states were represented. She said that the Law Committee did not intend to centralise that and that she would go with the suggestion of forming the GoM and that GoM could be given a reasonable time to submit its report to the Council.

15.9 Hon'ble Members from West Bengal, Karnataka, Andhra Pradesh and Haryana welcomed the Hon'ble Chairperson's proposal for setting up a GoM so that all aspects of the matter could be looked into.

Decision: The GST Council decided to constitute a broad-based Group of Ministers (GoM) to look into all aspects of the issue and submit its recommendations within a reasonable time.

Agenda item 12: Ad-hoc exemption Orders issued under Section 25(2) of customs Act, 1962

16. In respect of the Ad-hoc exemption orders issued under Section 25(2) of customs Act, 1962 the Secretary observed that these were items, where approval was taken from the Hon'ble Finance Minister in specific cases for exemption and were brought before the Council for approval. The same were unanimously approved by the Council.

Agenda item 13: Recommendations of the 16th IT Grievance Redressal Committee for approval/decision of the GST Council

17. The Secretary asked the Joint Secretary, GST Council Secretariat to present the agenda item 13 regarding recommendations of the 16th IT Grievance Redressal Committee before the Council. The Joint Secretary presented the agenda before the Council .

17.1 The 16th meeting of the IT Grievance Redressal Committee (ITGRC) discussed the following cases -

17.1.1 Four cases of TRAN-1/TRAN-2 filing forwarded by Nodal Officer: The Committee recommended that out of the four (04) cases forwarded by the Nodal officers, the committee did not consider two cases on merit as these were received by the GSTN after the due date i.e. 31.08.2020 and recommended for rejection as being time barred. The committee rejected the third case on merit and decided not to consider any case forwarded by the Nodal officers to GSTN after the due date i.e. 31.08.2020. The fourth case was recommended by the committee to resubmit the details as the similar cases were allowed in the 6th and 9th ITGRC meetings,

17.1.2 Sixteen cases of TRAN-1/TRAN-2 filing pertaining to Court cases: Out of sixteen (16) cases which came through the court, committee considered five (05) cases falling under Category A1 on merit as the taxpayer faced the technical glitch and decided to recommend for opening the portal to those five taxpayers. Regarding the remaining eleven (11) court cases, ITGRC observed that existence or non-existence of the technical glitch was a matter of fact and technical analysis confirmed that there existed no technical glitch in those eleven (11) cases. Accordingly, ITGRC decided that those 11 cases were liable to be rejected on merit.

17.2 Additional Agenda on legal issues (refund issues),

- i. M/s Futuristic Offshore Services & Chemical Limited; ITGRC took note of the data fixes done by the GSTN and recommended the same.
- ii. M/s Alstone International: ITGRC took note of the technical analysis done by GSTN and rejected the case on merit as the taxpayer did not face any technical glitch.

17.3 Regarding one day late fee waiver for August, 2021 period for GSTR-3B late filing due to payment issues with RBI, the ITGRC confirmed that there was a technical glitch in that case and recommended for waiver of penalty and fine only

17.4 Regarding reset of submitted GSTR-1 for M/s Vodafone Idea Ltd. (GSTIN:10AAACB2100P1ZC), the ITGRC approved the case without any precedent value (as *fait accompli*). Further, it was decided that return filing error was not a data fix and GSTN would not do it unless there was a demonstrated technical glitch and ITGRC had given its prior approval.

17.5 Regarding Technical Issues requiring data fixes by GSTN through back-end utilities, as per the SOP approved in the 15th ITGRC meeting, GSTN identified ten (10) cases which required data fix of the processed incorrect data through backend utilities.

Decision: The recommendations of the 16th meeting of the ITGRC were placed before the 47th meeting of the GST Council. After considering and due deliberations, The GST Council agreed with the recommendations of the 16th ITGRC.

Agenda Item 14: Interim Report of the Group of Ministers (GoM) on Rate Rationalisation for consideration of the GST Council

18. Introducing the Agenda item, the Secretary requested the Hon'ble Chief Minister of Karnataka and the Convenor of the GoM on Rate Rationalisation to present the Agenda item for further detailed discussion by the GST Council.

18.1 Presenting the Agenda Item, the Hon'ble Chief Minister of Karnataka and Convenor of GoM in his opening remarks stated that the GoM was entrusted to give its report on rate rationalization. He stated that the GST Revenue collection had fallen during successive COVID waves in year 2020 & 2021. This necessitated the need to take steps to augment GST Revenue so that additional mobilization of resources can be ensured. The GST Council in its 45th Meeting held on 17th September, 2021, at Lucknow decided to form a Group of Ministers to look into matters related to rate rationalization including reviewing the exemptions, tax slabs, tax slab structures and correction of inverted duty structure to enhance GST revenue.

18.2 He further stated that States of Karnataka, Goa, Kerala, Rajasthan, Uttar Pradesh, Bihar and West Bengal being the Members of the GoM had actively participated and given their views on relevant subjects. Subsequently, after 46th GST Council Meeting, the GoM was asked to look into the issues of textile sector inversion also while deferring the increase of rate from 5% to 12%. He stated that inputs on term of References of the GoM were invited from all the States and UTS where a number of States provided their view on the matter in written statements; that the Fitment Committee discussed those issues and placed suggestions before GoM for consideration. He stated that so far three detailed meetings of the GoM had been held to discuss the proposals and recommendations on review of exemptions and correction of inverted duty structure were being submitted to the GST Council in the form of an interim report; that it was decided that further detailed discussions and suggestions were required for submitting the report on tax rate slabs and slab structuring.

18.3 On the issue of inverted duty Structure, he stated that due to non- availability of refund of accumulated ITC on services and capital goods in case of inverted duty Structure, such accumulation increased the cost of supply and cost of entire chain supply went up which made Indian manufactures and suppliers uncompetitive in relation to imports of goods & services; that it also made Indian goods uncompetitive in international export market; that ITC blockage also worked as an incentive to evade taxes; that if the inversion is corrected, domestic manufacturer would be able to utilize the credit of tax paid on the inputs and no burden will be passed on to the consumer and it will benefit the manufacturers too. He then stated that three pronged approach was adopted by GoM while recommending the correction of inverted duty structure; that the first one was retention of rate of tax on certain sensitive items affecting common man as there were concerns that increasing GST rates on account of such corrections might impact prices; that the GoM had adopted cautious approach while making suggestions, for example items like utensils, tractors, some agricultural implements, fertilizers, consumer sensitive items were left out at this stage; that the second approach was disallowing refund in cases where inversion is not envisaged like edible oils, coal and other items; that the inverted duty structure corrections were suggested by increasing or calibrating the rate of tax in other cases. Following this

approach, suggestions to correct inverted duty structure on certain items had been recommended by the GoM.

18.4 He further stated that on the issue of works contract services, the GoM observed that there was a need to correct the inverted duty structure, however, the increase of six percent GST rate on works contract services provided to the Government may strain on the budget of the States and the GST Council might take a final view on that issue considering that present rate structure in works contract is causing inverted duty structure and has compliance issues. On the issue of review of exemptions, he stated that exemptions on goods and services also led to disruption of credit chain and blockage of ITC and therefore all the exemptions under GST were examined by the GoM; that exemption on a few items which had consumer sensitivity viz. bread , tea, coffee, poultry feed etc. were retained; that certain exemptions on goods and services had been suggested to be rationalized and the proposed rate on such goods would be the same as applies to the respective HSN code; that one of the majority category of exemptions reviewed was exemption on unbranded food items including cereals. Currently, only branded food items attracted tax and revenue from those items had fallen as compared to the pre- GST regime. Therefore, the GoM was of the view that this could be simplified by replacing the term branded with 'pre-packaged and labelled' and this would be in accordance with the Legal Metrology Act & Rules; that in other cases, no rate change was being suggested and such items sold loose and unlabelled would continue to remain exempt and hence majority of consumers buying loose food grains would remain unaffected.

18.5 He then stated that under GST regime there was a free flow of ITC, hence, pruning of exemptions on a list of services was also proposed to reduce the disruption in the credit chain; that exemptions on the services which were mostly B2B supplies viz. common bio medical waste treatment facilities might be withdrawn; exemptions on services provided by regulators like RBI, SEBI etc. could be withdrawn so that the business entities consuming those services could avail ITC. He further mentioned that some exemptions like differential tax based on the value of supply as in case of hotel accommodation were prone to misuse. He then stated that overall the GoM had taken into consideration various factors and had recommended to correct rate distortions leading to inversion of duty and reviewed plethora of exemptions and concessional rate in GST, correcting which would not only have positive revenue impact but also remove distortions in GST. Concluding his statement, the Hon'ble Chief Minister of Karnataka and convenor of GoM requested Joint Secretary, TRU/CCT, Karnataka to make presentation on recommendations of GoM. Thereafter, the presentation (**Annexure-6**) on the items on which the corrections had been recommended by GoM was made before the Council for seeking views of the Hon'ble Members on the same.

18.6 As the presentation concluded, the Secretary opened the floor for discussion on the same.

18.7 Hon'ble Member from Delhi stated that the GoM had presented an excellent report before them and it also appeared from the report that the Members of the GoM unanimously agreed to the suggestions presented in the report. He stated that after going through the report minutely he realised that it was carefully considered. He stated that the report has been so well prepared, considering all aspects, it would be appropriate that the report of the GoM might be accepted in toto by the GST Council for its implementation.

18.8 Hon'ble Member from Goa thanked the Convenor of the GoM and all members. Supporting the proposal given by the Hon'ble Member from Delhi, he stated that the GoM had given such a good report after due deliberations on the inputs received from the Members, Fitment Committee, officers and that it may not be prudent to discuss each item as the discussion might turn State specific rather than being focused on revenue. He mentioned that considering all the aspects, the interim report as proposed would

help in correcting inversion in rates, rationalisation of exemption and also augmentation of revenue, though the GoM needed more time to analyse how much increase in revenue would be there. He then requested the Council to accept the interim report as suggested by GoM.

18.9 The officer from Bihar on behalf of the Hon'ble Member stated that Bihar agreed with the report and also supported the proposal of increasing the rate on works contract services provided to the Government from 12% to 18% but as it may have an additional financial burden on the State exchequer, therefore she requested that proposal might be implemented in a staggered manner.

18.10 Hon'ble Member from Tami Nadu appreciated the report of GoM and stated that he agreed to most of the proposals, For example, he did not think that the increase of rate on works contract services from 12% to 18% on supplies to Government/local bodies would be net revenue neutral in the revenue devolution mechanism as reported in the presentation. He further stated that this proposal would have a burden on the local bodies. However, since the GoM's recommendations were to be taken in toto, he would go by the recommendations of the Council.

18.11 Hon'ble Chief Minister from Karnataka and convenor of the GoM thanked the Hon'ble Chairperson for supervising major issues like inverted duty structures, exemptions etc. that had been pending before the GST Council for a long time. He also thanked all the Members of the Council who had agreed to the corrections and suggestions that the GoM has made so far. He further mentioned that two other issues were pending before the GoM and sought three months time for finalizing the same. He also stated that the GoM would take inputs from all the States in writing and would deliberate on them with realistic approach. He again thanked the Hon'ble Chairperson, Members and all officers for their contribution.

18.12 Hon'ble Member from Uttar Pradesh specially thanked the Hon'ble Member from Delhi for his proposal of accepting the report of GoM in toto and also appreciated the decisions taken by the GoM in its three meetings held so far. He also thanked Hon'ble Member from Tamil Nadu for his positive remarks for the report.

18.13 Hon'ble Member from Haryana thanked the Hon'ble Chief Minister of Karnataka and convenor of GoM for giving his detailed presentation on all suggestions recommended by the GoM. However, on the proposal of withdrawal of exemptions on renting of residential dwelling for residential use [when supplied to business], he stated that if we tax this supply, the business establishments which provided house facility to their small employees would stop doing the same and suggested that there might be a threshold of the house rent amount for taxing; the rent below that threshold limit might be exempted.

18.14 Hon'ble Chief Minister from Karnataka clarified that only the service of renting of residential dwelling for residential use [when supplied to business] would be taxed as in case of companies which they provided to their employees. The Hon'ble Member from Haryana explained further that Gurgaon had a very big market of renting of houses and a company might take many houses on rent for its employees out of which a few might have higher rent and a few others might have less and further suggested that a capping might be done on the rent amount to be taxable. The Hon'ble Member from Karnataka again reiterated that only the service of renting of residential dwelling for residential use [when supplied to business] was made taxable and renting to the general public for residential purpose was exempted, however, the issue of capping on the rent might be deliberated further.

18.15 The Joint Secretary, TRU explained that there was a threshold exemption for services also and the objective to exempt residential dwelling was to exempt the rent paid by the individuals or non-commercial person as there should not be any tax burden on him. He further stated that corporates were

taking a number of other services for their employees also and were paying tax on the same. There was no such differentiation there.

18.16 Hon'ble Member from Tamil Nadu stated that after this modification, there might be a possibility that corporate might change the practice of renting a facility and giving that to employees; that the corporates might compensate the individual employee for the house rent paid by him and that might subvert the purpose of the proposed modification.

18.17 The Joint Secretary, TRU stated that while there may be certain such cases but the corporate usually take accommodations on lease and give them to their employees and taxing that supply was being covered as per the current proposal.

18.18 Hon'ble Minister of Tamil Nadu stated that there should be an exercise to know every time an exemption was removed that how much impact it had on the revenue. He stated that this study would help in understanding the reaction of market when a policy was changed and they would learn from the experiment.

18.19 Hon'ble Member from Chhattisgarh could not attend the meeting but he had sent his written comments vide letter dated 28.06.2022. He suggested that tax rate slabs need to be rationalised and there should not be more than two to three tax rate slabs. He further suggested that revenue realization should come from efficient tax recovery and plugging evasion rather than increase in tax rates which will benefit the consumer.

Decision: - For Agenda item 14, the Council accepted all the recommendations made in the **Interim Report of the Group of Ministers (GoM) on Rate Rationalisation and recommended its implementation.**

Agenda Item 15: Report of Group of Ministers (GoM) on GST System Reforms

19. The Hon'ble Secretary observed that the Group of Ministers (GoM) on GST System Reforms comprised the following States Maharashtra, Haryana, Assam, Tamil Nadu, Delhi, Andhra Pradesh, Chhattisgarh, and Odisha. As the Deputy Chief Minister of Maharashtra, Convenor of subject GoM was not present, the Hon'ble Secretary invited the representative officer from Maharashtra to present the issue. Thereafter, he gave a detailed presentation on the Agenda item which is attached as **Annexure-7**.

19.1 The officer from Maharashtra stated that the GoM on system reforms was constituted as an outcome of the 45th meeting of the GST Council, this GoM first met on 24th October 2021 and deliberated on what should be the strategy for the GoM to focus on various issues. This GoM identified seven focus areas to work upon and decided to call suggestions from all the States. All the suggestions were classified into certain groups and based on all these recommendations, sixteen broad suggestions were identified to be taken up on case to case basis and out of these, six to seven suggestions were identified for implementation.

19.2 The first issue on the subject was regarding the new registration and the biometric authentication, second issue was to study the profile of new registrants from the system and compulsory physical verification of these registrations, third was to check the existing tax payers whether they were doing fake invoicing or not with the help of the system and take them up for physical verification. Fourth item

was regarding the Geo-coding of addresses. It was observed that while seeking new registrations many tax payers were giving non existing addresses/ false addresses. GSTN is proposing to make arrangements to fetch the meta data from the application such as addresses and make it available to tax administration to verify online from the relevant utility website. The fifth item was to capture the electricity bill data. Currently at the time of registration, many users were using the electricity bills which were tampered with and submitting them as proof of addresses and Dept had no way of verifying those addresses as that data of electricity bills was not captured in the system. Next was the validation of the bank accounts. It was observed that some of the bank accounts submitted by the tax payers were not correct and field level checks required to be sent back to the GSTN for doing better analytics.

19.3 The first step is to improve the registration process through biometric identification of the high-risk applicants. On the basis of additional information, the new applicants would be bifurcated in high risk and low risk applicants. Some of the high-risk applicants would be selected for the biometric authentication. The details would be worked out in the Law Committee meeting and Gujarat had agreed to do a pilot in this regard.

19.4 The second issue identified by the GoM for implementation was to do mandatory physical verification. Presently whenever a new registration came into the system, it was based on the officer's assessment regarding the physical verification. Now based on some data leads, the system would identify and would red flag certain cases and all those cases would be assigned for physical verification.

19.5 The third was use of artificial intelligence and machine-based interdiction grounded on suspicious behavior of existing tax payer. Presently, whatever leads were being thrown by the BIFA system, all those leads would be converted into a task which would be monitored and closely followed through MIS, so that all the cases were covered.

19.6 The next issue identified by the GoM was the online address verification of the tax payers with the help of Geocoding. Whenever the tax payer would fill the address in the application form, he would be prompted by the facility built by GSTN using mapmyindia portal, who had a tie-up with the GSTN, to verify and Geotag every given address. So whatever address he would be trying to enter into the system would be matched by the system with the actual address so that there was no chance for him to fill in an incorrect address. Further, for the existing users, all the addresses that had been filled would be tallied with the utility. The detailing of that would be done by the Law Committee.

19.7 The fifth item was the electricity bill meter data capture during the registration process. There was lot of information which was there in the State data bases which was not currently linked with the GSTN like registration data base, electricity data base or RTO data etc. All these data bases provide a lot of cursive data which could be linked to the GSTN system and used to do analytics. Many tax payers were submitting electricity bill as proof of address but by tampering with the name and that could not be identified because that data was not captured in the system per se in the form of information. One pilot was being proposed by Maharashtra. All those electricity bill data would be captured at the time of filling the registration application and then states would be speaking with the data bases of the utility companies and would be verifying those electricity numbers. Once those numbers were sorted out, that would be easy to figure out which applicants had been furnishing false data in the electricity bills.

19.8 The second last item was about the use of incorrect bank accounts at the time of registration. It was observed in almost all the States that many of the bank accounts filled at the time of registration were incorrect in the sense that the name of the bank accounts did not match with the registrants. Therefore, it was proposed that GSTN would tie up with the NPCI, so that a check would be done. All that information would be fetched from the GSTN system and would be submitted to NPCI and they

would respond for each request and that could be verified how many bank accounts were false. Some trials had been done by the GSTN and the numbers were quite huge so some kind of methodology had to be devised.

19.9 The final recommendation of the GoM was regarding the task and case creation and feedback mechanism in the BIFA office. Currently whatever verification analytics was being done, the results of that were not being captured back in the BIFA system so neither the officers were able to use them in effective manner (action taken was not visible on the leads), nor the quality of analytics was improving for want of feedback. The idea behind that mechanism was that whatever leads which were generated once verified in the field office, the data would be fed back to the BIFA system. That way would not only improve the lead generation and success ratio, but the officers would also become more efficient.

19.10 As of now, the GoM had identified six issues to be taken up out of sixteen issues because all these issues were to be implemented by the GSTN after the approval of the GST Council and GSTN would also need some time to implement them. There were still ten more recommendations which would be taken up step by step in the third and fourth meeting of the GoM for implementation.

19.11 The representative officer from Maharashtra referred the matter to CEO, GSTN for his comments. He informed the Council that GSTN had already started working on the recommendations of the GoM and if all the approvals were received, they would implement the changes in due course of time.

19.12 The Hon'ble Deputy Chief Minister from Delhi stated that the intent of the GoM was to clean the system by using high end technology and progressive steps were finalized after a lot of thought and deliberations. That steps like mandatory biometric authentication or specially electricity bill verification or real time validation of bank accounts, the use of BIFA leads in the feedback mechanism were in themselves quite progressive steps.

19.13 The Deputy chief Minister from Haryana asked to reduce the e-way bill threshold limit to Rs 25000/ from Rs 50000/ and compulsory e-invoicing to be reduced from the existing Rs.20 crore. The Hon'ble Member further proposed that it may be examined if meter reading could also be recorded in E-way bills to avoid round tripping.

19.14 The Secretary clarified that the Law Committee had discussed the issue but did not agree upon it as that would be too intrusive and the taxpayer's reaction also had to be kept in mind while taking such a decision. Further, he added that reducing the limit of e-invoicing is being done continuously and regarding limit of Rs.25000/- for E-way bill would be very small.

19.15 The Member from Tamil Nadu stated that the GoM needed to meet more in person actively and on regular basis. The GoM also should meet the GSTN more frequently as a lot more could be done on the systems.

19.16 The Deputy Chief Minister of Delhi spoke about sharing the fast tag integration data. The Secretary stated that regarding fast tag integration, they had an App and requested the Member from GSTN to explain the App.

19.17 The representative from GSTN stated that for fast tag integration, NIC had done some work and an App had been given to the officers wherein live data was being shared. Regarding covering a situation wherein if on the same route, a vehicle had moved multiple times as indicated by the fast tag

payments, they would look into developing the said analytic and as and when developed, that would be presented before the Council.

19.18 The Deputy Chief Minister of Delhi stated that there was substantial information in BIFA which by default issued a Red Alert and that fast tag data could also be an innovative way to add to BIFA analytics. So that an inspector sitting in his office could also see the links and by default from the fast tag data, he could do random cross checking.

19.19 The representative from GSTN stated that they were in the process of digesting the fast tag data and that NIC was developing the App and once the process of digesting the data with the GSTN began, they expected to deliver two three good use cases using fast tag data within a period of next two to three months.

19.20 The representative from Tamil Nadu stated that whether the fast tag could be put on the e-waybill as the App was already in existence, so that they would be able to cross check immediately. The representative from GSTN stated that it was being attempted.

19.21 The Hon'ble Secretary invited the representative from Karnataka who stated that they had already synchronized the fast tag data with the vehicle numbers and that they were able to track the vehicle movements being done on the National Highways but not in the interiors where the vehicle did not cross any tolls. He stated that there were certain ways in which inter State movement done without tolls could not be captured. This issue needed to be tackled. However, on the National Highways one could track the vehicle using the fast tag data.

19.22 The Hon'ble Member from Uttar Pradesh stated that with effect from November 2019, for a registered tax payer from another State, the availability of downloading data pertaining to e-way bill was done away with and it could not be shared between two States. The information sharing system between the Centre and States also needed to be strengthened and if this could be developed, a lot of transparency could be brought into the system.

19.23 The Hon'ble Finance Minister asked the representative from GSTN to elaborate on the issue. The GSTN representative replied that data sharing was being done as per the direction of Law Committee and that there were some issues related to jurisdiction. That they would put the proposal of Hon'ble Member from Uttar Pradesh before the Law Committee as to how much information pertaining to the tax payer in respect of e-waybill could be shared between different States. That GSTN was only an implementing agency and whatever decision was taken by the Law Committee would be implemented by GSTN.

19.24 The representative from Tamil Nadu stated that since every transaction was being registered in the GSTN portal, why should the data not be available to the States for cross referencing and matching.

19.25 On this, the Chairperson stated that Tamil Nadu and Uttar Pradesh had given the logic for sharing the data and if any State could give any logic for not sharing the data. That since no State had come up with any objection, the chairperson asked GSTN to look towards sharing.

19.26 The Secretary observed that since the Law Committee was subordinate to the Council, they would take it as a Council decision.

19.27 The representative from GSTN stated that he would start with integrating e-waybill data sharing and as they moved along, they would take guidance of the GoM on IT, which was a standing GoM and

whatever was required to be shared, over a period of time, they would develop the module. The Secretary observed that the Council agreed on the proposal of Tamil Nadu and Uttar Pradesh pertaining to sharing of e-waybill data.

19.28 The representative from Madhya Pradesh stated that on the direction of the Chief Minister, a task force was constituted to look into how the GST revenue could be augmented. That one of the briefs before the task force was how to simplify the Registration procedure as a part of ease of doing business so that trade could be strengthened. That through the medium of API land records, electricity bill, lease deed, property ID, and digitized property details available with the Urban Development Authority would be used to verify the information being furnished at the time of Registration, so as to stop people from taking bogus Registration. The task force also suggested the use of Artificial intelligence. In order to start the pilot project in Madhya Pradesh, the Revenue department, the concerned department of GOI and GSTN had already concluded a meeting and early decision for starting, the pilot project was solicited.

Decision: The GST Council approved the recommendations of the GoM. The Council also decided to share the data among the stakeholders for cross referencing and matching. The GST Council then directed the GSTN to work on this under the guidance of the Law Committee.

Agenda Item 16: Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

20. The Secretary informed that there was a Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming which had submitted its report. He then, requested the Hon'ble Chief Minister of Meghalaya, the Chairperson of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming to present the report before the Council.

20.1 Hon'ble Chief Minister from Meghalaya stated that GoM was formed to look into the aspects of Casino, race courses and online gaming. That the GoM was basically formed to look a few aspects such as the valuation of services, the taxability of certain transactions specifically in Casinos, changes if required in legal provisions of administration and valuation provisions. That the GoM discussed those issues and agreed to defer them because of the complexity of the issues and finally on February, 2022 the GoM was reconstituted.

20.2 He further stated that the GoM had looked into three major aspects.

- First was the rate, what rate should be applied to these three different sectors whether that should be 18% or 28%.
- The second issue was whether GST should be charged on the commission that was charged by the organizers or should that be charged on the entire value of the stakes.
- Third issue was regarding Casino which was a very different game and a form of betting with multiple factors. That in Casino, the different activities such as entry fee, fees on the food that one ate inside, the fees on the chips that one bought and even the transportation of the players were having different aspects, and the GoM had to deliberate as to how to tax these different activities within the overall casino activity. Further online gaming, horse racing and casino were three very different

activities though all had a sense of betting and gambling but the way they were run was very different. That GoM needed to find some uniformity in the rates and valuation while understanding each of those games.

20.3 He presented a power point presentation (**Annexure-8**).

20.4 Based on above considerations, the GoM gave the following recommendations:

20.4.1 Imposition of GST on the activities namely, casinos, race courses, online gaming and lottery should be uniform (in terms of rate and valuation).

20.4.2 For the purpose of levy of GST, no distinction should be made between those activities merely on the ground that an activity was a game of skill or of chance or both.

20.4.3 GST may be levied at the rate of 28% on all activities namely Casinos, Race Courses and Online Gaming.

20.4.4 Valuation:

- In case of online gaming, the activities be taxed at 28% on the full value of the consideration, by whatever name such consideration might be called including contest entry fee paid by the player for participation in such games without making a distinction such as games of skill or chance etc.
- In case of Race Courses, GST may continue to be levied at the rate of 28% on the full value of bets pooled in the totalizator and placed with the bookmakers.
- In case of Casinos, GST be applied at the rate of 28% on full face value of the chips/coins purchased from the casino by a player.
- In case of casinos, once GST is levied on purchase of chips/coins (on face value), no further GST to apply on the value of bets placed in each round of betting including those played with winnings of previous rounds.

20.5 **Entry fee to casinos:** GST at the rate of 28 % was leviable on the services by way of access/entry to Casinos on payment of consideration/entry fee which compulsorily included price of one or more other supplies such as food, beverages etc.; that being a mixed supply. However, optional supplies made independently of the entry ticket would be taxed at the rates as applicable on such supplies.

20.6 The Secretary thanked the Hon'ble Chief Minister of Meghalaya for a very crisp and very clear presentation and opened the floor for discussion.

20.7 Hon'ble Member from Tamil Nadu stated that two things need to be discussed extensively. That the regulation of those activities varied from state to state because gambling sector was under the state regulatory ambit and all states retained the right to ban that, but taxation was independent of the activity being allowed or not. That the second was regarding improvement of the infrastructure, the technology, the data capture and identification models to bring the betting into the light and avoid the likelihood of

its moving into a grey or black market. He further stated that all the Members sought to maximize revenue while reducing those types of activities and having compliance to law. That it may not be relatively exorbitant and there was still some scope of review.

20.8 Hon'ble Minister from West Bengal submitted that Rule 31A had already been upheld by the Hon'ble Supreme Court. Two judgments were presented by Hon'ble Chief Minister of Meghalaya i.e. one of M/s Sunrise Associates and other of M/s Skill Lotto; that the Hon'ble Supreme Court had held that these three activities are actionable claims which could be taxed under GST. Therefore, if they took into consideration the Skill Lotto case, they could not fix separate system, the principle of valuation or rates for separate games having different actionable claims. Further, right to participate and right to win were not separable; that was what Supreme Court had said in M/s Sunrise Associates case, so while deciding the issues, that principle had to be taken into consideration. She stated that from lottery, west Bengal received a huge amount of GST and that was almost 4,000 crores. Lottery had already been decided in M/s Skill Lotto case; so while deciding the issues in case of casino, online gaming etc. that principal had to be taken into consideration.

20.9 Hon'ble Minister from Goa submitted that Rule 31A had been upheld by the Supreme Court and if the Council went by the GoM report that would lead to closure of the industry and moving into more grey areas. He wanted that one had to look at the pre-GST model also while deciding the taxation on Casino. He stated that if Council were to decide to charge on the total chips that were sold that would certainly be heading for closure of casino. That he had done a study and looked at the international best practices elsewhere in the world where casinos existed and they charged tax on the gross gaming revenue. That the stakeholders were not even asking for a reduction in the tax from 28% to 18% but a new formula to tax the Casinos instead of what the GoM had recommended. That casinos, horse racing and online gaming could not be clubbed together as each activity was totally different. That his simple submission was to rethink as that needed proper inputs, more meetings with the stakeholders and more information on the table for the GST Council to decide. That let the status-quo be maintained till that time. The recommendations will hurt Goa which is a small state.

20.10 Hon'ble Chairperson thanked the Minister from Goa for the speech made by him. She stated that the GST Council did not differentiate between big and small states. That this Council never differentiated between one state or another and on the contrary put all of them together in trying to see how best they could come up with solutions. That the Chief Minister of Meghalaya had already briefed her on particular issue regarding Goa and if that was not up to Goa's expectations, then the Council could also permit the GoM to have a relook on Casino only. That the GoM might be given another 15-20 days to look into that and come back again if the arguments of the Minister of Goa had any fresh evidential or other information. She appealed to the Member from Goa to submit all his documents, new fresh data and relevant material and participate in the GoM one more time.

20.11 Hon'ble Member from Uttar Pradesh agreed with the Chief Minister, Goa that the nature of all three activities were different and should not be clubbed together and he welcomed Hon'ble Chairperson's suggestion to reopen the discussion on Casino.

20.12 Hon'ble Member from Tamil Nadu stated that there are some profound issues such as enforcement and movement of the activities into the grey market. The identification of locus is easy in casino, hard in racing, least in online gaming. That all the three games had that risk. He further submitted that if the GoM had already submitted a report, like in the earlier case of rate rationalization, either the Council should look into it entirely all over again or not at all. That there were bigger issues there but if the GoM was to reopen, that should not be opened for just one of the three industries rather it should be opened for all the three industries.

20.13 Hon'ble Member from Delhi appreciated the Chairperson for giving a window to GoM to re-examine on limited issue as raised by Goa regarding casino. He stated that gambling, betting and even liquor were some of the necessary evils and on the one hand, the society wanted it not to happen but on the other hand if they existed, then the government desired to collect tax on them. That he wanted the council to accept the report as whole but respecting the submissions made by Goa, he agreed to the proposal to re-examine casino issue and that other parts of report might be accepted. He further asked clarification regarding place of supply of service for online gaming. The Convenor of Fitment Committee explained that place of supply would be the location of the recipient i.e. the recorded address of the recipient as in case of B2C supply.

20.14 Member from Delhi further stated that effectively that meant place of supply was the location of the player and not the location of the online platform. That the council must consider capturing the address of the person mandatory.

20.15 On behalf of the Finance Minister of Madhya Pradesh, the officer expressed the opinion of the State that the GoM had proposed GST at rate of 28% on online gaming and the service provider was expected to collect the tax from the consumer and deposit it in government account. That two possibilities might exist, one, service provider might register their servers outside taxable territory, but they should still be liable to pay tax, so there might be no evasion. Second, they would like to flag the possibility of users accessing online gaming portal through a virtual private network, in such case consumers who were actually located in India, would access the online gaming portal through a virtual private network, in which case, it would be impossible to detect the location of the customer since he should appear to be located outside taxable territory. That it might also be noted that that was a common practice with online Gamers dealing in high volume high value transactions. That imposition of higher rate of tax might encourage users to access the online gaming portal through VPN and thereby avoiding the imposition of tax. That Madhya Pradesh agreed that tax needed to be collected on online gaming but that the rate should be kept such that minimized the possibility of evasion also. That service providers should be mandated to track the location of the user of their platform perhaps by tracking the payments done by the user on the online platform.

20.16 Hon'ble Member from Telangana requested to re-examine all the three issues instead of just one. That Telangana had horse racing and the taxation as per the recommendations of the GoM would definitely lead to the closure of industry or that would lead to illegal activity. That in the broader interest, let all the three issues be re-examined. Hon'ble Chairperson then asked Telangana to submit papers on that to the GoM.

20.17 Hon'ble Member from Karnataka stated that in principle, he agreed with the recommendations of the GoM. That enforcement and implementation part were crucial and that let the Law Committee in consultation with enforcement department, including state enforcement department, come out with the roadmap.

20.18 Hon'ble Member from Gujarat suggested that place of supply in case of online services was very important issue and that the address of recipient on record was the key issue, so committee of officers might look into that as that was very important for taxation purpose. The Chairperson directed Chairman CBIC to sort out the issue.

20.19 Hon'ble Member from Haryana stated that he totally agreed with what Hon'ble Chief Minister of Karnataka had said. As regards place of supply he stated that either the address had to be the permanent address where the player was registered or the place of the transaction or the place of initializing the

transaction. He further submitted that GoM could have a re-look in case of casino but the Council might go ahead with the recommendations of GoM on horse racing and online gaming.

20.20 Hon'ble Member from Tamil Nadu further stated that either the GoM's recommendations were taken in toto or they were given a chance to be reviewed again in toto.

20.21 The Chairperson stated that the spirit of taking decisions in the Council had always been consensus in the interest of the country. That some states yielded, some sectors yielded, some industries yielded and some did not, but eventually, the Council arrived at something which could effectively be implemented with reasonable surety. That the Council corrected the faults which were observed on implementation of various provisions. That the clubbing on these activities together was because all the three games were gaming, betting and gambling and that common thread between the three was betting and gambling. That the common thread was not contentious at all and that was gambling and therefore, she would not want anything that undermine the efforts made by the GoM. However, if some Members had differing views, these may require examination by GoM to assess if there is a need to bring in a certain calibration into the final recommendations. This may have to be done, taking into account the point raised more than once by minister of Tamil Nadu such as need for a better regulation, better technology etc. **The Chairperson requested the Convenor of the GoM, and the Chief Minister of Meghalaya, to elicit the information from Goa, Tamil Nadu, Telangana, for their respective areas to put everything together and submit the report by 15th of July.**

21. State Specific Issue raised by Hon'ble Member from Telangana

21.1 Hon'ble Member from Telangana raised a state specific issue with the permission of the chair. The Member informed the Council that the issue was concerning place of supply and was a fallback of bifurcation of the state of Andhra Pradesh. That some of the consumers while mentioning their addresses had written place as Hyderabad but the state was mentioned as Andhra Pradesh. Due to this, Telangana is losing revenue and he gave some instances such as in case of Phone Pe, the revenue loss was Rs 120 Crores every year, Paytm, it was Rs. 125 Crores and ICICI Bank, it was 85 crores in the last four years. The issue was brought to the notice of the Council which allowed negative reporting in the monthly return (GSTR-3B) to help in stopping the revenue leakage/loss and requested to allow the same in the new return format also. However, that was prospective and that request was to recover retrospective revenue loss and sought the help of certain states such as Maharashtra, Karnataka, Delhi and Andhra Pradesh as there is no specific mechanism to recover old dues.

21.2 The Secretary told that that was a tricky issue and the taxpayer should not be unnecessarily burdened, however, Hon'ble Member from Telangana clarified that taxpayer would be given refund but Telangana needs help from the concerned states. The Secretary assured that the officers of the concerned states such as Telangana, Andhra Pradesh, Maharashtra and Karnataka collectively would see what best solution could be provided to the issue.

22. General Discussion on Compensation

22.1 Hon'ble Member from Punjab stated that Punjab was an agrarian State and all the taxes had got subsumed into GST. That Punjab might lose at least 50% of the revenue after the end of compensation. Therefore, he requested to extend the compensation for another five years.

22.2 Hon'ble Member from Karnataka stated that the purpose of compensation was to compensate the States while adjusting to the new tax regime and that GST Council was very active in taking decision and was a good platform for the States to discuss and put forth their points. He further Stated that the Revenue collection had fallen during Covid time and he appreciated the bold decision of compensating the States through loans. He Stated that entire Council should deliberate in a holistic manner and conduct studies to find ways and means to strengthen the finances of the State. He requested that a holistic decision on compensation should be taken keeping in mind the financial health of the States.

22.3 Hon'ble Member from Andhra Pradesh stated that Andhra Pradesh had certain concerns regarding the ceasing of compensation. He emphasized with statistics that Andhra Pradesh had suffered huge revenue losses after the bifurcation of the State of Andhra Pradesh. Now, the State is basically an agrarian State and hence, the GST collection has been adversely affected. He requested that extension of the compensation be considered.

22.4 Hon'ble Member from Rajasthan stated that due to Covid, the finances of the State were affected adversely and thus requested for extension of compensation for five years. He further stated that deliberations and wide consultation could be done regarding the decision for increasing tax rates. He requested to withhold the implementation of the decision for at least one year. The Hon'ble Minister drew attention towards the delay in release of the compensation amount.

22.5 The Hon'ble Chairperson replied that compensation had been settled to each State from the Central Consolidated Fund of India in advance and that States had to get a certificate from AG if any amount is due to be paid. That in the absence of AG Certificate, it was the fault of the State concerned and not the Centre.

22.6 The Secretary further clarified that Rs.64000/- crore was distributed in advance to help the States and for any difference in calculation, the State must submit the certificate from AG. That all the compensation due was paid to the States who had submitted the AG Certificate and that Rajasthan had not submitted the AG certificate. On submission of such a certificate, the dues would be paid immediately.

22.7 Hon'ble Member from Delhi stated that their financial situation has been strained due to the Covid Pandemic and hence, it would be desirable to extend the compensation for another five years. The restructuring of loans should also be taken to facilitate the continuation of compensation. He further stated that decisions regarding the enhancement of tax rates should be implemented immediately.

22.8 Hon'ble Member from Uttarakhand stated that the extension of the compensation would be in interest of the State.

22.9 Hon'ble Member from Kerala stated that compensation may be extended for a further period due to financial position of the States. He also stated that the ratio of Centre and State should be changed from 50:50 to 40:60 in favor of the States.

22.10 Hon'ble Member from Goa stated that the out of the box plan of loan scheme helped the States. He further Stated that theirs being a small State, it did not have many avenues to increase the revenue.

22.11 Hon'ble Member from West Bengal also requested to extend the compensation in view of the precarious financial situation of the States. She also drew the attention of the Council to the SC court judgment in the case of Mohit Minerals.

22.12 Hon'ble Member from Himachal Pradesh first thanked the PM for introducing One Nation One Tax in the country. That Himachal made substantial efforts to increase the revenue but with less success. Before the introduction of the GST Law, there used to be excise exemptions to the industries which were set up in this hill State for a specified period and this had encouraged the industrialization of the State. He requested to give special status again to the State of Himachal Pradesh. Further, after the introduction of GST regime, the State of Himachal Pradesh suffered revenue loss as it was not a consuming State. The main stay of revenue of the State is tourism and this industry had suffered a setback due to Covid. The compensation of Rs.3600/- Crores was a big amount for a small State such as Himachal Pradesh and the same may be continued.

22.13 Hon'ble Member from Tamil Nadu stated that though there was an increase in the revenue as pointed out by the Secretary but the increase was not of 14% of CAGR (Compound annual Growth Rate) as was anticipated at the outset and that the 2 years of Covid was an exceptional low period. He further stressed upon looking into the scheme of constituting GoMs which appeared to him inherently inefficient as the Chief Ministers and Deputy Chief Ministers as Convenors of GoMs may not have ample time to devote to the GoM. Further, he reiterated the basic principles of the Compensation regime of compensating those states which lag behind in revenue collection worked well. He requested to continue the Compensation scheme and the earlier baseline of 14 % of the CAGR could be reset. He also requested to make fundamental changes in procedures, methodology, usage of analytics, setting up studies before and after the decisions as certain issues such as Horse Racing, Casinos are unique to some States. He also requested that the GST council meetings may be held as per the prescribed frequency in the Procedure and Conduct of Business Regulations of the GST Council.

22.14 The Hon'ble Member from Odisha stated that at the time of introduction of GST, States were given assurance to take care of their revenue at the annual growth rate of 14% with the baseline of 2015-16. However, Covid had played spoiler to the original plan. He further stated that there was a significant short fall in GST revenue as well as in the compensation pool. He thanked the chair for the innovative idea of compensating the States in the form of loan during Covid period. He said that the gap between the protected revenue and the actual revenue had increased and if compensation was stopped, that would lead to huge resource crunch and requested the GST Council to extend compensation for another five years.

22.15 The Hon'ble Member from Puducherry stated that Puducherry was having the highest gap between the protected revenue and the actual revenue. He stated that finances of the State were affected not only due to Covid but also due to other State specific reasons. He gave certain statistics of revenue gap and stated that Puducherry had yet to finalize the budget for want of compensation. He requested to continue compensation for another five years from the year 2022.

22.16 Hon'ble Member from Uttar Pradesh stated that introduction of GST had worked well and that their State had taken steps to control the expenses but the Covid had spoiled the finances of the States. He submitted to look at the taxation structure on certain items and to devise strategies to achieve the pre GST revenue on these items. He further stated that though in principle, they did not seek compensation and wanted to be self-reliant but due to special circumstances, the State requested to continue the compensation.

22.17 Hon'ble Member from Gujarat stated that GST is a prime example of cooperative federalism and the decision making process of the GST Council represents the true federal character of our country. He further stated that the compensation was one of the key factors of the successful implementation. That Gujarat was a manufacturing State and had to lose revenue after the introduction of GST. That Gujarat was a financially disciplined State and their FRBM was within limits. That Covid had affected the State finances and requested for continuation of the compensation.

22.18 Hon'ble Member from Haryana stressed upon enforcement and proper training of the States' officers by the central officers. He further stated that Covid period was a set back to the revenue and compensation for at least two lost years might help the states and requested to increase the compensation for at least two years.

22.19 Hon'ble Member from Chhattisgarh could not attend the meeting but he had sent his written comments vide letter dated 27.06.2022. The Hon'ble Member stated that the provision of 14% protected revenue should be continued for at least 5 years more. He stated that the mining and manufacturing sector had suffered revenue loss in the State thus compensation is much required. He further suggested that if compensation is not continued then the 50%-50% share formula of CGST and SGST should be changed to 80%-70 % SGST and 20%-30% CGST.

23. The Secretary thanked all the Members of the Council for a very fruitful meeting. He stated that in the last two days, a number of decisions were taken which are going to help both the State and the Centre in garnering more revenues and also making some concessions to the taxpayers. The Secretary further stated that both the meeting of the officers and the GST Council meeting were held in a very conducive environment. He placed on record his heartfelt thanks to all the Members present in the meeting. He also specially thanked the Convenors of the GoM who had made presentations of their recommendations and had travelled to Chandigarh despite their very busy schedule. The GoM on Casinos, race courses and online gaming would also have a look at the issue of taxation of online gaming, casinos and horse racing once again and give the report in the next 15 days. In this meeting, it was also decided to set up a GoM on the issue of constitution of Tribunals and if the GoM could also submit its report by the end of the month, the next Council meeting would be held in the first week of August on these two items alone so that these important decisions could be taken.

23.1 The Secretary also thanked the administrations of UT Chandigarh, Haryana and Punjab for hosting the Council meeting at a very short notice. He also thanked all the Union Finance Minister, the MoS, the Members of the Council, and all the officers who had come from States and Centre and the officers from Secretariat who had been working overtime to ensure that GST council meeting was successfully conducted.

Annexures to the Draft Minutes of The 47th Meeting of GST Council

Annexure-1

List of Hon'ble Ministers from States/UTs attending the 47th Meeting of the GST Council on 28th & 29th June, 2022

S. No	Centre/States/UTs	Name of Hon'ble Minister	Charge
1	Govt. of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Govt. of India	Shri Pankaj Chaudhary	Minister of State for Finance
3	Andhra Pradesh	Shri BugganaRajendranath	Minister for Finance, Planning, Commercial Taxes, Skill Development & Training and Legislative Affairs
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister-cum-Finance Minister
5	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
6	Delhi	Shri Manish Sisodia	Deputy Chief Minister

7	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
8	Gujarat	Shri Kanubhai Desai	Minister for Finance, Energy & Petrochemicals
9	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
10	Himachal Pradesh	Shri Sukh Ram Chaudhary	Minister for MPP and Power
11	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Hon'ble Lieutenant Governor, Union Territory of Jammu and Kashmir
12	Karnataka	Shri Basavaraj Bommai	Chief Minister of Karnataka
13	Kerala	Shri K.N. Balagopal	Finance Minister

14	Madhya Pradesh	Shri Jagdish Devda	Minister for Commercial Tax, Finance, Planning & Statistics
15	Manipur	Dr. Sapam Ranjan Singh	Minister for Medical, Health & Family Welfare Department and Publicity & Information Department
16	Meghalaya	Shri Conard K. Sangma	Chief Minister
17	Meghalaya	Shri James K.Sangma	Finance Minister
18	Odisha	Shri Niranjana Pujari	Minister for Finance & Parliamentary Affairs Minister

19	Puducherry	Shri Lakshminarayanan	Hon'ble Minister for Public Works
20	Punjab	Shri S. Harpal Singh Cheema	Finance Minister
21	Rajasthan	Shri Shanti Kumar Dhariwal	Minister of Urban Development & Housing Department
22	Sikkim	Shri B. S. Panth	Minister to Tourism & Civil Aviation and Commerce & Industries
23	Tamil Nadu	Dr. PalanivelThiagarajan	Minister for Finance and Human Resources Management
24	Telangana	Shri T Harish Rao	Minister for Finance, Medical and Health

25	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
26	Uttarakhand	Shri Prem Chand Aggarwal	Minister of Finance, Urban Development, Housing, Legislative & Parliamentary Affairs, Re-organisation and Census
27	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs
28	West Bengal	Smt. Chandrima Bhattacharya	Minister of State (Independent Charge), Finance Department

Annexure-2**List of the Officers from the Centre and the States/Union Territories attending the 47th GST Council Meeting on 28-29 June 2022**

S. No	Centre/ State/UTs	Name of the Officer	Designation/Charge
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary
2	Govt. of India	Shri Vivek Johri	Chairman, CBIC
3	Govt. of India	Shri D.P. Nagendra Kumar	Member (GST), CBIC
4	Govt. of India	Shri Sandeep Kumar	Member (Tax Policy), CBIC
5	Govt. of India	Shri Sanjay Kumar Agarwal	Member (Compliance Management), CBIC
6	Govt. of India	Shri Vivek Aggarwal	Additional Secretary, DoR& GST Council Secretariat
7	Govt. of India	Shri Rajesh Malhotra	DG (Media & Comm.), PIB, MoF
8	Govt. of India	Smt. Mamta Varma	Addl. Director General, PIB, MoF
9	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
10	Govt of India	Shri Sanjay Mangal	Principal Commissioner (GST PW), CBIC
11	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU
12	GSTN	Shri Manish Kumar Sinha	CEO

13	GSTN	Shri Dheeraj Rastogi	EVP(Support) & SVP (Services)
14	Govt. of India	Dr. (Smt.) Shankari Murali	Pr.CCA, CBIC
15	Govt. of India	Smt. Chandan Mishra	CCA, CBIC
16	GST Council Secretariat	Ms. Ashima Bansal	Joint Secretary
17	Govt. of India	Shri S. S. Nakul	PS to Minister of Finance and Corporate Affairs
18	Govt. of India	Shri Karma S. Z. Lhasungpa	Additional PS to FM
19	Govt. of India	Shri Kumar Ravikant Singh	PS to MoS (Finance)
20	Govt. of India	Shri Rajesh Gupta	PA to MOS(Finance)
21	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
22	Govt. of India	Shri N. Gandhi Kumar	Director (State Tax), DoR
23	Govt. of India	Shri Amaresh Kumar	Additional Commissioner, GST PW, CBIC
24	Govt. of India	Shri Pramod Kumar	Director, TRU
25	Govt. of India	Shri Vinay V Nayak	Deputy Commissioner, TRU
26	Govt. of India	Shri Syed Wasif Haider	OSD, TRU
27	Govt. of India	Shri Rahul Kumar	Deputy Commissioner (TRU)

28	Govt. of India	Shri D. P. Misra	OSD to Chairman, CBIC
29	Govt. of India	Shri Alok Kumar	Additional Commissioner, GST PW, CBIC
30	Govt of India	Ms. Neha Yadav	Deputy Commissioner, GST PW, CBIC
31	Govt of India	Shri Amit Samdariya	Deputy Commissioner, GST PW, CBIC
32	GST Council Secretariat	Ms. B. Sumidaa Devi	Director
33	GST Council Secretariat	Shri Kshitendra Verma	Director
34	GST Council Secretariat	Shri Harish Kumar	Deputy Secretary
35	GST Council Secretariat	Shri S. S. Shardool	Deputy Secretary
36	GST Council Secretariat	Ms. Reshma R Kurup	Under Secretary
37	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary
38	GST Council Secretariat	Shri Manish Wadhwa	Superintendent
39	GST Council Secretariat	Shri Manoj Kumar	Superintendent
40	GST Council Secretariat	Shri Sachin Goel	Superintendent
41	GST Council Secretariat	Ms. Priya Sethi	Superintendent
42	GST Council Secretariat	Shri Rakesh Joshi	Inspector

43	GST Council Secretariat	Shri Vijay Malik	Inspector
44	GST Council Secretariat	Shri Tarun	Assistant Section Officer
45	GST Council Secretariat	Shri Padam Singh	Inspector
46	Andaman & Nicobar	Shri Kuldip Singh Thakur	Special Resident Commissioner
47	Andhra Pradesh	Shri Gulzar. N	Secretary to Government (RM & FP) & (CT) Finance Department
48	Andhra Pradesh	Shri S. Ravi Shankar Narayan	Chief Commissioner of State Tax, Andhra Pradesh
49	Andhra Pradesh	Shri K Ravi Shankar	Commissioner (GST)
50	Andhra Pradesh	Shri S Sekhar	Additional Commissioner (IT)
51	Andhra Pradesh	Shri L. Chandra Obul Reddy	O.S.D to Finance and CT Minister
52	Arunachal Pradesh	Shri Kanki Darang	Commissioner State Taxes
53	Arunachal Pradesh	Shri Tapas Dutta	Deputy Commissioner (GST)
54	Arunachal Pradesh	Shri Ajay Saring	PRO to DCM
55	Assam	Shri Jayant Narlikar	Commissioner & Secretary to the Govt of Assam , Finance Department
56	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax

57	Bihar	Dr. Pratima	Commissioner cum Secretary, Commercial Taxes Department
58	Bihar	Shri Arun Kumar Mishra	Tax Expert, Commercial Taxes Department
59	Bihar	Binod Kumar Jha	JCST
60	Chandigarh	Shri Vijay NamdeoraoZade	Finance Secretary-cum-Secretary Excise & Taxation, Excise & Taxation Department, U.T., Chandigarh
61	Chandigarh	Shri Vinay Pratap Singh	Excise and Taxation Commissioner, U.T., Chandigarh
62	Chhattisgarh	Shri Gaurav Dwivedi	Principal Secretary,Commercial Tax(State Tax)
63	Chhattisgarh	Shri KhemrajJharia	Additional Commissioner of State Tax, HQ
64	Delhi	Shri Ashish Chandra Verma	Principal Secretary Finance
65	Delhi	Dr. S.B. Deepak Kumar	Commissioner, State Tax
66	Delhi	Shri Anand Kumar Tiwari	Special Commissioner, State Tax
67	Goa	Shri Shashikant Kandolkar	P.A to Hon'ble Minister
68	Goa	Smt. Ruchika Katyal	Commissioner of State Tax

69	Gujarat	Shri J P Gupta	Principal Secretary to Government, Finance Department
70	Gujarat	Shri Milind Torawane	Secretary to Government (Economic Affairs), Finance Department & Chief Commissioner of State Tax
71	Gujarat	Shri Rajendra Kumar Patel	PA to Minister of Finance, Energy & Petrochemicals
72	Gujarat	Shri Riddhesh Rawal	Joint Commissioner
73	Haryana	Shri Simarpal Singh	Special Secretary to Deputy CM
74	Haryana	Shri Anurag Rastogi	Addl. Chief Secretary to Government of Haryana, Excise and Taxation Department
75	Haryana	Shri Shekhar Vidyarthi	Excise & Taxation Commissioner-cum-Secretary to Government, Haryana
76	Haryana	Shri Siddarth Jain	Additional Commissioner
77	Himachal Pradesh	Shri Subhasish Panda	Principal Secretary (STE)
78	Himachal Pradesh	Shri Yunus	Commissioner of State Taxes & Excise
79	Himachal Pradesh	Shri Rakesh Sharma	Advisor to the Hon'ble Member(Additional Commissioner)

80	Jammu & Kashmir	Shri Vivek Bharadwaj	Additional Chief Secretary, Finance Department, Government of J&K
81	Jammu & Kashmir	Dr.Rashmi Singh	Commissioner State Taxes Department, J&K
82	Jharkhand	Smt. Aradhana Patnaik	Secretary, Commercial Taxes Department
83	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner, Commercial Taxes Department
84	Karnataka	Shri Manjunath Prasad	Principal Secretary to Hon'ble Chief Minister
85	Karnataka	Shri Rohan Biradar	OSD to Hon'ble Chief Minister
86	Karnataka	Smt. C. Shikha	Commissioner of Commercial Taxes, Karnataka
87	Karnataka	Dr. M.P. Ravi Prasad	Additional Commissioner of Commercial Taxes, Karnataka
88	Kerala	Shri Rajesh Kumar Singh	Additional Chief Secretary (Finance & Taxes Department)
89	Kerala	Shri Abraham Renn S.	Additional Commissioner-1, State GST Department
90	Kerala	Dr.Shyjan	PS to FM
91	Madhya Pradesh	Shri Dilipraj Dwivedi	OSD to Minister
92	Madhya Pradesh	Smt. Deepali Rastogi	Principal Secretary

93	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, Commercial Taxes
94	Madhya Pradesh	Shri Manoj Kumar Choubey	JC GST
95	Madhya Pradesh	Shri Harish Jain	AC, GST
96	Maharashtra	Shri Rajeev Kumar Mital	Commissioner, State Tax
97	Maharashtra	Smt. A. Shaila	Govt Nominee and Secretary (Financial Reforms)
98	Maharashtra	Smt. VishakhaBorse	Joint Commissioner, State Tax
99	Manipur	Smt. Mercina R. Panmei	Commissioner of Taxes, Manipur
100	Manipur	Shri YumnamIndrakumar Singh	Asst. Commissioner of Taxes, Manipur
101	Meghalaya	Smt.S.A.Synrem	Commissioner &Secretary,Taxation ETC Meghalaya
102	Meghalaya	Shri.L.Khongsit	Additional Commissioner State Tax Etc, Meghalaya
103	Meghalaya	Shri Mukesh Kumar	OSD To CM
104	Meghalaya	Mr ShanborlangWarjri	Under Secretary to CMO
105	Meghalaya	Mr. G. Nongrum	Communications Executive , CMO

106	Mizoram	Shri R. Zosiamliana	Additional Commissioner of State Tax
107	Mizoram	Shri Hrangthanmawia	Assistant Commissioner
108	Nagaland	Shri WochamoOdyuo	Additional Commissioner of State Taxes
109	Odisha	Shri Sushil Kumar Lohani	Commissioner of Commercial Taxes & GST
110	Odisha	Shri Nihar Ranjan Nayak	Additional Commissioner of Commercial Taxes & GST
111	Puducherry	Shri. L. Kumar	Commissioner of State Tax, Puducherry
112	Puducherry	Shri. B. Balamourthy	Asst. CTO, Commercial Taxes Department, Puducherry
113	Punjab	Shri KAP Sinha	Additional Chief Secretary (Taxation)
114	Punjab	Shri Kamal Kishor Yadav	Commissioner of State Taxes
115	Punjab	Sh. Ravneet Singh Khurana	Additional Commissioner of State Taxes (Audit)
116	Rajasthan	Dr. Ravi Kumar Surpur	Chief Commissioner, State Tax
117	Rajasthan	Shri Arvind Mishra	Additional Commissioner, State Tax
118	Rajasthan	Shri Ashok Agarwal	PA/PS to Minister
119	Sikkim	Shri Manoj Rai	Commissioner, Commercial Taxes

120	Sikkim	Shri Keshab Subba	Joint Commissioner, Commercial Taxes
121	Tamil Nadu	Shri N. Muruganandama	Additional Chief Secretary, Finance
122	Tamil Nadu	Shri Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes
123	Tamil Nadu	Shri S. Subhash Chandra Bose	Joint Commissioner
124	Telangana	Shri K Ramakrishna Rao	Special Chief Secretary, Finance
125	Telangana	Smt. Neetu Prasad	Commissioner, Commercial Taxes
126	Telangana	Shri N Sai Kishore	OSD to Minister (Additional Commissioner of State Taxes)
127	Tripura	Shri Brijesh Pandey	Secretary, Finance Department
128	Tripura	Ms. Rakhi Biswas	TCS-SSG, Chief Commissioner of State Tax
129	Uttarakhand	Smt. Sowjanya	Secretary, Finance
130	Uttarakhand	Dr. Ahmed Iqbal	Commissioner, State Tax
131	Uttarakhand	Shri Anurag Mishra	Joint Commissioner, State Tax
132	Uttarakhand	Shri BhartenduShanker Pandey	OSD to the Hon'ble Minister
133	Uttar Pradesh	Shri Nitin Ramesh Gokarn	Principal Secretary, State Tax, U.P.
134	Uttar Pradesh	Ms. Ministhy S	Commissioner, State Tax, U.P.

135	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner (GST)
136	Uttar Pradesh	Shri Amit Pandey	PS to FM
137	West Bengal	Dr. Manoj Pant	Additional Chief Secretary, Finance Department
138	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
139	West Bengal	Shri Shantanu Naha	OSD to Minister



Ratification of Notifications and Circulars

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

[Vol 1- Pg. 120-152]

Act/Rules	Notification/Circular/Order Nos.	Description/Remarks
CGST Act / CGST Rules	Thirteen (13) Central Tax Notifications issued (No. 35/2021 to 40/2021, 01/2022 and 03/2022 to 08/2022) & nineteen (19) Central Tax (Rate) Notifications issued (No. 06/2021 to 22/2021 and 01/2022 to 02/2022)	3 amendments to CGST Rules carried out; notifications for implementation of various decisions of 45 th meeting of GST Council & to implement other GIC decisions. Some of the important decisions are i. to notify various provisions of Finance Act, 2021 from 01.01.2022; ii. to extend the due date for filing annual return for FY 2020-21 from 31.12.2021 to 28.02.2022; iii. to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 20 Cr from 1st April 2022; iv. to extend the due date of filing FORM GSTR-3B for the month of April, 2022; v. to extend the due date of payment of tax, in FORM GST PMT-06, for the month of April, 2022 by taxpayers who are under QRMP scheme; vi. to waive off late fee under section 47 for the period from 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22; vii. to notify CGST rates of various services as recommended by GST Council in its 45 th meeting held on 17.09.2021; viii. to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021; ix. to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting.
UTGST Act	Two (2) Union Territory Tax Notifications issued (No. 01/2022 to 02/2022) and nineteen (19) Union Territory Tax (rate) Notifications issued (No. 06/2021 to 22/2021 and 01/2022 to 02/2022)	Notifications to implement of various decisions of 45 th meeting of GST Council & to implement other GIC decisions.

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

[Vol 1- Pg. 120-152]

Act/Rules	Notification/Circular/Order Nos.	Description/Remarks
IGST Act	Nineteen (19) Integrated Tax (rate) Notifications issued (No. 06/2021 to 22/2021 and 01/2022 to 02/2022)	Notifications to implement of various decisions of 45 th meeting of GST Council & to implement other GIC decisions.
Circulars	Ten (10) circulars issued (Circular No. 159/15/2021-GST dated 20.09.2021 to Circular No. 168/24/2021-GST dated 30.12.2021)	Circulars for implementation of various decisions of 45 th meeting of GST Council & to implement other GIC decisions. Some of the important decisions are: i. Clarification on doubts related to scope of "Intermediary"; ii. Clarification in respect of certain GST related issues; iii. Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017; iv. Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act; v. Clarification regarding GST rates & classification (goods) vi. Clarifications regarding applicable GST rates & exemptions on certain services; vii. Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020; viii. Clarification on refund related issues; ix. Clarification on GST on service supplied by restaurants through e-commerce operators; x. Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli.

Recommendations of the Law Committee

Law Committee Recommendations for Trade facilitation and Reducing litigation

Agenda 3(I): Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification [Vol 1- Pg. 153-157]

Issue:

- ❖ **Hon'ble High Court of Guwahati** in its order dated 02.09.2021 in the case of M/s BMG Informatics Pvt Ltd. v. Union of India has observed that -
 - para 3.2 of the **Circular No. 135/05/2020-GST dated 31.03.2020**, is unsustainable in law as it bars refund of unutilized ITC on account of inverted rated structure when the petitioner has supplied goods at concessional rate under the Concessional Notification of the Government of India;
 - Such cases are covered under section 54(3)(ii), whereas para 3.2 of impugned circular bars it.

Proposal

- ❖ **LC has recommended to clarify through a circular that:**
 - the refund of accumulated input tax credit on account of inverted structure as per clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is **admissible** in cases where though input and output goods are same, but the **accumulation** of input tax credit is on account of **rate of tax on inputs being higher than the rate of tax on output supplies (at the same time) due to a concessional notification** issued by the Government,
 - other than cases where output supply is either Nil rated or fully exempted; and
 - also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under said clause.
- **This would provide clarity to the trade and field formations and would reduce litigation on the issue.**

Agenda 3(II): Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted rated structure (1/2) [Vol 1- Pg. 158-163]

Issue:

- ❖ In case of **M/s VKC Footsteps**, the vires of **Rule 89(5)**, providing for calculation of refund of unutilized ITC on account of inverted duty structure, were challenged in the Hon'ble Supreme Court of India on the ground that though clause (ii) of the 1st proviso to Section 54(3) provides for refund of ITC availed on both inputs and inputs services, however, **rule 89(5) does not allow the refund of ITC availed on input services.**
- ❖ **Hon'ble SC in its judgment dated 13.09.2021 has upheld the vires of rule 89(5).** However, while upholding the vires of said rule, Hon'ble Court has observed that the **formula prescribed in Rule 89(5) seeks to deduct the total output tax on account of inverted rated supplies from only one component of the ITC, namely ITC on input goods.**
- ❖ Accordingly, **Hon'ble SC has requested GST Council to have a re-look into the formula** as the formula makes a presumption that the output tax payable on inverted rated supplies has been entirely discharged from the ITC accumulated on account of **input goods** and there has been no utilisation of the ITC on **input services.**
- ❖ Hon'ble SC has suggested that **the rule can provide for a deeming fiction or statutory assumption** for certain % utilization of ITC on input services for payment of output tax.

Agenda 3(II): Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted rated structure

(2/2) [Vol 1- Pg. 158-163]

Proposal:

❖ **LC Recommendations:**

- In absence of any empirical data of percentage of ITC of inputs and inputs services utilized for payment of output tax, it may not be possible to suggest any actual or deeming percentage of ITC on inputs and input services for payment of output tax on inverted rated supplies for the purpose of formula under rule 89(5);
- LC has recommended to consider utilisation of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period and to use this objective criteria to revise the formula prescribed in rule 89(5) as suggested by Hon'ble SC.
- Accordingly, LC has recommended the **following amendment in formula** prescribed in rule 89(5):

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – {tax payable on such inverted rated supply of goods and services x (Net ITC÷ ITC availed on inputs and input services)}.

- **This would bring more objectivity to the formula for calculation of refund of ITC on account of inverted duty structure.**

Agenda 3(VI) : Issuance of clarification on various issues pertaining to GST (1/3) [Vol 1- Pg. 176-184]

Issue 1:

- ❖ **Circular No. 147/03/2021-GST dated 12.03.2021**, vide which the **para 41 of Circular No. 125/44/2019-GST** dated 18.11.2019 was amended, provides to **remove the restriction from availing the ITC** of the tax paid on the deemed export supply by the recipient **when the refund of tax paid on such deemed export is claimed by the recipient**.
- ❖ The said restriction was removed in order to enable the recipient of the deemed export supply to file refund due to the requirement of portal to debit the amount claimed as refund from the electronic credit ledger.
- ❖ Doubts have been raised by the field formations regarding **applicability of the provisions of Chapter V of the CGST Act, 2017 for such availment of ITC** by the recipient on the tax paid on deemed export supply and **regarding the calculation of "Net ITC"** under the provisions of rule 89(4) and rule 89(5) of the CGST Rules, in such cases where the recipient of deemed export supply claims ITC on the tax paid on such supply, for the purpose of claiming refund of such tax paid.

Proposal:

❖ LC has recommended that these issues **may be clarified through a circular -**

- ITC of tax paid on deemed export supplies allowed to the recipients for claiming refund of such tax paid is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the **ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017**; and
- As the ITC of tax paid on deemed export supplies allowed to the recipients for claiming refund of such tax paid is **not ITC in terms of the provisions of Chapter V** of the CGST Act, 2017, therefore, **such ITC** availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is **not to be included in the "Net ITC"** for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

Agenda 3(VI): Issuance of clarification on various issues pertaining to GST (2/3) [Vol 1- Pg. 176-184]

Issue 2:

- ❖ Doubts have been raised regarding **interpretation of section 17(5)(b)**, as to whether the **proviso at the end of clause (b) of sub-section (5) of section 17** of the CGST Act (providing for **availability of ITC** where it is **obligatory** for the employer to provide the same to the employees **under any law**) is applicable to the **entire clause (b)** or the said proviso is applicable **only to sub-clause (iii) of clause (b)**.
- ❖ Further, in the context of section 17(5)(b), clarification has been sought as to whether the provisions of sub-clause (i) bar availment of ITC on input services by way of **leasing of motor vehicles, vessels or aircraft** or whether ITC on input services by way of **any type of leasing** is barred under the said provisions.

Proposal:

- ❖ LC has recommended **to clarify through a circular** that-
 - Proviso after sub-clause (iii) of section 17(5)(b) of CGST Act is **applicable for all sub-clauses (i), (ii) & (iii) of section 17(5)(b)**;
 - “Leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to **leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items**;

Agenda 3(VI) : Issuance of clarification on various issues pertaining to GST (3/3) [Vol 1- Pg. 176-184]

Issue 3:

- ❖ Doubts have also been raised regarding **the taxability of various perquisites provided by the employer to its employees** in terms of contractual agreement entered into between the employer and the employee.

Proposal:

- ❖ LC Recommendation:
 - The issue may be **clarified through a circular**, on the lines of earlier clarification made through Press Release dated 10.7.2017, i.e. **supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST**.

Issue 4:

- ❖ Representations have been received seeking **clarification on utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger** for payment of tax and other liabilities in terms of the provisions of the CGST Act.

Proposal:

- ❖ LC Recommendation:
 - Issue a **clarification through a Circular** on usage of electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities in terms of the provisions of the CGST Act.

➤ **The proposal will bring clarity on the above mentioned issues and will reduce litigations.**

Agenda 3(VII) : Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use E-Commerce platforms(1/3) [Vol 1- Pg. 185-191]

Issue:

- ❖ It has been represented that the **mandatory registration requirement for every supplier supplying goods through ECOs under section 24(ix)** of the CGST Act, 2017, has resulted in **huge disparity between online and offline sellers**. The online sellers, even if having turnover well below the threshold limit, are required to get compulsorily registered under the existing provisions, irrespective of their turnover.
- ❖ The **composition scheme** available as per Section 10 of CGST Act **cannot be opted by sellers selling on e-commerce platforms**, by virtue of exception carved out under **Section 10(2)(d)**. As a result, there is again **lack of parity between online and offline sellers**, thereby discouraging small sellers from operating on e-commerce platforms.
- ❖ Similar issue has been raised by Ministry of MSME, Ministry of Textiles, Department for Promotion of Industry & Internal Trade (DPIIT) and NITI Aayog, etc.

Agenda 3(VII) : Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use E-Commerce platforms(2/3) [Vol 1- Pg. 185-191]

Proposal:

- ❖ LC has recommended for **giving exemption from compulsory registration under section 24(ix) for specified class of persons making supplies of goods through e-commerce operators** using powers conferred under **section 23(2)** of the CGST Act, **subject to conditions** that-
 - The exemption is available **upto aggregate turnover** on all India basis **not exceeding the turnover specified under sub-section (1) of section 22** of the CGST Act and notifications issued thereunder.
 - **They shall not make any inter-State taxable supply;**
 - They would be mandatorily required to **declare their Permanent Account Number (PAN) and Principal place of business.**
 - **For each PAN, such unregistered person shall be restricted to declare principal place of business in only One State.**
 - **The ECO would be required to -**
 - **declare the supplies made by unregistered persons** through them through GSTR-8 statement (by inserting a suitable table in it).
 - **to ensure that no inter-State supply through them is allowed** in respect of such unregistered persons by making necessary checks and validations on their system/platform; failing which the penalty would be imposable on the ECO.
 - **ECO will not be required to deduct any TCS** in respect of such supplies made by unregistered persons through them.

Agenda 3(VII) : Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use E-Commerce platforms(3/3) [Vol 1- Pg. 185-191]

- ❖ LC has also recommended **modalities for intra-state supplies of goods by unregistered persons through ECOs.**
- ❖ LC has further recommended that a **special procedure under section 148** may be notified to **allow composition taxpayers to make intra-State supply through e-commerce operators** subject to the following **conditions**:
 - he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;
 - **he is not engaged in making any inter-State outward supplies of goods or services;**
 - he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council;
 - he is neither a casual taxable person nor a non-resident taxable person.
- ❖ **Based on the in-principal approval** by the GST Council, the detailed amendments/ notifications/special procedures will be finalized by the Law Committee.
- ❖ Council may like to decide on the date of implementation of the proposal, keeping in consideration time required for preparedness by GSTN as well as ECOs.
- **The proposal will bring parity between online and offline sellers of goods and has the potential of providing tremendous spurt in the growth of MSMEs, thus facilitating trade.**

Agenda 3(VIII) : Refund of unutilised Input Tax Credit on account of Export of Electricity [Vol 1- Pg. 192-198]

Issue:

- ❖ Ministry of Power has represented about the **difficulty being faced by the exporters of electricity in claiming refund under GST on export of electricity.**
 - 'Electrical energy' is wholly exempted from levy of GST. As electricity is classified as goods, supply of electricity to a country outside India is a **zero-rated supply**. Being exempt, the exporter of electricity has only one option available for claiming refund i.e. the refund of unutilised ITC.
 - Being intangible in nature, there is **no requirement for filing of Shipping Bill/ Bill of Export** in respect of export of electricity.
 - However, the extant provisions under Rule 89 of CGST Rules, 2017 provide for requirement of furnishing the details of shipping bill/ bill of export for claiming refund of unutilised ITC in respect of export of goods, which is causing **difficulty in claiming such refunds.**

Proposal:

- ❖ LC has recommended:
 - to make **amendment in Rule 89(2)** of the CGST Rules, 2017 to provide for a **new statement** for claiming refund of unutilised ITC on account of export of electricity; and
 - to issue a **circular prescribing SOP for refund** of unutilised ITC on account of export of electricity till system related changes are carried out on portal.
- **This would facilitate the exporters of electricity in claiming refund of utilised ITC on zero rated supplies.**

Agenda 3(IV): Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices [Vol 1- Pg. 166-170]

Issue:

- ❖ There appears to be lack of clarity in respect of various issues pertaining to **demand of tax and for penal provisions** in cases involving issuance of tax invoices without underlying supply of goods or services, and/ or availment of ITC in respect of such fake invoices, leading to different practices by different authorities.

Proposal:

- ❖ LC has recommended to issue a **circular** in form of FAQs:
 - to clarify various issues pertaining to demand of tax and for penal provisions in various scenarios where a registered person issues a tax invoice without underlying supply of goods or services or both and/ or where a registered person receives a tax invoice without any underlying supply.
- The proposal will bring uniformity in notices for demand and penalty issued on completion of pending investigation in cases of fake invoices, thus reducing ambiguity and litigation.

Agenda 3(V): Notifying clause (c) of section 110 and section 111 of the Finance Act, 2022 [Vol 1- Pg. 171-175]

Issue:

- ❖ Vide section 111 of Finance Act 2022, section 50(3) of CGST Act is amended with effect from 01.07.2017 to provide that interest will be payable on the wrongly availed ITC only when the same is utilized.
 - It is desirable that to provide clarity on the issue of payment of interest and to avoid litigations, section 111 of Finance Act may be notified by the Centre at the earliest.
 - Also, the method of calculation of interest under section 50 of CGST Act needs to be prescribed through the rules.
- ❖ Vide clause (c) of section 110 of Finance Act 2022, sub-section (10) of section 49 of CGST Act is substituted to provide for transfer of any balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person.
 - As there is no provision of transfer of any amount from or to SGST electronic cash ledger, the amendment is required to be notified only by the Centre and is not required to be notified by States/UTs.
 - It is proposed that the same may be notified by the Centre at the earliest based on the readiness of functionality by GSTN.

Proposal:

- ❖ LC Recommendations:
 - Section 111 and clause (c) of section 110 of Finance Act, 2022 may be notified by the Centre at the earliest.
 - Insertion of new rule 88B with effect from 01.07.2017 for providing for method of calculation of interest [for section 111].
 - Insertion of a sub-rule 87(14) [for clause (c) of section 110]
- ❖ The council may also decide the date from which other provisions of the Finance Act 2022 may be notified by the Centre and the States/ UTs.
- The proposal will remove ambiguities regarding levy of interest on wrongly availed ITC and will also provide for transfer of balance in CGST and IGST cash ledgers between distinct persons, thereby improving liquidity and cash flows of such taxpayers.

Agenda 3(XIII) : Re-credit of amount in electronic credit ledger through FORM GST PMT-03A

[Vol 1- Pg. 238-245]

Issue:

- ❖ Difficulties are being faced by the taxpayers in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund sanctioned to them on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services, in contravention of rule 96(10) of the CGST Rules, 2017, had been paid back by them either on their own or on being pointed by the tax officer.
- ❖ The present provisions provide for re-credit of amount in electronic credit ledger only in two situations, which are rejection of refund of unutilised ITC and sanction of refund of excess payment of tax.
- ❖ GSTN has recently developed a new functionality of FORM GST PMT-03A which allows proper officer to re-credit the amount in the electronic credit ledger of the taxpayer, in situations other than those during sanction of refund.

Proposal:

- ❖ LC has recommended that in the following cases, if the erroneous refund amount is deposited by the taxpayer along with interest and penalty, wherever applicable, the amount of refund so deposited can be re-credited in the ECL of the taxpayer:
 - Refund of unutilised ITC on account of export of goods/services without payment of tax.
 - Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
 - Refund of unutilised ITC due to inverted tax structure.
 - Cases where IGST refund is granted on zero rated supply of export of goods or services in contravention of rule 96(10)
- ❖ LC has also recommended that to implement the above decisions:
 - insert sub-rule (4B) to rule 86 to provide for such re-credit.
 - issue a circular to clarify the procedure for such re-credit.
- The proposal will enable the taxpayers to get re-credit of the amount of erroneous refund paid back by them in their electronic credit ledger, and thus will facilitate the taxpayers.

Agenda 3(XV) : Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and extension of due date for filing FORM GST CMP-08 for Q1 of FY 2022-23

(1/2)

[Vol 2- Pg. 07-10]

Issue

- ❖ In cases where no liability was declared by the composition taxpayer in table 6 of FORM GSTR-4, it was presumed (by the system) that no liability is required to be paid, even though taxpayer may have paid the liability through FORM GST CMP-08. In such cases, liability paid through FORM GST CMP-08 was treated as excess tax paid by the system and was moved on the portal to Negative Liability Statement for utilization of same for subsequent tax period's liability.
- ❖ The issue of treating the same as Negative Liability Statement was deliberated by the Law Committee earlier and LC took a view that amount in negative liability statement needs to be debited on the portal as a remedial action. It was also decided wherever the amount available in negative liability statement had been utilized by the taxpayer for paying the liability while filing statement in FORM GST CMP-08 or return in FORM GSTR-4 of subsequent tax period, such amount needs to be debited from electronic cash ledger of the concerned taxpayer.
- ❖ However, large number of representations were received from the taxpayers stating that due to the debit made by the system in electronic cash ledger, resulting in negative balance in the said ledger, they were suddenly facing cash crunch for paying the remaining due amount as per GSTR-4 return.
- ❖ The issue was deliberated by the Law Committee in its meeting held on 07.05.2022 and LC recommended that late fee under section 47 may be waived for the period 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22. The said recommendation of the Law Committee was subsequently approved by the GST Implementation Committee (GIC) and implemented vide issuance of Notification No. 07/2022-GST dated 26th May, 2022.
- ❖ A large number of representations are still being received from the taxpayers and various trade associations regarding difficulty being caused due to negative balance in electronic cash ledger. It has also been represented that in some cases, the amount of negative liability has already been paid through DRC-03 challans, or by adjustment in subsequent CMP-08/ GSTR-4.
- ❖ The status of the issue was accordingly placed by GSTN before the Law Committee, in the meeting held on 08.06.2022.
- ❖ It was informed by GSTN that as on 08.06.2022, approximately 85,000 taxpayers still had negative entries in their electronic cash ledger amounting to approximately Rs 168 crores.

Agenda 3(XV) : Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and extension of due date for filing FORM GST CMP-08 for Q1 of FY 2022-23 (2/2)

[Vol 2- Pg. 07-10]

Proposal:

❖ LC Recommendations:

- The **negative balance in cash ledger in respect of those taxpayers having negative balance in electronic cash ledger as on date may be nullified by passing a credit entry of equal amount by running a utility in the System.**
 - The **list of all such cases** may be sent to tax authorities for necessary verification and recovery, if any, in cases wherein taxpayer has neither paid the amount utilised out of negative liability statement through CMP-08/GSTR-4 nor through DRC-03.
 - An **e-mail** may also be sent by GSTN to these taxpayers (approximately 85,000) to pay the tax, if any, in case they have utilised the negative liability.
 - Where the taxpayer has paid the liability twice, he may seek refund from the jurisdictional officer under the category excess tax paid.
- ❖ In order to implement the aforesaid recommendations of the Law Committee, GSTN has sought **time upto 08.07.2022** for deployment of the said functionality (present waiver of late fee for filing of GSTR-4 for FY 2021-22 is only upto 30.06.2022).
- ❖ In view of the above, **Council may approve:**
- To **extend the waiver of late fee** under section 47 for delay in filing **FORM GSTR-4** for FY 2021-22 by approximately four more weeks, i.e. **till 28.07.2022** (the existing waiver is for the period from 01.05.2022 till 30.06.2022)
 - To **extend the due date of filing of FORM GST CMP-08** for the 1st quarter of FY 2022-23 from 18.07.2022 to **31.07.2022.**
- The proposal will facilitate and benefit a large number of composition taxpayers who are affected by the said issue of negative balance in electronic cash ledger.

Agenda 3(XVIII) : Amendment in CGST Rules for handling of pending IGST refund claims

[Vol 3- Pg. 9-13]

Issue:

- ❖ **Rule 96 (1)** of the CGST Rules, 2017, provides that **Shipping Bill** filed by the exporter would be **deemed to be an application for refund** of integrated tax paid on account of export of goods subject to **filing of EGM** and return in **FORM GSTR-3B**. Further, these IGST refunds are processed by the proper officer of customs in completely **automated manner** as per the provisions of **rule 96(3)**.
- ❖ However, in some cases where the exporter is identified as **risky exporter** requiring verification by GST officers, or where there is a violation of provisions of Customs Act, the refund claims in such cases are suspended/ withheld and such refunds remain pending for processing, as the proper officer of Customs is not empowered to reject the refund, fully or partially.

Proposal:

❖ LC Recommendations:

- To make necessary **amendments in rule 96** of the CGST Rules -
 - to provide for transmission of such refunds on the portal in a **system generated FORM GST RFD-01** to the jurisdictional GST authorities; and
 - to provide for such refunds to be dealt by jurisdictional GST officer in a manner similar to refunds filed in **FORM GST RFD-01** to enable processing of such pending refunds.
 - Further, it has been recommended to make such changes **retrospectively w.e.f. 01.07.2017.**
- This would result in **expeditious disposal of such IGST refund claims, after due verification by GST officers, thus benefitting the taxpayers.**

Issue:

- ❖ An **e-Wallet scheme** was proposed by GST Council in its **22nd meeting** held on 06.10.2017 to **prevent capital blockage of exporters on account of tax amount involved in procurement of goods and services.**
- ❖ In the e-wallet scheme, **'virtual credit'** was proposed to be provided to the exporters for passing on the same to their supplier so that the suppliers can use the 'virtual credit' while making payment against supplies made to the exporters. These 'virtual credits' could also be utilised for procurement of goods/services/capital goods under AA/EPCG/EOU schemes.
- ❖ Till the scheme comes into operation, GST council has allowed for **exemption of IGST on import of goods under AA/EPCG/EOU scheme time and again and the same is presently extended till 30.06.2022.**

Proposal:

- ❖ LC observed that the **e-Wallet scheme** was mainly envisaged to **get over the issue of capital blockage due to delay in GST refunds** in the initial phases of implementation of GST.
 - ✓ However, the **same does not appear to be relevant now** as the issue of working capital blockage of exporters is being very well taken care of by exemption from tax/concessional rate available to AA/EPCG/AA license holders and merchant exporters and by faster refunds both under IGST route and as well as that pertaining to un-utilized input tax credit on account of zero-rated supply.
- ❖ LC, therefore, recommended:
 - **Present refund mechanism to exporters have been stabilised and streamlined, with exporters now being fairly acquainted with the refund processing under GST. Present Exemption Notifications may be continued.**
 - **E-wallet scheme may not be pursued further.**
- **The proposal will provide assurance and stability to the exporters.**

Law Committee Recommendations relating to Compliance and Administrative measures under GST

Agenda 3(XII): Proposal for amendments to CGST Rules, 2017

(1/3)

[Vol 1- Pg. 223-237]

Amendment to rule 21A :

- ❖ At present, centralized suspension of registration is being done by the system, for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29, based on annual turnover (AATO>Rs 50 lakhs).
- ❖ To facilitate centralized suspension in such cases by the system irrespective of turnover threshold, there is a need to have provisions for automatic revocation of suspension, once all the pending returns are filed on the portal by the taxpayer.
- ❖ Accordingly, **LC recommended amendment in sub-rule (4) of rule 21A** to provide that in cases of centralized suspension of registration for non-compliance of clause (b) or clause (c) of sub-section (2) of section 29, the suspension shall be **automatically revoked** once all the pending returns are filed on the portal by the taxpayer.
 - ✓ **Council may also allow** for centralized suspension of registration under rule 21A(2A) for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29, irrespective of for annual turnover (below Rs. 50 Lakh also).

Amendment to Explanation 1 after rule 43 :

- ❖ Duty Credit Scrip (DCS) are transferrable and GST was required to be paid on its sale / supply. However, w.e.f. October, 2017, the said supply was exempted from GST. Various representations have been received from field formations and trade and industry **as to whether exporters of goods who sale / supply such DCS, being transferrable, are required to reverse ITC under rule 42** on common inputs and input services used for both taxable (including zero-rated) as well as exempted supply.
- ❖ The Law Committee opined that though supply of Duty Credit Scrip by the exporters is an exempt supply under GST, the credit availed on inputs and input services by the exporters for making taxable supplies, including zero rated supplies, should not be considered as common credit on such taxable supplies and the exempted supply of DCS.
- ❖ **LC, therefore, recommended that Explanation 1 after rule 43 may be amended** to provide that there is **no requirement of reversal of input tax credit for such exempted supply of DCS by the exporters.**

Agenda 3(XII): Proposal for amendments to CGST Rules, 2017

(2/3)

[Vol 1- Pg. 223-237]

Amendment to rule 46 :

- ❖ The enablement has been done on the Invoice Registration Portal (IRP) **for e-invoicing** on the basis of the turnover declared by the taxpayers in **FORM GSTR-3B**.
- ❖ Presently, as per various notifications of e-invoicing, **certain entities/ sectors of taxpayers are exempted** from the mandate of e-invoicing. These taxpayers, who are otherwise not required to generate e-invoice, have also got enabled on the portal and are now requesting for their e-invoice status to be disabled as their recipients seek e-invoice from them instead of regular invoices.
- ❖ The **Law Committee recommended that rule 46 of the CGST Rules**, which provides for particulars to be declared in an invoice, **may be amended** to specify that **invoice** shall contain a **declaration** by the registered person to the effect that invoice is not required to be issued in the manner prescribed under rule 48(4) of the CGST Rules, in all cases where an invoice is issued, other than in the manner under rule 48(4), by the taxpayer having AATO more than the threshold notified for issuance of e-invoice.

Amendment to rule 87:

- ❖ GST Council, in its 42nd meeting, has approved “UPI & IMPS” as a **payment option** for payment of Goods and Services Tax in addition to the four modes of payment as specified under Rule 87(3) of CGST Rules, 2017.
- ❖ Law Committee has recommended **amendment in rule 87(3), rule 87(5), FORM PMT-06 and FORM PMT-07** so that appropriate action **for implementation of new payment mode** may be initiated.

Agenda 3(XII): Proposal for amendments to CGST Rules, 2017

(3/3)

[Vol 1- Pg. 223-237]

Amendment to rule 89 :

❖ **Export Value**

- There is persistent confusion among the field formations regarding the **meaning of the term “export value”** declared in the corresponding shipping bill under the Customs Act – *whether the same has to be taken as FOB value or CIF value or invoice value.*
- Law Committee was of the view that the term export value declared in the corresponding shipping bill under the Customs Act mentioned in the clarification issued vide **para 47 of the Circular No. 125/44/2019-GST** dated 18.11.2019 **refers to FOB value only.**
- **Law Committee recommended** that to remove any ambiguity in the matter and to ensure uniformity in processing of refunds of unutilised ITC on account of export of goods, **an explanation may be inserted under rule 89(4) of CGST Rules to clarify that for purpose of rule 89(4), value of goods exported has to be taken as the FOB value declared in Shipping bill or the invoice value, whichever is lower. Corresponding amendments in Statement 3 of RFD-01 may also be carried out.**

❖ **“specified officer” in case of SEZ supplies:**

- As per **second proviso to rule 89(1)**, in respect of refunds pertaining to supplies to SEZ Developer/Unit, receipt of such supply of goods or services by SEZ should have been **endorsed by the specified officer** of the Zone. However, **“specified officer”** mentioned in the above proviso **has not been defined or clarified** in CGST Rules, leading to confusion and rejection of refund claims in some cases.
- **Law Committee recommended** that to clarify the matter and to align the provisions of sub-rule (1) of rule 89 of CGST Rules with those pertaining to supplies by DTA to SEZ in **SEZ Rules, 2006**, **an explanation may be inserted at the end of sub-rule (1) of rule 89 to clarify the term “specified officer”.**

Amendment in FORM GSTR-3B required:

- ❖ In light of Notification No. 17/2021-Central Tax (Rate) **to capture the details of supplies notified under section 9(5);**
- ❖ **Label changes** in terms of **Agenda 3(X)** placed before the GST Council relating to clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in **FORM GSTR-3B** to facilitate settlement of IGST amount.

Agenda 3(X) : Clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1

[Vol 1- Pg. 203-209 and Vol. 3- pg.14]

Issue:

- ❖ The process of return filing has been simplified over a period of time. W.e.f. December, 2020, **FORM GSTR-3B is getting auto-generated on the portal** by way of auto-population of ITC from **FORM GSTR-2B** and auto-population of liabilities from **FORM GSTR-1**, with an **editing facility** to the registered person.
- ❖ However, it has been observed that there still are some **infirmities in information** being furnished by the registered person in relation to **inter-State supplies** effected to unregistered person, registered person paying tax under section 10 of the CGST Act (composition taxable persons) and UIN holders.
- ❖ Also, there appears to be **lack of clarity regarding reporting of information about reversal of ITC as well as ineligible ITC in Table 4 of FORM GSTR-3B.**
- ❖ **Representations have also been received from States for settlement of IGST amount based on various reversals of ITC.**

Proposal:

❖ **LC Recommendations:**

- **Issuance of a circular** to explain the manner of reporting of the information about inter-state supplies to unregistered persons, UIN holders & composition taxpayers and also about reversals of ITC and ineligible ITC in **Table 4 of FORM GSTR-3B**, along with illustrations.
 - **Settlement of reversals of ITC and ineligible ITC** to be done by Department of Revenue & GSTN on the basis of **Table 4(B)(1) and 4(D)(2) of FORM GSTR-3B.**
 - **Necessary label changes may be done in FORM GSTR-3B accordingly.**
- **The proposal will bring clarity and uniformity in reporting of information in return and will also help in settlement of IGST amount based on various reversals of ITC.**

Agenda 3(XI): Comprehensive changes/amendments in FORM GSTR-3B

[Vol 1- Pg. 210-222]

Issue:

- ❖ In the 42nd GST Council meeting, it was recommended that the present system of **GSTR-1/3B** return filing to be continued and the GST laws may be amended to make the **GSTR-1/3B** return filing system as the **default return filing system**. Based on the recommendations of the GST Council in its 43rd meeting, amendments have been made in return filing provisions through Finance Act, 2022 to **align GST laws as per GSTR-1/ 3B return filing system**.
- ❖ **Modifications are required in the format of GSTR-3B**, due to the following factors:
 - Representations have been received from **trade and industry** to allow **amendment** in **FORM GSTR-3B**, to allow **reporting of negative values** in GSTR-3B and to provide solution to the **difficulty in reconciling various reversals and subsequent reclaims of ITC**.
 - **Tax officers** require more granular information in GSTR-3B for effectively undertaking scrutiny, assessment and audit work.
 - The **demand of States** is for streamlining the process of settlement of IGST revenues arising by way of reversals of ITC.

Proposal:

- ❖ **LC Recommendations:**
 - Modification in **Table 3 of GSTR-3B**: for allowing auto-population of values from **GSTR-1** into **GSTR-3B** in specific rows;
 - Modification in **Table 4 of GSTR-3B**: for **capturing line wise reversals** for streamlining the process of settlement of IGST revenues;
 - **GSTR-3B** to provide for **amendment tables** for reporting of various amendments in outward supplies, input supplies liable to reverse charge and ITC for the previous tax periods;
 - **To allow negative values** in tables of **GSTR-3B** and carrying forward of negative values to **GSTR-3B** of next tax period;
 - **GSTR-1** to capture the details of **supplies made through ECOs** in separate **Table 14, 15, 16**.
- ❖ *LC has further recommended to place the said draft of **GSTR-3B** & changes in **GSTR-1** before the Council for in-principle approval and for seeking directions to place the proposed change in **GSTR-3B** in public domain for seeking inputs/suggestions of the stakeholders.*
- The proposal will address the long pending demand of trade and industry and at the same times, will also address the needs of tax administrations for effective intervention in scrutiny and audit process, besides facilitating settlement of IGST.

Agenda 3(IX) : Annual Returns for FY 2021-22

[Vol 1- Pg. 199-202]

Issue:

- ❖ The Annual Return in **FORM GSTR 9** & Annual Reconciliation Statement in **FORM GSTR 9C** were simplified for the FY 2017-18, 2018-19, 2019-20 and 2020-21 by making few entries/tables optional.
- ❖ It has been suggested that in a long run, the annual return should cover the features of proposed changes in **FORM GSTR-3B**, as suggested by the Law Committee and detailed in Agenda 3(XI). However, as the FY 2021-22 is over, there is demand to notify the Annual Return forms for FY 2021-22 at the earliest.
- ❖ A sub-committee of the Law Committee examined the relaxations provided in FY 2020-21 and has **recommended modifications / continuation / discontinuation of such relaxations** based on their present relevance as detailed in the agenda note.

Proposal:

- ❖ **LC Recommendations:**
 - ❖ **To continue with most of the relaxations** as provided for FY 2020-21, **barring a few detailed in agenda note**, such as seeking HSN details in Table 17 of GSTR-9, as requirement of reporting HSN in invoices were changed w.e.f. 01.04.2021.
 - ❖ **AATO threshold** for granting exemption from filing annual return in **FORM GSTR-9/9A**, which was **Rs. 2 crores for FY 2020-21, may be continued for FY 2021-22 also**.
- The proposal will lead to continuity in annual return filing regime, with least changes in Form and threshold turnover for filing of annual return.

Agenda 3(III): Authority to issue recurring SCN in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to State and vice versa

[Vol 1- Pg. 164-165]

Issue:

- ❖ Due to cross-empowerment, an enforcement action against a taxpayer assigned to State Tax authorities can be initiated by the Central Tax authorities and vice versa. In such cases, **various consequential action** relating to such cases such as appeal, review, adjudication, rectification, revision, etc. need to be taken. Clarity is being sought about some of the consequential action like **refunds**.
- ❖ Clarity is also being sought by the field formations as to which is the competent administration or authority who will issue the **recurring Show Cause Notices** arising out of investigation initiated and finalized by Central Tax authorities to taxpayers under State Administration and vice versa.

Proposal:

- ❖ LC Recommendations:
 - Since issuance of recurring SCNs does not involve any fresh investigation as the subject matter as well as ground of SCN remain the same, **it may be desirable that such further/ recurring SCNs are issued by the jurisdictional authorities (which is responsible for assessment of returns of the taxpayer)**, as they will be in a better position to access the records and returns of the taxpayers, and to check whether the grounds of SCN still exist or not and take a view/ action for issuance of recurring SCN, based on facts in the said period *(on the issue of authority to issue recurring SCN)*
 - A taxpayer located within a State is open to enforcement action by both authorities. For example, a enforcement action against a taxpayer assigned to State can be initiated by the Central authorities (and vice versa). In such cases, **all consequential action** relating to such case including, but not limited to, appeal, review, adjudication, rectification, revision **will lie with the authority which had initiated the enforcement action** i.e. the Central authorities in the instant case. **However, the refund claim in respect of any taxpayer is to be decided by the jurisdictional tax authority only.** *(on the issue of various consequential action)*
- The proposal will bring clarity to the field formations about the competent authority to take an action in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to State and vice versa.

Agenda 3(XIV) : Extension of limitation under section 168A of the CGST Act, 2017

[Vol 2- Pg. 05-06]

Issue:

- ❖ Law Committee deliberated on the problems being faced by the taxpayers as well as tax administration in respect of **demands and refunds getting time barred** due to long period of lockdown/restrictions **on account of Covid-19 pandemic**. A request was made to consider extension of timelines in respect of aforementioned proceedings.

Proposal:

- ❖ LC Recommendations:
 - ❖ limitation under section 73 for FY 2017-18 for issuance of order in respect of recoveries linked with due date of annual return, **may be extended till 30th September, 2023**, under the powers available under section 168A of CGST Act.
 - ❖ Further, **no such extension may be allowed for timelines under section 74 of the Act**, as the Act provides for sufficient limitation time of 5 years in respect of such cases, i.e. much beyond the period affected by COVID-19.
 - ❖ **Time period from 01.03.2020 to 28.02.2022 may be excluded** from calculation of the limitation period **for filing refund claim** by an applicant under section 54 and 55 of CGST Act, as well as for **issuance of demand/ order (by proper officer) in respect of erroneous refunds** under section 73, by exercising power under section 168A of CGST Act.
- The proposal will help the taxpayers in filing the refund claims which they could not file in time due to Covid-19 pandemic. The proposal will also enable the tax officers to issue demands and orders in case of scrutiny, assessment and audit proceedings, which were delayed due to Covid-19 pandemic.

Agenda 3(XVI): Refund of accumulated ITC to Duty-Free Shops (1/2)

[Vol 2- Pg. 11-15]

Issue:

- ❖ A view was earlier taken that the sale from DFS outlets is not 'export of goods' and therefore, the DFS operator is not entitled to refund of unutilized ITC of inputs/ input services on supplies made to outgoing passengers, by treating them as zero-rated supplies, under Section 54(3) of CGST Act, 2017.
- ❖ W.e.f. 01.07.2019, **refund of taxes paid on inward supply of indigenous goods**, which are supplied to outgoing International Tourists by Duty Free Shop (DFS) and Duty Paid Shop (DPS) in departure area of international airport, was **notified under Section 55 and Rule 95A was inserted**. Correspondingly, notifications and circulars were issued to implement the same.
- ❖ However, the Hon'ble High Court of Bombay in its judgment dated 7.10.2019 (followed by Hon'ble High Court of Kerala in judgment dated 22.09.2020) has held that **supply of goods by DFS to outgoing passenger is in the nature of zero-rated supply and therefore, refund provisions as mentioned in Section 54(3) of CGST Act, 2017 and Rule 89 of CGST Rules, 2017 are applicable. Hon'ble Court has also taken a view that refund under section 54(3) is also available in respect of supply of goods by DFS to arriving passengers.**
- ❖ The above judgment of Hon'ble High Court of Bombay was duly examined in consultation with the Additional Solicitor General (ASG) and based on the advice of the ASG, **it was decided not to file an SLP in the matter**. On the same grounds, the judgement of Hon'ble High Court of Kerala was also accepted by the government.
- ❖ The issue was deliberated by the Law Committee in respect of apparent anomaly between the law pronounced by the Hon'ble High Courts vis-a-vis the existing legal provisions.

Agenda 3(XVI): Refund of accumulated ITC to Duty-Free Shops (2/2)

[Vol 2- Pg. 11-15]

Proposal:

- ❖ **LC Recommendations:**
 - ❖ **To align rules and notifications with the decision of Hon'ble High Courts** to treat the supply of goods by Duty Free Shops to outgoing international passengers as **zero-rated supply** by:
 - rescinding rule 95A of the CGST Rules, 2017 and Circular No. 106/25/2019-GST dated 29.06.2019 **ab initio**
 - rescinding notification No. 10/2019-Integrated Tax (Rate), notification No. 11/2019-Central Tax (Rate) and notification No. 11/2019-Union territory Tax (Rate) all dated 29.06.2019;
 - ❖ **For future, there is a need to exclude refund in respect of ITC on inputs/ input services pertaining to DFS at Arrival Terminal by amending Explanation to sub-section (3) of section 17 of CGST Act** by including certain transactions under **paragraph 8(a) of Schedule III** of CGST Act in the value of exempt supply. **LC recommended –**
 - To amend **sub-section (3) of section 17** of CGST Act, 2017, by **substituting the existing Explanation** as detailed in Agenda Note
 - Post amendment, **the supplies from DFS at arrival terminal to the incoming passengers** to be **prescribed through the Rules** so that value of such supply are not excluded for calculation of "value of exempt supply" for the reversal of ITC.
- **The proposal will remove the existing and anticipated litigation on the issue and will provide clarity to tax payers as well as tax officers.**

Notifying the provisions of section 123 of the Finance Act, 2021 relating to **amending section 16 of the IGST Act** and to **notify the class of supplies and class of persons** who can export on payment of IGST (1/2)

Issue:

- ❖ Vide section 123 of Finance Act, 2021, sub-section (3) of section 16 of the IGST Act has been proposed to be amended to:
 - make the export under LUT as the default route.
 - restrict the export/zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services
- ❖ This was placed before the GST Council in its 45th meeting held on 17.09.2021 vide Agenda 3 (XV) for notifying the Section 123 of the Finance Act, 2021

Council's recommendation:

- ❖ However, during discussion in the 45th meeting of GST Council, the following view emerged:
 - When proposal to amend section 16 of IGST Act to restrict IGST route was approved by Council in 39th Meeting (March 2020), a number of cases of fraudulent refunds through IGST route were noticed due to fraudulent availment of ITC.
 - Since then, a number of measures have been taken, either through REAP project of GSTN, or through policy interventions to discipline return filing system and also to restrict availment of ineligible ITC.
 - Accordingly, it was felt that there may be a need to re-examine whether restriction of IGST route to such large extent needs to be undertaken at this stage, when the country needs a push to export, and such proposed measure to restrict IGST route to only 10% of the present exporters using IGST route, may cause disruption in exports for a large number of exporters.

Notifying the provisions of section 123 of the Finance Act, 2021 relating to **amending section 16 of the IGST Act** and to **notify the class of supplies and class of persons** who can export on payment of IGST (2/2)

- ❖ GOM in its interim report on capacity based taxation and special composition scheme for certain sectors placed before 45th GST Council meeting on 17.09.2021 **has recommended that IGST refund route to be closed for Mentha oil as and when amended section 16 is notified and the said recommendation was approved by the GST Council.**
- ❖ There are also reports of misuse of facility of IGST refund by a unscrupulous elements in respect of items of **HSN Chapter 24**, including tobacco and tobacco products.
- ❖ **Proposal before the Council:**
 - ✓ To notify Section 123 of the Finance Act, 2021 for amendment in Section 16 of the IGST Act.
 - ✓ Class of supplies: All supplies of goods and services, **except for Mentha oil and goods of HSN Chapter 24 (including tobacco and tobacco products)**, may be notified as class of supplies under clause (ii) of sub-section (4) of amended Section 16 of IGST Act, 2017.
- **The proposal will help in implementing the decision of GST Council with respect to closure of IGST refund route to mentha oil and in preventing the misuse of IGST refund in case of export of tobacco and tobacco products.**

Agenda 9: Final Report of the Group of Ministers to examine the feasibility of implementation of E-way bill requirement for movement of gold and precious stones(1/2)

[Vol 2- Pg. 193-279]

Issue:

- ❖ In pursuance of the decision taken in 37th GST Council Meeting held on 20th September, 2019, a Group of Ministers (GoM) was constituted by the GST Council Secretariat vide O.M issued vide F.No. 591/GoM/Mvmt of Gold & Pre. Stones /GSTC/ 2019/9221-9225 dated 22.11.2019
 - **mandate to examine the feasibility of implementation of e-way bill requirement for movement of Gold and other precious stones.**

GoM Recommendations:

- ❖ **E-way bill for intra-state movement of gold and precious stones:**
 - The states should be allowed to decide about imposition of the requirement of **e-way bill for intra-state movement of gold and precious stones within their states.**
 - There will be a **minimum threshold of Rs 2 Lakh**, and the states can decide any amount including or above this amount as minimum threshold for generation of E-way bill for intra-state movement of gold/ precious stones in their state.
 - **Only Part 'A' on the e-way bill will be required to be filled** in such cases, without any need for filling Part 'B' of the e-way bill.
 - Once e-way bill requirement for movement of Gold and Precious Stones is decided, the **corresponding suitable amendment in CGST Rules, 2017 would have to be carried out.**
 - While finalizing amendment in Rules, it is to be ensured that **in case of supply of gold by registered persons to unregistered buyers, the requirement of e-way bill generation is mandated on registered supplier only.**

Agenda 9: Final Report of the Group of Ministers to examine the feasibility of implementation of E-way bill requirement for movement of gold and precious stones(2/2)

[Vol 2- Pg. 193-279]

GoM Recommendations:

- ❖ **E-invoicing for Gold and precious stones:**
 - E-invoicing should be made mandatory **for B2B transactions** by all taxpayers **supplying gold/ precious stones** (goods of HSN 71) and **having annual aggregate turnover above Rs 20 crore.**
 - ✓ *Threshold for issuance of e-invoice for B2B transactions has already been reduced to Rs 20 crore for all taxpayers, including those supplying gold and precious stones, with effect from 01.04.2022.*
- ❖ **Levy of GST on RCM basis on Old Gold:**
 - The issue of levy on **GST on reverse charge mechanism (RCM) basis on purchase of old gold by registered dealers/ jewellers from unregistered persons** may be referred to **Fitment Committee** for detailed examination.
- The recommendations of GoM are placed before GST Council for deliberations and decision.

Agenda 3(XX): Consent based data sharing

Issue:

- ❖ GST eco-system captures valuable data in electronic data that has use cases other than tax administration
- ❖ There are some platforms that provide various value added services based on financial data obtained from various sources
- ❖ GST data can be used for such value added services like flow based lending to **MSME – TReDS platform** and **Account Aggregator framework of RBI**
- ❖ Currently GST law has a blanket bar on sharing of data submitted by taxpayer

Proposal:

- ❖ **Law Committee recommendation:**
 - Law may be amended to provide for sharing of data of various taxpayers based on the consent of the supplier and recipient, where applicable.
 - ❖ It is proposed to insert a new section 158A in CGST Act for this purpose, as detailed in agenda note.
- This proposal will help in facilitating flow based lending to MSMEs through TReDS platform and Account Aggregator Framework of RBI, thus helping MSMEs get timely credits.

THANK YOU



47th GST Council Meeting

Presentation of GSTN



Agenda : Status of development of Return System



1

New return system : GST RET-1/2/3



- Proposal for NRS
 - Approved in 27th GST Council Meeting
 - Effective date Oct 2022 – Postponed later
- Scheme of New Return System: FORM GST RET-1, RET-2 (Sugam), RET-3 (Sahaj)
 - GST ANX-1 : For declaring outward B2B, B2C, Zero rated supplies
 - GST ANX-2 : Auto-population of ITC for recipient from
 - GST ANX-1, GSTR-5, GSTR-6 of suppliers
 - Import data : Bill of Entry, Courier imports, Import from SEZ to DTA
 - Option for quarterly return filing for smaller taxpayers (upto Rs. 5 crore turnover)
- 39th GST Council meeting
 - Avoid big-bang change – Adopt incremental approach to Return enhancements
 - Import Features of the New Return system
 - Link of the existing returns like GSTR-1, GSTR-2A with GSTR-3B
 - Bring other significant changes, as may be needed - New GSTR-2B, Nil filing by SMS etc
- “REAP”- *Returns Enhancement and Advancement Project* started on 1st April 2020 on a Time & Material (T&M) basis.

Return Enhancements Implementation Status



Sl. No.	Feature	New Return System Design	Present return system
1.	Auto-population of liability to return	✓	✓
2.	Statement of auto-populated credit (GSTR-2B/ GST ANX-2)	✓	✓
3.	Auto-population of ITC to return	✓	✓
4.	Quarterly filing of return for smaller taxpayers	✓	✓
5.	Auto-population of import data for ITC	✓	✓
6.	Auto-population of e-invoice data in GSTR-1	✗	✓
7.	Nil filing of GSTR-1, GSTR-3B by SMS	✗	✓
8.	Option to keep ITC pending or Reject invoice by recipient	✓	Under development
9.	Separate Amendment Return	✓	Under development
10.	No change allowed in auto-populated values	✓	Capability developed

Proposal: Final decision on stopping New Return Development may be taken

Agenda : Extension of T & M for LEAP and REAP

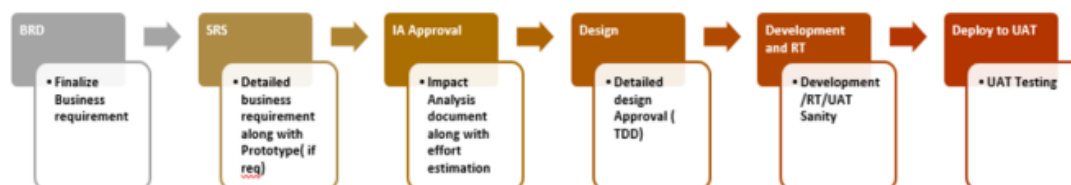
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Background:

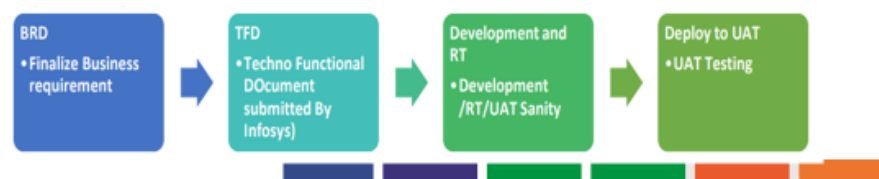


- T&M model: Software development under actual identified resources utilization model
- **GST Council 43rd meeting decision: Approved maximum 200 resources till 31st March, 2022**
- Difference in T&M model and normal CR model
 - T&M model payment is calculated in terms of man-days of resources.
 - Normal CR model a sizable time gets spent on estimation of efforts and then designing with to and fro movement between GSTN and Infosys till agreement is arrived at the effort estimation.

Change Management (Non -T&M Model) involves six stages and intermediate negotiations on effort and estimate



Change Management (T&M Model) which includes TFD under involves 4 stages and needs close monitoring of project implementation



5

Current Methodology used in GSTN for implementation of Change Request:



Currently GSTN uses 2 models for implementation of Change Request:

- All critical changes, where time bound implementation required: taken up under T&M model.
- All other changes related to other modules: Non T&M model
- **Analysis of Regular Process (Non T&M) and T&M Process shows that T&M is better model:**
 - Normal CR route process has 6 stages however (T&M) model have 4 stages only.
 - Comparison of changes of similar magnitude under two models
 - Similar scale of payment to vendor, changes completed in about 30% of time of CR model.
 - New modules and IT improvements stabilised system and improved revenue.

Proposal:

- Extension of current T&M model from **1st April 2022- till 30th March 2023** (Max resources not **exceeding 200**)
- Conversion of existing Change Management (Non -T&M Model) model into T&M model **with max. number of resources: not exceeding 100 at any given point of time till 30th March 2023**
- Extension of T&M and flexibility to increase/ decrease manpower be delegated to GSTN, as it is a commercial decision. GST council would be kept informed of budget impact, if any.



6



Agenda : Developments in Multiple IRP



7

➤ Proposal for Multiple IRP

- Approved in 43rd GST Council Meeting
- RFP floated on 17.12.2021, Registrations closed on 15.01.22
- 71 parties registered
- 30 parties shortlisted as satisfying criteria.
- 17 parties participated in detailed evaluation
- **4 parties** finally Agreement Signed for IRP
- Expected date of operation 1st October, 2022

S. No.	IRP Partner Name
1	Cygnnet Infotech Private Limited
2	IRIS Business Services Limited
3	Defmacro Software Private Limited
4	Ernst & Young LLP

➤ NIC Proposal for IRP 2 received

- **GSTC may agree for IRP 2 of NIC**



THANK YOU!!

 Goods And Services Tax Network

Amendments in provisions relating to GSTAT

Triggers for amendments

- Judgment of Madras High Court
 - Composition of each Bench with one judicial member but two technical members dilutes judicial balance
- Judgement of Supreme Court in various cases leading to Tribunal Reforms Act, 2021
 - Related to composition of Search and Selection Committee – to be headed by Chief Justice of India or a Judge of Supreme Court nominated by him
 - Removal etc on recommendation of the Committee
 - Tenure, retirement age, salary allowances etc.
 - GSTAT Rules, 2019 are already under challenge for being not in line with these judgements.

Bench Composition

- Currently, one Judicial Member, two Technical Members – one from Centre and one from State
- Proposed – one Judicial and one Technical Member
- 50% of Technical Members from States and 50% from Centre
- Will be in compliance with the Madras High Court Judgement and will ensure proper judicial balance in the benches of the GST Tribunal

Selection Committee

- Currently different Selection process for Judicial Members, Technical Member (State) and Technical Member (Centre)
- Supreme Court in Madras Bar Association Vs Union of India (2020) has directed that the Search cum Selection Committee should consist
 - Chief Justice of India or a Judge of SC nominated by CJI as chairperson
 - Chairperson of Tribunal concerned
 - Two Secretaries
- It is proposed to have ScSC on the same lines, with CJI or his nominee Judge as Chairperson and President of Tribunal, one Secretary from Centre and Chief Secretary of one State nominated by Council as Members
- All appointments and removals on the recommendations of this Committee

Structure of Benches

- Since all selections have to be done by the same committee, it is proposed to have uniform nature of Benches everywhere.
- Administrative functions to be exercised by the President and such number of Vice Presidents as may be prescribed through Rules on the recommendations of Council.
- Vice President shall perform such functions of President as may be prescribed through Rules on the recommendations of Council.

Qualifications

- Supreme Court, in R Gandhi Vs Union of India has specified that since Tribunals exercise appellate jurisdiction that would have otherwise been exercised by High Courts – officers not below the level of Additional Secretary should not be eligible
 - Judicial Members are either High Court Judges or District Judges eligible for appointment as High Court judge
- Proposed to have 25 years of experience in Group A service of Centre and State – provision to reduce this requirement in case some States do not have any officer
- Preference of officers of a State in Benches located in that State

Term and retirement age

	President	Judicial Member	Technical Member
Existing			
Term	Three years	Three years	Five Years
Retirement	Seventy years	Sixty-five years	
Proposed			
Term	Four years		
Retirement	Seventy Years	Sixty-seven years	

Group of Ministers (GoM) on Rate Rationalization

47th GST Council Meeting
28th – 29th June, 2022

Contents

- Background
- Terms of reference
- Proceedings of the GoM
 - **Inverted duty correction**
 - **Review of exemptions**
- Interim report of the GoM
- Future road map

Background & constitution of the Group of Ministers

3

Deliberations during the 45th GST Council Meeting

- *Agenda 17: Review of Revenue position*
- *Agenda 18: Compensation- Scenario post June, 2022*
- Revenue dip during two pandemic waves
 - Although recovery post second wave has been robust.
- Need for measures to augment revenue
 - Corrective steps for inversion correction in mobile phones, footwear, etc already taken
- GST Council directed that a **Group of Ministers** be formed to look at at rate restructuring / rate rationalization, including –
 - correction of inverted duty structure (IDS)
 - to reduce classification related disputes, and
 - to enhance GST revenues.

4

Constitution of the GoM and Terms of Reference

- Group of Ministers constituted with Hon'ble Chief Minister of **Karnataka** as convenor
 - Other Member States: **Uttar Pradesh, West Bengal, Bihar, Rajasthan, Kerala and Goa**

Terms of Reference	
• review the supply of goods and services exempt under GST with an objective to expand the tax base and eliminate breaking of ITC chain	• review the current tax slab rates and recommend changes in the same as may be needed to garner required resources
• review the instances of inverted duty structure other than where Council has already taken a decision to correct the inverted structure and recommend suitable rates to eliminate inverted duty structure as far as possible so as to minimize instances of refund due to inverted duty structure	• review the current rate slab structure of GST, including special rates, and recommend rationalization measures, including merger of tax rate slabs, required for a simpler rate structure in GST

- Subsequently, in the 46th GST Council Meeting, the GoM was also given the mandate to examine duty inversion in the **Textiles sector**

5

Proceedings of the Group of Ministers

6

Preparatory work

- Inputs were sought from all States on GoM's terms of the reference
- Refund Data analysis to identify duty inversion
- Fitment Committee examined the GoM's terms of reference based on above
- Proposals from Fitment Committee placed before the GoM

7

Meetings of the Group of Ministers

- The Group of Ministers has met *three* times so far
- In the initial meeting, the roadmap for the GoM was set -
 - View that exemptions were given after serious thought and their review would require careful consideration
 - All the Members to provide their comments on proposals
 - Need to assess the impact of proposed changes
- In the second meeting, the specific Fitment Committee proposals related to **IDS correction and review of exemptions** were discussed in detail
 - Proposals where there was general agreement were taken forward
- In the third meeting, proposals related to above 2 Terms of Reference were finalised by the GoM, to be included in an **Interim Report** for consideration of the Council
- For remaining issues, GoM felt that further discussion is needed before a view can be taken

8

Inverted Duty correction

9

Inverted Duty in GST rate structure

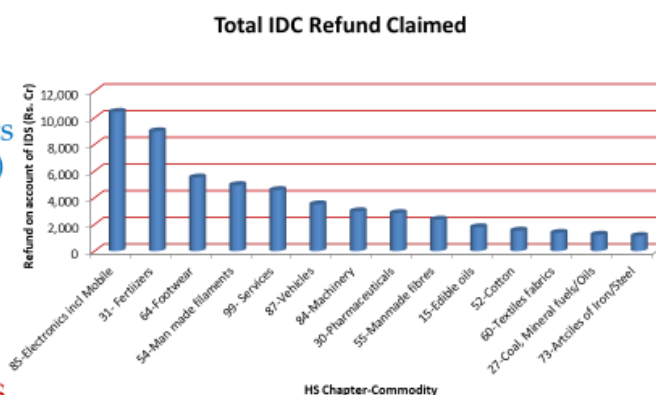
What is Inverted Duty Structure (IDS)?	Instances of IDS	Why is IDS undesirable?
☐	☐	☐
☐ GST on Value Addition only	☐ Fertilizers	☐ Unutilized ITC becomes a cost to the manufacturer
☐ Tax paid on inputs available as Credit (ITC)	☐ ~~Mobiles~~	☐ To correct the anomaly, refund of unutilized ITC must be given
☐ ITC set off with output tax liability	☐ ~~Footwear~~	☐ This causes cash-flow issues for trade
☐ If Output Tax liability > ITC, IDS exists	☐ Manmade yarn, fabrics	☐ Rs. 20,000 Crore refund issued per year
	☐ ~~Renewable energy devices~~	☐ Unnecessary fiscal burden
	☐ Tractors	

- **Major anomaly in the rate structure. Discussed in the Council on many occasions in the past (38th, 39th, 40th, 43rd and 45th Meetings)**
- **Corrective action in respect of sectors like mobiles, footwear, renewable energy devices, ores, railway parts, pens, etc has already been taken**

10

Inverted duty structure - Goods

- Available Data on refund on account of IDS was analysed to identify major commodities/ sectors
- Backward linkages (rates on inputs vis-à-vis finished product tax rate) were analysed for these sectors
- Remedial action proposed by Fitment Committee to the GoM-
 - Output rate rationalization, or
 - Disallowing refund on account of IDS. E.g. coal, edible oils.



11

Inverted duty structure – Goods ...

- GoM discussed each proposal in detail with wide perspective, including
 - Extent of inversion
 - Impact on consumer
- Cautious approach chosen by the GoM. Many items where inversion is apparent were **left untouched** on account of consumer sensitivity and currently prevailing inflation scenario.

Fertilizers	Pharmaceuticals	Utensils
Tractors	Certain Agri-machinery	Agarbatti

12

Inverted duty structure – Goods ...

- Items where remedial action was generally agreed upon has been included in GoM's recommendations for correction in IDS.
- To illustrate, for IDS correction in goods, changes suggested include -

Item	Present rate	Proposed rate
Printing, writing or drawing ink	12%	18%
LED lamps/ lights/ light fixtures	12%	18%
Power driven pumps	12%	18%
Solar Water Heater and system	5%	12%
Prepared/finished /chamois /composition leathers	5%	12%
Milling and grinding machines including chakki and Wet grinder	5%	18%
Restriction on IDS refund on edible oil and coal	-	-

13

Inverted duty structure – Services

- The GoM examined the inverted duty structure in following services –
 - Services provided by a foreman of a **chit fund**
 - **Works contract service** supplied to government, local authorities and for construction of roads bridges etc.
 - Services by way of **job work** in relation to
 - i. processing of hides, skins and leather;
 - ii. manufacture of leather goods or footwear;
 - iii. manufacture of clay bricks;
 - iv. textile & textile products and tailoring services.

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Inverted duty structure – Services ...

- *Services supplied by foreman to chit fund may be increased from 12% to 18%*
- *GST on job-work in relation to processing of hides, skin, leather and manufacture of footwear on job work may be increased from 5% to 12%*
 - GST rate on footwear has been increased to 12% w.e.f 1.1.2022
 - Leather goods are already at 18%.
- *Manufacture of clay bricks on job work may be increased from 5% to 12%*
 - *GST on clay bricks has been revised from 5% to 12% (with ITC)/ 6% (without ITC)*
- *Textile & textile products and tailoring services on job work may continue at 5%*
 - *GST rate structure on textile fabric and textile products is still under consideration*

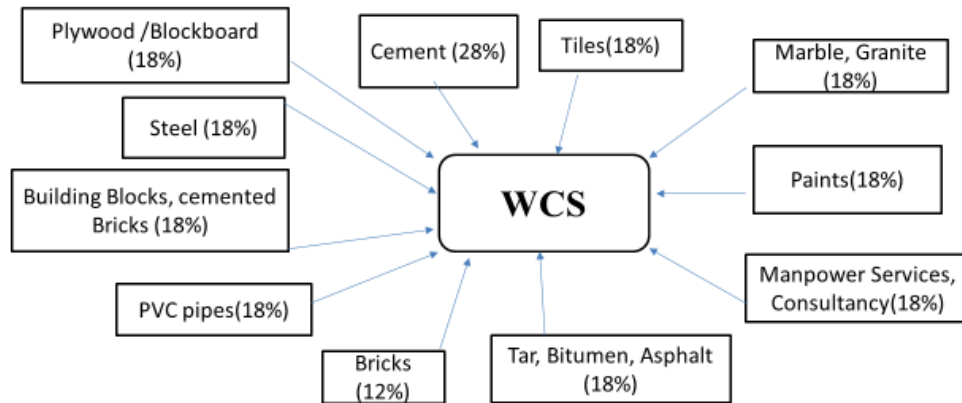
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Inverted duty structure – Services ... Works Contract Services (WCS)

- *Lower rate of 12% on:*
 - WCS supplied to Government and local authorities
 - WCS for construction of roads, bridges, tunnels, terminals, railways, metro and mono rail
- *Most of the inputs and input services used for works contract attract GST at 18% and 28%*
 - Cement (28%)
 - Steel, Paints, Tar, Asphalt, Bitumen etc. (18%)
- *Inversion results in:*
 - Accumulation of ITC, increase in cost of projects
 - Revenue leakage on input side and malpractices such as ITC diversion

16

Inverted duty structure–Services ... Works Contract Services (WCS)..



17

Inverted duty structure–Services ... Works Contract Services (WCS)..

- *Construction sector is a large sector of economy*
- *GST Council had initially recommended standard rates of 18% on all WCS.*
 - *The rate on specified WCS was reduced to 12% later*
- *States did not give any significant exemption from VAT on works contract supplied to Government or for construction of roads, bridges, dams, irrigation etc.*
- *Standard service tax rate applied on taxable services, including works contract*

18

Inverted duty structure–Services ... Works Contract Services (WCS)..

- *No distinction or duality in GST rates on goods supplied to governments. In services, this duality exists*
- *Divergent views:*
 - *Increase in GST rate on works contract shall adversely impact state finances*
 - *Counter argument: Necessary to correct inversion*
 - *It shall remove ITC accumulation, reduce costs, boost revenue on input side, plug revenue leakages*
 - *Higher GST paid by the states will flow back to them in the next month*
 - *Financial devolution would ensure positive net flow to states at higher GST*
- *GST Council may take final view on increasing GST rate on WCS supplied to government and local authority*

19

Review of Exemptions

20

Review of exemptions – Goods: ‘Branded’ items

- A number of items (mostly food grains, cereals, etc) when supplied unbranded are **exempt** from GST
- Condition for exclusion from exemption is that the corresponding items must be put up in unit container and –
 - a) bearing a brand name; or
 - b) bearing a brand name on which actionable claim or enforceable right in a court of law is available (other than where any actionable claim or enforceable right in respect of such brand name has been voluntarily foregone.)
- (i.e. such items when put up in unit container and satisfying condition (a) or (b) above are being taxed at applicable rates)

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Review of exemptions – Goods: ‘Branded’ items ...

- Subjective term ‘branded’ has been misused to avail exemption
- Further, cases came to light where even well established brands file Affidavit giving up rights on brand name, simply to avail GST exemption
- GoM suggestion: Replace exclusion condition of being ‘**branded**’ and related text, with condition of being ‘**pre-packaged and labelled**’, in order to specify items which will be taxed
 - **Simplification** of exclusion condition
 - **No Rate change** is suggested – items sold in loose condition or not pre-packed, will continue to **remain exempt**
 - Existing provisions from the **Legal Metrology Act, 2009** and rules made thereunder may be utilized to draft the revised text.

22

Review of exemptions – Goods ...

- Existing exemptions on supply of goods examined in detail
- GoM has again taken a cautious approach.
 - Fitment suggestion on withdrawing a number of exemptions was **not accepted** by the GoM in view of consumer-sensitivity and prevailing inflation scenario

Bread	Tea	Coffee	Guar meal
Non-alcoholic Toddy	Aquatic / Poultry feed	De-oiled rice bran	Cotton seed oil cake

- Items where remedial action was generally agreed upon has been included in GoM's recommendations for correction in IDS. (*Interim Report Page 21 refers*)
- GoM has also recommended rationalization of rates in respect of few instances of standalone exemptions/ concessional rates.
 - *Oil exploration goods from 5% to 12%*
 - *Scientific and technical instruments from 5% to applicable rate*

23

Review of exemptions – Services

- GoM reviewed exemption in services under following categories:
 - Exemptions on B2B supplies
 - Exemptions to Regulators
 - Exemptions prone to misuse
 - Exemptions not warranted as recipient can afford to pay

24

Review of exemptions – Services... (B2B Supplies)

- In Service Tax period, ITC of VAT paid on capital goods, raw material and other inputs was not available for payment of Service Tax and vice versa
- Under GST, there is free flow of ITC
- Exemptions on B2B supplies have no justification
 - *break ITC chain and increase the cost of supplies*
 - *increased compliance burden on the suppliers: reversals of ITC*
- GST exemptions on B2B supplies such as the following may be withdrawn:
 - *Transportation of railway equipment and material*
 - *Services provided by common bio-medical waste treatment facility*
 - *Fumigation in a warehouse of agricultural produce.*
 - *Storage or warehousing of goods which attract GST (spices, copra, sugarcane, jaggery, cotton, unmanufactured tobacco etc.)*
- Exemption on reinsurance of exempted insurance services **may not** be withdrawn
 - *Exempted insurance schemes meant for poor and farmers*
 - *Premium mostly borne by Centre or State governments*

25

Review of exemptions – Services...

- *Exemptions to Regulators*
 - Like other entities, regulators should pay GST on their supplies
 - No exemption has been given to Lok Sabha Secretariat and Rajya Sabha Secretariat also
 - No exemption on services supplied by Government or Local Authority to business entities
 - Exemption may be withdrawn on services supplied by **RBI, IRDA, SEBI, FSSAI, GSTN**
- *Exemptions prone to misuse*
 - Exemption on hotel accommodation having room rent up to Rs 1000 per night may be withdrawn
 - *Small players entitled to threshold exemption and composition scheme*
 - *Prone to misuse*

26

Review of exemptions – Services...

- *Exemptions not warranted as recipient can afford to pay*
 - Continuing such exemptions is against the objective of comprehensive taxation at lower rates
 - Exemption may be withdrawn/rationalised on:

☐ Services of cord blood bank for stem cells	☐ Business class air travel for North Eastern states
☐ Services by way of training or coaching in recreational activities when provided by commercial large entities (other than by individuals)	☐ Hospital rooms with room rent of above Rs. 5000 a day. A nominal GST of 5% may be levied on such room rent

27

Rationalization of RCM

- Some of the services of Department of Post are under forward charge (Speed Post, Express Post Parcel, Life Insurance supplied to individuals or businesses) and the others under reverse charge (Ordinary Post, Post Card, Inland Letters, Registered Post etc. supplied to business entities).
- This makes the tax structure on the services of Department of Post complicated
- Services by Department of Post of only post-cards, inland letters, book post and ordinary post (envelopes weighing less than 10 gm.) may be exempted
- All other services of Department of Post supplied to any person including individuals, business entities, government etc. be taxed under forward charge to plug any leakage and for simplification

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Interim Report

- Summarized deliberations of the GoM, and
- Recommendations of the GoM, in respect of –
 - *inverted duty correction, and*
 - *review of exemptions*

Contents	
I.	Context
II.	Decisions of the 45th and 46th GST Council Meetings
III.	Group of Ministers and its Terms of Reference
IV.	Deliberations of the GoM
V.	Inverted Duty Structure
VI.	Review of exemptions
VII.	Recommendations of the GoM
Annexure -A: Recommendations of the Group of Ministers	
1.	Inverted Duty Structure correction in Goods
2.	Inverted Duty Structure correction in Services
3.	Review of exemptions in Goods
3.1	Review of exemption condition from 'branded' to 'pre-packaged and labelled'
3.2	Withdrawal of exemption in Goods
4.	Review of exemptions in Services
4.1	Exemptions on services which mostly are B2B supplies
4.2	Exemptions to Regulators
4.3	Exemptions prone to misuse
4.4	Exemptions not warranted as recipient could afford to pay
4.5	Rationalization of tax structure on services supplied by Department of Post
4.6	Miscellaneous Exemptions
Annexure-B: Constitution of Group of Ministers on Rate Rationalization	
Annexure-C: Press Release on recommendations of the 46th GST Council Meeting	

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Future Roadmap

- GoM felt that issue of GST rate slab re-structuring requires further deliberation
- Inversion in Textiles sector referred to GoM by 46th GST Council Meeting
- Few miscellaneous issues forwarded by Fitment Committee also to be examined.
- Extension of three months sought for completing deliberations on remaining Terms of Reference and submission of final report

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THANK YOU

47th GST Council Meeting

Report of Group of Ministers (GoM) on GST System Reforms



GoM on GST System Reforms (IT improvements)



- The 45th GST Council reconstituted the Group of Ministers (GoM) on IT issues in GST.
 - 2 Meetings held – First on 21st Oct.' 21 and Second Meeting on 10th Feb' 22
 - Deliberated on 16 broad suggestion: Prioritized Action Points for detailing by the officers
 - Priority I (7 Suggestions) and II (5 Suggestions)
 - Priority I Agenda items summarized below:

#	Agenda Item details
1	Integrated approach on improving Registration process: Using biometric authentication for high-risk applicants; (Item 1)
2	Risk Assessment of New applicants/registrants using Machine Learning (ML) and to carry out Mandatory Physical Verification as Assigned by the System (Item 2A)
3	AI/ML based interdiction grounded on suspicious behaviour of existing taxpayers to be used for carrying out system assigned verifications etc (Item 2B)
4	Online Address verification of New and Existing Taxpayers with the help of Geocoding (Item 2C)
5	Capturing Electricity Bill meta data (CA No.) during Registration process (Item 3)
6	Validation of Bank Accounts of taxpayers through NPCI (Item 4)
7	Lead based dashboard, Task & Case Creation and Feedback Mechanism in Back Office (Item 7)

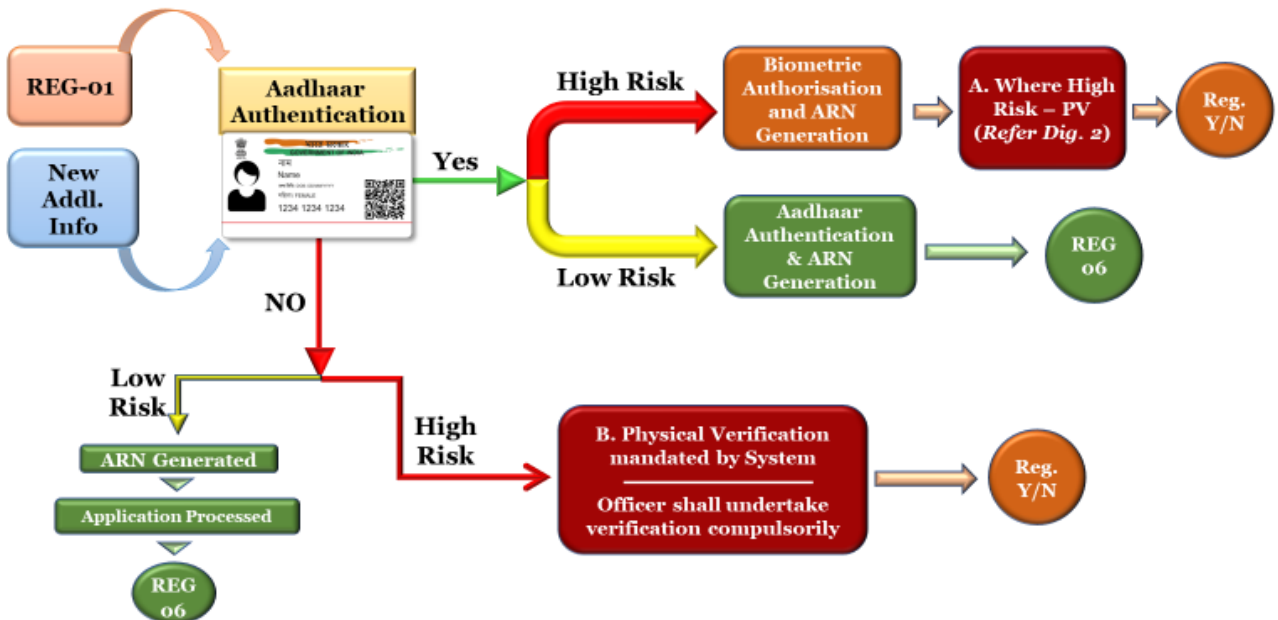
Issue # : Integrated approach on improving Registration process: Using biometric authentication for high-risk applicants; (Item 1)

Solution #: AIML and Risk Based identification of Applicants for Biometric Authentication

GoM Decision #: GoM approved using mandatory biometric authentication for high-risk applicants for registration under GST.



High level Business process flow for Biometric verification of New Applicants (Diagram 1)



GoM on GST system Reforms



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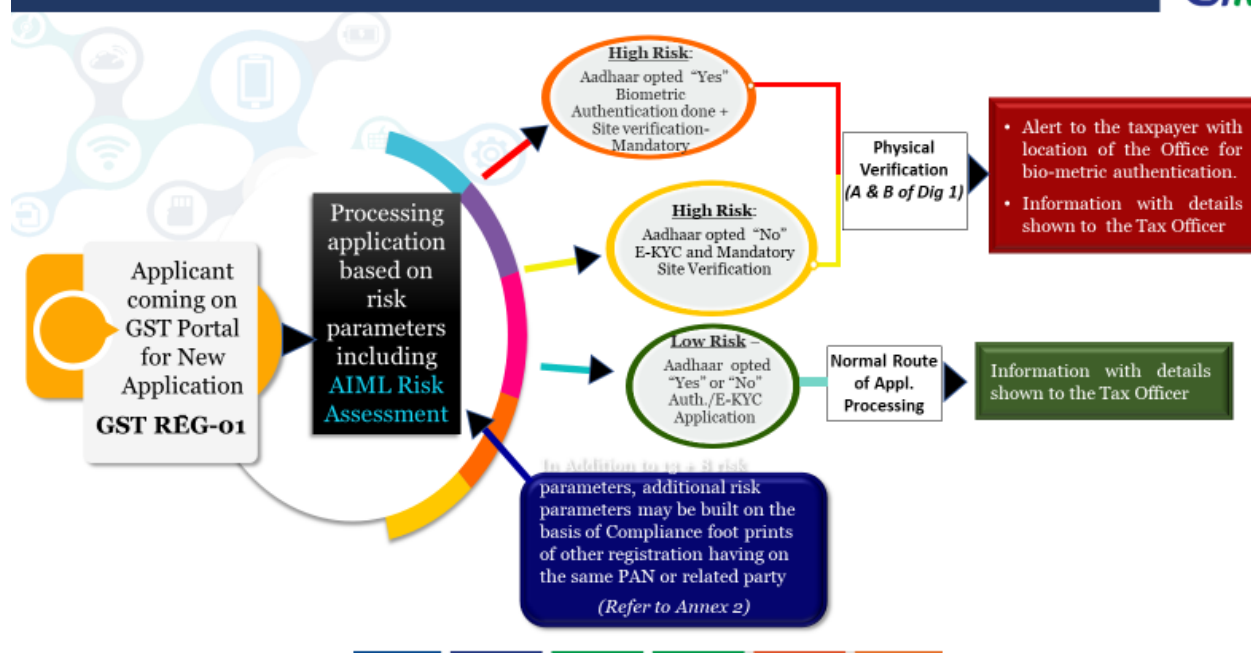
Issue # : Risk Assessment of New applicants/registrants using Machine Learning (ML) and to carry out Mandatory Physical Verification as Assigned by the System (Item2A)

Solution #: AIML and Risk Based risk assessment of new registrations for mandatory physical verification

GoM Decision #: GoM approved identifying risky behaviour of the new registrants/applicants using AI/ML and place the information on the back office for the field officer to carry out mandatory physical verification of these taxpayers .



Risk Assessment of New Applicants using Machine Learning (Diagram 2)



AI/ML based interdiction grounded on suspicious behaviour of existing taxpayers (Agenda 2B)



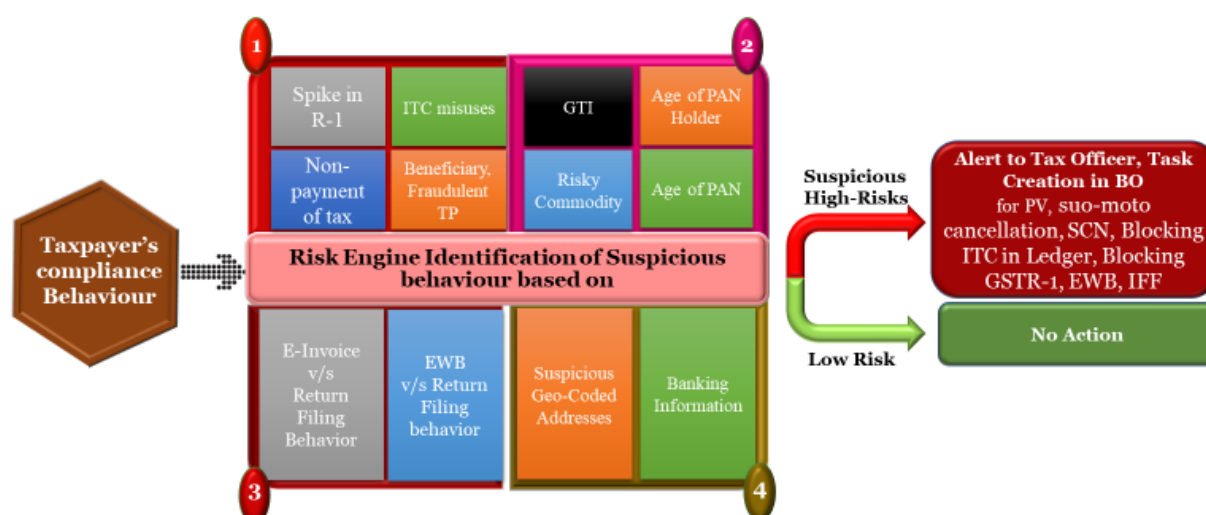
Issue # : AI/ML based interdiction grounded on suspicious behaviour of existing taxpayers to be used for carrying out system assigned verifications etc.

Solution #: AIML and Rule based identification of Suspicious transactions for verification

GoM Decision #: Approved AI/ML based interdiction to generate MIS for officers to take post registration verification and other necessary actions for high risk taxpayers.



Existing Taxpayers - Interdiction Based on Suspicious Behavior (Agenda 2B)



Online Address verification of Taxpayers with the help of Geocoding (Agenda 2C)



Issue # : Online Address verification of New and Existing Taxpayers with the help of Geocoding (Item 2C)

Solution #: Geocoding of all taxpayers

GoM Decision #: GoM approved online/site verification with the help of Geo-Coding and for officers to carry out physical verification of high-risk taxpayers or getting correct address filed by the taxpayers.



Online Address verification of New and Existing Taxpayers with help of Geocoding(Agenda 2C)



application provided by Map My India (MMI) using comparison with Geo-Coded Value

- In case of major gap, **mandatory physical verification shall be undertaken:-**
 - Either by departmental officer or
 - Through any other agency as required by the state, before approval of such application.
- MIS of such applications and outcome of physical verification may be given to the senior officers.



Complete Match

Sl No	Field Name	As-Is Value	Geo-Coded Value
1	Country	India	India
2	Pincode	831001	831001
3	State	Jharkhand	Jharkhand
4	District	East Singhbhum	East Singhbhum
5	City/Town/Village	Jamshedpur, Agrico	Jamshedpur
6	Locality/Sub-Locality		Agrico Area



Capturing Electricity Bill meta data (CA No.) during Registration process (Agenda 3):



Issue # : Capturing Electricity Bill meta data (CA No.) during Registration process (Item 3):

Solution #: Online capture and verification of Meta Data of Supporting documents

GoM Decision #: GoM approved inclusion of Electricity Bill meta data (CA No.) as a data field during registration by new taxpayers. CA Number shall be verified to improve the quality of registered addresses in GST System.



Making Electricity CA No. mandatory for Registration (Agenda 3)



- Field in the registration form to capture meta data:
 - Electricity consumer number /document number of any proof of principal place of business.
 - The GoM suggested GSTN to collect meta-data supported by documents (electricity bill etc.) furnished by taxpayers at the time of registration that clearly identifies their place of business.
 - Small change in REG-01 to capture document number, name and other details will be required.
 - State administration shall ensure that such departments are providing online access/search facility of such document.



Validation of Bank Accounts of taxpayers through NPCI (Agenda 4)



Issue # : Use of incorrect Bank Accounts at the time of Registration

Solution #: Online verification of Bank Accounts

GoM Decision #: GoM approved real time validation of Bank Accounts through integration of GST System with NPCI. The outcome of the verification shall be made available to the tax officers. GSTN to take necessary steps to make available information related to all bank accounts against a particular PAN.



Validation of Bank Account through NPCI (Agenda 4)



- GSTN Needs to integrate with NPCI:
 - The GoM discussed the possibility of Bank Account verification of taxpayer from authentic databases e.g., NPCI, CBDT etc
 - The GoM proposed to add a feature on online Bank Account validation by integrating GST system with NPCI This system would highlight the high-risk category of taxpayers on a near real-time basis, for taking action by the tax officers
 - This system would highlight the high-risk category of taxpayers on a near real-time basis, for taking action by the tax officers

Input from GSTN					Validation from NPCI			
Header	Reference No.	PAN	IFSC Code	Account number	IFSC Bank Account validity	Primary Account holder PAN	Primary Account Holder Name.	Account Number
Parameter name	Type, Account ID, State Code							
Sample	OTH1038710	AAQFG7471F	BNPA0009008	3002133454545	V verified	Null Not avialble	Null Not avialble	V Verified



Lead based dashboard, Task & Case Creation and Feedback Mechanism in Back Office (Agenda 7)



Issue # : Task & Case Creation and Feedback Mechanism in Back Office

Solution #: Action on ITC surge leads of BIFA

GoM Decision #: GoM approved development of BI-BO Feedback Mechanism for capturing the feedback of leads generated by BIFA (and provided to tax officers in BO systems)

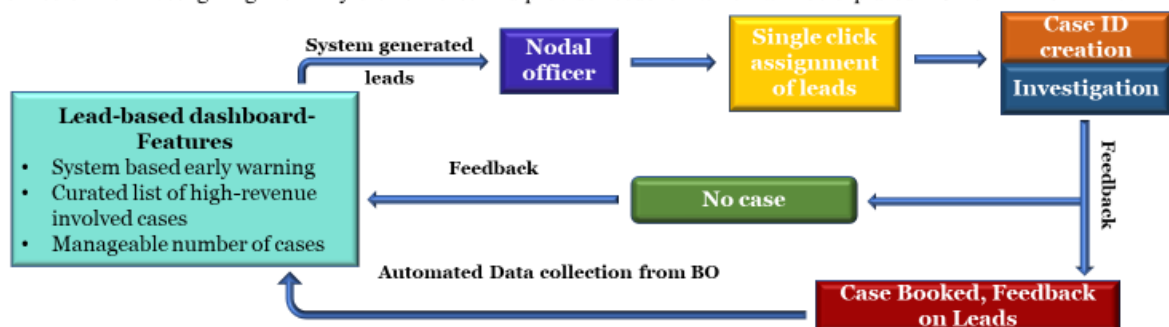


Feedback Mechanism (Agenda 7)



Lead Based Dashboard in GAIN application of BIFA

- GSTN may develop a feedback mechanism to create task for officers in BO
- Leads generated in BIFA can be send to senior officers/nodal officers in their BO.
- They can create task for officers in one click
- Officers after investigating task may create a case and provide feedback which will be captured AUTOMATICALLY.



Proposal: Officers shall make use of Lead Based Dashboard in GAIN application of BIFA with feedback



Priority II agenda items of the GoM

Agenda Item	Details
Agenda Item 8A & 8B.	Hard locking of Table 4 of GSTR 3B in order to restrict ITC up to 105%, and sequential filing of GSTR1 and GSTR 3B.
Agenda Item 9.	For tracking Non-Genuine/ Non-existent taxpayers (Fake invoicing) and for follow up action, there should be suitable communication platform to inform the task to the counterpart jurisdictional officer and to report compliance by the jurisdictional officer along with flagging of Non-genuine/ Non-existent Tax payer to dealer as well as tax officer.
Agenda Item 12.	Non-reporting of B2C Supplies. Payment portals to be mandated to report data in which annual transactions of individuals has exceeded more than 20 lakh in order to check for evasion of tax.
Agenda Item 13.	HSN level declaration in invoice or improving the same in Table 12 of GSTR1.
Agenda Item 16 A and B:	Proposal to integrate Income Tax, ICEGATE and Import/Export of Services data with GST system data.



THANK YOU!!

 Goods And Services Tax Network



Report
of
Group of Ministers (GoM)
on
Casinos, Race Courses and
Online Gaming

29th June, 2022
Chandigarh



Schema of the Presentation

- Constitution of the GoM
- Considerations made by the GoM
- Challenges
- Deliberations by the GoM
- Recommendations

Constitution of the GoM on Casinos, Race Courses and Online Gaming

In May 2021, the GoM on Casinos, Race courses and Online Gaming was constituted with following Terms of Reference:

- To examine the issue of valuation of services provided by Casino, Race course 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.

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Constitution of the GoM

- Meanwhile, GST Council in its 45th meeting held on 17.09.2021 agreed to defer various issues w.r.t. Horse Racing, Casinos and Online Gaming- for examination by the GoM.
- In Feb 22, the GOM was reconstituted.

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Constitution of the GoM

S-31011/12/2021-DIR(NC)-DOR
Government of India
Ministry of Finance
Department of Revenue

New Delhi, dated 10th February, 2022

OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming - reg.

In partial modification to the OM of even number dated 24.05.2021 & 11.06.2021 on the subject cited above, it is stated that reconstituted membership of the GoM is as follows: -

Sl. No.	Name	Designation and State	
1.	Sh. Conrad Sangma	Chief Minister, Meghalaya	Convener
2.	Sh. Ajit Pawar	Deputy Chief Minister, Maharashtra	Member
3.	Smt. Chandrima Bhattacharya	Minister for Finance, West Bengal	Member
4.	Sh. Kanubhai Patel	Minister for Finance, Gujarat	Member
5.	Sh. Mauvin Godinho	Minister for Panchayat Raj, Transport, Animal Husbandry & Veterinary Services, Protocol & Legislative Affairs, Goa	Member
6.	Dr. Palanivel Thiaga Rajan	Minister for Finance, Tamil Nadu	Member
7.	Sh. Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs and Medical Education Departments, Uttar Pradesh	Member
8.	Sh. Thanneeru Harish Rao	Minister for Finance, Telangana	Member

2. The other terms of reference (ToR) for the GoM on Casinos, Race Courses and Online Gaming shall remain unchanged.

3. This issues with the approval of competent authority.


(Dr. N. Gandhi Kumar)
(Director)
Tel.011-23092613

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Issues before the GoM

- Accordingly, main issues before the GoM were:
 - ❖ Rate
 - ❖ Valuation
 - ❖ Taxability of different activities in Casinos

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Considerations by the GoM



Provisions of the GST Law

Valuation:

- GST is applied on the transaction value, i.e., supply value of goods and services [Section 15 of the Act].
- In case of betting, gambling, lottery there may have been doubts as to whether the value is the full ticket price, entry fee, chips in casino or net of winnings
- Clarity on valuation of these activities has been provided in GST Rules which specifically provide Value of supply as follows:
 - i. Lottery - 100/128 of face value of ticket
 - ii. Betting, gambling- 100% of face value of bet
 - iii. Horse racing: Amount paid to the totalisator [Rule 31 A]

Provisions of the GST Law

GST Rate:

Actionable claim involved in betting, gambling, or horse racing in race club has been kept in **28% rate slab** [Notfn 1/2017-Rates]

Recreational, cultural and sporting services of:

- Admission to Casino/Race Club/ events like IPL
- Services provided by Race club
- Gambling

are also placed in **28% slab** [Notfn 11/2017-rates]

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Provisions of the GST Law

Clarification has also been issued that

- **28%** rate would apply on entry to casinos as well as on betting/gambling on the **total bet value**
- Further, GST would be leviable on entire bet value, that is, **total of face value** of any or all bets paid into the **totalisator** or placed with licensed bookmakers

[Circular No. 27/01/2018-GST dated 04.01.2018]

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Jurisprudence

- Sunrise Associates (2006)

The Constitution Bench of the Hon'ble Supreme Court held that lottery is an **actionable claim**. *Right to participate and right to win prize are inseparable rights conferred on a lottery buyer and entire consideration is paid for the chance to win.*

- Skill Lotto case- 2020

The Hon'ble Supreme Court ruled that-

- a) Inclusion of actionable claim in Goods (sec 2(52)) is not illegal
- b) Prize money not to be excluded for determining taxable value. **Upheld the validity of Rule 31A(3).**

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Challenges

- Comparison ?
- Risk of closure
- Impact on other similar sectors
- Absence of clarity-skill vs chance
- International Practice
- Finding a formula which runs through all

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Challenges

- **Online Gaming:**
 - Position taken by trade is that it is skill and not chance. Hence, it is not gambling or betting.
 - Tax on Gross Gaming Revenue (GGR)/Platform fees.
 - Adverse impact on the children and youth
 - Market size of Industry – 34600 cr INR FY 21 with a CAGR of 38%, estimated to grow to 165000 cr INR by FY 25

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Challenges

- **Horse Racing:**
 - Money goes to an escrow account- hence tax should be levied on GGR/Commission.
 - Impact on the ancillary related sectors viz., breeding, pharma, etc.

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Challenges

- **Casino:**
 - Concerns expressed by Hon'ble Member from Goa- (i) likelihood of closure of casinos, which is the main source of revenue (ii) Levy of tax on GGR/Net chips
 - How to keep a check on what happens inside the casino.
 - International practices.
 - Valuation of the Industry
 - Other members felt that tax should be levied on the full value of the chips bought.

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Deliberations by the GoM

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Deliberations by the GoM

- The GoM deliberated upon the issues in the **two meetings** held in New Delhi on 2nd May, 2022 and 18th May, 2022.

View taken:

- Valuation of supply of **lottery** on its face value (cum-value basis) was **settled** after extensive deliberation and discussions in GST Council and has been upheld by way of judicial pronouncements by the Hon'ble Supreme Court. It should **not be re-opened**.

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- The actionable claim provision is common and should be equally treated in all such cases.
- The GoM also felt that any **different view on actionable claim** for casino, online gaming, horse racing will also have implication on lottery.
- Simplification of GST principles to be kept in mind.

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Deliberations by the GoM

- All these activities are to be **uniformly taxed** and because of their nature and **negative externalities**, should be levied a **higher incidence of tax**
- GST being a **pass-through tax**, the **incidence** of entire GST is borne by the players, and its incidence does **not fall on the suppliers** involved in these activities
- **Recommendations** regarding valuation should be made in **conformity** with the **statutory & legal** framework and the **jurisprudence** in similar matters.

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Deliberations by the GoM

Legislative Intent:

- Law does not differentiate between game of chance or game of skill: In valuation rule, it only has a reference of “chance to win” which is an inherent feature in all these activities, including online gaming.
- Taxing full value of consideration **without** deducting prize pay-outs.
- Actionable claim in (i) lottery, (ii) betting and (iii) gambling is taxable in GST. As per law, even the actionable claim in betting alone is also taxable
- By removing the prize pay-outs from the value of bets, it will result in effectively removing actionable claims from the value of supply, defeating –
 - Purpose of subsuming of taxes on betting and gambling in GST
 - Intent of bringing actionable claims within the purview of GST

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Deliberations by GoM

Casino-specific Deliberations:

- Taxing each round, once tax is collected at the entry to casino on the purchase of chips, is **neither feasible** nor desirable.
- It was also felt that the **right to play with the winnings** of the previous game was **inherent** in the rights acquired by the players against the price paid for the chips/tokens purchased from the casinos.

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Recommendations

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Recommendations

- Imposition of **GST** on **these activities** namely, casinos, race courses, online gaming **and lottery** should be **uniform** (in terms of rate and valuation).
- For the purpose of levy of GST, **no distinction** merely on the ground that an activity is a game of **skill** or of **chance** or both.
- **Rate** of GST: **28%** on all activities namely Casinos, Race Courses and Online Gaming.

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Recommendations

Valuation:

- Online gaming: the activities be taxed at 28% on the full value of the consideration, by whatever name such consideration may be called including contest entry fee, paid by the player for participation in such games without making a distinction such as games of skill or chance etc.
- Race Courses: GST to be levied at the rate of 28% on the full value of bets pooled in the totalisator and placed with the bookmakers.
- Casino: GST to be levied at the rate of 28% on full face value of the chips/coins purchased from casino by a player.

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Recommendations

- Taxability in Casinos:
 - ❖ In casinos, once GST is levied on purchase of chips/coins (on face value), no further GST to apply on the value of bets placed in each round of betting including those played with winnings of previous rounds.
 - ❖ Entry fee to casinos: GST at the rate of 28% is leviable on the services by way of access/entry to Casinos on payment of consideration/entry fee which compulsorily includes price of one or more other supplies such as food, beverages etc.; this being a mixed supply. However, optional supplies made independently of the entry ticket shall be taxed at the rates as applicable on such supplies.

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Thank You

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

In the 22nd meeting of the GST Council held at New Delhi on 6th October, 2017, it was decided that the Notifications, Circulars and Orders, which are being issued by the Central Government with the approval of the competent authority, shall be forwarded to the GST Council Secretariat, through email, for information and deemed ratification by the GST Council. Accordingly, till the 47th meeting held on 28th-29th June 2022, the GST Council had ratified all the Notifications, Circulars and Orders issued up to 18.06.2022.

2. In this respect, the following Notifications and Circulars issued after 18.06.2022 under the GST laws by the Central Government, as available on www.cbic.gov.in, are placed before the Council for information and ratification: -

Act/Rules	Type	Notification / Circular / Order Nos.	Description/Subject
Notifications under the CGST Act, 2017 / CGST Rules, 2017	Central Tax	1. Notification No. 09/2022-Central Tax dated 05.07.2022	Seeks to notify the provisions of clause (c) of Section 110 and Section 111 of the Finance Act, 2022
		2. Notification No. 10/2022-Central Tax dated 05.07.2022	Seeks to exempt taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing annual return for FY 2021-22
		3. Notification No. 11/2022-Central Tax dated 05.07.2022	Seeks to extend due date of furnishing FORM GST CMP-08 for the quarter ending June, 2022 till 31.07.2022
		4. Notification No. 12/2022-Central Tax dated 05.07.2022	Seeks to extend the waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22
		5. Notification No. 13/2022-Central Tax dated 05.07.2022	Seeks to extend dates of specified compliances in exercise of powers under Section 168A of the CGST Act, 2017
		6. Notification No. 14/2022-Central Tax dated 05.07.2022	Seeks to make amendments (First Amendment, 2022) to the CGST Rules, 2017

		7. Notification No. 15/2022-Central Tax dated 13.07.2022	Seeks to amend Notification No. 10/2019- Central Tax
		8. Notification No. 16/2022-Central Tax dated 13.07.2022	Seeks to amend Notification No. 14/2019- Central Tax
		9. Notification No. 17/2022-Central Tax dated 01.08.2022	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Crore from 1 st October, 2022
		10. Notification No. 18/2022-Central Tax dated 28.09.2022	Seeks to notify 01.10.2022 as the date on which provisions of Sections 100 to 114, except clause (c) of Section 110 and Section 111 of Finance Act, 2022, shall come into force
		11. Notification No. 19/2022-Central Tax dated 28.09.2022	Seeks to make amendments (Second Amendment, 2022) to the CGST Rules, 2017
		12. Notification No. 20/2022-Central Tax dated 28.09.2022, along with corrigendum dated 29.09.2022	Seeks to rescind Notification No. 20/2018-Central Tax dated 28th March, 2018
		13. Notification No. 21/2022-Central Tax dated 21.10.2022	Seeks to extend the due date of filing FORM GSTR-3B for the month of September, 2022
		14. Notification No. 22/2022-Central Tax dated 15.11.2022	Seeks to make amendments (Third Amendment, 2022) to the CGST Rules, 2017

		15. Notification No. 23/2022-Central Tax dated 23.11.2022	Seeks to empower the Competition Commission of India to handle anti-profiteering cases under CGST Act, 2017 with effect from 01.12.2022
		16. Notification No. 24/2022-Central Tax dated 23.11.2022	Seeks to make fourth amendment (2022) to CGST Rules, 2017 with effect from 01.12.2022
	Central Tax (Rate)	1. Notification No. 03/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 11/2017- Central Tax (Rate) dated 28.06.2017
		2. Notification No. 04/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 12/2017- Central Tax (Rate) dated 28.06.2017
		3. Notification No. 05/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 13/2017- Central Tax (Rate) dated 28.06.2017
		4. Notification No. 06/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 1/2017- Central Tax (Rate)
		5. Notification No. 07/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 2/2017- Central Tax (Rate)
		6. Notification No. 08/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 3/2017- Central Tax (Rate)
		7. Notification No. 09/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 5/2017- Central Tax (Rate)

		8. Notification No. 10/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 2/2022-Central Tax (Rate)
		9. Notification No. 11/2022-Central Tax (Rate), dated 13.07.2022	Rescinds Notification No. 45/2017-Central Tax (Rate)
Notifications under UTGST Act / UTGST Rules	Union Territory Tax	1. Notification No. 03/2022-Union Territory tax dated 13.07.2022	Seeks to amend Notification No. 02/2019- Union Territory Tax
		2. Notification No. 04/2022-Union Territory tax dated 13.07.2022	Seeks to amend Notification No. 02/2017- Union Territory Tax
	Union Territory Tax (Rate)	1. Notification No. 03/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No 11/2017- Union territory Tax (Rate) dated 28.06.2017
		2. Notification No. 04/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No 12/2017- Union territory Tax (Rate) dated 28.06.2017
		3. Notification No. 05/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No 13/2017- Union territory Tax (Rate) dated 28.06.2017
		4. Notification No. 06/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No. 1/2017- Union Territory Tax (Rate)
		5. Notification No. 07/2022-Union Territory tax (rate),	Seeks to amend Notification No. 2/2017- Union Territory Tax (Rate)

		dated 13.07.2022	
		6. Notification No. 08/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No. 3/2017-Union Territory Tax (Rate)
		7. Notification No. 09/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No. 5/2017-Union Territory Tax (Rate)
		8. Notification No. 10/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No. 2/2022-Union Territory Tax (Rate)
		9. Notification No. 11/2022-Union Territory tax (rate), dated 13.07.2022	Rescinds Notification No. 45/2017-Union Territory Tax (Rate)
Notifications under IGST Act / IGST Rules, 2017	Integrated Tax (Rate)	1. Notification No. 03/2022-Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 8/2017-Integrated Tax (Rate) dated 28.06.2017
		2. Notification No. 04/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 9/2017-Integrated Tax (Rate) dated 28.06.2017
		3. Notification No. 05/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 10/2017- Integrated Tax (Rate) dated 28.06.2017
		4. Notification No. 06/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 1/2017-Integrated Tax (Rate)

		5. Notification No. 07/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 2/2017- Integrated Tax (Rate)
		6. Notification No. 08/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 3/2017- Integrated Tax (Rate)
		7. Notification No. 09/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 5/2017- Integrated Tax (Rate)
		8. Notification No. 10/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 2/2022- Integrated Tax (Rate)
		9. Notification No. 11/2022- Integrated Tax (Rate), dated 13.07.2022	Rescinds Notification No. 47/2017- Integrated Tax (Rate)
Circulars under the CGST Act, 2017		1. Circular No. 170/02/2022-GST dated 06.07.2022	Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1
		2. Circular No. 171/03/2022-GST dated 06.07.2022	Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices
		3. Circular No. 172/04/2022-GST dated 06.07.2022	Clarification on various issue pertaining to GST

	4. Circular No. 173/05/2022-GST dated 06.07.2022	Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional Notification
	5. Circular No. 174/06/2022-GST dated 06.07.2022	Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A
	6. Circular No. 175/07/2022-GST dated 06.07.2022	Manner of filing refund of unutilized ITC on account of export of electricity
	7. Circular No. 176/08/2022-GST dated 06.07.2022	Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019
	8. Circular No. 177/09/2022-GST dated 03.08.2022	Clarifications regarding applicable GST rates & exemptions on certain services
	9. Circular No. 178/10/2022-GST dated 03.08.2022	GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law
	10. Circular No. 179/11/2022-GST dated 03.08.2022	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th–29th June, 2022 at Chandigarh
	11. Circular No. 180/12/2022-GST dated 09.09.2022	Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd
	12. Circular No. 181/13/2022-GST dated 10.11.2022	Clarification on refund related issues

	13. Circular No. 182/14/2022-GST dated 10.11.2022	Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 & 02.09.2022

3. The GST Council may grant ratification to the Notifications and Circulars as detailed in para 2 above.

4. It is further informed that out of the Notifications and Circulars detailed in Para 2 above, certain Notifications and Circulars have been issued to implement the decisions of the GST Implementation Committee (GIC) taken during the period since the 47th meeting of the Council. The details of such decisions and the relevant Notifications and Circulars issued to implement such decisions are enclosed as **Annexure 2A** to this Agenda Note.

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

- I. The GST implementation Committee (GIC) took certain decisions between 47th GST Council meeting and the upcoming 48th GST Council meeting. Due to the urgency involved, most of the decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions take are given below:

1. Decision of GIC by Circulation on 21st July, 2022 on rollout of the fifth phase of e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Cr.

- a. In the agenda note received from GSTPW, CBIC, it was stated that the GST Council, in its 37th meeting held on 20th September, 2019, had recommended the roll out of e-invoicing in a phased manner. Accordingly, electronic invoicing system was introduced with effect from 01.10.2020 for taxpayers with turnover of more than Rs. 500 crores in any preceding financial year from 2017-18 onwards for B2B transactions and for export invoices. The same was extended for taxpayers with turnover of more than Rs. 100 crores from 01.01.2021. Vide Notification No. 05/2021-CT dated 08.03.2021, the same has been extended for taxpayers with turnover of more than Rs. 50 crores from 01.04.2021. Further, vide Notification No. 01/2022-CT dated 24.02.2022, the same has been extended for taxpayers with turnover of more than Rs. 20 crores from 01.04.2022.
- b. It was further stated that data has been received from GSTN vide email dated 12.07.2022 related to number of taxpayers along with their turnover:

Summary of Slab wise PAN level AATO in any of the previous financial years (2017-18 to 2021-22)		
Turnover slabs	Number Of PANs	Number of GSTINs
Turnover above 500Cr	10,654	79,475
Turnover between 100Cr to 500Cr	43,483	1,16,292
Turnover between 50Cr to 100Cr	59,254	1,02,905
Turnover between 20Cr to 50Cr	1,86,662	2,62,745
Turnover between 10Cr and 20Cr	2,94,982	3,67,941
Turnover between 5Cr and 10Cr	4,89,857	5,73,905

- c. It was also stated in the agenda note that e-invoice has been one of the major reforms taken by the Government which is beneficial for both tax administration as well as trade. It helps the taxpayers in backward integration and automation of tax relevant processes and in real-time

upgradation of data on the GSTN system and thereby, drastically reducing the time taken in filing the returns. Therefore, it was proposed that next phase of e-invoicing may be rolled out. Taxpayers with annual turnover of more than Rs. 10 crore in any preceding financial year from 2017-18 onwards may be brought under the ambit of e-invoice for B2B transactions and for export invoices in the fifth phase as per capacity of GSTN/NIC. Further, sufficient window of 2-3 months may be provided to taxpayers to make necessary IT changes as well as for NIC to enable the specified taxpayers on sandbox for testing. Data suggests that approximately 3,67,941 GSTINs have AATO between rupees 10 Cr to 20 Cr who would be impacted by the decision.

- d. Accordingly, it was proposed that this provision for lowering threshold for issuance of e-invoice to Rs 10 crore may be made applicable with effect from 01.10.2022 to provide sufficient time to taxpayers as well as NIC to make necessary preparations.
- e. **Decision:** The Members of GIC approved the above proposal regarding rollout of the fifth phase of e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Cr.
- f. **Implementation Status: The decision of GIC was implemented by way of issuance of Notification No. 17/2022 – Central Tax dated 1st August, 2022.**

2. Decisions in the 42nd Meeting of the GIC held on 16th August, 2022

2.1 Agenda: GST data sharing with Ministries and Departments

- a. In the agenda note, it was mentioned that after introduction of GST, large amount of quality data was available with the GST system that can be used within Government for various purposes, including better decision making and better targeting of Government resources. Department of Revenue and State Tax departments have been receiving requests from different Ministries/Departments/Agencies, at Central as well as State levels, seeking data related to GST. These request for data can be broadly classified into three categories as under:

I. Validating GSTIN using GSTN validation API with the following data field.

It was further stated these requests are from those agencies that take the GSTIN from their clients for their purpose. Examples could include procurement, subsidy and other benefits. These agencies may like to verify the validity of the GSTIN given by the entity. GSTN has a publicly available facility on their portal, called "search taxpayer", where the details of the taxpayer for a given GSTIN is made available, including the legal name, trade name, address, date of registration, whether it is Aadhaar authenticated, major goods and services that the entity deals in and even the filing status. While this information is available on the portal, it has to be accessed through manual intervention for each GSTIN.

It was proposed that since this facility is anyway available publicly, it could be made through APIs to Government Ministries/Departments/Agencies so that their IT systems can easily access this information.

II. Aggregated GST data which does not involve disclosure of any personally identifiable information of a taxpayer etc.

It was also stated the second set of data sharing request pertain to aggregate information, mainly for planning and decision-making purposes. For example, aggregate information of e-way bill can give important insights into movement of goods, that would be useful for National and State Highway organisation. Details of gross GST collection every month is being widely used for macro-economic monitoring.

It was proposed that aggregate information as may be available from those fields of various statements under GST legal framework that are credible and have a system to ensure its correctness, even if on a risk based system, which do not reveal identity of a taxpayer or an identifiable set of taxpayer in any way, can be shared with Government Ministries/Departments/Agencies for planning and better decision making. It can also be considered that a subset of this information can be made available even in public domain so that they are available even to industry and research organisations. Currently, details of GST collection and settlement are put in public domain with a delay as per the decision of the GST Council.

III. Dis-aggregated data which does not disclose the identity of the taxpayer

In the agenda note, it was mentioned that apart from aggregate data, at times agencies request for dis-aggregated data but with the identity of taxpayer masked. Such data can include details relating to individual e- way bills with the GSTIN of the supplier and the recipient removed. While most of the requirements can be met using aggregate data, many use advance analytics requiring dis-aggregated data. This would also allow mapping of datasets across IT platforms of different agencies using identifiers that cannot be traced back to the supplier or the recipient.

It was proposed that this information could be shared with Government Ministries/Departments/Agencies if they are able to demonstrate that their use case requires dis-aggregated data and there is value in sharing dis-aggregated data for such a use case.

Any data sharing request that does not fall under the above category should only be done with specific approval of the GST Council/GST Implementation Committee on a case to case basis. It may be noted that at previous occasions, data of individual taxpayers has been shared with Government agencies where the legal framework required providing such data, like with National Authority Chemical Weapons Convention (NACWC), Cabinet Secretariat, MSME registration etc. These have been done after approval of the GSTC/GIC. At specific instances, data is being shared with enforcement agencies for enforcement purposes and where GST data is required as an evidence.

- b. The sharing of data should be subject to following general conditions:
 - i. The user agency should ensure safety and security of the data received from GST system and put in place proper IT and administrative mechanisms to ensure safety of data shared.
 - ii. The user agency should use the data only for the purpose it was shared and not disseminate the data further to other agencies.
 - iii. The user agency should not use the raw data for commercial benefits since this data has been acquired from the compliances furnished by taxpayers. Agencies can, however, charge for value added services made available based on the data shared.
 - iv. GST Council reserves the right to revoke access to any data shared with any agency at any time if it comes to a conclusion that sharing of a set of data with an agency is not in public interest.

The GST data is collectively owned by Centre and States and is held by GSTN under the guidance of GST Council. Decision has to be taken by both Centre and States as to how the GST data of the taxpayer can be shared with other departments/ministries for their use.

- c. A video conference was held on 16.08.2022 to enable the members to share their concerns and arrive at a consensus on the Agenda Item. The minutes of the VC is placed as **Annexure I**.
- d. **Decision:** The Members of GIC decided that a detailed agenda note for sharing of data with Ministries/Govt Depts would be placed in the next GST Council meeting for approval.

3. Decision of GIC by Circulation on 26th August, 2022 on draft Circular for providing guidelines for the registered persons for filing/revising TRAN-1/TRAN-2 as per directions of the Hon'ble Supreme Court vide its order dated 22.07.2022 in the case of Union of India Vs M/s. Filco Trade Centre Pvt. Ltd.

- a. In the agenda note, it was stated that the Hon'ble Supreme Court in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, vide Order dated 22.07.2022 has issued the following directions:

"1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

*4. The concerned officers are **given 90 days thereafter** to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."

- b. It was further stated that the said Order of the Hon'ble Supreme Court was examined and opinion of the Additional Solicitor General of India (ASG) was sought on for clarification on various issues arising out of the said judgment. The ASG has opined that the opportunity for filing/ revising TRAN forms by the Hon'ble Supreme Court during 01.09.2022 to 31.10.2022 is for all registered taxpayers, who are eligible to file TRAN forms, whether they had filed writ petition or not, or whether they had filed application before ITGRC or not. The ASG has also opined that the said decision of the Hon'ble Supreme Court has to be enforced and filing review

petition would not be desirable. In view of the above opinion of ASG, a time bound action is required for implementation of the directions of the Hon'ble Supreme Court in the said judgment.

- c. It was also stated in the agenda note that the said matter was discussed by the Law Committee in its meeting held on 03.08.2022 and 12.08.2022. It was decided by the Law Committee that a Circular may be drafted at the earliest for providing guidelines for the registered persons for filing/revising TRAN-1/TRAN-2 in the window provided by the Hon'ble Supreme Court, and another separate Circular shall be drafted later on for providing guidelines for the jurisdictional officer for verification of the TRAN-1/TRAN-2 filed/revised by the taxpayers in terms of Order of the Hon'ble Supreme Court. The draft Circular for providing guidelines for the registered persons for filing/revising TRAN-1/TRAN-2, as discussed by the Law Committee in its meeting held on 12.08.2022 and as finalized vide circulation, was placed before the GIC for approval.
- d. It was also mentioned that on the request of GSTN, an application/ prayer was being filed before the Hon'ble Supreme Court for seeking extension of one more month for opening of portal for enabling the aggrieved registered persons for filing/ revising Tran forms on the portal. Pending a decision by the Hon'ble Supreme Court on the said application/ prayer, the directions of the Hon'ble Supreme Court vide Order dated 22.07.2022 for opening common portal for filing TRAN-1/ TRAN-2 by aggrieved registered persons during 01.09.2022 to 31.10.2022 needs to be implemented in a time bound manner. **Accordingly, approval of GIC was sought for issuance of the draft Circular, as finalized by the Law Committee, for providing guidelines to the registered persons for filing/revising TRAN-1/TRAN-2 on the portal, so that the said Circular can be issued in a timely manner before start of the time period provided by the Hon'ble Supreme Court for filing/ revising Tran forms.** It is also mentioned that dates, as to when the common portal shall be opened for the registered person for filing or revising TRAN-1/TRAN-2, and dates for subsequent verification by the concerned officers would be finalized in the Circular, based on the final directions/ Order of the Hon'ble Supreme Court in response to the above mentioned affidavit/ application.
- e. **Decision:** The Members of GIC approved the above proposal along with the draft Circular.
- f. **Implementation Status: In pursuance of GIC decision dated 26.08.2022, Circular No. 180/12/2022-GST dated 09.09.2022 was issued on "Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of the Hon'ble Supreme Court in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd".**

4. Decisions in the 43rd Meeting of the GIC held on 22nd September, 2022

4.1 Agenda: Notifying the remaining provisions of Finance Act, 2022 and consequential amendments in the CGST Rules, 2017

- a. In the agenda note, it was stated that various amendments in the provisions of Central Goods and Services Tax Act, 2017 has been made vide the Finance Act, 2022. Based on the recommendations of the GST Council in its 47th meeting held on 28th and 29th June, 2022, provisions of clause (c) of Section 110 and Section 111 of the Finance Act, 2022 have already been notified by the Centre vide Notification No. 09/2022-Central Tax, dated 05.07.2022.

Consequent insertion of Rule 88B and sub-rule 87(14) in the CGST Rules, 2017 has also been carried out by the Centre vide Notification No. 14/2022-Central Tax, dated 05.07.2022.

- b. It was further stated that the GST council has recommended that the other provisions of the Finance Act, 2022 pertaining to GST may be notified w.e.f. 01.10.2022 by both the Centre and the States. Once these provisions are notified, corresponding amendments in the CGST Rules, 2017 would also be required to be carried out simultaneously.
- c. It was also stated in the agenda note that the Law Committee in its meeting held on 26.08.2022 and 07.09.2022 had accordingly, examined the requisite amendments to be carried out in the CGST Rules, 2017. The Law Committee recommended carrying out the requisite amendments to the CGST Rules, 2017 w.e.f. 01.10.2022 consequent to the Notification of the remaining provisions of the Finance Act, 2022, (except for the rules corresponding to sub-section(2) of amended Section 41 and corresponding to clause (ba) to sub-section(2) of Section 16, read with sub-section(2) of Section 38 of CGST Act, 2017 which will require further deliberations by the Law Committee, in consultation with GSTN, based on the data as well as the feedback to be provided by GSTN, as the implementation of the said rules may require development of requisite functionality on the portal by GSTN. The said amendments in the CGST Rules, 2017, as recommended by the Law Committee were placed before the GIC for approval.
- d. As no GST Council meeting was scheduled to be held before 01.10.2022, GST policy wing had requested that approval of GIC may be urgently obtained through circulation and that a meeting of GIC through video conferencing may be convened on 22.09.2022 for deliberations by GIC on this agenda.
- e. A meeting of the GIC was held on 22.09.2022 through video conferencing wherein the aforesaid agenda was taken up for discussion. The detailed minutes of the GIC meeting through VC is placed as **Annexure II**.
- f. **Decision:** The Members of the GIC approved the above agenda relating to the amendments proposed by Law Committee to the CGST Rules, 2017 with effect from 01.10.2022.
- g. **Implementation Status: In pursuance of GIC decision dated 22.09.2022, Notification No. 18/2022- Central Tax dated 28.09.2022 was issued to notify 01.10.2022 as the date on which provisions of Sections 100 to 114, except clause (c) of Section 110 and Section 111 of Finance Act, 2022 shall come into force and Notification No. 19/2022- Central Tax dated 28.09.2022 was issued to make amendments (Second Amendment, 2022) to the CGST Rules, 2017. Further, Notification No. 20/2022-Central Tax dated 28.09.2022 and corrigendum to Notification No. 20/2022-CT dated 28.09.2022 was issued to rescind Notification No. 20/2018-CT dated 28.03.2018.**

5. Decision of GIC by Circulation on 15th October, 2022 on proposal to settle IGST amount of Rs. 22,000 crores for the Financial Year 2022-23 on ad hoc basis.

- a. In the agenda note, it was mentioned that depending on the amount of IGST remaining unapportioned, provisional settlement was done from time to time on an ad-hoc basis as per the provisions of sub-section(2A) of the Section 17 of the IGST Act, 2017, which reads as under:

17. Apportionment of tax and settlement of funds.—

(2A).The amount not apportioned under sub-section(1) and sub-section(2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on ad-hoc basis and shall be adjusted against the amount apportioned under the said sub-sections

- b. It was further stated that as per the accounts made available by the Pr. CCA, CBIC, the unsettled IGST balance net of settlement and refund till September, 2022 is about Rs. 23,983 crore. Therefore, it is proposed to apportion ₹ 22,000 crore on ad-hoc basis, 50% to Centre and 50% to States/UTs.
- c. **Decision:** The Members of GIC approved the agenda item regarding proposal to settle IGST amount of Rs. 22,000 crores for the Financial Year 2022-23 on ad-hoc basis.

6. Decision of GIC by Circulation on 21st October, 2022 on extension of due date of filing FORM GSTR-3B for the month of September, 2022 due to technical glitches on portal

- a. In the agenda note, it was stated that in terms of sub-rule (1) of Rule 61 of the CGST Rules, 2017 every registered person furnishing return under sub-section(1) of Section 39, is required to furnish **FORM GSTR-3B**, electronically through the common portal on or before the twentieth day of the month succeeding such month. Accordingly, the due date of filing of **FORM GSTR-3B for the monthly filers** for month of September, 2022 was 20th October, 2022.
- b. It was further stated that the GSTN had informed vide email dated 20.10.2022 that taxpayers had reported slowness in portal while filing Form GSTR-3B return. The persistence of the issue had been acknowledged. Technical teams were working to resolve the issue. An incident report had been sent to CBIC for considering extension in the return filing dates.
- c. It was also stated in the agenda note that the as a result of the said technical glitch, taxpayers had lost crucial time before filing their returns. Thus, it was proposed that the due date of filing FORM GSTR-3B for the month of September, 2022, by registered person furnishing return under sub-section(1) of Section 39 of the CGST Act, 2017 be extended from 20th October, 2022 to 21st October, 2022. Accordingly, the draft Notification was proposed to be placed before the GIC for approval.
- d. Accordingly, approval of GIC was sought for extending the due date of filing FORM GSTR-3B for the month of September, 2022, by registered person furnishing return under sub-section(1) of Section 39 of the CGST Act, 2017 **from 20thOctober, 2022 to 21st October, 2022**
- e. **Decision:** The Members of GIC approved the above proposal to extend the due date for filing FORM GSTR-3B for the month of September, 2022, by registered person furnishing return under sub-section(1) of Section 39 of the CGST Act, 2017 from 20th October, 2022 to 21st October, 2022.
- f. **Implementation Status: In pursuance of GIC decision dated 21.10.2022, Notification No. 21/2022- Central Tax dated 21.10.2022 was issued to extend the due date of filing FORM GSTR-3B for the month of September, 2022.**

7. Decision of GIC by Circulation on 31st October, 2022

7.1 **Agenda 1:** *Guidelines for verifying the Transitional Credit in light of the Order of the Hon'ble Supreme Court in the Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, Order dated 22.07.2022 & 02.09.2022*

- a. In the agenda note, it was stated that the Hon'ble Supreme Court in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, vide Order dated 22.07.2022 has issued the following directions:

"1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

*4. The concerned officers are **given 90 days thereafter** to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."

Subsequently in Miscellaneous Application No. 1545-1546/2022 in SLP(C) No. 32709-32710/2018, the Hon'ble Supreme Court vide Order dated 2nd September, 2022 has inter-alia ordered as follows:

"The time for opening the GST Common Portal is extended for a further period of four weeks from today.

It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Services Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open."

- b. It was further stated that based on the approval of the GIC, Circular No.180/12/2022 dated 09.09.2022 has been issued for providing guidelines for the registered persons for filing/reviving TRAN-1/TRAN-2.
- c. It was also stated that Law Committee in its meeting held on 12.10.2022 deliberated and recommended issuance of a Circular for providing guidelines for the jurisdictional officer for verification of the TRAN-1/TRAN-2 filed/revived by the taxpayers. Since, GSTN has already opened the portal for taxpayers to file/revise TRAN-1/TRAN-2 as per Order of the Hon'ble Supreme Court, it is necessary to issue the said Circular at the earliest so that the jurisdictional

tax officers can conduct necessary verification of such TRAN-1/TRAN-2 filed/revised in a time bound manner in accordance with the directions issued by the Hon'ble Supreme Court vide the above mentioned orders. The draft Circular recommended by the Law Committee was placed before the GIC for approval.

- d. **Decision:** The Members of GIC approved the agenda item along with the draft Circular.
- e. **Implementation Status: The recommendation of GIC has been implemented by way of issuance of Circular No. 182/14/2022-GST dt. 10.11.2022.**

7.2 Agenda 2: *Clarification regarding the issues relating to refund of unutilised ITC on account of inverted rated structure*

- a. In the agenda note, it was stated that the formula for calculation of refund of unutilised ITC on account of inverted rated structure, prescribed under sub-rule (5) of Rule 89 of the CGST Rules, 2017 has been amended vide Notification No. 14/2022-Central Tax dated 05.07.2022 as under:

“Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – {tax payable on such inverted rated supply of goods and services x Net ITC ÷ ITC availed on inputs and input services}”

- b. Further, vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, refund of unutilised ITC on account of inverted rated structure has been restricted in respect of output supplies of certain commodities such as oils falling under the chapter heading/ sub-heading 1507 to 1518 and coal, lignite & peat falling under the chapter heading/ sub-heading 2701, 2702 & 2703 respectively w.e.f. 18.07.2022.
- c. It was also stated that references have been received from the field formations seeking clarification regarding the date of applicability of the formula, amended vide Notification No. 14/2022- Central Tax dated 05.07.2022, for calculation of refund of unutilised ITC on account of inverted rated structure as to whether the amended formula would be applicable to all refund claims pending as on 05.07.2022 or whether it would be applicable to refund claims filed on or after 05.07.2022.
- d. It was further stated that similar doubts have also been raised about the applicability of the restriction on refund of unutilised ITC on account of inverted rated structure imposed vide Notification No. 09/2022-CT (Rate) dated 13.07.2022 as to whether such restriction will apply to all refund claims pending on 18.07.2022 or will apply to refunds filed on or after 18.07.2022 or will apply to refunds of prospective tax periods only
- e. It was also mentioned that the issue was deliberated in the Law Committee in its meeting held on 21.09.2022 wherein Law Committee recommended the following:
 - i. The amended formula for calculation of refund of unutilised ITC on account of inverted rated structure, as per Notification No. 14/2022-CT dated 05.07.2022, would be applicable to refund claims filed on or after 05.07.2022.
 - ii. In respect of Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, the refund of unutilized ITC on account of inverted rated structure shall not be available for the supply of the notified commodities in respect of refund claims filed on or after 18.07.2022.

- iii. The issue may be clarified through a Circular.
- f. It was informed that a draft Circular was prepared as per the recommendations of the Law Committee and placed before the Law Committee in its meeting held on 12.10.2022 wherein the same was approved. The draft Circular recommended by the Law Committee was placed before the GIC for approval.
- g. **Decision:** The members of GIC approved the agenda item along with the draft Circular.
- h. **Implementation Status: The recommendation of GIC has been implemented by way of issuance of Circular 181/13/2022-GST dt. 10.11.2022.**

7.3 *Agenda 3: Amendment in the instructions of GSTR-9*

- a. In the agenda note it was stated that vide Notification No. 18/2022-Central Tax dated 28.09.2022, the Government has appointed 01.10.2022 as the date on which the provisions of Sections 100 to 114, except clause (c) of Section 110 and Section 111, of the Finance Act, 2022 shall come into force. Thereby, the time limit for the various compliances under Section 16(4), Section 34(2) Section 37(3), Section 39(9) and Section 52(6) of CGST Act 2017, in respect of a particular Financial Year, has been extended and fixed as 30th November of the next Financial Year. In this regard, Government has also issued clarification regarding the applicability of this amended limitation period vide Press Note issued on 04.10.2022.
- b. It was further stated that the instructions to **FORM GSTR-9** were amended vide Notification No. 14/2022-Central Tax dated 05.07.2022 for the Financial Year 2021-22. In the said Notification, the old limitation period (before amendment of the CGST Act, 2017 as notified vide Notification No. 18/2022-Central Tax dated 28.09.2022) was mentioned in instructions to **FORM GSTR-9**, as the said amendments in the CGST Act, 2017 made vide Finance Act, 2022 was not notified at the time of issuance of said Notification. Accordingly, to align the instructions of **FORM GSTR-9** with the provisions of the Finance Act, 2022, the following changes may be made in the relevant part of paragraph 7 of instructions to GSTR-9 as under:

(A) The following changes may be made-

“For FY 2021-22, Part V consists of particulars of transactions for the previous financial year but paid in the **FORM GSTR-3B** ~~between of~~ April, 2022 to ~~September-October,~~ 2022 **filed upto 30th November, 2022.**”;

(B) in the Table, in second column, -

(I) against serial numbers 10 & 11, the following changes may be made -

“For FY 2021-22, details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A, Table 9B and Table 9C of **FORM GSTR-1** of April, 2022 to ~~September~~ **October, 2022 filed upto 30th November, 2022** shall be declared here.”;

(II) against serial number 12, the following changes may be made -

“For FY 2021-22, aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April, 2022 to ~~September-October~~, 2022 upto 30th November, 2022 shall be declared here. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details.”;

(III) against serial number 13, the following changes may be made –

“For FY 2021-22, details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April, 2022 to ~~September-October~~, 2022 upto 30th November, 2022 shall be declared here. Table 4(A) of **FORM GSTR-3B** may be used for filling up these details. However, any ITC which was reversed in the FY 2021-22 as per second proviso to sub-section(2) of Section 16 but was reclaimed in FY 2022-23, the details of such ITC reclaimed shall be furnished in the annual return for FY 2022-23.;

- c. It was further stated that the issue was deliberated in the Law Committee in its meeting held on 12.10.2022. The Law Committee had approved the abovementioned changes in instruction to **FORM GSTR-9**. The draft Notification in this regard was placed before GIC for approval.
- d. **Decision:** The Members of GIC approved the agenda item regarding amendment in the instructions of GSTR-9.
- e. **Implementation Status: The recommendation of GIC has been implemented by way of issuance of Notification No. 22/2022 dt. 15.11.2022.**

8. Decision of GIC by Circulation on 15th November, 2022 on Authorizing Competition Commission of India (CCI) to handle Anti-Profiteering Cases and consequential rule amendments

- a. In the agenda note, it was stated that the National Anti-Profiteering Authority (NAA) has been constituted under Section 171 of the Central Goods and Services Act, 2017 to ensure that the reduction in tax or the benefits of input tax credit is passed on to the recipient by way of commensurate reduction in prices. Rule 137 of Central Goods and Service Tax Rules, 2017 prescribes that the tenure of the NAA shall be for 5 years from the date on which Chairman enters upon his office. Accordingly, the tenure of NAA is ending on 30th November, 2022.
- b. It was further stated that the GST Council in its 45th meeting held on 17.09.2021, while deliberating on the agenda No. 16 on National Anti-profiteering Authority, recommended that NAA to close down on 30.11.2022 and the work of the NAA can be taken up by Competition Commission of India (CCI). The relevant extract of the minutes of 45th GST Council meeting is as follows:

“The Secretary stated that as suggested by the Hon'ble Members, the tenure of NAA can be extended by one year up to 30.11.2022 after which it will close down and meanwhile it can be taken up with the CCI for taking up the work of

NAA. He sought authority from the Council to take up the issue with CCI. The Council agreed with this arrangement.”

- c. It was also stated in the agenda note that the matter was deliberated by the Law Committee for authorizing Competition Commission of India (CCI) to handle Anti-Profiteering Cases on expiry of tenure of NAA and for amendments in provisions of the CGST Rules, 2017 to provide for the same. Law committee in its meeting dated 21.09.2022 recommended that a Notification under Section 171(2) of CGST Act, 2017 may be issued authorizing CCI to handle Anti-Profiteering cases under CGST Act, 2017 with effect from 01.12.2022 and consequent amendments may also be carried out in Rules 122 to 137 under Chapter XV of the CGST Rules, 2017.
- d. Accordingly, approval of GIC was sought for authorizing Competition Commission of India (CCI) to handle Anti-Profiteering Cases and for making consequential rule amendments in the CGST Rules, 2017.
- e. **Decision:** The Members of GIC approved the agenda item regarding authorizing Competition Commission of India (CCI) to handle Anti-Profiteering Cases and for making consequential rule amendments in the CGST Rules, 2017 along with the draft Notification.
- f. **Implementation Status: The recommendation of GIC has been implemented by way of issuance of Notification No.23/2022-Central Tax dt. 23.11.2022 and Notification No.24/2022-Central Tax dt. 23.11.2022.**

Minutes of the GST Implementation Committee (GIC) Meeting held on 16th August, 2022

A meeting of GIC was held through Video Conferencing on 16th August, 2022. The list of attendees for the GIC meeting through video conference is enclosed. A single Agenda item regarding GST data sharing with Ministries and Department which was shared with all the members through e-mail, was discussed during the meeting.

2. Member (GST), CBIC requested the Joint Secretary, GST Council Secretariat to give a brief on the Agenda item. The Joint Secretary, GSTCS thereafter gave a brief overview of classification of four categories of data including the general conditions for sharing the data as stated in Agenda Item

3. Additional Secretary, DoR stated that the consent based sharing of data was approved by GST Council in last meeting for implementing consent based data sharing module through amendments in the GST enactments, however, the current agenda item before GIC was regarding sharing of non-personal data of the taxpayer and which could be aggregated and could be utilized by any Government Agency i.e Centre or State for various purposes; that this data sharing would protect the taxpayers' identity and the data thus shared could not be used for any purpose other than it was sought for. Accordingly, the proposition was put up before the GIC for its approval in order to form SOP on the same which could be implemented through GSTN after due approval. He added further that keeping in view of the points raised by the State of Tamil Nadu and State of West Bengal, it was decided to have a meeting over the same and take a collective decision.

4. Member (GST), CBIC requested the other members to put forth their views on the Agenda item. The Commissioner of Commercial Taxes, Tamil Nadu stated that they had given their in-principle approval for the Agenda item, however, their only concern was that the implementation of this data sharing should be in line with the proposed amendments in the GST Act in order to avoid any litigation in future.

5. Commissioner, State Tax, West Bengal stated that the present issue being a major issue need to be discussed in the GST Council and not in GIC where only a few States were members. He also invited attention to the final decision of Law Committee taken in its meeting dated 22nd July 2020 regarding putting the general issue of data sharing with Government departments before the GST Council. He stated that the matter should be put up before the GST Council for further deliberations and collective decision on the same.

6. Joint Secretary, DoR, stated that if the GIC decided so, the matter might be put up before the GST Council. He further added that the validation of GSTIN through API to Government departments and Ministries would be beneficial for the business process of various departments of Centre and States; that aggregated data viz. e-way bill information could be shared with different departments for analytical purpose, data based decision making and for their own functional requirements; that this data sharing would protect the identity of taxpayers and therefore it would be different from consent based data sharing as per the proposed Section 158A. He stated that the first class of data was the publicly available information; second set of data was the aggregated information which did not belong to any taxpayer, and third one where the even disaggregated data was proposed to be shared, the taxpayer information would not be disclosed.

7. Member (GST), CBIC stated that an agreement could at least be reached on first clause where the information was already available in public domain and with API validation, it would be more convenient for any Govt department to access this information. The Commissioner, State Tax , West

Bengal reiterated his point stating that the decision should be taken by all the States being stakeholders. Member (GST), CBIC agreed to the suggestion.

8. The CEO, GSTN stated that the API validation would be a basic validation which already existed in the system. He further stated that GSTN had been getting requests from various States asking for such validation. Member (GST), CBIC stated that GSTIN validation could be compared with Aadhar and PAN validation facility which was already being used by authorized agencies.

9. Member (GST), CBIC stated that it should also be clarified that the API validation facility would be provided to Government Organizations only. The Joint Secretary, DoR stated that the first set of data already being available in public domain could be shared by GSTN. Second class of data being the aggregated data having statistical value could also be put in public domain later if it was desired by many agencies. However, for dis-aggregated data, the sharing would be done for specific purpose.

10. Member (GST), CBIC stated that the concept of providing aggregated data was being used by Ministry of Commerce through DGFT portal where aggregated information of export and import was available in public domain and could be accessed by anyone. Accordingly, the ideas on what granular data needs to be publicly available may concretised. The Joint Secretary, DoR stated that such information related to GST would be made public only after analyzing the pattern of data requests from various departments.

11. The Additional Secretary, DoR stated that the issue can be put up before the GST Council in its next meeting vide an Agenda Note. Member (GST), CBIC stated that as suggested by West Bengal, as far as for the first set of data sharing was concerned, wider consultation and circulation amongst States was necessary and for second and third sets of data, the Agenda could be prepared in detail before taking it to the GST Council. The Additional Secretary also concurred with it.

12. Commissioner, State Tax, West Bengal clarified that they had no objection in proposed sharing of data, however, the same should be done with wide consultation with all States and with formal approval of GST Council. The Additional Secretary, DoR stated that the agenda would be put before the GST Council for formal approval.

Decision: GIC members decided that detailed agenda note for sharing of data with Ministries/Govt Depts would be placed in the next GST Council meeting for approval.

List of Attendees to the GIC meeting held on 16th August, 2022

Members (Centre)

1. Member (GST), CBIC
2. Additional Secretary, DoR
3. Principal Director General (Systems), CBIC
4. Principal Chief Commissioner (CGST), Delhi

Members (State)

1. Commissioner, State Taxes, West Bengal
2. Commissioner, State Taxes, Tamil Nadu

Special Invitees

1. CEO, GSTN
2. Joint Secretary, DoR

Others

1. Principal Commissioner (GST Policy Wing), CBIC
2. Joint Secretary, GSTC Secretariat
3. Dy Commissioner, Excise and Taxation Department, Haryana

Minutes of Video Conferencing on GIC Agenda- Notifying the remaining provisions of Finance Act, 2022 dt. 22.09.2022

1. A meeting of GIC was held through Video Conferencing on 22nd September, 2022 with a single Agenda item regarding Notifying the remaining provisions of Finance Act, 2022 and consequential amendments in CGST Rules, 2017 (**Annexure-1**), was discussed during the meeting. The list of attendees for the GIC meeting through video conference are attached alongwith.
2. Joint Secretary, GST Council Secretariat welcomed the newly appointed Member (GST), CBIC Ms. V. Rama Mathew to the meeting and requested her to chair the meeting. Member (GST), CBIC requested the Pr. Commissioner, GST Policy Wing to give a brief on the Agenda item.
3. The Pr. Commissioner, GST Policy Wing stated that in the 47th GST Council meeting it was agreed that several changes made to the CGST Act, 2017 vide Finance Act, 2022 may be notified w.e.f 01.10.2022 by Centre and States. He added that this would require corresponding changes to be made in the CGST Rules, 2017 and that the Law Committee in its meetings held on 26.08.2022 and 07.09.2022 proposed carrying out the requisite amendments to the CGST Rules, 2017 w.e.f. 01.10.2022 consequent to the Notification of the remaining provisions of the Finance Act, 2022. Thereafter, he stated that at present no GST Council meeting is scheduled to be held before 01.10.2022 and therefore, it was decided to table the proposed amendments as an agenda in GIC. Accordingly, the amendments proposed by Law Committee to the CGST Rules, 2017 were being taken up for approval in the meeting.
4. The Pr. Commissioner, GST Policy Wing detailed out stated Rule 21 of the CGST Rules, 2017 is being amended pursuant to amendments made to Section 29 of the CGST Act, 2017. The Rules 36, Rule 37, Rule 38, Rule 42, Rule 43, Rule 60, Rule 83, Rule 85, Rule 96 and Form PCT-05 are being amended due to omission of Sections 42,43 and Section 43A and to align the said Rules with the GSTR-1/GSTR2B/3B return filing system. Further, Rules 69 to 77 and Rule 79 are being omitted so as to do away with two way communication process in return filing. Rule 89 is amended on account of the proposed amendment to the proviso to sub-section(1) of Section 54 of the CGST Act, 2017. The FORM GSTR1A, GSTR 2 and GSTR 3 are also being omitted pursuant to omission of Sections 42,43 and Section 43A. Principal Commissioner GST also informed that consequent to amendment of Sub-section(2) of Section 54 providing for time of two years for filing refund claim under Section 55, Notification No. 20/2018-CT dated 28.03.2018 also needs to be rescinded.
5. The amendments proposed by Law Committee to CGST Rules, 2017 with effect from 01.10.2022 as detailed out by the Pr. Commissioner, GST Policy and rescinding Notification No. 20/2018-CT dated 28.03.2018 was agreed to by the members unanimously.

Decision: GIC members unanimously approved the agenda.

List of Attendees to the GIC meeting held on 22nd September, 2022

Members- Centre

1. Additional Secretary (Revenue)
2. Member (GST), CBIC
3. Pr. DG, DG Systems, New Delhi, CBIC
4. Chief Commissioner, Delhi, CBIC

Members- States

1. Haryana
2. Gujarat
3. Tamil Nadu
4. West Bengal

Member- GSTC Secretariat

1. Additional Secretary, GSTCS

Others

- 1.Pr. Commissioner, GSTPW
2. JS, GSTCS

F. No. CBIC-20021/3/2022-GST

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

GST Policy Wing

AGENDA NOTE

Subject: Notifying the remaining provisions of Finance Act, 2022 and consequential amendments to CGST Rules, 2017-reg

Various amendments in the provisions of Central Goods and Services Tax Act, 2017 (“CGST Act” in short) were made vide the Finance Act, 2022. Based on the recommendations of the GST Council in its 47th meeting held on 28th and 29th June 2022, provisions of clause (c) of Section 110 and Section 111 of the Finance Act, 2022 have already been notified by the Centre *vide* Notification no. 09/2022-Central Tax, dated 05.07.2022. Consequent insertion of Rule 88B and sub-rule 87(14) has also been carried out by the Centre *vide* Notification no. 14/2022-Central Tax, dated 05.07.2022.

2. The Council further recommended that the other provisions of the Finance Act, 2022 pertaining to GST may be notified **w.e.f. 01.10.2022** by both the Centre and the States. Once these provisions are notified, corresponding amendments in the CGST Rules, 2017 may also be required to be carried out simultaneously.

2.1 Accordingly, Law Committee in its meetings held on 26.08.2022 and 07.09.2022 examined the requisite amendments to be carried out in the CGST Rules, 2017. The Law Committee recommended carrying out the requisite amendments to the CGST Rules, 2017 w.e.f. 01.10.2022 consequent to the Notification of the remaining provisions of the Finance Act, 2022, (except for the rules corresponding to sub-section(2) of amended Section 41 and corresponding to clause (ba) to sub-section(2) of Section 16, read with sub-section(2) of Section 38 of CGST Act, 2017 which will require further deliberations by the Law Committee, in consultation with GSTN, based on the data as well as the feedback to be provided by GSTN, as the implementation of the said rules may require development of requisite functionality on the portal by GSTN).

2.2 The said amendments in CGST Rules, 2017, as recommended by the Law Committee, are enclosed as **Annexure-1A** to this agenda note.

3. The agenda note is, therefore, placed before the GIC for approval.

(Annexure-1A) Proposed amendments in the CGST Rules, 2017	Remarks
21. Registration to be cancelled in certain cases. - The registration granted to a person is liable to be cancelled, if the said person, - (a) does not conduct any business from the declared place of business; or (b) issues invoice or bill without supply of goods or services [or both] in violation of the provisions of this Act, or the rules made thereunder; or (c) violates the provisions of Section 171 of the Act or the rules made thereunder (d) violates the provision of Rule 10A (e) avails input tax credit in violation of the provisions of Section 16 of the Act or the rules made thereunder; or (f) furnishes the details of outward supplies in FORM GSTR-1 under Section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under Section 39 for the said tax periods; or (g) violates the provision of rule 86B. (h) being a registered person, required to file return under sub-section (1) of Section 39 for each month or part thereof, has not furnished returns for a continuous period of six months. (i) being a registered person, required to file return under proviso to sub-section (1) of Section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.	Clause (b) and (c) of sub-section(2) of Section 29 of the CGST Act, 2017 are being amended so as to provide that the registration of a person is liable for cancellation, where - (i) a person paying tax under Section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return; (ii) a person, other than those paying tax under Section 10, has not furnished returns for such continuous tax period as may be prescribed.
36. Documentary requirements and conditions for claiming input tax credit.-(1)The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of Section 31; (b) an invoice issued in accordance with the provisions of clause (f) of sub-section(3) of Section 31, subject to the payment of tax; (c) a debit note issued by a supplier in accordance with the provisions of Section 34; (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports; (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of Rule 54 of CGST Rules, 2017. (2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document., ~~and the relevant information, as contained in the said document is furnished in FORM GSTR-2 by such person:-~~ Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person. (3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts. (4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of Section 37 unless,- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and (b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of Rule 60 of CGST Rules, 2017.	two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
37. Reversal of input tax credit in the case of non-payment of consideration.-(1)A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of Section 16, shall ~~furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month~~ pay an amount equal to the input tax credit availed in respect of such supply, along with interest payable thereon under Section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice: Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system. Also, a mechanism needs to be

deemed to have been paid for the purposes of the second proviso to sub-section(2) of Section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section(2) of Section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section(2) of Section 16.

~~(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.~~

~~(2) Where the said registered person subsequently makes payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the said input tax credit referred to in sub-rule (1).~~

~~(3) The registered person shall be liable to pay interest at the rate notified under sub-section(1) of Section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (21), is paid.~~

(4) The time limit specified in sub-section(4) of Section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

provided for re-avilment of ITC reversed earlier upon payment of the consideration by the recipient to the supplier.

Further, to align with the GSTR-1/2B/3B return filing system, 2nd and 3rd provisos to Section 16(2) may also be amended as below:

“Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be ~~added to his output tax liability~~ paid by him, along with interest ~~thereon~~ payable under Section 50, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the

	<i>credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.”</i>
38. Claim of credit by a banking company or a financial institution.-A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section(2) of Section 17, in accordance with the option permitted under sub-section(4) of that Section, shall follow the following procedure, namely,- (a) the said company or institution shall not avail the credit of,- (i) the tax paid on inputs and input services that are used for non-business purposes; and (ii)the credit attributable to the supplies specified in sub-section(5) of Section 17,~~in FORM GSTR-2;~~ (b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section(4) of Section 17 and not covered under clause (a); (c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution ~~and shall be furnished in FORM GSTR-2, and the balance amount of input tax credit shall be reversed in FORM GSTR-3B;~~ ~~(d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of Sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.-(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section(1) or sub-section(2) of Section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,- (a) the total input tax involved on inputs and input services in a tax period, be denoted as ‘T’; 	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.

(g) 'T₁', 'T₂', 'T₃' and 'T₄' shall be determined and declared by the registered person ~~at the invoice level in FORM GSTR-2 and~~ at summary level in FORM GSTR-3B; 	
43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.-(1) Subject to the provisions of sub-section(3) of Section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of Section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,- (a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in ~~FORM-GSTR-2 and~~ FORM GSTR-3B and shall not be credited to his electronic credit ledger; (b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in ~~FORM-GSTR-2 and~~ FORM GSTR-3B and shall be credited to the electronic credit ledger; 	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
60. Form and manner of ascertaining details of inward supplies. - (7) An ~~auto-drafted~~ auto-generated statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of - (i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section(1)of Section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month; 	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system. <u>Consequential changes:</u> 1. FORM GSTR-1A, FORM GSTR-2 & GSTR-3 may

	be omitted.
69. — Matching of claim of input tax credit . The following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under Section 41, shall be matched under Section 42 after the due date for furnishing the return in FORM GSTR-3— (a) — Goods and Services Tax Identification Number of the supplier; (b) — Goods and Services Tax Identification Number of the recipient; (c) — invoice or debit note number; (d) — invoice or debit note date; and (e) — tax amount; Provided that where the time limit for furnishing FORM GSTR-1 specified under Section 37 and FORM GSTR-2 specified under Section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly: Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of input tax credit to such date as may be specified therein. <i>Explanation.</i> For the purposes of this rule, it is hereby declared that— (i) The claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that were accepted by the recipient on the basis of FORM GSTR-2A without amendment shall be treated as matched if the corresponding supplier has furnished a valid return; (ii) The claim of input tax credit shall be considered as matched where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
70. Final acceptance of input tax credit and communication thereof. (1) The final acceptance of claim of input tax credit in respect of any tax period, specified in sub-section (2) of Section 42, shall be made available electronically to the registered person making such claim in FORM GST MIS-1 through the common portal.	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned

~~(2) The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-1 through the common portal.~~	with the GSTR-1/2B/3B return filing system.
~~71. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit.~~ ~~(1) Any discrepancy in the claim of input tax credit in respect of any tax period, specified in sub-section (3) of Section 42 and the details of output tax liable to be added under sub-section (5) of the said Section on account of continuation of such discrepancy, shall be made available to the recipient making such claim electronically in FORM GST MIS-1 and to the supplier electronically in FORM GST MIS-2 through the common portal on or before the last date of the month in which the matching has been carried out.~~ ~~(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.~~ ~~(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.~~ ~~(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.~~ ~~Explanation. For the purposes of this rule, it is hereby declared that-~~ ~~(i) Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient;~~ ~~(ii) Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
~~72. Claim of input tax credit on the same invoice more than once.~~ ~~Duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered person in FORM GST MIS-1 electronically through the common portal.~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned

	with the GSTR-1/2B/3B return filing system.
~~73.—Matching of claim of reduction in the output tax liability.~~ The following details relating to the claim of reduction in output tax liability shall be matched under Section 43 after the due date for furnishing the return in FORM GSTR-3, namely:- ~~a.—Goods and Services Tax Identification Number of the supplier;~~ ~~b.—Goods and Services Tax Identification Number of the recipient;~~ ~~c.—Credit note number;~~ ~~d.—Credit note date; and~~ ~~e.—tax amount;~~ Provided that where the time limit for furnishing FORM GSTR-1 under Section 37 and FORM GSTR-2 under Section 38 has been extended, the date of matching of claim of reduction in the output tax liability shall be extended accordingly: Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of reduction in output tax liability to such date as may be specified therein. ~~Explanation.~~ For the purposes of this rule, it is hereby declared that— ~~(i) the claim of reduction in output tax liability due to issuance of credit notes in FORM GSTR-1 that were accepted by the corresponding recipient in FORM GSTR-2 without amendment shall be treated as matched if the said recipient has furnished a valid return.~~ ~~(ii) the claim of reduction in the output tax liability shall be considered as matched where the amount of output tax liability after taking into account the reduction claimed is equal to or more than the claim of input tax credit after taking into account the reduction admitted and discharged on such credit note by the corresponding recipient in his valid return.~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
~~74.—Final acceptance of reduction in output tax liability and communication thereof.—~~ ~~(1) —The final acceptance of claim of reduction in output tax liability in respect of any tax period, specified in sub-section(2) of Section 43, shall be made available electronically to the person making such claim in FORM GST MIS-1~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication

~~through the common portal.~~ ~~(2) — The claim of reduction in output tax liability in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-1 through the common portal.~~	process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
~~75. — Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction.~~ ~~(1) Any discrepancy in claim of reduction in output tax liability, specified in sub-section (3) of Section 43, and the details of output tax liability to be added under sub-section (5) of the said Section on account of continuation of such discrepancy, shall be made available to the registered person making such claim electronically in FORM GST MIS-1 and the recipient electronically in FORM GST MIS-2 through the common portal on or before the last date of the month in which the matching has been carried out.~~ ~~(2) — A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.~~ ~~(3) — A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.~~ ~~(4) — Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier and debited to the electronic liability register and also shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.~~ ~~<i>Explanation.</i> For the purposes of this rule, it is hereby declared that—~~ ~~(i) rectification by a supplier means deleting or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient;~~ ~~(ii) Rectification by the recipient means adding or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
~~76. — Claim of reduction in output tax liability more than once.~~ ~~The duplication of claims for reduction in output tax liability in the details of outward supplies shall be communicated to the registered person in FORM GST MIS-1 electronically through the common portal.~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication

	process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
~~77.—Refund of interest paid on reclaim of reversals. The interest to be refunded under sub-section(9) of Section 42 or sub-section(9) of Section 43 shall be claimed by the registered person in his return in FORM GSTR-3 and shall be credited to his electronic cash ledger in FORM GST PMT-05 and the amount credited shall be available for payment of any future liability towards interest or the taxable person may claim refund of the amount under Section 54.~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
~~79. Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier :-~~ ~~(1) Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in FORM GST MIS-3 and to the e-commerce operator electronically in FORM GST MIS-4 on the common portal on or before the last date of the month in which the matching has been carried out.~~ ~~(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.~~ ~~(3) An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.~~ ~~(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the common portal in FORM GST MIS-3.~~	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
83. Provisions relating to a goods and services tax practitioner .-	1. Sections 42, 43 and 43A of the CGST Act, 2017 have

“(1) An application in FORM GST PCT-01 may be made electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner for enrolment as goods and services tax practitioner by any person who, ... (8) A goods and services tax practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorized by him to- (a) Furnish the details of outward ~~and inward~~ supplies; (b)”	been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system. 2. Consequential Amendment: FORM GST PCT-05 needs to be suitably amended.
85. Electronic Liability Register.- (1) The electronic liability register specified under sub-section(7) of Section 49 shall be maintained in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register. (2) The electronic liability register of the person shall be debited by- (a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person; (b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person; (c) ~~the amount of tax and interest payable as a result of mismatch under Section 42 or Section 43 or Section 50; or~~ (d) any amount of interest that may accrue from time to time.	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
89. Application for refund of tax, interest, penalty, fees or any other amount.-	1. Proviso to sub-section(1) of Section 54 of the CGST Act,

(1) Any person, except the persons covered under Notification issued under Section 55, claiming refund of **any balance in the electronic cash ledger in accordance with the provisions of sub-section(6) of Section 49** or any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file subject to the provisions of rule 10B, an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

~~**Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section(6) of Section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:**~~

.....

2017 is proposed to be amended vide Section 113 of the Finance Act, 2022 as under:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section(6) of Section 49, may claim such refund ~~in the return furnished under Section 39~~ in such form and manner as may be prescribed.

2. Rule 89 of the CGST Rules 2017 prescribes the manner of filing application of refund and documents required to be submitted along with such application. First proviso to sub-rule (1) of rule 89 of the CGST Rules, 2017 was earlier aligned with proviso of sub-section(1) of Section 54 as it provided that the refund of any balance in excess cash ledger can be claimed by a

	registered person through the return filed for the relevant tax period. Therefore, as proviso to sub-section(1) of Section 54 has been amended to provide for filing of refund of balance in cash ledger in such form and manner as may be prescribed, there appears no need for first proviso to the sub-rule (1) of Rule 89 of the CGST Rules, 2017. Further, sub-rule (1) of Rule 89 is also proposed to be amended to provide for filing of refund of balance in electronic cash ledger in FORM GST RFD-01 electronically through common portal. 3. Consequential amendment: Consequent to amendment in sub-section(2) of Section 54 of CGST Act, 2017 regarding extension of time period for filing refund claims under Section 55 from six months to two years the Notification No. 20/2018-CT dated 28th

	March, 2018 regarding providing a time period of eighteen months for filing such refund claims may be rescinded.
96. Refund of integrated tax paid on goods ¹[or services] exported out of India.- (3) Upon the receipt of the information regarding the furnishing of a valid return in ~~FORM GSTR-3²~~ ~~[or FORM GSTR-3B, as the case may be;]~~ from the common portal, ⁸[the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods] and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
FORM GSTR-1A, GSTR-2 AND GSTR-3 TO BE OMITTED.	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The relevant forms therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
FORM GST PCT-05 <i>[See rule 83(6)]</i> Authorisation / withdrawal of authorisation for Goods and Services Tax Practitioner	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The relevant forms therefore needs to be aligned with the GSTR-

To The Authorised Officer Central Tax/State Tax. <u>PART-A</u> Sir/Madam I/We <Name of the Proprietor/all Partners/Karta/Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees etc.) do hereby 1. *solemnly authorise, 2. *withdraw authorisation of ----- (Name of the Goods and Services Tax Practitioner), bearing Enrolment Number----- for the purposes of Section 48 read with rule 83 to perform the following activities on behalf of ----- (Legal Name) bearing << GSTIN - >>: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Sr. No.</th> <th style="width: 60%;">List of Activities</th> <th style="width: 30%;">Check box</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>To furnish details of outward ~~and inward~~ supplies</td> <td></td> </tr> <tr> <td style="text-align: center;">2.</td> <td>To furnish monthly, quarterly, annual or final return</td> <td></td> </tr> <tr> <td style="text-align: center;">3.</td> <td>To make deposit for credit into the electronic cash ledger</td> <td></td> </tr> <tr> <td style="text-align: center;">4.</td> <td>To file an application for claim of refund</td> <td></td> </tr> </tbody> </table>	Sr. No.	List of Activities	Check box	1.	To furnish details of outward ~~and inward~~ supplies		2.	To furnish monthly, quarterly, annual or final return		3.	To make deposit for credit into the electronic cash ledger		4.	To file an application for claim of refund		1/2B/3B return filing system.
Sr. No.	List of Activities	Check box														
1.	To furnish details of outward ~~and inward~~ supplies															
2.	To furnish monthly, quarterly, annual or final return															
3.	To make deposit for credit into the electronic cash ledger															
4.	To file an application for claim of refund															

5.	To file an application for amendment or cancellation of registration			
[6	To furnish information for generation of e-way bill			
7	To furnish details of challan in FORM GST ITC-04			
8	To file an application for amendment or cancellation of enrolment under rule 58			
9	To file an intimation to pay tax under the composition scheme or withdraw from the said scheme.] ¹			

2. The consent of the ----- (Name of Goods and Services Tax Practitioner) is attached herewith*.

**Strike out whichever is not applicable.*

Signature of the authorised signatory

Name

Designation/Status

Date

Place

Part -B

Consent of the Goods and Services Tax Practitioner

¹Inserted vide Notf no. 03/2019-CT dt. 29.01.2019wef 01.02.2019

I <<(Name of the Goods and Services Tax Practitioner>>< Enrolment Number> do hereby solemnly accord my consent to act as the Goods and Services Tax Practitioner on behalf of ----- (Legal name), GSTIN only in respect of the activities specified by ----- (Legal name), GSTIN

Signature

Name

Enrolment No.

Date

Agenda Item 3: Recommendations of the Fitment Committee for the consideration of the GST Council

This agenda note deals with proposals regarding GST rates on supply of goods and services. The proposed changes in GST rates emanate from the recommendations made by the Fitment Committee.

2. Briefly stated, representations/recommendations have been received from various stakeholders including Ministries and other offices of Centre and States, seeking changes in GST rates and certain clarifications regarding GST rates applicable on supply of certain goods/services.

3. The Fitment Committee met on 12th & 23rd September, 2022 and 28th October, 2022 and had detailed discussions on recommendations received from various stakeholders seeking changes in GST/IGST rates or seeking clarification on supply of goods/services. After examination, the Fitment Committee has recommended changes in GST rates or issue of clarification, in relation to certain goods and services. Further, the Fitment Committee has recommended no change in respect of certain goods and services. On certain issues, Fitment Committee was of the view that further examination would be required before making any recommendation to the GST Council.

4. Accordingly, Fitment Agenda for consideration of the GST Council is summarised as below:

a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to goods – Annexure-I

Annexure – I

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Pencil Sharpener (Educational Product)	18%	12%	1. As suggested by GoM on Rate rationalization, based on the recommendation of 47th GST Council Meeting, GST rate on Pencil Sharpeners (falling under CTH 8214) was increased from 12% to 18%. Accordingly, entry 188 in Schedule II (12%) was omitted. ~~8214: Paper Knives, Pencil sharpeners and blades thereof.~~ 2. However, while examining the current request, it was seen that Pencil Sharpeners continued to attract 12% under Sr. No. 180 of Schedule II as below:

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments		
				Product (CTH)	GST Rate	Sr. No. of Notification No. 1/2017-Central Tax (Rate)
				Pencils (9608)	12%	Sr. No. 233 of Schedule II
				Erasers (4016)	5%	Sr. No. 191 of Schedule I
				Pencil Sharpeners (7310 or 7326)	12%	Sr. No. 180 of Schedule II
				Pencil Sharpeners (8214)	18%	Sr. No. 302A of Schedule III
				Pencil Box including pencils, erasers and sharpeners	12%/18% (based on the classification of pencil sharpeners)	Mixed Supply
				3. Pencil Sharpeners mentioned at Entry 180 of Schedule-II (7310 or 7326) still mentioned in Schedule II (GST rate of 12%) says : <i>7310 or 7326 : Mathematical boxes, geometry boxes and colour boxes, pencil sharpeners</i> 4. According to HSN, Pencil Sharpeners are mentioned specifically in classification under HS Code 8214 10 10. (for which rate has been increased to 18%).		

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				5. Entry in tariff is 82141010 ---paper knives, letter openers, erasing knives, pencil sharpeners 6. While not recommending reduction in rate, Fitment Committee recommends that the inconsistency in this regard may be removed by deleting the entry of Pencil Sharpeners from Sr. No. 180 (7310 or 7326) of Schedule II of GST Rate Notification No. 1/2017-Central Tax (Rate).
2.	By-products of milling of Dal/Pulses like Khanda, Churi (also known as Chuni), Chilka	-	Reconsider the clarification issued vide Para 8 of Circular No. 179/11/2022-GST dated the 3rd August, 2022.	1. The matter was brought for deliberation in the Fitment Committee (FC) of Officers meeting, held before the 47th GST Council Meeting. The FC had recommended that a suitable clarification may be issued that by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi are used as cattle feed ingredient and attract GST at the rate of 5% and that in view of the prevailing multiple interpretations, recovery on account of this issue for past periods, may not be insisted upon. 2. Further, it was deliberated in the said FC meeting that the differential GST rates on animal feed ingredients (attract GST as per specific HS Code and the applicable GST rate thereof, primarily at 5%) and animal feed (attracts GST exemption) has been subject to a lot of litigation (like Fishmeal, Meat cum Bone Meal, DDGS, etc.) and thus, a uniform rate of 5% on the entire Chapter 23 (except dog or cat food falling under CTH 2309) may help to address the issue. 3. In line with this logic, the Fitment Committee had recommended that the GoM on Rate Rationalization may consider uniform GST rate of 5% on all items in Chapter 23 (with exception of dog or cat food).

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				4. In the 47th GST Council Meeting, the recommendation of FC to the extent of issuance of clarification, as detailed above, was accepted. With regards to the proposal regarding rate rationalization of entire chapter 23 to 5%, as per its Interim Report, the GoM on Rate Rationalization had not recommended any increase in rate on the animal feeds falling under Chapter 23, at this stage. 5. Now, certain representations have been received post issuance of the above-mentioned Circular that these items are also directly used as Cattle feed and they are covered within the ambit of the Entry at S. No. 102 of Notification No. 2/2017-Central Tax (Rate), dated the 28th June, 2017, which <i>inter alia</i> provides GST exemption to goods with description <i>supplement & husk of pulses, concentrates & additives</i>, falling under heading 2302 and 2309. 6. Accordingly, there is dual use of these products with differential GST rate [that is, Nil-when supplied as cattle feed and 5%- when supplied as cattle feed ingredients]. Thus, the administration of the levy would be difficult and so would be compliance on the part of the millers. 7. Till the GoM on Rate Rationalisation takes a view on the rationalisation of rates under Chapter 23, in order to have clarity and avoid confusion amongst the concerned suppliers regarding the GST rate on the supply of subject goods and for the ease of administration of the levy, they may be exempt from GST, irrespective of its end use. This can be done by creating an entry for subject goods in the GST Rate Notifications as the ultimate burden of cost of cattle feed would fall primarily on farmers, and it may not be practically possible to determine the exact proportion of total supply that goes directly as cattle feed.

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments		
				8. Fitment Committee recommends that the relevant entries in the Notification may be amended/inserted as under:		
				Entry/ Notification No./CTH	Description	GST rate
				S. No. 102 of Notification No. 2/2017- Central Tax (Rate) dated 28.6.2017 (2301,2302,2 308 2309)	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & ~~husk of pulses,~~ concentrates & additives, wheat bran & de-oiled cake [other than rice bran]	Nil
				S. No. 102 C of Notification No. 2/2017- Central Tax (Rate) dated 28.6.2017 2302, 2309	Husk of pulses including chilka and concentrates including chuni/churi, khanda	Nil

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments		
				S. No. 103A, Schedule -I of Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017 2302	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants [other than i) aquatic feed including shrimp feed and prawn feed, ii) poultry feed and cattle feed, including grass, hay & straw, supplement & additives, iii) husk of pulses including chilka, iv) concentrates including chuni/churi, khanda, v) wheat bran, vi) de-oiled cake]	5%
				9. Fitment Committee also recommends that a clarification be issued to regularise the matter of the intervening period on as is basis from the date of issuance of last Circular (that is, consequent to 47th GST Council Meeting) on account of genuine doubts.		
3.	SUV Cars	-	Clarification on the rate of GST compensation cess applicable on the supply of SUVs in the light of ambiguity between the Entries in the Table appended to the Notification No. 5/2017-Compensation Cess (Rate) dated 11.09.2017 for HSN 8703 and the recommendations of the Goods and Services Tax	1. The GST Council in its 21st Meeting held in Sept, 2017 had recommended a higher rate of compensation cess of 22% for SUVs. 2. The exact extract of the decision is reproduced as below: <i>“The Council approved the increase in the rate of Compensation Cess for the following categories of motor vehicles:</i> i. <i>Sports Utility Vehicles (SUVs) (of length more than 4-metre, engine capacity more than 1500cc and ground clearance 170 mm): To increase the rate of cess from the present 15% to 22%.”</i>		

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments								
			Council, made in 21 st GST Council meeting held on 09.09.2017.	3. After the above recommendation of the GST Council, the Entry No. 52B of Compensation Cess rate Notification 1/2017-Compensation Cess (Rate) dated 28.06.17(as amended) reads as under: <table><tr><th>S.no</th><th>Heading</th><th>Description</th><th>Rate of compensation cess</th></tr><tr><td>52B</td><td>8703</td><td>Motor vehicles of engine capacity exceeding 1500cc, popularly called as Sports Utility Vehicles (SUVs) including utility vehicles. <i>Explanation. – For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above</i></td><td>22%</td></tr></table> 4. Briefly by way of background, the levy of higher excise duty on SUVs was brought in the Finance Act, 2013, where the basic excise duty rate was increased for SUVs qualifying some conditions.	S.no	Heading	Description	Rate of compensation cess	52B	8703	Motor vehicles of engine capacity exceeding 1500cc, popularly called as Sports Utility Vehicles (SUVs) including utility vehicles. <i>Explanation. – For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above</i>	22%
S.no	Heading	Description	Rate of compensation cess									
52B	8703	Motor vehicles of engine capacity exceeding 1500cc, popularly called as Sports Utility Vehicles (SUVs) including utility vehicles. <i>Explanation. – For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above</i>	22%									

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments								
				5. This was done by inserting an Entry No. 284A in the Central Excise Tariff as below: <table><tr><th>S.no</th><th>Heading</th><th>Description</th><th>Rate</th></tr><tr><td>284A</td><td>8703</td><td>Motor vehicles of engine capacity exceeding 1500cc, popularly called as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. – For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above</td><td>30%</td></tr></table> 6. Thus, the current entry for Compensation cess in the GST regime is the same as entry in erstwhile Central Excise regime. The term SUV has not been defined, only an explanation has been provided in the above entries. 7. Thereafter based on request of the industry for clarification on the category of vehicles that would be covered by the said entry, the Board (CBEC) issued Circular No. 972/06/2013/CX dated 24.07.2013 whereby it has in the context of Entry 284 A clarified <i>inter alia</i> that a higher rate of tax is applicable on <i>motor vehicles which are popularly known as SUVs and which satisfy all the other three conditions , viz.(i) the engine capacity exceeds 1500cc,(ii) the length exceeds 4000 mm; and (iii) the ground clearance is 170 mm and above.</i> 8. In the GST regime, a similar issue has arisen as to whether ALL four conditions viz. engine	S.no	Heading	Description	Rate	284A	8703	Motor vehicles of engine capacity exceeding 1500cc, popularly called as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. – For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above	30%
S.no	Heading	Description	Rate									
284A	8703	Motor vehicles of engine capacity exceeding 1500cc, popularly called as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. – For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above	30%									

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments				
				capacity 1500 cc, popularly known as SUV, length exceeding 4000mm and ground clearance 170 mm as discussed above need to be satisfied, for levying higher cess rate as per Entry 52B, OR the conditions in Explanations are optional? 9. As the recommendations of the Council (S.N. 2 above) was for levying cess at higher rate for the vehicles satisfying all conditions, a clarification may be issued (on similar lines as done earlier in 2013) to clarify that all four conditions need to be fulfilled for a motor vehicle to be eligible for levying a higher compensation cess rate of 22% as per entry 52B. 10. Fitment Committee recommends that a clarification may be issued				
4.	Mentha Oil		1. Mentha namely Menthol Mint/Japanese Mint (Botanical Name- <u>Mentha arvensis</u>) needs to be included in the Notification No 10/2021 CTR dt 30.09.2021 under HSN Code 33012590 (Others) 2. Fitment Committee may deliberate on the necessity of issuance of Corrigendum to Notification No 10/2021 CTR dt 30.09.2021 to	1. Interim Report of the Group of Ministers (GoM) on capacity-based taxation and special composition scheme for certain sectors was placed before the GST Council in its 45th Meeting, held on 17.09.2021. One of the categorical recommendations in the Interim Report was for introducing the payment of GST liability under Reverse Charge Mechanism (RCM) on the supply of Mentha Oil, at the first stage of the supply, in terms of modalities worked out by Uttar Pradesh. 2. Accordingly, the RCM was duly notified for supply made by any unregistered person to any registered person for the following goods: <table><tr><th>HS Code</th><th>Description of goods</th></tr><tr><td>33012400, 33012510, 33012520, 33012530, 33012540</td><td>Following essential oils other than those of citrus fruit namely: - a)Of peppermint (Mentha piperita); b)Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate)</td></tr></table>	HS Code	Description of goods	33012400, 33012510, 33012520, 33012530, 33012540	Following essential oils other than those of citrus fruit namely: - a) Of peppermint (Mentha piperita); b) Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate)
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S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
			incorporate Menthol Mint/Japanese Mint (Botanical Name- Mentha arvensis) under RCM	3. Now, a request has been made to also include <i>Mentha arvensis</i>, classifiable under HSN Code 3301 25 90, under Reverse Charge Mechanism. 4. Fitment Committee recommends to include <i>Mentha arvensis</i>, classifiable under HSN Code 3301 25 90, under Reverse Charge Mechanism.
5.	Fruit Pulp or fruit juice based drinks with Carbon-dioxide added as a “Preservative / Additive”		(i) Clarification on applicable GST rate and 6/8-digit HS Code on fruit Pulp or fruit juice based drinks with Carbon-dioxide added as a “Preservative / Additive”; (ii) Lower GST levy for these beverages may be considered given that it contains at least 5% fruits content.	1. In the 45th GST Council meeting, a separate entry was created for carbonated beverages, under heading 2202. The goods with description ‘Carbonated Beverages of Fruit Drink’ or ‘Carbonated Beverages with fruit Juice’ are covered under Sl. No. 12B of Schedule –IV of Notification No. 1/2017- CT(R) & Entry at Sl. No. 4B of Notification No. 1/2017- CC(R) respectively attracting 28% and 12% duty. Fitment Committee recommended that 2202 99 is the appropriate 6-digit code and that the request for lower GST rate may not be accepted. 2. Through representations, it has been brought to notice that few suppliers are still clearing their products under “Fruit pulp or fruit juice based drinks” @ 12% vide entry at Sl. No. 48 of Schedule –II of Notification No. 1/2017- CT(R) though they contain carbon dioxide also. The intention of the GST Council was always to tax these products at 40% as long as they contain carbon dioxide irrespective of whether it is used as a preservative, additive etc. 3. Thus, in order to make it amply clear and remove any ambiguity Fitment Committee recommended an exclusion in the entry at Sl. No. 48 of Schedule –II of Notification No. 1/2017-CT(R) as below: <i>Fruit pulp or fruit juice based drinks excluding ‘carbonated beverages of fruit drink’ or ‘carbonated beverages with fruit juice’</i>
6.	Rab (Rab-Salawat)	-	To clarify the	1. Under the UP Rab (Movement Control Order)

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments									
			classification and appropriate rate of Rab (Rab-Salawat)	1957, rab has been defined as: “rab means massecuite prepared by concentrating sugar Juice on open pan furnaces, and includes Rab Galawat and a Salawat, but does not include Khandsari molasses or Gur” 2. Under present classification, ‘cane or beet sugar and chemically pure sucrose, in solid form’ is classified under 1701. 3. Though a product of sugarcane, <i>Rab(salawat)</i> being in liquid or semisolid form therefore does not qualify to be classified under HSN 1701. 4. In addition, the chemical composition of <i>Rab(salawat)</i> is different from that of Molasses and hence it is not classifiable under HSN 1703. 5. The Fitment Committee recommended to clarify that Rab (Rab-Salawat) falls under HSN 1702 attracting 18% GST.									
7.	Salted products manufactured using the process of extrusion; Fried and salted Fryums (Pellets)		Issuance of clarification regarding fryums manufactured using the process of extrusion.	1. The instant classification dispute is between the following two entries: <table><tr><th>Entry and HSN</th><th>Description</th><th>Rate (%)</th></tr><tr><td>S. No. 46 of Schedule-II of Notification No. 1/2017-Central Tax (Rate) [2106 90]</td><td>Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form [other than roasted gram], pre-packaged and labelled</td><td>12</td></tr><tr><td>S. No. 16 of Schedule-III of Notification No. 1/2017-Central Tax (Rate) [1905]</td><td>Pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products [other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted</td><td>18</td></tr></table>	Entry and HSN	Description	Rate (%)	S. No. 46 of Schedule-II of Notification No. 1/2017-Central Tax (Rate) [2106 90]	Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form [other than roasted gram], pre-packaged and labelled	12	S. No. 16 of Schedule-III of Notification No. 1/2017-Central Tax (Rate) [1905]	Pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products [other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted	18
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S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				products] 2. CTH 19.05 includes extruded products, savoury or salted. 3. The Fitment Committee recommended to clarify that the item fryums manufactured using the process of extrusion will attract GST @ 18% (CTH 1905)
8.	IGST rate on items imported for Petroleum Operations under Notification No. 3/2017-Integrated Tax (Rate)	-	Clarification sought on applicable IGST rate on items imported for Petroleum Operations under Notification No. 3/2017-Integrated Tax (Rate)	1. The GOM has, in its interim report, taken a decision to prune the exemptions on manufactured items under rate rationalization as it felt that these concessions cause duty inversion and affect domestic capacity adversely. It also results in accumulation of Input Tax Credit and gives rise to refunds. 2. On similar rationale, the 45 th Council had revised the GST rates of new and renewable energy items like solar panel, solar cell, wind turbines, hydro plants, waste to energy equipment. The rate was revised w.e.f. 1.10.2021 from 5% to 12%. Further, inputs services which constitute major cost for such exploration attract GST at the rate of 12%. 3. Notification No. 3/2017-Integrated Tax (Rate) specifically provided concessional rate of GST @5% for goods of all chapters and as <u>per the list specified</u> which were imported for petroleum operations. Based on the GoM report, the said Notification was amended by Notification No. 8/2022-Integrated Tax (rate), to increase the IGST rate from 5% to 12%. The intent of such rate increase was to correct duty inversion to some extent on those items in the specified list which attract higher GST rates. 4. However, certain goods in the specified list, by virtue of their entry in Schedule I of Notification No. 1/2017-Integrated Tax (Rate) continue to attract the lower GST rate @5% For eg., certain dual-use products which are also used for petroleum operations such as Light-vessels, fire-floats, dredgers, floating cranes and other vessels attract 5% GST while other dual-use

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments						
				products like organic chemicals attract 18% GST. 5. Accordingly, exemption Notification No. 3/2017- Integrated Tax (Rate) provides a concessional rate @12% to those products which are at higher rate of GST (i.e. 18% in this case) if these goods are imported for Petroleum operations. 6. Fitment Committee recommends that a clarification may be issued that a taxpayer can claim the lower rate for specific items as given in the Schedule.						
9.	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%	1. National Policy on Biofuels – 2018, provides an indicative target of 20% ethanol blending under the Ethanol Blended Petrol (EBP) Programme by 2030. 2. Further, during the Budget exercise of 2022-23, additional Basic Excise Duty @ Rs. 2 per litre was levied on Unblended Petrol and Unblended Diesel to promote blending in petrol and diesel in the country. 3. At present, concessional GST rate of 5% is available only to Oil Marketing Companies (OMCs) like IOCL, BPCL and HPCL under Schedule I of Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017. <table><tr><th>S No.</th><th>Chapter</th><th>Description</th></tr><tr><td>102A</td><td>2207</td><td>Ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol).</td></tr></table> 4. Keeping in view of the implementation of the Ethanol Blending Programme, and since	S No.	Chapter	Description	102A	2207	Ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol).
S No.	Chapter	Description								
102A	2207	Ethyl alcohol supplied to Oil Marketing Companies for blending with motor spirit (petrol).								

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				concessional GST benefit is already given to OMCs for blending ethanol with petrol, the proposal is to provide the same concessional GST rate of 5% on ethanol supplied to standalone petroleum refineries as well for blending with petrol in order to provide a level playing field. 5. Fitment Committee recommends that the entry 102A of Schedule I may be amended to include refineries in addition to Oil Marketing Companies.

b) Issues where no change has been proposed by the Fitment Committee in relation to goods – Annexure-II

Annexure-II

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Water Pump sets	18%	12%	1. Based on the report of Group of Ministers on Rate Rationalization, the GST Council, in its 47th meeting, recommended to increase GST on ‘Submersible & Mono Block Pumps’ (falling under HS Code 8413) from 12% to 18%, with effect from 18.07.2022, in order to lower the embedded costs of Input Tax Credits (ITC) accumulated due to inverted duty structure prevalent on these goods and thereby to promote their domestic manufacturing. 2. Fitment Committee recommends that status quo may be maintained.
2.	(a) Milling Machinery for cereals (8437) (b) Kitchen ware (82119200) (c) Spoon (82159900)	18% 18%	5% (not more than 8%) 12%	1. Based on the report of Group of Ministers on Rate Rationalization, the GST Council, in its 47th meeting, recommended to increase GST on : (a) ‘Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; Machinery used in milling industry or for the working of cereals or dried leguminous vegetables other than farm type machinery..’ from 5% to 18%, (b) Kitchen and table ware from 12 to 18% -with effect from 18.07.2022, in order to lower the embedded costs of Input Tax Credits (ITC) accumulated due to inverted duty structure prevalent on these goods and thereby to promote their domestic manufacturing. 2. Fitment Committee recommends that status quo may be maintained.
3.	Gold (7108)	3%	Reduce GST	1. GST on Gold (falling under HS Code 7108) and Silver (7106) has been kept at the lower rate of 3% since the introduction of GST on

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
	Silver (7106)			01.07.2017. 2. Fitment Committee recommends that status quo may be maintained.
	Diamonds (7102, 7104)	0.25% / 1.5%	Reduce GST	1. GST Council, in its 47th meeting, recommended to increase GST on Cut & Polished Diamonds (falling under HS Code 7102 29, 7102 39 10, 7104 91 00) from 0.25% to 1.5% in order to lower the embedded costs of Input Tax Credits (ITC) accumulated due to inverted duty structure prevalent on these goods. 2. GST on rough diamonds (falling under HS Code 7102 21, 7102 31 00 & 7104 21 00) has been kept at lower rate of 0.25%. 3. Fitment Committee recommends that status quo may be maintained.
4.	(a) Printing Paper by newspaper agencies (Newsprint) [CTH 4801] (b) Printing paper for books (uncoated copier paper) [CTH 4802]	5% 12%	1. Remove GST on Printing paper 2. Create differentiation between RNI (Registrar of Newspaper of India) registered and unregistered agencies at the time of purchasing printing papers. 3. Provide incentive to printing paper manufacturing units that manufacture quality paper from cellulose fibres.	1. Newsprint, in rolls or sheets, attract a GST rate of 5% under S. N. 199, Sch 1 of 1/2017-CT(R) irrespective of purchase by Registrar of Newspaper of India (RNI) registered or unregistered agencies. 2. Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes etc. attract a GST rate of 12% under S. N. 112, Sch 2 of 1/2017-CT(R) 3. The GST rate of 5% on newsprint and 12% on uncoated copier paper was prescribed in the 14 th GST Council meeting considering all factors including pre-GST tax incidence and consumption base and the rates remain unchanged since the implementation of GST from 1 st July, 2017. 4. The raw materials for newsprint attract a GST rate of 12% (different kinds of pulp) or 5% (waste paper). Thus, a reduction of GST rate to

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				NIL will lead to inverted duty structure in the industry and may lead to distorting tax structure. 5. Fitment Committee recommends that Status quo may be maintained.
5.	Components of Battery Energy Storage System (BESS) 1. Li-ion Batteries (85076000) 2. Lithium Ion Battery Module(Li ion) with BMS & Racks (8507) 3. Rack Level BMS (853720) 4. Battery Container (73090090) 5. PCS (85044010) 6. LT Power & Control Cable 7. AC Cable (85446090) 8. 33 KV Step Up Inverter Duty Transformer (85049090) 9. Aux Transformer (85049010) 10. 33 KV Switchgear (85351040) 11. DCDB & ACDB (85371000) 12. Fire fighting System (84241000) 13. HVAC System	Applicable rate	5% concessions shall be applicable for power sector till 31 st March, 2025 or till commencement of production of batteries under PLI scheme for advanced chemistry cell (ACC) Battery Storage, whichever is earlier.	1. While the GST rate on batteries/electric accumulators is 28%, Lithium ion batteries attract a lower GST rate of 18%. 2. Reducing the GST rate to 5% would lead to inversion and also potential misclassification due to excessive rate differential. 3. Items numbered 3 to 13 are general electronic/ electrical items on which application of lower GST rate would lead to an end-use based concessional rate. 4. Such end-use based concessional GST rates lead to distortion and are difficult to monitor. 5. Therefore, in order to avoid inversion and not create distortions, the GST rate may be left unchanged for these items. 6. Fitment Committee recommends that GST rate may be left unchanged for these items.
6.	Parts and accessories of aircraft and aircraft engines.	Applicable rate 12/18/28%	MoCA has requested for a uniform GST rate @5% (from the applicable rate for the	1. As recommended by the GST Council in its 23rd Meeting, 5% IGST rate has been prescribed for aircraft engines, tyres and seats. Specific parts (for aircraft) falling under

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
			list of 611 parts and accessories of aircraft and aircraft engines.	heading 8807 also attract 5% IGST (Sl. No. 245 of Schedule I of IGST Rate Notification). 2. However other parts including consumable items attract applicable GST (12%-18%). 3. 'Parts, testing equipment, tools and tool-kits for MRO activities for aircrafts' attract Nil BCD rate when imported by MRO operators registered with the DGCA. This exemption from BCD is available on all parts and equipment (whether designed for exclusive use with aircrafts or otherwise). However, IGST is payable on such imports at the applicable rate as mentioned in para (i) above. 4. An inter-Ministerial meeting was held on 25th February, 2022 to discuss matters related to aviation industry. 5. Against this backdrop, the Ministry of Civil Aviation (MoCA) had given a list of more than 30,000 parts for uniform rate of 5% GST rate. 6. This request was examined in the recently held 47th GST Council Meeting and was not accepted. 7. Thereafter, MoCA has submitted a pruned down list of 611 high value items. 8. As per MoCA, the total value of imports in FY 2019 and 2020 is approx. USD 1.011 Billion. Thus, any GST rate reduction would entail substantial revenue implication. 9. Further, the list of parts has generic items like Starter, Unit, and Display Unit etc. Giving an end-use based exemption would have its implementation issues and also gives impetus to misclassification tendencies. 10. Additionally, currently domestic industry is not much engaged in the manufacturing of such

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				parts. So, if concessional IGST at 5% is applied to such parts, there would be no incentive for the domestic industry to develop since it would be cheaper to import such parts rather than producing them domestically. 11. Fitment Committee recommends that status quo may be maintained.
7.	LD Slag	18%	5%	- LD slag is used in Cement industry. Cement attracts GST@ 28%. - Cement manufacturers will get ITC for GST paid on purchase of LD slag. - Benefits of lower GST rates on slag will be garnered by slag producer and the cement industry will have no major impact. - In order to achieve the larger goal of a single rate GST, it may not be appropriate to tweak GST rates of goods which are already at 18% or below and therefore, there is no rationale for further reduction in rate. Fitment Committee recommends that status quo may be maintained.
8.	FTTH (Fibre To The Home) equipment and related services used for fixed line internet/broadband	18%	Exempt or Reduce GST to 5%	- The goods specified by the Department of Telecommunications as equipment used in providing FTTH connections are falling under the Chapter 39, 85 and 90 (viz. CTH 3917, 8517, 8529, 8536, 8544). - The specified goods (around 160 items) are general electronic items like routers, connectors, splitters, cables, cords, switches, adapters, Pole mount kit, hot dipped galvanised pole, anchoring clamp, cables, plug for duct, telephone set etc, which can be used for FTTH and other telecommunication systems as well. - Waiving off or prescribing a 5% GST rate on

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				these goods would create an inverted duty structure. 4. Further, providing a concessional rate for these items for use in FTTH connections leads to end-use based exemption which is distortionary in nature and prone to misuse. 5. Fitment Committee recommends that status quo may be maintained.

c) Issues deferred by the Fitment Committee for further examination in relation to goods –
Annexure-III

Annexure-III

S.No.	Commodity	GST Rate	Request/ Requested GST Rate	Comments
1	Khari , Cream Rolls [Bakery products] (HS 1905)		It is requested to clarify that Khari and Cream Roll should get covered under “similar toasted products”, which attracts 5% GST rate	1. Currently, concessional GST rate of 5% is applicable on Rusks, toasted bread and other toasted products falling under tariff item 19054000. 2. Bakery products such as Pastry, Cake, Biscuits, Communion Wafers, etc. [other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products], falling under CTH 1905, attract GST rate of 18%. 3. Fitment Committee examined the issue before the 47th GST Council Meeting and observed that further details regarding the nature of product, process of preparation is required before making any suggestions. Accordingly, the matter was deferred by the 47th GST Council for further examination. 4. Maharashtra asked for time to make a presentation. The Fitment Committee decided to defer this matter.
2.	Heavy feedstock, Vacuum Gas Oil (VGS) / Reformates, etc [27]	18%	Nil	(1) The main refinery products namely, petrol, diesel and ATF are outside purview of GST, while GST is levied on other refinery products including intermediate streams that are shared between refineries. (2) As informed, feedstock is cheaper than crude while being a viable option to crude oil, easy availability of heavy feedstock will lead to better capacity utilization of refineries and revenue implication for OMCs is only around Rs. 321 crores. (3) Customs duty on these items, including

S.No.	Commodity	GST Rate	Request/ Requested GST Rate	Comments
				straight run fuel oil, low sulphur wax residue, vacuum residue, slurry, vacuum gas oil, etc was reduced to 2.5% during Budget in Feb, 2022. (4) Fitment Committee discussed the issue and noted that further clarity is needed on the matter regarding the intended use, capacity utilization potential and benefits accruing from the item. It was proposed that additional inputs may be sought from the Ministry of Petrol and Natural Gas. Accordingly, the matter was deferred until further inputs are provided. (5) Inputs have been sought from Ministry of Petroleum and Natural Gas (MoPNG) but the inputs/comments are awaited. The Fitment Committee decided to defer this matter as inputs are still awaited from MoPNG.

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

Annexure – IV

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
1.	To extend validity of GST exemption on Viability Gap Funding (VGF) paid to Selected Airline Operators (SAOs) for operating flights under Regional Connectivity Scheme (RCS) for further period.	Ministry of Civil Aviation (MoCA) has undertaken Policy Reforms and Financial Relief Measures to SAOs for RCS -UDAN routes. Under these reforms, all concessions available on RCS - UDAN routes, available to SAOs for 3 years, were extended for an additional period during which operations were suspended due to COVID under any orders of the Central or State Government or UT administration. With the extension of all the concessions to SAOs, GST concession on VGF is also required to be extended for an additional period.	Sr. No. 16 of Notification No. 12/2017-CTR exempts services provided to the Central Government, by way of transport of passengers, by air, embarking from or terminating at an RCS airport, against consideration in the form of VGF. This exemption is applicable for a period of 3 years from the date of commencement of operations of the RCS airport notified by MoCA. This exemption has been carried forward from ST regime. However, the exemption has become superfluous in GST regime as Section 15(2) sub-clause (e) excludes subsidies provided by Central and State Government. Therefore, it may be conveyed to MoCA, that subsidy in the form of VGF paid by government to airlines for operating RCS flights is not taxable in terms of the said provision of CGST Act, 2017. They may advise airlines accordingly.
2.	Omission of the Entry 23A of Notification No. 12/2017-CTR dated 28.06.2017 which provides exemption to the service by way of access to a road or a bridge on payment of annuity.	Hon'ble High Court of Karnataka has set aside Circular No.150/06/2021-GST dated 1.06.2021 citing that it overrides the Notifications No.32/2017 -CTR dated 13.10.2017. It has also observed that the entry 23A of Notification No.32/2017 -CTR dated 13.10.2017 in a way, exempts services of construction of road, where the consideration is paid in the form of annuity.	Entry 23A of Notification No. 12/2017-CTR dated 28.06.2017 exempts services, by way of providing <i>access to a road or a bridge</i>, against consideration in the form of annuity. Based on recommendations of the 43rd GST Council, it was clarified vide Circular No. 150/06/2021-GST dated 1.06.2021 that “<i>Entry 23A of Notification No. 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.</i>”

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			The Hon'ble High Court has held that entry 23A of Notification No. 12/2017-CT(R) covers services of construction of road where consideration is paid in the form of annuity. Entry 23A is ambiguous and serves no purpose. Annuity is paid for construction of road and not for allowing access to road. Access to road or bridge is allowed against consideration in the form of toll which is exempt under entry at Sr. No. 23. Entry 23A may be omitted to prevent its misuse. The decision of Hon'ble Karnataka High Court may be challenged in Supreme Court.
3.	Whether revenue apportioned by Indian Railways (IR) to SPVs and O&M costs charged by Indian Railways from SPVs attract levy of GST?	It has been submitted that Ministry of Railways (MoR) has been giving lot of thrust on expanding its existing network, through the private participation including PPP initiatives. There are presently 10 SPVs, which have become part of the Indian Railway system on concession basis mainly for the first mile and last mile connectivity and there are many more in the pipeline. For any train, originating or terminating on the lines built by SPVs, the revenue is collected by Railways from the customer as single entity for the whole distance and proportionate revenue is passed on to SPVs by IR. Under the Service Tax regime, Traffic earnings are subjected to levy of Service Tax at its originating stage. Apportionment of revenue and apportionment of operation and maintenance charge on proportionate basis which did	1. Ministry of Railways has stated that Indian Railways (IR) gets railway projects constructed through SPVs, which are incorporated as joint ventures between IR and public/private investors. 2. The SPVs create assets such as new railway lines, electrification of railways, installation of signaling equipment etc. 3. SPVs are the owner of the assets created by them during the concession period. They hand over the assets to IR after concession period is over. During the concession period, the assets are operated by IR. In other words, freight and passenger services using the assets created by SPVs are supplied by IR. SPV has no role in it. The IR collects the entire revenue from the freight and passenger operations. SPVs are paid on pro rata basis for the stretch of length of the line owned by them. 4. The infrastructure/asset created by SPVs is maintained by IR for which it recovers O&M expenses from the SPV. 5. Ministry of Railways has requested for issuance of clarification that both apportioned revenues paid to SPVs and O& M costs charged by IR from the SPV do not attract GST. 6. IR and the SPV are distinct persons. Supply of services by SPV to IR by way of allowing IR to

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		not attract any service tax. A significant portion of the funding of the Spy project line is through external sources (in addition to Indian Railways or its PSEs) brought in by the partners comprising both State Government as well as private entities. Once the rail infrastructure i.e., Railway line, Signaling, electrical installations etc., are developed, the train operations for running of passenger and freight trains is controlled by the Indian Railways (IR). This includes the commercial operation of collecting the freight as per freight tariffs of Ministry of Railways. The SPV is not involved in operation of trains. These SPVs have been created to fill the gap of Railway's internal finances for rail infrastructure projects, thereby contributing in performing the sovereign function of the Government. The GST is collected by the Railway and deposited in the Consolidated Fund of India. No charge is being collected by the SPV since no service is being provided by them to the passengers or freight customers. Therefore, there is no loss of revenue to the Government. The project expenditure incurred by the SPV is compensated by way of a return on investment and is transferred to the SPV from the	use infrastructure built and owned by them during the concession period against consideration in the form of pro rata share of revenue is a taxable supply. GST paid on the said supply of services is available to IR as ITC. 6.1 It has been stated that SPV is not supplying any service. It is only contributing in the performance of sovereign functions by Government. The revenue stream of SPV is merely return on investment made by them for development of rail infrastructure for IR. It is relevant to mention that even if the SPV and IR are regarded as constituting an Association of Persons (AOP), the services supplied by them to each other will be taxable. Section 7 of the CGST Act, 2017 provides that <i>the 'person' (which has been defined to include an AOP) and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.</i> 6.2 It has been stressed by IR that the amount paid to SPVs is only a revenue share. The pro rata share of revenue paid by IR to SPV is nothing but consideration paid by IR to SPV for the service of allowing the use of infrastructure owned by SPV. The measure of consideration can take any form as desired by the contracting parties. It can be a fixed sum paid upfront, or amount paid in installments or annuities or certain fixed percentage of the revenue earned from such project or the pro rata revenue earned from the project of asset owned by the SPV. The measure of consideration or the way how it is calculated, does not affect the taxability of supply for which it is paid. It is the supply which is taxed and the tax is levied on the amount paid /payable for that supply. The manner in which the contracting parties decide to calculate the consideration payable for a supply is immaterial in determining whether the supply is taxable or not. 7. Similarly, services of maintenance supplied by IR to SPV is a taxable supply. ITC of the same is available to SPV. 8. Therefore, the GST paid either on the amount paid by IR to the SPV or by the SPV to IR is not a

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		revenues collected by the IR from its customers and is transferred net of O&M expenses to the SPV. After the concession period, the project line is transferred back to the Railway. In the perspective of above, it is requested to issue suitable clarifications that both apportioned revenue of SPVs and O&M costs for SPVs does not attract levy of GST.	cost for them. 9. The court rulings pertaining to service tax era are not relevant in GST as the provisions of GST law are different from the existing provisions of that period. 10. We may clarify to Ministry of Railways accordingly.
4.	To clarify on applicability of GST on Air Force Officers Mess.	The issue arises from 47th GST Council's decision regarding levy of GST at 12% on services of hotel accommodation below Rs 1000/- by a hotel, inn, guest house, club or campsite for residential or lodging purposes. Further, it has been informed that Messes in Armed Forces are established to cater for requirement of accommodation and messing for the personnel of Armed Forces all across the country which includes places where there is no habitation. These are created /established by using public fund as per the laid-out scale and is maintained by the contribution from individual officers (members) on no profit no loss basis. Messes are home for the living-in officers, a club for living-out officers and a social centre for the station. Services provided at Officers Mess are chargeable to members and its income, if any, is used for the development of the	All services supplied by the Government to individuals other than business entities except a few specified services such as services of postal department, transportation of goods and passengers etc. are exempt from GST vide Sl. No. 6 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 Therefore, accommodation services provided by Air Force Mess to Air Force personnel would be exempt in terms of Sl. No. 6 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided services supplied by Air Force Mess qualify to be considered as services supplied by Central Government. The same may be clarified to the Air Force.

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		Mess. Officer Messes charge for per room per day has been kept @ less than Rs 1000/- for officers coming on Temporary Duty. Further, due to the specific object of the Messes, it is also outside the ambit of Income Tax under Section 10 of the Income Tax Act, 1961. Therefore, it has been requested to give a clarification on the applicability of GST on Air Force Officers Mess.	
5.	To clarify whether GST is applicable on the incentive paid by MEITY to the Banks under the Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions. In case GST is applicable, the same may be waived as the purpose of the scheme is to promote RuPay debit card and BHIM-UPI transactions.	MEITY rolled out a scheme called the Incentive Scheme for promotion of RuPay Debit Cards and low-value BHIM -UPI transactions (P2M). The scheme is aimed at boosting the acquiring banks to build a robust ecosystem for digital payments and making the digital payments accessible to sectors and population who do not have access to formal banking facilities. The incentive is provided as a percentage of the amount transacted and is subject to specified caps. The incentive is given only for transactions made through RuPay debit cards and low value BHIM UPI (< Rs 2000) transactions. Further, the banks are required to show a minimum growth rate in the number of transactions made through RuPay/BHIM UPI as prescribed in the Notification to avail this scheme. Reimbursement of claims will be done on quarterly basis and incentive will be shared by acquiring banks with other stakeholders as decided by NPCI.	The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay debit card or BHIM UPI. Instead, the Government pays them an incentive at prescribed rates. A view may be taken that the service supplied by the acquiring banks and other participants in the digital payment system in case of transactions through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration, instead of being paid by the merchant or the user of the card is paid by the government in the form of incentives. In this view of things, the incentive is nothing but a subsidy directly linked to the price of the service paid by the central government and the same is not taxable in view of the provisions of Section 2(31) and Section 15 of the CGST Act, 2017. A view may also be taken that the incentive in question is not a consideration paid by the central government for service supplied by the acquiring banks but only an incentive per se as it is paid

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		It has been contended that the incentives given to member banks is nothing but subsidy received from the Central Government in order to promote the use of specified electronic modes and that Section 2(31) of the CGST Act, 2017, which defines 'consideration' excludes subsidy given by the Central Government or a State Government. Further, Section 15 of the CGST Act, 2017 also excludes subsidies provided by Central Government or State Government from the value of taxable supply. Therefore, GST is not applicable on the said incentive and a clarification to this effect has been requested.	contingent upon the banks achieving a minimum yearly growth rate in the number of transactions. However, even in that case, the incentive will not be taxable as it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. It is the core business of the banks to facilitate monetary transactions between businesses and individuals. The transactions can be offline or online. The banks allow people to transact through digital system not for the Government but for themselves. Mere fact that the government encourages them to promote digital transactions through RuPay/BHIM UPI does not mean that they are supplying any service to the Central Government. The Central Government does so to promote its own policy objectives. Further, there is no contractual obligation on the banks to promote such transactions or on the central government to provide such incentives. The entire arrangement is voluntary. In other words, not achieving the yearly growth rates in number of transactions prescribed for the incentive does not result in any breach of contract. The incentive paid to the banks under the scheme can be considered akin to the export incentives paid by the government to exporters under various schemes. The exporters do not export for the Government but for themselves. Therefore, the incentives paid by Government to the acquiring banks for promoting RuPay/ BHIM-UPI transactions are no more taxable than the incentives paid to the exporter is. So, in this view of things also, incentives paid by acquiring banks under the scheme is not taxable. In view of the above, it may be clarified by way of a Circular that incentives paid to banks under the scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions is not taxable.
6.	Whether, GST is leviable when the residential dwelling is	The petitioner has stated that she has taken registration under GST even though the turnover of her	The department has informed the Hon'ble High Court in the instant writ petition as below-

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation								
	rented by a person who is the proprietor of a proprietorship firm in his personal capacity for use as his own residential dwelling.	business is less than the threshold turnover of Rs. 20.00 lakh per annum because of the compulsory requirement of registration by businesses supplying goods or services through ECO irrespective of their turnover. Since, she is a registered person under GST, even though she intends to rent the residential dwelling for her own use as residence and not in the course of or furtherance of business of the proprietorship firm owned by her, she would be required to pay GST.	<i>“the language used in the exemption entry as amended w.e.f. 18th July, 2022 makes it clear that renting of residential dwelling is taxable only where the residential dwelling is rented to a registered business entity. The exemption on renting of residential dwellings to a person other than a registered business entity continues. It is relevant to note in this context that the term “person” has been defined in the CGST Act, 2017 to include an individual, an HUF, a Company, a firm, Government and so on. Clearly, where the residential dwelling is rented by a person who is the proprietor of a proprietorship firm, who rents it in his personal capacity for use as his own residential dwelling, (and such renting is not on account of its business, i.e., not accounted for in the firms account but is on personal account) the exemption shall continue to be available to him. Similarly, where the residential dwelling is rented by a partner of a partnership firm in his personal capacity for his own residential use and not accounted for in business entity account, the exemption will be available.”</i> 2. However, the Government Counsel has informed that during the hearing in this matter, the Hon'ble Court has pointed out that the Notification did not specify that GST would be charged only where the registered person was renting the residential dwelling in course or furtherance of business. 3. To obviate dispute and litigation in this regard, it is recommended that- a) The Entry at Sr. No. 12 of Notification No. 12/2017-CTR may be amended as under- <table border="1"> <tr> <th>Sl. No.</th><th>Heading</th><th>Present entry</th><th>Proposed amendment</th></tr> <tr> <td>12</td><td>Heading 9963 or Heading</td><td>Services by way of renting of residential dwelling for</td><td>Services by way of renting of residential dwelling for</td></tr> </table>	Sl. No.	Heading	Present entry	Proposed amendment	12	Heading 9963 or Heading	Services by way of renting of residential dwelling for	Services by way of renting of residential dwelling for
Sl. No.	Heading	Present entry	Proposed amendment								
12	Heading 9963 or Heading	Services by way of renting of residential dwelling for	Services by way of renting of residential dwelling for								

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation			
				9972	use as residence except where the residential dwelling is rented to a registered person.	use as residence except where the residential dwelling is rented to a registered person <i>for use by such registered person in the course or furtherance of business.</i>
7.	To specify a positive list of services under Sr. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate)		b) An explanation may be inserted in the entry in exercise of the power under Section 11(3) of the CGST Act, 2017 as under: Explanation: - Notwithstanding anything stated above, services by way of renting of residential dwelling to a registered person where the, – i. residential dwelling is rented to a registered person who is a proprietor of a proprietorship firm and who rents it in his personal capacity for use as his own residence and ii. such renting is on his own account and not that of the proprietorship firm; shall be exempted from tax. The same shall apply, mutatis mutandis, where the residential dwelling is rented to a partner of partnership firm who rents it in his personal capacity for use as his own residence. Detailed agenda note which was placed before the 47th GST Council meeting is enclosed (Annexure II) 1. 47th GST Council meeting held on 28th-29th			

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			June, 2022 had directed that the proposal to specify a positive list of services under Sr. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 may be reconsidered by the Fitment Committee taking into account the inputs from all the States which had voiced their concerns in the said council meeting. 2. Accordingly, the States of Telangana, Andhra Pradesh and Delhi were invited to the Fitment Committee meeting held on 12.09.2022 to give their views on the said issue. At the said meeting, Telangana requested to include Public Distribution System, Animal Husbandry etc. under the proposed positive list. Andhra Pradesh suggested expanding the proposed definition of <i>Public Authority</i> so as to cover manpower supply services hired by the state through a state corporation under exemption. 3. The views given by the states in writing are as under: Telangana The following services may be added to the list of services to be specified in entry 3/3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 • <u>Public Distribution and the related activities including Custom Milling and transportation services</u> Process of public distribution system involves large scale procurement of Custom Milling Services and renting of vehicles transportation services, without which the final goal of distribution cannot be met. • <u>Minor Irrigation</u> Telangana has taken up the programme of restoring the minor irrigation sources under the title “Mission Kakatiya”. The services procured under this programme are

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			primarily in the nature of pure services or services where goods component is less than 25%. • <u>Social forestry and Farm forestry</u> For achieving the objective of increasing tree cover in the State to 33% of the total geographical area of the State through the "Haritha haram". • <u>Roads and bridges</u> To improve the connectivity, earth work (laying of mud roads) is taken up on a continuous basis in many villages. These services are generally procured from the Local people and the involvement of the goods component in these services is quite low. Delhi The exemption on services mentioned in Article 243 G & 243 W of Constitution of India should be continued. 4. In view of the above suggestions received from states, the Fitment Committee went through the list of activities specified in the 11th and 12th Schedule to the Constitution and recommended that the following services may be added to the positive list of services (placed before the 47th GST Council) under Sr. No. 3/3A of Notification No. 12/2017-CTR • Education, including primary and secondary schools • Technical training and vocational education • Adult and non-formal education • Libraries • Social Forestry and Farm Forestry • Fire Services 4.1 On the suggestion to include 'society' also in the definition of Public Authority, consensus was that the phrase 'any other body' used in the

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			definition of Public Authority proposed in the 47th GST Council Meeting would include societies, companies, corporations etc. also. 4.2 As regards, the suggestion of Telangana to include <u>Minor Irrigation & Roads and Bridges</u>. GST on specified works contract services (WCS) supplied to Central Government, State Government and Local Authorities has recently been revised from 12% to 18% with effect from 18.07.2022 and on WCS predominantly involving earthwork from 5% to 12%. Services procured for minor irrigation and for construction/laying down of roads & bridges would predominantly be WCS which the GST Council has recommended to be taxed at 18%/12%. 4.3 Exempting custom milling will block the input tax credit (ITC) of the milling units on capital goods, raw materials (such as packing material, vitamins and other fortification additives etc.) and input services. GST payable on customs milling will in any case flow back to the Government as revenue. 5. Accordingly the following list of services may be specified in SI. No. 3 and 3A of Notification No. 12/2017-CTR as under: “3. Supply of pure services, or composite supply of goods and services, in which the value of goods constitutes not more than 25% of the value of composite supply, to Central Government, State Government, Union Territory, a local authority or a public authority by way of, 1. Water treatment and/or supply; 2. Public Health activities, Sanitation Conservancy and Solid or Liquid Waste management; 3. Slum Improvement and Up gradation; 4. Maintenance and operation of street lights, bus stops, public conveniences, public parks and gardens, burial ground and crematorium; 5. Education, including primary and secondary schools; 6. Technical training and vocational

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			education; 7. Adult and non-formal education; 8. Libraries; 9. Social Forestry and Farm Forestry; 10. Fire Services; 11. Renting of motor vehicles for carrying out functions listed at Sr. No. 1 to 10 above; 12. Supply of manpower services for carrying out functions listed at Sr. No 1 to 10 above.” Public authority may be defined as under: <i>“Public Authority means an authority or a board or any other body established <u>and controlled</u> by the Central or State Government to carry out the functions listed in SI. No. 1 to 10 of the entry.”</i> As explained in Circular No.177/09/2022-TRU dated 03rd August 2022, issued on the basis of the recommendations of the 47th GST Council meeting, exemption under Entry 3 & 3A of Notification no. 12/2017-CT(R) dated 28.06.2017 has been given on pure services and composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11th and 12th Schedule of the Constitution. If such services are procured by any Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under Sl. No. 3 and 3A of Notification 12/2017- CT(R). As a consequential change to the proposed modification in entry 3 and 3A of the said Notification, an explanation may be inserted in the modified entry along the lines of the Circular as under: “Explanation: The exemption under this entry applies only to pure services and composite supplies procured by Central Government, State Government, Union Territories, local authorities or a public authority for performing functions listed in the 11th and 12th Schedule of the

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			Constitution. Services procured by any Central/State Government Ministry/Department /Union Territory or Public Authority which does not perform any functions listed in the 11th and 12 th Schedule, in the manner as a local authority does for the general public, are not eligible for exemption under this entry.”

(Recommendations of Fitment Committee on positive list of services to be specified in Sr. No. 3/3A of Notification No. 12/2017-CT(R))

By way of background, it is stated that the entries at Sr. No. 3 and 3A of exemption Notification No. 12/2017-CT(R) dated 28.06.2017 exempt supply of pure services and composite services (goods component 25% or less) supplied to Government, Local Authority, Governmental Authority or Government Entity by way of any activity in relation to Municipal or Panchayat functions.

2. Post the amendments made with effect from 1.1.2022, the entries read as below:

Entry 3 of Notification No. 12/2017- CT(R):

“Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.”

Entry 3A of Notification No. 12/2017- CT(R):

“Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.”

3. With reference to these entries, the following a proposal placed before the GST Council in the 45th Council meeting held on 17.09.2021 was that the entries were being interpreted too widely, the issue as to the scope of the term “in relation to” appearing in the said entries was placed the Fitment Committee and GST Council. The Fitment Committee recommended that as the scope of the expression “in relation to” used in the said exemption entries is too wide and prone to interpretation disputes, a list of services may be specifically notified as exempt under the said entries.

[Agenda No 14, Annexure IV, Sl. Nos. 25 of 45th GST Council may please be seen]

4. In Service Tax regime, since the intent of the exemption was to exempt only the services directly connected with the functions carried out by Government and local authorities of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation, the relevant Entry 25 of Notification No. 25/2012- Service Tax read as:

“Services provided to Government, a local authority or a governmental authority by way of-

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation;”

During discussion on this issue, in the 45th meeting Council was of the view that while the approach to specify a positive list of exempt services was agreed to, the list recommended by Fitment Committee needs to be pruned and refined. It was agreed that the list of services shall be circulated to all states for their inputs for refining the list which may be brought before GST Council for approval.

6. Accordingly, as per the direction of the Council, the List was circulated to States vide email dated 22.11.2022. Comments were received from West Bengal, Bihar and Tamil Nadu.

7. The issue was discussed at length in the Fitment Committee. After long deliberation the Fitment Committee was of the view that the exemption under said entries should confine to those services which are directly connected with the functions entrusted to Panchayat or Municipality and not services remotely or vaguely connected with those functions. Further, it was felt that only few services constitute bulk of input services by the local authority. Hence the list could be pruned down significantly while ensuring that major services by these bodies remain exempted. This approach would ensure that exemption entries are not interpreted widely, local authority continue to have major relief on supply of input services, and in respect of other general services the normal design of GST could be applied. Fitment Committee also felt that in respect of purchase of goods no special concession is allowed to procurement by the Government or Local Authority. They suffer same incidence on goods as any private person (for example cement, iron and steel, vehicle, furniture etc.). In service, the special concession crept in as services were taxed differently in pre-GST regime wherein tax was only imposed by Centre and there was no VAT on services. However, In GST there should not be any appreciable difference in the approach for goods and services. As is the case in goods, the Government and Local Authority should also bear the normal rate of GST on input services barring exceptions. Accordingly, Fitment Committee carved out a positive list of services for consideration of the Council.

8. With this positive List approach, it was also felt that the authorities constituted by in different states for such civic work as fall in the proposed positive list should also be included in the ambit of these exemptions alongside the local authority.

Recommendation of Fitment Committee: -

I. The following list of services may be specified in Sl. No. 3/3A of Notification No. 12/2017-CT(R) dated 28.06.2017:

Supply of **pure services**, or **composite supply of goods and services, in which the value of goods constitutes not more than 25% of the value of composite supply**, to Central Government, State Government, Union Territory, a local authority or a public authority by way of, -

- 1) Water treatment and/or supply
- 2) Public Health activities, Sanitation Conservancy and Solid or Liquid Waste management
- 3) Slum Improvement and Up gradation
- 4) Maintenance and operation of street lights, bus stops, public conveniences, public parks and gardens, burial ground and crematorium.
- 5) Renting of motor vehicles for carrying out functions listed at Sr. No. 1 to 4 above.
- 6) Supply of manpower services for carrying out functions listed at Sr. No 1 to 4 above.

II. Public authority may be defined as under:

“Public Authority” means an authority or a board or any other body established by the Government to carry out the functions listed in S. No. 1 to 4 of the entry.

e) Issues where no change has been proposed by the Fitment Committee in relation to services – Annexure-V

Annexure –V

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
1.	To extend the validity of GST exemption on transport of goods by air from India to Outside. This is currently valid till 30.9.2022.	In order to maintain competitiveness of Indian exporters vis-a vis their counterparts, exemption from GST for air freight exports may be extended beyond 30.09.2022	Transport of goods by vessel and air from a place in India to outside India, are presently exempt from GST [till 30.9.2022] vide entry No. 19A and 19B of Notification No. 12/2017. This exemption was given in September, 2017 because online refund mechanism for exporters had not fully stabilized at that time. The exemption was initially given for a period of one year up to 30.9.2018 and then extended every year. Last year, though, the online refund process had stabilized, exemption was given in view of COVID situation. Now, since the online refund process is fully functional and working smoothly, there is a case for withdrawing this exemption. GST paid on export freight will not be a cost for exporters as they will be entitled to take refund of ITC of the same. The withdrawal of exemption will also allow shipping lines to use their ITC. This will also benefit the airlines as they will not have to reverse ITC. The validity of GST exemption on transport of goods by vessel and air from a place in India to outside India may not be extended beyond 30.09.2022.
2.	a. Reduction in GST rate in respect of under construction commercial apartment from 18% with ITC to 7.5% (without ITC)	It has been submitted that due higher rate of GST on under construction commercial apartments, more and more buyers are preferring ready to use apartments, where occupancy certificate has been issued.	Lowering of GST rate on under construction commercial apartment will result in accumulation of ITC. Most of their inputs and input services attract GST @ 18% (steel, building blocks, cemented bricks, tar, bitumen, asphalt, tiles, paints, PVC pipes, manpower supply etc.) and 28% (cement). It will also act as a disincentive for procurement of tax paid input goods and services and result in revenue

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
			leakage and malpractices such as ITC diversion. May not be accepted.
	b. Options of rates i.e., 7.5% (without ITC) or 12% (with ITC) to given in respect of under construction residential apartment other than affordable residential apartment.	It has been submitted that in case of mixed project it become cumbersome for builders-promoters to utilize the ITC available to them.	It was a conscious decision of the GST Council after much deliberation to tax construction of other than affordable residential apartments by promoters at the effective rate of 5% without ITC. May not be accepted.
	c. Uniform rate of 12% for works contract supply provided by contractor in respect of residential apartments irrespective of it being affordable or otherwise.	It has been submitted that higher rate of GST on works contract supply has increased price of the residential apartments.	Lowering GST rate on works contract supply will result in accumulation of ITC. Most of their inputs and input services attract GST @ 18% (steel, building blocks, cemented bricks, tar, bitumen, asphalt, tiles, paints, PVC pipes, manpower supply etc.) and 28% (cement). It will also act as a disincentive for procurement of tax-paid input goods and services and result in revenue leakage and malpractices such as ITC diversion. May not be accepted.
	d. Computation of shortfall in receiving 80% of value of input/input services from registered supplier should be done project wise instead of year wise.	It has been submitted that due to this requirement of year wise computation of shortfall in receiving 80% of value of input/input services from registered supplier, in the last year(s) of the project, the builder receives the higher component of input and input services from unregistered supplier relatively and thereby he has to pay the RCM component on the same.	The provisions with regard to construction of residential apartments by the promoters were introduced after detailed deliberations by the Council. May not be accepted.
3.	Request of exemption to Assam Cancer Care Foundation (ACCF) from being subjected to the payment of GST applicable on works procured by ACCF for	Assam Cancer Care Foundation (ACCF) is a pioneer society, striving hard to facilitate cancer care in the state, under the patronage of Assam Government. And they procure a large number of equipment solely for the purpose of extending support to cancer patients, which are taxable	Health Care Services are already exempt. Request is for end use-based exemption on inputs and input services used for setting up of hospital. End use-based exemptions are difficult to

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	setting up the infrastructure and managing the operations in the State of Assam.	under GST.	monitor and prone to misuse. Further, request is for a new exemption. General policy of GST Council has been not to expand the existing list of exemptions. May not be accepted.
4.	To exempt GST on leasing/renting/transfer of right to use the Energy Storage Systems (ESS)	India has pledged to achieve 500GW of non-fossil fuel-based generation capacity by 2030 at the COP 26 Summit. Out of the 500GW of required capacity 450GW of capacity will come from renewable sources. Electricity from renewable sources is available only during certain times of the day, this impacts the reliability and grid stability. Energy Storage Systems (ESS) would overcome the challenges of grid integration and ensure availability of round the clock power from renewable energy sources. ESS connected to the grid has wide range of applications such as energy shifting, energy arbitrage, firming up of intermittent renewable energy power, ancillary services and storage of excess renewable energy generation. ESS can be established by a Generating Company or a transmission licensee or a distribution licensee or an ESS developer. The ESS may be established on a standalone basis or in conjunction with Generation, Transmission and	Ministry of Power has stated that there is no clarity regarding GST on leasing/renting of Energy Storage Systems (ESS). It may be conveyed to Ministry of Power that the Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 which prescribe the rates of GST on supply of services very clearly provides in Sl. No. 17, Item 7A that leasing or renting of goods attracts the same rate of tax as applicable on sale of like goods. Therefore, it is clear that leasing or renting of ESS will attract GST @ 18% which is the rate applicable on sale of ESS. Supply of electricity is presently exempt from GST. However, most of the goods and services used in generation of supply of electricity such as coal, capital goods, cable, works contract services, man power supply, instruments, cement, steel, switches and other apparatus all attract GST. Exempting any of the goods or services used in generation, transmission, distribution or supply of electricity will amount to zero rating/partial zero rating of supply of electricity. Zero rating is done only for exports and not for domestic use. There was no exemption on renting of ESS in Service Tax period also. The general view in GST Council has been that the existing list of exemptions should not be expanded. More importantly any exemption of leasing or renting of ESS will block ITC of the ESS

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
		Distribution Systems. The developer/owner of ESS may sell/lease/rent out the ESS to a company engaged in generation, transmission or distribution of electricity. In all cases the output is electricity which is exempt from GST. It is apprehended that applicability of GST on leasing/renting out of ESS would lead to increased cost of electricity for consumers.	developers. They will not be able to take ITC of capital goods, battery and other equipment required for setting up ESS facilities. Therefore, the exemption will increase the cost of ESS developers. It may also encourage them to procure input goods and services which have not suffered GST. This will result in revenue leakage. May not be accepted.
5.	Credit of GST paid on O&M services used for metro, monorail etc., may be allowed to be used against other taxable services offered by NCRTC and the remaining unutilized credit may be allowed to be refunded.	National Capital region Transport Corporation (NCRTC) plans to outsource Operation & Maintenance (O&M) services as per Metro Rail Policy, 2017. However, service of transport of passengers by metro, monorail or tramway is exempt under GST. This results in non-availability of ITC to NCRTC on O&M services procured by it. Therefore, credit of GST paid on O&M services used for metro, monorail etc., may be allowed to be used against other taxable services offered by NCRTC and the remaining unutilized credit may be allowed to be refunded.	ITC is allowed only in respect of goods and services used in making a taxable supply. NCRTC is not eligible for taking ITC of GST paid on any inputs or input services used for supplying exempt services. Therefore, question of allowing utilization of such ITC for payment of GST on other supplies or refund of unutilized ITC does not arise. May not be accepted.
6.	a. Removal of Proviso to S1. No. 66 of the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 and to consider reinstating the exemption similar to the Mega Exemption Notification No. 25/2012-Service Tax,	The first proviso to SI. No. 66 of the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 restricts the exemption to services provided to educational institutions only up to higher secondary school (or equivalent)' and is not applicable to higher educational institutions, it is requested that an exemption similar to the Mega Exemption Notification No. 25/2012-Service Tax, dated 20th	The request is for broadening of the existing exemption entry, which is not desirable in the wake of initiative taken by the GST Council in respect of rate rationalisation. Broadening of existing exemptions is against the objective of comprehensive taxation of supply of goods and services at reasonable rates of tax. May not be accepted.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	dated 20th June, 2012 as applicable till April 2017 b. Expansion of exemption to other ancillary services such as Renting of premises of educational institution, General Insurance Services, Legal Services, ICT Enablement Services, Curriculum Development Services, Student Exchange programme related services c. concession be provided for supply of all goods and services @ 5 to all educational institutions including schools, colleges and universities	June, 2012 as applicable till April 1, 2017, be reinstated. It has been submitted that the educational institutions need to incur expenses at a very high level on various ancillary services which are not a part of GST exemption Notification.	
7.	Aligning GST rate for construction of ARHCs (Affordable Rental Housing Complexes) with other PM AWAS Yojana schemes: Amendment in Notification No. 8/2017-ITR dated 28.06.2017 to include specific entry for works contract service at GST rate of 12% used for construction of ARHCs at par with other PMAY schemes Amendment under	The ARHC scheme intends on improving the living conditions of urban migrants and obviate them from staying in slums, informal settlements or peri-urban areas. The success of the scheme would depend on making the rental facility affordable for the beneficiary. Levy of 18% or 28% GST on pure labour contract or construction services or materials procured for construction would increase the overall cost of setting up the ARHCs which will translate to higher rental charges being collected from the beneficiaries. Specific GST exemptions or concessional rate	The request has lost its relevance in the wake of withdrawal of concessional rate of GST on works contract services with effect from 18.07.2022. May not be accepted.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	Heading 9954, Sl. No.11 in Notification No. 09/2017- ITR dated 28.06.2017 to include ARHCs as part of PMAY.	benefits would reduce the cost of the project and decrease the rental burden on the beneficiaries of the ARHCs. A number of existing affordable housing schemes under PMAY already draw the benefit of exemptions/ concessional rates of GST as mentioned above, as the objective is to provide affordable housing to the needful. Even though the intention of ARHC Scheme is the same - i.e., to provide affordable housing to the needful, ARHC Scheme currently doesn't have any exemption or concessional GST rates available to other PMA Y schemes. Exempting the construction cost of the ARHC from GST would greatly increase the success rate of the ARHC scheme and is likely to increase its popularity.	
8.	Request to bring parity in applicable GST rate between supply of goods and services being consumed in the entire value chain of Petroleum operations at the rate of 5%.	Notification No. 03/2017-IGST(R) dated 28.06.2017 provides for 5% GST on supply of specified goods required to be used in petroleum operations. Notification No. 11/2017-CT(R) dated 28.06.2017 provides for GST of 12% on other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both attract GST of 12%. Since the major part of capital expenditures in petroleum operations are in the form of services i.e drilling, fracturing, cementing, logging, perforation , workover operations, related manpower operations , professional/technical services etc,	This is a request for expansion/deepening of lower rate. May not be accepted.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
		the request is to bring parity in applicable GST rate between supply of goods and services being consumed in the entire value chain of Petroleum operations at the rate of 5%. This measure will motivate operators to enhance their capital expenditure which will help in boosting domestic production and thereby reduce imports.	
9.	To extend GST exemption to service provided by sub-contractor to main contractor providing services to run electrical vehicles (buses) for Local Authorities or State Transport Undertakings.	While the Ministry of Finance has exempted GST levy on service provided by main contractors providing services to run electrical vehicles (buses) to local authorities and State transport undertakings, the same is not being extended to services provided by sub-contractors (e.g., Operation, maintenance, drivers etc.) to the main contractor	This is a request for deepening of exemption. It will amount to zero rating which is done only for exports. May not be accepted.
10.	The tax regime applicable to the travel and tourism sector may be reviewed holistically.	1. The 313 th Report by the Rajya Sabha Secretariat Department-related Parliamentary Standing Committee on Transport, Tourism and Culture has observed that <i>one of the major reasons for India's Inbound Tourism remaining grossly under-utilized has been the high rates and multiplicity of taxes that deter Inbound Tourism and have led to tourist packages being outpriced vis-à-vis those in competing tourist destinations of other countries. The tax structure applicable to hotel accommodation, air travel, food and beverages consumption, etc., not only leads to tourist packages being overpriced but also obstructs seamless flow of tourists to our historical sites. The Committee notes that despite Inbound Tourism being a major foreign</i>	Issues relating to the tax regimes on travel and tourism sector were holistically reviewed by 47th GST Council in its meeting held on 28th-29th June, 2022. The 47th GST Council recommended that in case of tours conducted for foreign tourists partially in India and partially outside India, proportionate value of the foreign component of the tour may be excluded from the value for the purposes of payment of GST. This recommendation has been brought into effect w.e.f 18.07.2022 vide Notification No. 04/2022 -Central Tax (Rate) dated 13.07.2022. Further, the GST Council also recommended for issuing a clarification that exemption at Sr. No 17 (d) of Notification No. 12/2017-CTR dated 28.06.2017 [which exempts "transportation of passengers by public transport, other than predominantly for tourism purpose, <u>in a vessel</u> between places

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
		<i>exchange earner with foreign exchange earnings of Rs.2,11,661/- crore in 2019, the taxes levied on Inbound Tourism are among the highest in the country. The Committee, therefore, recommends that the tax regime applicable to the travel and tourism sector be reviewed holistically so that with suitable amendments India can convert its comparative natural and economic advantages into competitive advantages for the tourism sector. The Committee desires to be kept apprised of the steps taken and the result achieved in this regard.”</i> 2. The Committee has observed that the current rates are high and that there exists multiplicity of taxes in the travel and tourism sector, leading to tourist packages being overpriced and also outpriced vis-à-vis competing tourist destinations in other countries. Further, the Committee recommends for a holistic review of the tax regime applicable on the travel and tourism sector so that India can convert its comparative natural and economic advantages into competitive advantages for the tourism sector.	<i>located in India]</i> would apply on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government and the expression ‘public transport’ used in the exemption Notification only means that the transport should be open to public and can be privately or publicly owned. This recommendation has also been implemented vide Circular No. 177/09/2022-TRU dated 03.08.2022. Tour operator service attracts GST in the lowest slab of 5%. Restaurant and catering service also attracts GST @ 5%. Transportation by rail (AC), road, air (economy class) attracts GST @ 5%. Transportation by rail (other than AC), non-air-conditioned stage carriage/contract carriage are exempt from GST. Accommodation services attract GST @ 12% upto tariff of Rs7500/day and 18% on tariff above Rs7500/day. Therefore, the travel and tourism sector presently attracts GST in the lower rate slabs of nil/5%/12%. Moreover, with the implementation of GST, various indirect taxes such as VAT, entertainment tax, luxury tax etc, have been subsumed under GST. This has done away with not only multiplicity of indirect taxes but also the cascading of taxes which resulted in a much higher tax incidence in pre-GST tax regime. Therefore, the observation of the Committee that the current rates are high and that there exists multiplicity of taxes in the travel and tourism sector does not appear to be correct.
11.	Proposal for granting exemption to the services supplied by electricity transmission utilities by	It has been submitted that the principal activity of TRANSCO is transmission of electricity. Apart from this, it regularly engages in works involving construction, erection, modification,	The exemption has been sought by the transmission utility for construction of transmission lines upto the pump houses constructed under Lift irrigation Scheme on the ground that <i>services supplied by</i>

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	way of construction and erection of transmission assets for providing power supply to the pump houses which are constructed under a Lift Irrigation Scheme (LIS).	commissioning & installation of various transmission assets such as transmission towers, bays, lines, sub-stations which are used in the course of transmission of electricity. Unless the transmission utilities (TS TRANSCO) provide such services for transmission of electricity, the distribution utilities cannot provide the service of distribution of electricity. Transmission utilities are providing the exact same services as the distribution utilities for the agricultural activity of the farmers, Therefore, it should also be the beneficiary of GST exemption vide entry 10A of Notification No. 12/2017 dated 28.06.2017. This would rationalise all types of construction and commissioning projects for agricultural purposes undertaken by Transmission utilities as well as Distribution utilities. When a distribution utility provides services of construction, erection etc., for distribution of electricity to the farmers for agricultural purpose, such services are exempt from GST vide entry 10A of Notification No. 12/2017 dated 28.06.2017. Irrigation and Command Area Development Department of Government of Telangana (I&CAD) during the course of constructing new dams under Lift Irrigation Scheme constructs pump-houses through which the water in these dams is pumped to the farmers' fields. These pump-houses need power supply to undertake the said function. As TS TRANS CO is designated state transmission utility for the state of Telangana it is engaged by I&CAD to build new transmission assets in order to provide power supply to the said pump-houses. <u>It is for these services that TS TRANSCO seeks exemption from GST.</u> In view of the above, it has been	<i>electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use are exempt from GST (vide Entry 10A of the Notification No. 12/2017-CTR dated 28.06.2017).</i> There is no parallel between the two services. While electricity distribution utilities supply services to farmers, the electricity transmission utilities supply service to command area development authority or state governments and not to farmers directly. This is a request for new exemption. May not be accepted.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
		requested to make appropriate amendment in the entry 10A of Notification No. 12/2017 dated 28.06.2017 with retrospective effect to grant exemption to the services supplied by electricity transmission utilities by way of Construction and erection of transmission assets for providing power supply to the pump houses which are constructed under a Lift Irrigation Scheme (LIS).	
12.	Request to remove exemption limits of renting of premises as provided at Sl. no. 13 for entities registered under 12(AA) of the Income-tax Act, 1961, or a trust or an institution registered under sub-clause (v) of clause (23C) of Section 10 of the Income-tax Act. OR Request to exempt renting by one 12(AA) entity to another 12(AA) entity registered under the Income Tax Act, 1961, who are engaged in activities of relief to poor, education, healthcare, environment protection, spread of religion, spirituality, yoga related activities etc.	BAPS, a charitable trust provide following services: Renting of Immoveable Properties by individual trusts, whose focus is on social service, like education, health care, and publications related to religion and spirituality and herbal medicines etc. Certain other independent trusts carry out various social welfare activities from the premises leased / rented out by main trust; the BAPS charges rent from the service specific trust for the usage of property at reasonable rates. Till introduction of GST, renting of premises by a religious trust was exempt from Service Tax. But in GST, this exemption has been curtailed by prescribing limits on amount charged for these services.	The issue was discussed in the 47th GST Council meeting and was deferred. There is no merit in the request to reduce the existing limit of exemption towards renting of precincts of a religious place or completely exempt the renting activity. Internal transactions between individual 12AA entities are taxable if such transaction value exceeds the exemption limit provided under Sl. No. 13 of the Notification No. 12/2017-Central Tax (Rate). Exemption to such internal transactions may not be granted. Similar request from Auroville Foundation was not been accepted by GST Council in the 28th Meeting held on 21st July, 2018. May not be accepted.
13.	In principle approval of GST Council was obtained for formulating a Margin Scheme for		The agenda note where in-principle approval for a margin scheme for tour operators was sought from the GST Council in the 47 th meeting, is enclosed (Annexure I).

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	Tour Operators. The scheme shall be worked out by Fitment Committee after consultation with stakeholders.		<u>Inputs from States on Tour Operator Margin Scheme</u> 47th GST Council meeting held on 28th-29th June, 2022 had directed that the proposal regarding margin scheme for tour operator services may be reconsidered by the Fitment Committee taking into account inputs from all States which had voiced their concerns in the said council meeting. 2. Accordingly, the States of Himachal Pradesh, Kerala, Uttarakhand, Jammu & Kashmir, Delhi and Goa were invited to the Fitment Committee meeting held on 12.09.2022 to give their views on the said issue. The written inputs/ comments of these States are as under: <u>Himachal Pradesh:</u> Analysis shows that any reduction of GST on tour operator services will affect the income of the State adversely. The State is therefore in favour of continuing with the existing rate structure on tour operators. Comments of Himanchal Pradesh are annexed as Annexure A. <u>Kerala:</u> Kerala State is a popular destination for inbound domestic as well as foreign tourists and the tourism sector significantly contributes to the economy of the State. The existing provisions under GST with respect to place of supply are beneficial to all the States that are dependent on tourism. No changes which will adversely affect GST revenue of the State should be made to the place of supply provisions. Further, any change that is proposed to be made in this sector may be brought only after conducting a detailed study on the financial implications of the states where tourism is a predominant contributor to the economy. Comments of Kerala are

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
			annexed as Annexure B. <u>Uttarakhand:</u> Marginal scheme is against the concept of indirect tax which is a tax on transactions relating to manufacture, sales or supply of goods or services. During the period of more than 100 years of indirect tax history in India, a tax rate has not been fixed based on the profit margin in respect of any goods or service sector. Indirect tax has to be collected and paid and therefore cannot have any relevance to income or profit or margin of the assessee. Any conceptual change may result in opening of Pandora's box. If marginal scheme is allowed in tour operator services, it will further deteriorate revenues in the sector and will not be conducive to the finances of the State. The tax base will decrease compared to the current practice of levying 5% GST without ITC on the entire tour package cost. It is impractical to prescribe the same margin for all the tour operators as some would be operating at higher margin and others at lower margin. People with higher margin (say more than 10%) will benefit the most while those with the lower margin will be at a loss. Detailed comments of Uttarakhand are annexed as Annexure C. <u>Jammu & Kashmir:</u> As of now J&K is in favour of existing scheme of things dealing with the tour operators. However, if the margin scheme is to be considered, certain safeguards/ suggestions may be incorporated. Some of the important safeguards/suggestions made by J&K are as under: (i) Concept of Agent and Principal should be well defined in the scheme. (ii) Where normal commercial practice is to remit payments to

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
			suppliers, for example hotels, on a periodic basis, the concept of self-billing needs to be incorporated. (iii) If a holiday includes components that are provided from own resources, one must include in costs, the equivalent cost of that component if one had to buy it in. (iv) Where the components of a holiday are bought from suppliers which are not registered for GST, the components may be treated in the calculation according to whether the supply would bear GST if the suppliers were registered. Detailed comments of J&K are annexed as Annexure D. <u>Delhi:</u> Delhi is in favour of its implementation so as to maintain a fine balance between the tax collection from this sector without being prejudicial to interest of the tour operators. The comments of Delhi are annexed as Annexure E. <u>Goa:</u> Goa has identified a modus operandi among the industry players especially the tour operators / travel agents who are defeating the basic purpose of the said provision by using the IGST settlement mechanism to transfer ITC out of the state thereby depriving the state of legitimate revenue generating out of immovable properties, cruises etc. in the state. Further, it is incorrect to claim that the tour operators are not taking the ITC credit of the hotel accommodation services. A study of top 35 tour operators / travel agents suggested that 34 out of 35 dealers are taking ITC credit for the same by undertaking IGST billing.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
			Therefore, the State of Goa supports the formulation of the margin scheme for the tour operators without ITC. However, the scheme should cover the tour operators and travel agents both along with withdrawal of the option of paying taxation with ITC. The rates however may be decided in discussion with industry experts from the relevant ministry, inputs from the stakeholders or as deemed fit by the committee. Since the revenue of the state is primarily based on the tourism industry, if such leakages are not stopped through intervention from all levels, it will adversely affect the revenue collection of the state. In case required, the issue may be referred to the Law Committee as well and Goa be allowed to be a part of discussions for the same, as required. Detailed comments of Goa are annexed as Annexure F. 3. It was observed by the Fitment Committee that most of the concerns raised by Goa pertain to interpretation of law which Goa may take up with Law Committee. 4. Keeping in view the concerns of states that any change to the taxation dispensation for tour operators may have an adverse impact on revenue of the state and also that the proposed margin scheme for tour operators may invite similar requests from other sectors, it was decided that status quo may continue. The tour operators in any case are paying GST in the lowest slab of 5%.
14.	GST on economy class fare may be increased to 12% and on business class to 18% provided ATF is brought under ambit of GST.	Aviation turbine fuel may be included under GST subject to following conditions: For domestic travel: Output tax on economy class tickets may be fixed at 12% and on business class tickets at 18%;	At present there is no proposal to bring ATF under ambit of GST, therefore, status quo may be maintained. Having different GST rates on domestic and international air travel is not feasible. It will distort tax structure and make it more complex.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
		• GST on ATF may be fixed at no more than 18% (without application of any cess); • Full ITC may be provided on all goods and services to airlines For international travel • The current status quo may be maintained; • Output tax may be retained at 5% on economy class and 12% on business class; No taxes may be applied on ATF. Any increase in output tax on international travel will greatly disadvantage the Indian carriers that seek to compete with foreign carriers.	
15.	To bring parity between express and transport sector.	The express industry has been a major enabler for the growth of e-commerce industry in the economy. Express services are subject to GST @ 18%, whereas transportation services with credit are taxed @ 12%. The Place of Supply for transportation by air and ocean are different from the one applicable to express service. With respect to export shipments, ocean freight is zero-rated, while air freight is exempted. In case of import shipments, ocean freight is taxable whereas air freight is exempt. But express service for both imports and export shipments are subject to GST. This is contributing to increase in the overall logistics cost in India.	Postal and courier services attract GST at the rate of 18% and transport of goods by road/rail/vessel attract GST at the rate of 5% with either no ITC or restricted ITC of input services. The two are distinct services. In Service Tax period also Postal and Courier services attracted service tax at the standard rate of 15% and transport of goods by road/rail/vessel attract service tax at the rate of 4.5% with either no ITC or restricted ITC of input services. No merit in the request.
16.	To exempt GST on All India Permit fee paid for grant of authorization or	Ministry of Road Transport and Highways has notified All India Tourist Vehicles (Authorization or	The GST Council while recommending the exemption on National Permit Fee for goods carriages observed that National Permit Fee is

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	permit for plying Tourist Vehicles throughout India w.e.f 1.04.2021	Permit) Rules, 2021 effective from 1.04.2021. These rules provide for submission of application with prescribed for grant of authorization to enable the passenger vehicles operator/owner to ply passenger vehicles throughout the territory of India. The All India Tourist Vehicles (Authorization or Permit) Rules, 2021 are similar to the rules governing the issue of National Permit for goods carriages. In both cases, the fee paid is for issue of Authorization or permit for plying Goods Carriages and Passenger vehicles throughout India. Since National Permit Fee is exempt from GST, the authorization fee, air-conditioned permit fee and non air-conditioned permit fee paid for All India Tourist Permit may also be exempted from GST.	not a tax but a fee or consideration for a service supplied by the Government in the form of grant of national permits for plying of vehicles. Expanding the scope of the exemption to include other types of fees which are also in nature of consideration for services supplied by Government may not be accepted.

Agenda note on issues related to Tour and hospitality Sector

A Existing rate structure and place of supply provisions

(I) On tour operators

a. GST rate

5% without ITC (but ITC of input services in the same line of business is allowed) subject to the **condition** that the amount charged for the tour operator services must include charges for accommodation and transportation both.

Or

18% with ITC

[Refer S. No. 23 of Notification No. 11/2017-CT(R)]

b. Place of supply of service of tour operator:

For domestic supplies: Location of recipient [default rule]-Section 12 of the IGST Act, 2017.

For international supplies:

(i) The location where services are actually performed (location of physical presence)-Section 13(3)(b) of the IGST Act, 2017.

(ii) If service is provided both in taxable and non-taxable territory (say a composite tour of India and Nepal) the place of supply of service is India for whole service by virtue of Section 13(6) of the IGST Act, 2017.

(II) Hotel accommodation services:

a. GST rate:

Nil upto a rent of Rs 1000 per day

12% (Rent> Rs 1000 , <=7500)

18% (Rent> Rs 7500)

[Refer S. No. 7 of Notification No. 11/2017-CT(R), and S. No. 14 of Notification No.12/2017- CT(R))

b. Place of Supply of service: Location of hotel [in all scenarios - domestic as well as international supplies- (Section 12(3) and 13(4) of the IGST Act, 2017 refers)

(III) Restaurant services:

a. GST rate:

5% without ITC in all cases except restaurants within hotels where room tariff is higher than Rs 7500.

18% - specified premises (restaurants within hotels where room tariff is higher than Rs 7500)

[Refer S. No. 7 of Notification No. 11/2017-CT(R)]

b. Place of Supply of service: Location where services are actually performed, i.e. location of the restaurants [Section 12(4) and 13(3)(b) of the IGST Act, 2017 refers]

(IV) Passenger Transport services:

a. GST rate:

By road	5% without ITC (except ITC of input service in the same line of business); 12% (with ITC)
By rail (AC or First Class)	5% (with ITC of input services) <u>Exempt</u> other than AC or first class
By Air	Economy 5% (with ITC of input services) Business 12% (with ITC) <u>Exempt</u> To or from NE States and RCS airports
By inland waterways	Exempt
By sea including cruise ships	18%

[Refer S. No. 8 of Notification No. 11/2017-CT(R), and S. No. 15, 16 and 17 of Notification No.12/2017- CT(R)]

b. Place of Supply of service:

For domestic supplies:

- (i) Supply to registered person – location of such person
- (ii) For unregistered person – place where the passenger embarks on the conveyance for a continuous journey.
(Section 12(9) of the IGST Act, 2017 refers)

For international supplies:

Place where the passenger embarks on the conveyance for a continuous journey.
(Section 13(10) of the IGST Act, 2017 refers)

B. Issues and request by tour operators

The rate structure and place of supply as above leads to a situation that 18% with ITC is not a viable option and hence most tour operators pay GST at the rate of 5% without ITC. The tour operators have been arguing that effective GST tax rate on tour operators is very high. The issues raised are discussed below.

(a) Issue

PoS of hotel accommodation is the location of the hotel. As a result, tour operators are not able to take ITC of GST paid on hotel accommodation in the outside their States. Similarly they may not be able to take ITC of transport services and restaurant services in many instances in view of place of supply thereof. The tour operators have requested that they should be facilitated ITC of all goods and input services including the hotel accommodation service if standard rate is to apply.

Request

For this purpose, PoS of hotel accommodation service may be suitably changed.

Alternatively,

They may be charged GST @ 1.8% without ITC on the gross value charged by them. Tour operators have stated that they work on a margin of 10%. Hence GST @18% on 10%.

(b) Issue:

Services supplied by tour operators to foreign tourists in India against payment in foreign exchange do not qualify as exports and attract GST. This is because PoS of tour operator service is the place where the service is performed.

The 288th Report of the Department Related Parliament Standing Committee on Transport, Tourism and Culture on demands for grants (2021-22) has recommended that *“in order to enhance export competitiveness of Indian tourism as also to provide relief to the tourism and hospitality sector, the payments received by all the tourism and hospitality entities in convertible foreign exchange be considered as deemed export and be exempted from GST and the concept of zero-rating also be applied to tourism foreign exchange earnings”*.

The tax charged on tour operator services by competing countries like Thailand, Singapore, Maldives and other South East Asian countries is much lower as compared to India. This makes the Indian tour packages less competitive as compared to tour packages in countries like Thailand and Singapore where the GST rates are lower at 7%. Industry has requested that the tour operator services supplied to the foreign tourists in India may be treated as exports/deemed exports.

Request:

Service provided to a foreign tourist be treated as exports [at least where it is against foreign exchange receipt]

(c) Issue:

Tours having a foreign component and an Indian component are taxed as if the entire tour happened in India in view of the PoS provisions.

Request:

Foreign component may be exempted.

(d) Issue

Reduce GST on private ferry tickets at Andamans:

The industry has represented that presently GST @ 18% is applicable on private ferry tickets in Andamans as per cruise GST rate. The ferry is not luxury ferry or cruise but it is a means of transport. These are normal AC transport ferries. There is no other way of transportation to reach from one island to another island and is the only source of connectivity between small islands and Port Blair.

C Facts and Analysis

- The PoS of hotel accommodation service is the State where the hotel is located. As a result, a tour operator, say registered in Delhi is not able to take ITC of Maharashtra State GST paid on hotel accommodation in Maharashtra. This PoS provision in the Indian GST law is not in harmony with the international practice. As per International VAT/GST guidelines, 2015 brought out by OECD in the context of cross-border trade, place of B2B supply of hotel accommodation service is the location of the recipient.
- The PoS of tour operator service is the place where the tour is performed (Section 13 (3) of IGST Act, 2017 refers). This PoS provision is in harmony with the international practice. In Singapore, Australia, EU etc the PoS of B2C supply of tour operator service is the place where the tour is conducted. Accordingly, these countries do not treat tour operator services supplied to a foreign tourist as zero rated.
- GST charged on tour operator services by Thailand and Singapore is 7%. They are major competitors of India in tourism sector.
- The Travel and Tourism Competitive Index, 2019 places India at an overall rank of 34 but at a much lower rank of 118 when evaluated on the basis of total taxes paid by this sector [Travel and Tourism Competitive Index, 2019 published by World Economic Forum, <https://reports.weforum.org/travel-and-tourism-competitiveness-report-2019/rankings>]
- The proposal to change PoS of B2B supply of hotel accommodation service was taken to the GST Council. However, the same was not agreed to in view of competing arguments of revenue to states where services are performed.

D Options available for resolving the above issues

1. PoS of hotel accommodation service

- Change PoS of B2B supply of hotel accommodation service, transport services and restaurant services from the exiting rule to the default rule (location of recipient). This would require change in law and hence a long process.

Alternatively,

- **Allow tour operators a margin scheme, as an alternative option**, under which they may pay GST on value arrived at on deemed basis [certain % of gross tour cost] that represent their fair competitive margin no ITC is availed on any input and input services. Margin scheme would be allowed where tour is all inclusive or includes either the hotel accommodation or transport. This will make the tax incidence on tour operator competitive.

2. Tours conducted partially in India and partially outside India

- The POS provision in Section 13(6) of IGST Act, 2017, as far as tour operator service is concerned, maybe aligned with Explanation to Section 12(7) of IGST Act, 2017. Or
- Considering the genuineness of the issue, and also taking into account that foreign component is actually performed outside India, for excluding the proportionate value of the foreign component of the tour.
- To avoid disputes/ misuse, we may prescribe valuation of the foreign and domestic components of such composite tours based on the proportion of the number of nights for which tour was conducted outside and within India. To ensure that balance remains in favour of domestic tourism in such composite tours, we may prescribe that this concession shall be provided for say maximum of half of the duration of the tour or actual period whichever is less.

3. GST on private ferry tickets at Andamans:

Sr. No 17 (d) of said Notification No. 12/2017-CTR dated 28.06.2017 exempts “transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India”.

We may clarify that this exemption would apply on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government. The expression ‘public transport’ used in the exemption Notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

4. **Export status to tour operator service supplied to foreign tourists against foreign exchange by way of tours conducted in India.**

Such services are not treated as exports internationally. Margin scheme would address the concern of tour operators. A reasonable margin scheme will reduce the burden of tour operators.

Recommendation of Fitment Committee:

1. **In principle approval of GST Council may be obtained for formulating a Margin Scheme for Tour Operators. Once approval is given by the Council, the scheme shall be worked out by Fitment Committee after consultation with stakeholders.**
2. **In principle the Council may approve that in case of tours conducted for foreign tourists partially in India and partially outside India, proportionate value of the foreign component of the tour may be excluded from the value for the purposes of payment of GST. To ensure that balance remains in favour of domestic tourism in such composite tours, we may prescribe that this concession shall be provided for say maximum of half of the duration of the tour or actual whichever is less. Once in principle approval is given, the exact methodology would be worked out by Fitment Committee after consultation with tour operators.**
3. **It may be clarified by way of Circular that exemption at Sr. No 17 (d) of Notification No. 12/2017-CTR dated 28.06.2017 [which exempts *“transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India*] would apply on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/Government. The expression ‘public transport’ used in the exemption Notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.**

Detailed Comments of Himachal Pradesh:

Any reduction of GST on tour operator services will affect the income of the State adversely. The State is therefore in favour of continuing with the existing rate structure on tour operators.

Detailed Comments of Kerala:

Kerala is a popular destination for inbound domestic as well as foreign tourists and the tourism sector significantly contributes to the State's economy. The existing provisions under the GST with respect to the place of supply are beneficial to all the States that are dependent on tourism. No changes which will adversely affect the GST revenue of the State should be made to the place of supply provisions. Further, any changes that is proposed to be made in this sector shall be brought only after conducting a detailed study on the financial implications of the states where tourism is a predominant contributor to the economy.

Detailed Comments of Uttarakhand:

1. Marginal scheme is against the concept of indirect tax which is a tax on transactions relating to manufacture, sales or supply of goods or services. During the period of more than 100 years of indirect tax history in India, such a tax rate has not been fixed based on the profit margin in respect of any goods or service sector. Indirect tax has to be collected and paid and therefore cannot have any relevance to income or profit or margin of the assessee. Any conceptual change may result in a situation like the opening of Pandora's Box.
2. It may be noted that there was an abatement scheme in Central Excise and Service Tax. However, in Central Excise it was introduced to simplify valuation process and avoid litigation in the case of goods which are required to have MRP predetermined and in Service Tax, to ensure that the service tax is levied only on the Service portion and not on the Goods part. It did not have any relation with margins.
3. If the marginal scheme is allowed in tour operator services, it will further deteriorate the revenues in the sector and will not be conducive to the finances of the State. The tax base will decrease compared to the current practice of levying 5% GST without ITC on the entire tour package cost.
4. The place of supply being the location of recipients for domestic supplies in the tour operator sector has already adversely affected the revenue of the State which is almost to the tune of Rs.196 crore for the year 2021-22.
5. It is impractical to determine the same margin for all the tour operators as some would be operating at higher margin and others at lower margin. The people with higher margin (say more than 10%) will benefit the most while one with the lower margin will be at loss.
6. Margins are usual and common across all the businesses, so the deviation from the fundamental tenets of GST may connive others also to put forward the demand to be taxed marginally.

Detailed Comments of Jammu & Kashmir:**1. Concept of Agent and Principal should be well defined in the scheme.**

The treatments for GST vary depending on whether one is acting as an agent or principal. A business may be an agent for some of the sales it makes, and a principal for others. One is acting as a principal if one buys in components of a holiday, such as accommodation, travel, tours and car hire, or provide these from the resources of own business, and sell the components in his own name, either individually or as a package. One is acting as an agent if one do not buy in the components of a holiday but sell them, or the package, on behalf of another business.

Normally this is in return for a commission, although one is acting as an agent even if one do not take a commission. For example, one may include a component supplied by someone else in a package you put together, without taking a commission, because it makes the overall package more attractive to potential customers.

There is also a concept of an '**undisclosed agent**' behaving as if they are principal. One is acting as an undisclosed agent when the customer is not aware that someone else, and not you, is making the supply. So, while formulating a scheme these aspects need to be considered.

2. The scheme should clearly define Supplies as a principal

Where someone is acting as principal, GST may be calculated on holiday packages that one sell as a principal in one of two ways:

- the package basis, or
- the components basis

The package basis: When a package that includes both standard and zero-rated components, the proportion of the value of supply that is taxable at GST standard rate is equal to the proportion of the costs of the components of the holiday that are standard-rated.

Buying in components of a holiday: Where package is purchased on component basis GST shall be charged on the component supplied by a supplier and it is a standard-rated supply.

3. Self -billing

Where normal commercial practice is to remit payments to suppliers, for example hotels, on a periodic basis, the concept of self-billing needs to be incorporated. This enables the customer to create the supplier's sales invoice, sending a copy to them.

4. Components of a holiday provided from own resources

If a holiday includes components that are provided from own resources, one must include in costs, the equivalent cost of that component if one had to buy it in. For example, if accommodation is provided in a hotel that is part of GST registration, the cost of that component to be included in the calculation is the rate for the room(s) if not sold as part of a holiday package.

5. Components of a holiday provided by suppliers not registered for GST

Where the components of a holiday are bought from suppliers that are not registered for GST, the components are treated in the calculation according to whether the supply would bear GST if the supplier were registered. For example, a taxi service may not be provided by a GSTregistered business, but if it is used that taxi service for airport transfers as part of the holiday package, the cost should be included in the standard-rated costs. Examples of other such components may include: pony trekking, bike or car hire, guided walks and meals.

Further, Vaishno Devi and Amarnath Tour Packages are Managed both by the private tour operators as well as by Government and Includes Darshan, pony rides as well as helicopter rides as such needs to be considered in this context. Similarly, Amaranth Yatra is managed through Government by registration and issuance of Yatra Permit (YP).

6. Supplies as an agent

Where the supplies of a holiday are made as an agent for a commission, the liability of supply follows that of the main supply of the holiday. If one acts as an agent for no commission, one is not making a supply for GST. Therefore, the concept of agent should be clear with the ones working as commission agents.

As of now J&K is in favour of existing scheme of things dealing with the tour operators however if the margin scheme is considered the above observations made may kindly be considered.

Detailed Comments of Delhi:

Delhi is in favour of its implementation so as to maintain a fine balance between the tax collections from this sector without being prejudicial to interest of the tour operators.

Detailed Comments of Goa:**1. Issue and request by Tour Operators as mentioned in the agenda**

Following is the excerpt of the issue raised by tour operators from the agenda as placed in the 47th GST Council meeting:

The rate structure and place of supply leads to a situation that 18% with ITC is not a viable option and most tour operators pay GST @ 5% without ITC. The tour operators have been arguing that the effective GST tax rate on tour operators is very high i.e. 5 % without ITC. It has been stated by the tour operators that the PoS of hotel accommodation is location of hotel and therefore they are not able to take ITC of GST paid on hotel accommodation in the outside their states and therefore they are seeking the formulation of margin scheme at a lesser rate than 5 % which is the rate as prescribed for taxation without ITC.

2. Issue in brief for the state of Goa

Section 12 of the IGST Act provides for “Place of supply of services where location of supplier and recipient is in India” and sub-section (3) of the said section provides for Place of Supply (PoS) in case of immovable property or boat or vessel.

It is known that the primary intent of said provision is that the tax revenue generated from an immovable property in any state is retained in that state by mandating the taxpayer to charge local tax i.e SGST and CGST.

However, this office has identified a modus operandi among the industry players especially the tour operators/travel agents who are defeating the basic purpose of the said provision by using the IGST settlement mechanism to transfer ITC out of the state thereby depriving the state of legitimate revenue generating out of immovable properties, cruises etc. in the state. The Modus Operandi is explained below with an example:

Example: Tour Operator ‘A’ in ‘XYZ’ state books hotel accommodation for its customer residents of ‘XYZ’ state through a tour operator ‘B’ in the state ‘ABC’, who in turn books the hotel accommodation with a hotel ‘C’ located in the state ‘ABC’. Thus, the taxpayer ‘C’ (Hotelier) bills ‘B’ as intra-state supply as per the provisions of section 12(3) of IGST Act and charges CGST and SGST. However, tour operator ‘B’ bills taxpayer ‘A’ as inter-state supply and charges IGST for having provided the support services and not a supply covered by section 12(3) of IGST Act.

Thus, the actual tax intended to be retained in the state where the immovable property is situated is transferred out of the state using IGST settlement mechanism.

Further, there remains ambiguity with regards to Section 12(3)(d), which provides that “*Any services ancillary to the services referred to in clause (a), (b) and (c)*”. For hotel accommodation services, the tour operators / travel agents claim that they do not fall within the purview of Section 12(3)(d) since the principal supplier of hotel accommodation services is the hotel and not the travel agent / tour operator.

Thus, in a nutshell the following submissions, being connected to the issue at hand with the fitment committee, be taken into account for resolution.

- (i) It is incorrect to claim that the tour operators are not taking the ITC credit of the hotel accommodation services. A study of top 35 tour operators / travel agents suggested that 34 out of 35 dealers are taking ITC credit for the same by undertaking IGST billing.
- (ii) The dealers providing the room accommodation services by sourcing them from hotels claim that they are out of the definition of tour operators since tour operators as per definition provided should be supplying both accommodation and transport services.
- (iii) It is stated that the billing of IGST is being done amongst travel agents / tour operators as mentioned above and therefore the claim that they are not taking ITC is incorrect.
- (iv) It is, however, stated that in this entire process the provisions relating to Place of supply are being defied.

3. Proposed resolution of the issue

a. The state of Goa supports the formulation of the margin scheme for the tour operators without ITC. However, the scheme should cover the tour operators and travel agents both along with withdrawal of the option of paying taxation with ITC. The rates however may be decided in discussion with industry experts from the relevant ministry, inputs from the stakeholders or as deemed fit by the committee.

b. Another course of action would be the suggestion that the billing by such tour operators / travel agents be allowed on a commission basis chargeable at the rate of 18% on the commission amount only.

c. Further, it is proposed that any support services provided by the facilitator, where the primary services are in relation to immovable property and having place of supply as provided in section 12(3) of IGST Act, should be treated as services provided at the location of the immovable property or boat or vessel. It is proposed that a clarification may be issued, to specify that any services whether ancillary or support service when supplied in relation to the principal supply or supply which are actually performed at the location of immovable property, boat or vessel shall be treated as supply in relation to immovable property and the place of supply in such cases shall be the location of the immovable property or boat or vessel. Therefore, while billing such services either by principal supplier to customer or tour operator or travel agent or any other facilitator or by one facilitator to another, either for intrastate or interstate transactions, the place of supply of such services should be the location of immovable property (i.e., place where the primary service is performed).

The above course of action shall resolve the issue being faced by tour operators as well as the tourism centric states.

4. Request to list the issue in next meeting

Since the revenue of the state is primarily based on the tourism industry, if such leakages are not stopped through intervention from all levels, it will adversely affect the revenue collection of the state. In case required, the issue may be referred to the Law Committee as well and Goa be allowed to be a part of discussions for the same, as required. Therefore, it is humbly requested that the issue be placed before the fitment committee for appropriate recommendation on the issue to be placed before the GST Council for consideration.

**f) Issues deferred by the Fitment Committee for further examination in relation to services
– Annexure-VI**

Annexure – VI

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendations
1.	a. To notify a mechanism for availment 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 the registered bus operators providing passenger transportation service through ECOs	The applicant hires AC buses from bus owners. The bus owners charge GST from the applicant. Thereafter, the applicant provides passenger transport services wherein the ticket price charged from customers includes the cost of fuel. Passenger transport services attract GST @ 5% with ITC of services in same line of business. Earlier, the applicant was discharging GST on outward supply of passenger transport services by utilizing ITC of input service that is, leasing/renting of buses. However, w.e.f 1.1.2022, ECOs were made liable to pay tax under Section 9(5) of CGST Act, 2017 in respect of services by way of transportation of passengers by any motor vehicle. Therefore, the liability to pay tax in respect of passenger transportation services provided by AC buses shifted from applicant to ECO. The issue which has arisen due to the aforesaid change is that ITC of input services is getting accumulated with the applicant as there is no mechanism on GST portal to transfer ITC to ECO for payment of tax. The ECO, thus has to discharge the entire GST liability in cash despite significant ITC accumulation with	The issue was discussed in the 47th GST Council Meeting and was deferred for gathering more data to understand ramifications of the issue. So far request to allow registered bus operators to discharge GST instead of ECOs has been received only from two entities. One of them has filed a writ petition in the Hon'ble Delhi High Court. As regards pricing of tickets pre and post shifting of liability to pay GST on ECOs, it has been informed that there is no change in the price of tickets sold before 1.1.2022 and tickets sold after 1.1.2022 as dynamic pricing system is followed for fixing the price of tickets. With regard to details of other bus operators facing issue of credit accumulation and industry data about number of bus operators paying GST @ 5% and 12%, no information has been received. The matter may be deferred.

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendations
		the service provider. The applicant has requested that (a) the GST portal be suitably amended so that the ITC available to actual service provider is reflected in electronic credit ledger of ECO or (b) a facility should be made available to actual service provider so that he may transfer the ITC available in his electronic credit ledger to the ECO. Alternatively, the onus to discharge GST on sale of tickets for passenger transport service through ECO may be shifted to the registered bus operators.	
2.	To clarify the nature and taxability of various supplies in relation to crypto eco-system.	Crypto industry in India has been facing various challenges, concerns and skepticism like any new industry. The Virtual Digital Assets (VDA) industry has seen astronomical growth despite ambiguities around regulations. Two unicorns have come into existence. Finance Bill provision of 1% TDS (Direct Tax) on all VDA transactions and disallowing set off is expected to adversely affect the sector. Any additional tax, such as GST will further pose a challenge to this industry.	The issue was discussed in the 47th GST Council Meeting and was deferred because it was felt that issues involved in crypto ecosystem need deeper study. Crypto assets refer to algorithm based decentralized convertible virtual asset protected by crypto-graphy. Crypto ecosystem involves various activities including mining, exchange services, wallet services, payment processing, barter system, and other different transactions etc. Officers from Haryana and Karnataka were requested by the Fitment Committee to identify all relevant issues in GST associated with crypto-ecosystem and possible solutions for the same. The report is awaited.
3.	To clarify that GST is not applicable on flying training courses by the flying training institutes.	It has been submitted by National Flying Training Institute Private Limited that it is approved by DGCA to conduct flying training to pilots. DGCA fully controls such training	Services supplied by educational institutions to students are exempt from GST vide entry 66 of the Notification No. 12/2017-CT(Rate), dated 28 th June, 2017. "Educational Institution" means an

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendations
		institutes by prescribing syllabus, number of seats per session, conduct of examination. It issues a Course completion certificate and on job training certificate to candidate. Course completion certificate is approved by DGCA. 2. Thus, it should be considered as educational institution and the educational courses and certificates issued by it for obtaining commercial pilot license can be considered as education recognized under law. Further, Circular No. 117/36/2019-GST dated 11.10.2019 has been referred wherein it has been clarified that Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.	institution providing services by way of: i. Pre-school education and education up to higher secondary school or equivalent, ii. Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force, iii. Education as a part of an approved vocational education course. 2. Based on the recommendation of GST Council in its 37th Meeting held on 20th September, 2019, it has been clarified vide Circular No. 117/36/2019-GST dated 11.10.2019 that the maritime training institutes are educational institutions and the courses conducted by them are exempt from levy of GST. 3. Flying training institutes have also requested for a similar clarification in respect of flying training imparted by them. 4. However, it was observed that the education imparted by maritime training institutes and flying training institutes is vocational in nature. The vocational education should therefore, meet the criteria of '<i>approved vocational course</i>' prescribed in sub-para (iii) of the definition of 'Educational Institution' mentioned above to be eligible for exemption under Sl. No 66 of the Notification No. 12/2017-CT(Rate), dated 28th June, 2017 and not clause (ii) of the said definition which covers "<i>Education as a part of a curriculum for obtaining a qualification recognized by law</i>". 5. In view of the above, question arose whether maritime training institutes and flying training institutes should meet the criteria of '<i>approved vocational education</i>'

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendations
			<i>course</i>’ prescribed in sub-para(iii) of the definition of ‘<i>educational institution</i>’ to be eligible for exemption under Sl. No 66 of the Notification No. 12/2017-CT(Rate), dated 28th June, 2017 and whether Circular No. 117/36/2019-GST dated 11. 10.2019 needs to be revisited. 6. It was decided that the issue may be referred to GoM on rate rationalisation for taking a comprehensive view on definition of educational institutions.
4.	Request for bringing renting of residential dwellings transactions by registered persons to registered persons under forward charge mechanism.	It has been submitted that there are various registered persons like body corporates who are engaged in the business of renting of residential dwellings to other registered persons like body corporates who further give these dwellings on rent to their employees for residence. Taxing such supplies under RCM would adversely affect such registered persons since the ITC on the input services would not be available to them. This would not only affect the business of such registered persons but will also increase the cost of rent in the hands of the employee to whom this residential dwelling is ultimately rented if the rent is recovered from the employee.	It was felt that the change has been made very recently. It may need detailed examination before any change is made. May be deferred.

5. The proposals, as contained in para 4 above are placed before the GST Council for consideration.

Agenda Item 04: Report of the Committee on Levy of penal interest on delayed remittances of GST by the banks to the Government Accounts in RBI during the initial period of GST implementation.

1.1 Principal Chief Controller of Accounts, CBIC designated as Chief Accounting Authority (CAA) for the purpose of accounting & reporting of Goods & Services Tax (GST) has formulated a SOP (Standard Operating Procedure) to monitor the delays in remittances by the agency Banks to the Government Account with RBI and levy the penal interest on Agency Banks. The same SoP was made applicable post implementation of GST and was duly documented in the form of BARM (Banking Authorization Reference Model) which served as a benchmark for authorization of Agency Banks in the GST regime.

1.2 As part of the regular exercise, the Pr. CCA, CBIC issued demand letters for penal interest on delayed remittances of GST collection against 23 banks for the period from 1st July, 2017 to 31st December, 2017. In response to the demand letter, most of the banks requested for waiver of penal interest on account of technical glitches, validation failure at RBI, CBS problem, etc. faced by the banks during the initial period of GST implementation. To examine the requests of the Banks regarding levy of penal interest during the initial period of GST on merit, a Committee was constituted vide O.M dated 08.02.2019 (copy enclosed as **Annexure 'A'**) under the chairmanship of Pr. CCA, CBIC.

1.3 The committee submitted its report on 21.08.2020 (copy enclosed as **Annexure 'B'**) and recommended the following points: -

1.3.1 Various banks had given reasons and justifications for the delay in remittance of GST collections to the Central/State Government Accounts in RBI. Members of the committee representing SBI, Bank of Baroda and PNB had cited the changes made in the integration and file exchange processes in the initial six months of GST implementation, because of which Banks could not remit the Govt. funds timely. Other Banks in their representations had also cited that it took time for understanding and implementing the changes/modifications in the IT processes to meet out the requirements of GST portal, as the reasons for not making timely remittance of funds.

1.3.2. In the first few months of the introduction of GST, the IT Systems and Applications could not be properly tested before GST implementation because of the time constraint and non-availability of actual data. Those IT applications and integration processes were only tested on the basis of some expected and anticipated test cases and scenarios. But there were many scenarios that were unexpected and were encountered only after the actual roll out of the system from July 1st, 2017.

1.3.3. Failure of many receipt transactions from Banks at GSTN portal resulted into various course corrections on the basis of analysis of errors. Those course corrections were necessitated in the interest of the tax payers to credit their electronic cash ledgers on GST portal, enabling them to discharge their tax liability without difficulty. Those cases were discussed with banks in multiple meetings organized periodically by GSTN in its premises and also through video/call conferences. There were other channels like email and Google groups, through which GSTN officials were communicating with authorized banks to resolve the issue of failed transactions. In one of such email, GSTN directed all authorized banks to complete the reconciliation process on daily basis at the end of day, before remitting the funds to RBI. This direction was contrary to the prescribed guidelines of T + 1 day for settlement of receipts transactions. The impression taken by the banks to handle failure cases and fully reconcile the transactions with GSTN before remitting the funds to RBI, remained for some time

resulting into change of priority. The confusion among the banks in that regard contributed to irregular compliance of the prescribed guidelines for settlement of receipt transactions on T + 1 basis.

1.3.4 RBI on its part clarified that it had never given any permission to any agency bank to upload luggage file for settlement of receipt transactions after T + 1 day. It was also clarified that there was no case on record where agency bank had approached RBI for exemption from being penalized for delayed uploading of luggage file on a particular day. Therefore, it was concluded from those facts that the agency banks, whenever not remitting the funds on T + 1 day to RBI during the initial period of GST implementation was not because of any rejections by RBI system but because of issues in the reconciliation between banks and GST portal of GSTN and also due to IT issues like up-gradation of banking software, and technical glitches.

1.3.5. The data for the said period (July-December 2017) was analysed and it showed that about 80% of the total delayed transactions were having one to three days of delay. This pattern was being seen in all the six months of transaction, across all 25 banks. There were, however, many transactions which were delayed beyond 3 days, but those were pertaining to few banks only and did not form any pattern as well. Therefore, the committee was of the view that during initial months of GST implementation, there were many transaction failures while being transmitted by banks to GSTN, because of unforeseen errors and IT glitches. While those transactions were successful at the bank's end after debiting the taxpayer's account, however, they were not reported on real time to GSTN to credit the tax payer's electronic cash ledger. The thrust, therefore, during those months was on the reconciliation of such transactions between GSTN and Banks.

1.3.6. On the basis of analysis of data for the said period for all banks, the committee, therefore recommended a relaxation of 3 days for remittance of GST receipt by agency banks to Govt. account in RBI beyond T+1 for the CINs generated from 1st July to 31st October, 2017 and a relaxation of 1 day for the CIN s generated from 1st November to 31st December, 2017. The actual delay beyond T+1 day might be adjusted by the recommended period of 3 days or 1 day. If a transaction was delayed for more than 3 days/1 day, (as the case may be), then the interest on delayed remittance might be charged after adjustment of recommended days.

1.4 Controller General of Accounts forwarded the report to the GST Council Secretariat to seek the views of the States/UTs on the recommendation of the committee. The report was circulated among all the states vide this office letter dated 09.03.2021 for their comments. Only fourteen states gave their comments of which ten states agreed with the recommendations of the committee. The comments of the states are annexed as **Annexure 'C'**.

1.5 Under GST regime, CIN (digitally signed Challan from banks) was a composite challan containing Central & State Taxes and in order to have uniform process in Central and States/UTs, applicability of the recommendations of the Committee might also be considered for SGST component of GST. Hence, the report of the committee is placed before the GST Council for decision.

Annexure 'A'

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Controller General of Accounts
Ministry of Finance
Department of Expenditure
Mahalekha Niyantarak Bhawan
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No. S-11012/3/PI/CBIC/GBA/194-200

8th February 2019

Office Memorandum

Sub:- Constitute of the Committee for examining the matter of levy of penal interest during the initial period of GST Collections

As decided in the 19th Meeting of the Core Group of Standing Committee held on 2nd November 2018 at Bhubaneswar, it has been decided to constitute a Committee comprising of the following members to examine the requests of the banks and to decide on the issue of waiver of penal interest, levied by O/o the Pr.CCA, CBIC, on the grounds of technical problems faced by the banks during the initial period of GST collection i.e. from 1st July 2017 to 31st December 2017.

1.	Principal Chief Controller of Accounts, Central Board of Indirect Taxes and Customs	Chairman
2.	Joint Controller General of Accounts (GBA), O/o the CGA, New Delhi	Member
3.	Commissioner, Policy Wing, CBIC, Department of Revenue	Member
4.	General Manager, Department of Government and Bank Accounts, Reserve Bank of India, Mumbai	Member
5.	Chief General Manager (Government Business), State Bank of India	Member
6.	General Manager (Government Business), Punjab National Bank	Member
7.	General Manager (Government Business), Bank of Baroda	Member

2. The Committee will submit its report to the CGA within three months from the date of issue of this order.

3. This issues with the approval of Competent Authority.


(Anupam Raj)

Asstt. Controller General of Accounts (GBA)

Annexure 'B'

REPORT



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**Report of the committee constituted by Controller General of
Accounts, for examining the matter of levy of penal interest on
Banks during the initial period of GST collection**

PART: 1

BACKGROUND

- 1.1 The Government of India implemented Goods & Services Tax (GST) with effect from 1st July, 2017. Total 25 banks (21 Public Sector Banks and 04 Private Sector Banks) were authorized to collect GST on behalf of Government of India. Principal Chief Controller of Accounts, Central Board of Indirect Taxes and Customs (the then Central Board of Excise and Customs), New Delhi was designated as Central Accounting authority for the accounting of CGST. The complexities involved in the business process having multiple stakeholder's systems, could only be overcome through IT solutions alone so that the system can work in an automated environment. The Joint Committee of the empowered group of the State Finance Ministers, recommended in its Report of Payment process that a dedicated IT application should be developed by authorized banks to get integrated with GSTN portal on one hand and Reserve Bank of India on the other hand.
- 1.2 Keeping in view the responsibility of the Central Accounting authority, a detailed document BARM (Bank Authorization Reference Model) was prepared by the Office of Pr. CCA, CBIC. The business logic and work flow designs were prescribed in this document for the authorized banks.
- 1.3 In the Bank Authorization Reference Model (BARM), it has been stipulated that IT systems of the banks should be in place to prepare the luggage file of all transaction successfully credited in

the Government account of the accredited bank till 2000 hrs of the day and the same are to be uploaded to RBI on T+1 day. Based on luggage file, the RBI gives credit to Govt. Account after debiting the bank account.

- 1.4 An elaborate integration and testing process was followed between GSTN portal and all 25 banks before implementation of GST on 1st July, 2017. 25 authorized banks were allowed by the GST Council on the basis of preparedness certificate and check list provided by all the banks.
- 1.5 The SOP for levying penal interest on accredited banks doing Govt. Agency business, issued by the Office of the CGA vide O.M. No. S-11/12/1 (31)/AC22/2015/RBS/332-424 dated 09.03.2016 specifies that penal interest for delayed remittance beyond the prescribed time limit will be levied at the rate of Bank Rate +2%.
- 1.6 Accordingly, ~~the~~ transaction (CIN) wise details of delayed remittance for collection, were worked out by the office of Pr. CCA, CBIC. Penal interest was calculated on the delayed period as per prescribed rate for the period from 1st July, 2017 to 31st Dec., 2017. As per SOP dated 09.03.2016 of the office of CGA, petty claims of delayed penal interest involving an amount of Rs.500/- or below per transaction is to be ignored. Hence, the demand letters for penal interest against 23 banks to the tune of Rs.7.62 crore was issued to the concerned banks in Feb/March, 2018 by the office of Pr. CCA, CBIC.
- 1.7 Most of the banks represented to the office of Pr. CCA, CBIC for waiver of penal interest due to the reason of technical problems, EOD related issues, validation failure at RBI, GSTN, CBS problems etc.

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1.8 The Office of Pr. CCA, CBIC brought this issue as an agenda item before the 19th Meeting of the Core Group of Standing Committee held on 2nd November, 2018 at Bhubaneswar. The meeting was chaired by CGA. It was decided in this meeting to constitute a committee comprising the following members to examine the requests of the banks and to decide on the issue of waiver of penal interest levied by the office of Pr. CCA, CBIC on the ground of technical problems faced by the banks during the initial period of GST collection:

- i) Pr. Chief Controller of Accounts, CBIC- Chairman
- ii) Joint Controller of Accounts (GBA), O/o. CGA, New Delhi - Member
- iii) Commissioner, Policy Wing, CBIC, Department of Revenue- Member
- iv) General Manager, Department of Government and Bank Accounts, Reserve Bank of India, Mumbai- Member
- v) Chief General Manager (Govt. Business), State Bank of India- Member
- vi) General Manager (Govt. Business), Punjab National Bank- Member
- vii) General Manager (Govt. Business), Bank of Baroda- Member

The agenda item along with the grounds on which the banks had represented the levy of penal interest are annexed as Annexure 1 and Annexure 2. The minutes of the meeting and the O.M. dated 8th Feb., 2019 issued for constituting the Committee are annexed as Annexure 3 and Annexure 4.

PART :2
PROCEEDINGS OF THE COMMITTEE

2.1 The Committee had held three meetings. The details of these meetings are as follows:

- i) 1st meeting was held on 12th March, 2019. (Minutes are annexed as Annexure 5)
- ii) 2nd meeting was held on 10th April, 2019. (Minutes are annexed as Annexure-6)
- iii) 3rd meeting was held on 11th June, 2019. (Minutes are annexed as Annexure-7)

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PART :3 RECOMMENDATIONS

- 3.1 Various banks have given reasons and justifications for the delay in remittance of GST collections to the Central/State Government Accounts in RBI. Members of the committee representing SBI, Bank of Baroda and PNB had cited the changes made in the integration and file exchange processes in the initial six months of GST implementation, because of which Banks could not remit the Govt. funds timely. Other Banks in their representations have also cited that it took time for understanding and implementing the changes/modifications in the IT processes to meet out the requirements of GST portal, as the reasons for not making timely remittance of funds.
- 3.2 In the first few months of the introduction of GST, the IT Systems and Applications could not be properly tested before GST implementation because of the time constraint and non-availability of actual data. These IT applications and integration processes were only tested on the basis of some expected and anticipated test cases and scenarios. But there were many scenarios, which were unexpected and encountered only after the actual roll out of the system from July 1st, 2017.
- 3.3 Failures of many receipt transactions from Banks at GSTN portal, resulted into various course corrections on the basis of analysis of errors. These course corrections were necessitated in the interest of the tax payers to credit their electronic cash ledgers on GST portal, enabling them to discharge their tax liability without difficulty. These cases were used to be discussed with banks in multiple meetings organized periodically by GSTN in its premises and also

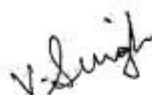
through video/call conferences. There were other channels like email and Google groups, through which GSTN officials were communicating with authorized banks to resolve the issue of failed transactions. In one of such email(Annexure-8), GSTN directed all authorized banks to complete the reconciliation process on daily basis at the end of day, before remitting the funds to RBI. This direction was contrary to the prescribed guidelines of T+1 day for settlement of receipts transactions. The impression taken by the banks to handle failure cases and fully reconcile the transactions with GSTN before remitting the funds to RBI, remained for some time resulting into change of priority. The confusion among the banks in this regard contributed to irregular compliance of the prescribed guidelines for settlement of receipt transactions T+1 basis.

- 3.4 RBI on its part has clarified that it had never given any permission to any agency bank to upload luggage file for settlement of receipt transactions after T+1 day. It has also been clarified that there was no case on record where agency bank had approached RBI for exemption from being penalized for delayed uploading of luggage file on a particular day. Therefore, it may be concluded from these facts that the agency banks, whenever not remitting the funds on T+1 day to RBI during the initial period of GST implementation was not because of any rejections by RBI system but because of issues in the reconciliation between banks and GST portal of GSTN and also due to IT issues like up-gradation of banking software, and technical glitches.
- 3.5 The data for the said period (July-December 2017) as been analyzed, and it shows that about 80% of the total delayed transactions are having one to three days of delay. This pattern is being seen in all the six months of transaction, across all 25 banks. There are, however, many transactions which were delayed beyond 3 days, but these are pertaining to few banks only and do not form any pattern as well. Therefore, the committee is of the view that during initial months of GST implementation, there were many transaction failures while being transmitted by banks to GSTN, because of

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unforeseen errors and IT glitches. While these transactions were successful at the bank's end after debiting the taxpayer's account, however, were not reported on real time to GSTN to credit the taxpayer's electronic cash ledger. The thrust, therefore, during these months was on the reconciliation of such transactions between GSTN and Banks.

- 3.6 On the basis of analysis of data for the said period for all banks, committee, therefore recommends a relaxation of 3 days for remittance of GST receipt by agency banks to Govt. account in RBI beyond T+1 for the CINs generated from 1st July to 31st October, 2017 and a relaxation of 1 day for the CINs generated from 1st November to 31st December, 2017. The actual delay beyond T+1 day may be adjusted by the recommended period of 3 days or 1 day. If a transaction is delayed for more than 3 days/1 day, (as the case may be), then the interest on delayed remittance may be charged after adjustment of recommended days.



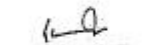
Jt CGA (GBA)
(Member)



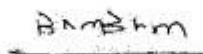
Dy. Commissioner (GST Policy) CBIC
(Member)



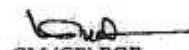
GM (DGBA), RBI
(Member)



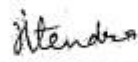
CGM (GB) SBI
(Member)



GM (GB) PNB
(Member)



GM (GB) BOB
(Member)



Pr. CCA (CBIC)
Chairperson

Summary of Reply received from States

S.No.	Name of the States	letter No.	Dated	Remark/Comments given by the Sates
1	Rajasthan	17(105-Part-VI) ACCT/GST/2019/663 (Pg-44)	18.03.2021	They want Bank Rate+2% Penal Interest for the period 01.07.2017 to 31.12.2017. It appears that they did not agree with report of Committee
2	Meghalaya	No. CTA-12/2020/43 (pg-42)	24.03.2021	Agreed with recommendation of the committee
3	Nagaland	No. CT/LEG/GSTC/1/17(PT)/191(Pg-43)	25.03.2021	Agreed with recommendation of the committee
4	Tamil Nadu	3451/B1/2021(Page45)	25.03.2021	Agreed with recommendation of the committee
5	Gujarat	email dated 26.03.2021(Pg-37)	26.03.2021	various suggestion have been given which are being re produced below*
6	Himachal Pradesh	12-12/2017-18(512)-EXN-GST-9692 (pg-41)	19.04.2021	They are agreement with the proposal of CBIC for levy of penal interest on Banks for delaying the payment T+1 days
7	Odisha	FIN-CTI-Tax-0017-2021(Pg-36)	28.04.2021	Agreed with recommendation of the committee
8	Uttar Pradesh	Email dated 23.06.2021(Page 50)	23.06.2021	The State of Uttar Pradesh would like to convey its approval to the recommendations of the committee constituted for examination of levy of penal interest on delayed remittance by the banks. However we are of the opinion that the SGST Component of the penal interest charged from the Banks after the adjustment of the recommended 3 Days/1 Day (as the case maybe) shall be transferred to the respective states.
9	Punjab	No. Accountants-2-2021/241 dated 06.12.2021 (Page No.66)	06.12.2021	No relaxation may be given, in the penal interest to be levied on the banks, due to late transfer of the amount of GST by bank to the RBI account, and the state share of penal interest should be paid to the state Government." (Not Agreed)
10	Chhattisgarh	letter No. 6670 (Page No. 56)	27.07.2021	Accepted the recommendations of the committee.
11	Manipur	Letter No. TAX/CO-101/1/2022- TAXES-TAXATION dated 05.08.2022 (Pg No. 74)	05.08.2022	Accepted the recommendations of the committee.
12	West Bengal	Email dated 19.09.22	19.09.2022	The report of the committee may be placed before the GST Council for deliberation
13	Assam	CT/GST-28/2019/106	20.09.2022	Agreed with recommendation of the committee
14	Goa	No.CCT/26-10/RBI-Penal Interest/2022-23/2480	23.11.2022	Agreed with recommendation of the committee

Agenda Item 05: Performance Report of the NAA (National Anti-Profiteering Authority) for the 1st quarter (April, 2022 to June, 2022) and 2nd quarter (July, 2022 to September, 2022) along with monthly performance report for the month of October and November 2022 for the information of the Council

The performance report of Anti-Profiteering for the 1st quarter (April to June 2022) and 2nd quarter (July to September 2022) at various levels is as under:

1.1. Performance of National Anti-Profiteering Authority:

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
Quarter 1 (April – June 2022)						
208	8	37	26	6	5	179
Quarter 2 (July – September 2022)						
179	11	70	43	5	22	120
October 2022*						
120	5	0	0	0	0	125
November 2022*						
125	3	0	0	0	0	128

* National Anti-Profiteering Authority (NAA) has also submitted month wise reports for the months of October 2022 and November 2022 as the tenure of NAA has ended on 30th November, 2022. Now, the work related to NAA has been shifted to Competition Commission of India (CCI) vide Notification No. 23/2022-Central tax dated 23.11.2022.

1.2 Performance of DG (Anti-Profiteering):

Opening Balance (No. of cases)	Receipt	Disposal	Mode of disposal of cases		Closing Balance (No. of cases)as on 30.06.2022
			Report to NAA confirming profiteering	Report to NAA for closure action	
Quarter 1 (April – June 2022)					
29	17	7	6	1	39
Quarter 2 (July – September 2022)					
39	36	10	5	5	65*

*Out of these 65 cases, 21 cases have been stayed by various Hon'ble High Courts

- One case has been held up as per direction by NAA.
- Actual pendency of cases in which Investigation is under Process, are 43 only.

1.3 Performance report of the Standing Committee on Anti-profiteering:

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases) as on 30.06.2022
Quarter 1 (April – June 2022)			
30	38	26	42
Quarter 2 (July – September 2022)			
42	48	19	71

1.4 Performance report from the State Level Screening Committee:

Opening Balance (No.of cases)	Receipt	Disposal		Closing Balance (No. of cases)
		Cases referred to Standing Committee	Cases Rejected	
Quarter 1 (April – June 2022)				
64*	123	20	11	156
Quarter 2 (July- September 2022)				
156	95	23	133	95

Last quarter data of F.Y. 2021-22 (January to March 2022) for reference

101	66	7	92	68

*The Closing Balance of the quarter ending March 2022 doesn't match with the Opening Balance of the quarter ending June 2022 since the report from Karnataka SLSC for the quarter ending June 2022 was not received so the total Closing Balance of Quarter ending March 2022 and Opening Balance of quarter ending June 2022 differs by no of 4 cases. The SLSC report for the quarter ending September 2022, does not include the report from Chhattisgarh, Himachal Pradesh, Karnataka and Kerala as these States have not submitted their reports.

2. During the above mentioned quarters NAA has undertaken the following activities/initiatives-

For the quarter April-June 2022:-

- The quorum in the Authority was restored w.e.f 23.02.2022 after joining of two new Technical Members i.e, Shri P.K. Singh and Shri Hitesh Shah and thereafter the Authority has started working with full vigor and passed 37 Orders involving profiteering of an amount of Rs. 244 Crores. The NAA, till date has passed 310 orders since its inception establishing profiteering of Rs.1945 Cr. (Approx.) out of which an amount of Rs. 562.5 Cr. (Approx.) has either been passed on to the buyers or deposited in the Consumer Welfare Funds or deposited with the High Courts.

- ii. Total no of 179 cases were pending for completion of proceedings at the level of Authority.
- iii. The Authority has taken a landmark decision by removing the practice of pre-verification of passing of the ITC benefit to home/flat/shop buyers and replaced the same with post-verification of passing of the ITC benefit by the Jurisdictional CGST/SGST Commissioners. It has helped in speedier resolution of cases before the Authority. In this respect, an advertisement of appropriate size (large enough to be noticed by the reader) would be published in minimum of two local Newspapers/ vernacular press in Hindi/English/local language with the details i.e Name of builder (Respondent) and Project, its Location and profiteered amount so that the concerned customers/ flat buyers/ recipients can claim the benefit of ITC. This would help buyers in ascertaining the amount of ITC benefit due to them from the builders. The Authority has also started this practice in respect of cases of tax reduction where consumers are identifiable.
- iv. The performance of DGAP was reviewed by the Authority periodically with the last such review on 23.06.2022. Various issues like pending investigations, Court cases, complaints, non-submission of Monthly/Quarterly reports by the State Screening Committees of certain states etc. were discussed in detail.
- v. The Chairman, NAA held Review Meeting with the Members of the Standing Committee on Anti-Profiteering wherein various pending issues like speedier resolution of grievances/ complaints, rejection of complaints etc. were discussed in detail.
- vi. The Chairman, NAA held a Review Meeting with the Members of Delhi State Screening Committee on Anti-Profiteering on 26.04.2022 regarding various pending issues including the details of the disposal of the complaints received by the Screening Committee and pendency of complaints.
- vii. 140 Writ Petitions filed before various High Courts of India are being continuously monitored by the Authority. The Counsels are being regularly briefed about all cases listed before Hon'ble High Courts by the Authority with active assistance of the Legal Consultant. The Hon'ble High Court of Delhi has reported and fixed hearings in 81 clubbed anti-profiteering cases on 12th, 13th and 14th July, 2022 respectively wherein arguments are being heard on constitutionality of Section 171 of the CGST Act, 2017 and the Rules framed under it. The Hon'ble High Court is likely to pass judgement on these cases shortly. It is noteworthy that none of the decisions of the NAA has been set aside by any High Court till date.
- viii. 33 complaints were received by the Authority during the quarter via NAA portal, e-mails and post. The complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to the respective Screening Committee/ Standing Committee for further action/examination thereof. While 13 complaints related to other GST/enforcement issues were forwarded to the Jurisdictional State and Central GST Commissioners for necessary action.

For the quarter July-September 2022:-

- ix. During the quarter ending September 2022, the Authority has passed 70 orders involving profiteered amount of Rs. 621 Crores. Therefore, the NAA has passed 380 orders since its inception establishing profiteering of Rs. 2563 Crores (Approx.) and out of which an amount

of Rs. 563 Cr. (Approx.) has either been passed on to the buyers or deposited in the Consumer Welfare Funds or deposited with the High Courts.

- x. 120 cases (including 11 received from the DGAP during the quarter) were pending for completion of proceedings at the level of the Authority. The proceedings were being held expeditiously to dispose of the pending cases at the earliest.
- xi. 117 hearings were held during the quarter ending September 2022 thereby 280 hearings have been held till the quarter ending September 2022 since reconstitution of the Authority w.e.f 23.02.2022 and regular proceedings are being held by the Authority since 23.02.2022.
- xii. In compliance of Department of Revenue's Order No. 51/2022 dated 03.02.2022, Sh. Mahesh Kumar Rustogi, IRS, (C & CE) had joined in the Authority on 16.08.2022 as Fourth Technical Member.
- xiii. The performance of DGAP is being monitored by the Authority periodically. The last review meeting was held on 29.09.2022. Various issues like pending investigations, Court cases, Complaints, non-submission of Monthly/Quarterly reports by State Screening Committees of certain states etc. have been discussed in detail.
- xiv. The Chairman, NAA has held the Review Meeting with the Members of Maharashtra State Screening Committee on Anti-profiteering on 16.09.2022 regarding various pending issues including the details of the disposal of the complaints received by the Screening Committee and pendency of complaints.
- xv. 150 Writ Petitions filed before various High Courts of India are being continuously monitored by the Authority. The counsels are being regularly briefed about all cases listed before Hon'ble High Courts by the Authority with active assistance of the Legal Consultant. The Assistant Solicitor General and empanelled councils were briefed about 82 clubbed anti-profiteering cases wherein the hearings were held on 12th, 13th, 14th, 30th and 31st August 2022 before the Hon'ble Delhi High Court and arguments were heard on constitutionality of Section 171 of The CSGT Act, 2017 and the Rules framed under it. The Hon'ble High Court of Delhi has fixed the next hearing on 19th October in these cases and is likely to decide on these cases shortly. It is noteworthy that none of the decisions of the NAA has been set aside by any High Court till date and recently in one of the judgements in case of M/s L'Oreal India Pvt. Ltd., the Hon'ble Delhi High Court has passed a detailed speaking order and directed M/s L'Oreal India Pvt. Ltd. to deposit the principal profiteered amount of Rs. 186 Cr. which is a landmark victory for the anti-profiteering efforts of the Authority.
- xvi. Four cases viz. M/s K.V. Developers, M/s Umang Realtech, M/s Supertech and M/s Logix City Developers are pending for resolution before NCLT which have been kept in abeyance for time being by the Authority.
- xvii. 49 complaints were received by the Authority during the quarter ending September 2022 via NAA portal, e-mails and post. 30 complaints relating to profiteering in terms of Section 171 of the CGST Act 2017 were forwarded to the respective Screening Committees/ Standing Committee for further action/examination thereof. While 20 complaints that related to other GST/ enforcement issues were forwarded to the jurisdictional State and Central GST Commissioners/ Chief Commissioners for necessary action.

For the period October 2022 to November 2022:-

- xviii. During the month of October and November 2022, no order could be passed by the Authority due to lack of quorum as the tenure of the Chairman expired on 02.10.2022. The NAA has passed 380 orders since its inception establishing profiteering of Rs. 2563 Cr. (Approx) out of which an amount of Rs. 563 Cr. (Approx.) has either been passed on to the buyers or deposited in the Consumer Welfare Funds or deposited with the High Courts.
 - xix. Total 128 cases were pending for completion of proceedings at the level of the Authority.
 - xx. 10 complaints were received by the Authority during the month of October, 2022 via NAA portal, e-mails and post. 7 Complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to the respective Screening Committees/ Standing Committee for further action/examination thereof. While 3 complaints that related to other GST/enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/Chief Commissioners for necessary action.
 - xxi. 21 complaints were received by the Authority during the month via NAA portal, e-mails and post. 17 Complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to the respective Screening Committees/ Standing Committee for further action/examination thereof. While 3 complaints that related to other GST/enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/Chief Commissioners for necessary action.
- 3. In addition to the two quarterly reports (i.e. April-June 2022 and July-September 2022), the National Anti-profiteering Authority has also submitted the reports for the months of October 2022 and November 2022 as the tenure of NAA has ended on 30th November, 2022. Now, the work related to NAA has been shifted to CCI vide Notification No. 23/2022-Central tax dated 23.11.2022.
 - 4. Department of Revenue (State Taxes-I), Ministry of Finance vide OM dated 30.11.2022 issued vide F. No.S-34011/37/2021-ST-I-DoR has directed that all the officers/staff subordinate to Chairman and Members of NAA shall continue to work on an as-is where-is basis and will provide necessary assistance to CCI for a period of six months from 01.12.2022 till 31.05.2023 or until further orders, whichever is earlier. It also provided that the DGAP shall continue to investigate anti-profiteering matters even in the amended framework.
 - 5. Accordingly, the quarterly performance reports for two quarters i.e. April-June 2022 and July-September 2022 of the National Anti-profiteering Authority, State-level screening, Standing committees and Directorate General of Anti-Profiteering (DGAP) along with NAA's reports for the months of October and November 2022 are placed before the GST Council.

Agenda Item 06: Ad-hoc Exemptions Orders issued under Section 25(2) of the Customs Act, 1962 to be placed before the GST Council for information

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

2. The details of the ad hoc exemption orders issued recently are as follows:

Order No.	Date	Remarks
AEO No. 02 of 2022	16 th September, 2022	Request for ad-hoc exemption for import of cheetahs as donation by the National Tiger Conservation Authority, Ministry of Environment, Forest & Climate Change, Government of India (order copy enclosed).
AEO No. 03 of 2022	30 th September, 2022	Request for ad-hoc exemption from customs duties and other taxes for import of goods for 90 th Interpol General Assembly in New Delhi (order copy enclosed)
AEO No. 04 of 2022	13 th October, 2022	Request from Shri T.N Hari for exemption from payment of customs duty under Section 25(2) of Customs Act, 1962 on import of drug Inj. Anakinra (order copy enclosed)

3. This is placed for the information of GST Council.

F. No. 452/06/2022-Cus V
Ad-hoc Exemption Order no. 2 of 2022
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 49, North Block, New Delhi – 110001

Dated the 16th September 2022

To,
The Chief Commissioner of Central GST & Customs
Bhopal Zone

Sir,

Subject: Request for Ad hoc exemption for import of Cheetahs as donation by the National Tiger Conservation Authority, Ministry of Environment, Forest and Climate Change, Government of India-reg.

The undersigned is directed to refer to a request dated 07.09.2022 (copy enclosed) received from the Director General of Forests and Special Secretary, Ministry of Environment Forest and Climate Change (MoEF&CC), Government of India and subsequent D.O. letter dated 15.09.2022 from the Secretary, Ministry of Environment, Forest and Climate Change seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for the goods received as grant from Government of Namibia.

2. MoEF&CC has informed that:

- i. Project Tiger Division, Ministry of Environment Forest and Climate Change, Government of India is in receipt of 08 number of live Cheetahs in crate, accompanied with empty crates, radio collars & receivers which are a Government of India cargo being consigned by The Head of Chancery, High Commission of India in Namibia.
- ii. The Cheetahs will be imported from Gwalior International Airport.
- iii. From Gwalior the Cheetahs would proceed for final release to Kuno National Park.

2.1 MoEF&CC has requested for waiving off the customs duties and IGST (where applicable) for the above-mentioned imported goods received as grant for restoration of open forest and savanna system which in turn will help in conservation of biodiversity and accrue ecosystem services.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts the subject goods (i.e. 08 number of live Cheetahs in crate, accompanied with empty crates, radio collars & receivers) for introduction into Kuno National Park, from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the

Page 1 of 2

F. No. 452/06/2022-Cus V
Ad-hoc Exemption Order no. 2 of 2022
Issued under section 25(2) of the Customs Act, 1962

Customs Tariff Act, 1975 (where applicable), subject to the end use for the purpose being imported and in compliance of the provisions of the Customs Act, 1962.

4. An undertaking to comply with the conditions mentioned in Para 3 above shall be submitted to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of this Order should be brought to the immediate notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

6. This order is valid for imports made up to 30.09.2022

Yours faithfully,

(Komila Punia) 16/9/22

Deputy Secretary to the Govt. of India

Copy to:

- The Inspector General of Forests, Project Tiger Division, Ministry of Environment Forest and Climate Change, Government of India.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.

Yours faithfully,

(Komila Punia) 16/9/22

Deputy Secretary to the Govt. of India

F. No. 462/03/2022-Cus V
Ad-hoc Exemption Order No. 3 of 2022
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 49, North Block, New Delhi – 110001
Dated the 30th September 2022

To,
The Chief Commissioner Customs
Delhi Zone

Sir,
Sir,

Subject: Request for Ad hoc exemption from Customs duties and other taxes for import of goods for 90th Interpol General Assembly in New Delhi- regarding.

The undersigned is directed to refer to a request dated 11th July 2022 from Director, Central Bureau of Investigation (CBI), New Delhi and Para 5(iv) of the Record of Discussion during the meeting held on 3rd August 2022 under the Chairmanship of Union Home Secretary regarding hosting of 90th INTERPOL General Assembly. Ministry of Finance has been requested, in accordance with the Article 6 of the Privileges and Immunities Agreement (copy enclosed) entered into by the Government of India and INTERPOL, for granting exemption from Customs duties and other taxes to the anticipated imports.

2. Director CBI has informed that:

- i. India will be hosting the 90th INTERPOL General Assembly in New Delhi at Pragati Maidan from 18th -21st October, 2022
- ii. the event will be preceded by the INTERPOL Executive Committee meetings from 15th-17th October, 2022.
- iii. Delegates/participants will be visiting India to attend the same from 195 INTERPOL member countries.
- iv. India has signed the Privileges and Immunities Agreement, which entered into force on 14.06.2022.

2.1 Director CBI has requested for granting exemption from Customs duties and other taxes to the anticipated imports (where applicable) which will be imported under Article 6 of the aforesaid Privileges and Immunities Agreement.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts the goods, imported under Article 6 of the Privileges and Immunities Agreement entered by the Government of India and INTERPOL for the 90th General Assembly Session and the Executive Committee meetings to be held in New Delhi in 2022, from the whole of the duty of

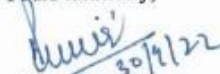
F. No. 462/03/2022-Cus V
Ad-hoc Exemption Order No. 3 of 2022
Issued under section 25(2) of the Customs Act, 1962

Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (where applicable), subject to the end use for the purpose being imported and in compliance of the provisions of the Customs Act, 1962.

4. An undertaking to comply with the conditions mentioned in Para 3 above may be submitted to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. This order is valid for imports made up to 31.12.2022.

Yours faithfully,


(Komila Punia)

Deputy Secretary to the Govt. of India

Encl: as above

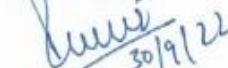
Copy for information and necessary compliance (where required) -

- The concerned Chief Commissioner of Customs of any other Customs port to which the said goods are consigned for import for the above stated purpose.

Copy also for information to:

- The Director, Central Bureau of Investigation, 5-B, C.G.O. Complex, Lodhi Road, New Delhi 110003.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.

Yours faithfully,


(Komila Punia)

Deputy Secretary to the Govt. of India

F. No. 452/01/2022-Cus V
Ad-hoc Exemption Order no. 4 of 2022
Issued under section 25(2) of the Customs Act, 1962

Government of India
Ministry of Finance
Department of Revenue

Room no. 227A, North Block, New Delhi – 110001

Dated the 13th October 2022

To,
The Chief Commissioner of Customs,
Delhi Customs Zone

Sir,

Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of drug Inj. Anakinra– reg.

The undersigned is directed to refer to a request received from Shri. T. N. Hari, father of baby Navaneeth Krishna, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of injection Anakinra, a drug for treatment of Neonatal onset multi system inflammatory disease (NOMID).

2. Sh. T.N.Hari has represented that:

- i. his son, Navaneeth Krishna, is suffering from Neonatal onset multi system inflammatory disease (NOMID). It is a disorder that causes persistent inflammation and tissue damage primarily affecting the nervous system, skin, and joints. Patients are at risk for leukemia, infections and some develop deposits of protein aggregates called amyloid, which can lead to kidney failure and other problems.
- ii. they raised money for import of the drug, through crowd funding.
- iii. they have obtained approval from DGCI to import this life saving medicine for personal use.
- iv. the drug Anakinra needs to be imported from Sweden and as per the doctor's advice 28 pre-filled syringes would be required for the treatment of the child for the next 6 months.

2.1 In view of the above, a request for waiving off the customs duties and GST on the import of this lifesaving drug Anakinra has been made.

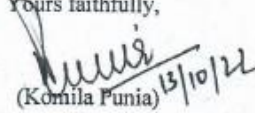
3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 28 pre-filled syringes of Anakinra, from the whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of baby Navaneeth Krishna and will not be put to other use.

F. No. 452/01/2022-Cus V
Ad-hoc Exemption Order no. 4 of 2022
Issued under section 25(2) of the Customs Act, 1962

The said drug is already exempt from payment of BCD under Sl. No. 607 of Notification 50/2017- Customs dated 30th June, 2017, subject to conditions therein. The port of import may ensure that the conditions prescribed for waiving of basic customs duty are full-filled.

4. An undertaking that the goods covered by this Order will be used solely for the treatment of baby Navaneeth Krishna and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.
5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc. .
6. This order is valid for imports made up to 12.04.2023

Yours faithfully,


(Komila Punia)
Deputy Secretary

Copy to:

- Mr. T.N. Hari, Thekkumkomana House, Mamala Post Office Kakkad, EKM District, Kerala- 682305.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- ✓ Guard File.

Yours faithfully,

(Komila Punia)
Deputy Secretary

Agenda Item 7: Issues recommended by the Law Committee for the consideration of the GST Council

Agenda Item 7(i): Amendment in the CGST Rules, 2017 for Aadhaar based Biometric authentication of the registrants

A. Biometric-based Aadhaar authentication and physical verification for new registration

Sub-rule (4A) was inserted in Rule 8 of the CGST Rules, 2017, vide Notification No. 94/2020-Central Tax dated 22.12.2020 to provide for biometric-based Aadhaar authentication w.e.f. a date to be notified, as follows: -

“(4A) Every application made under Rule (4) shall be followed by—

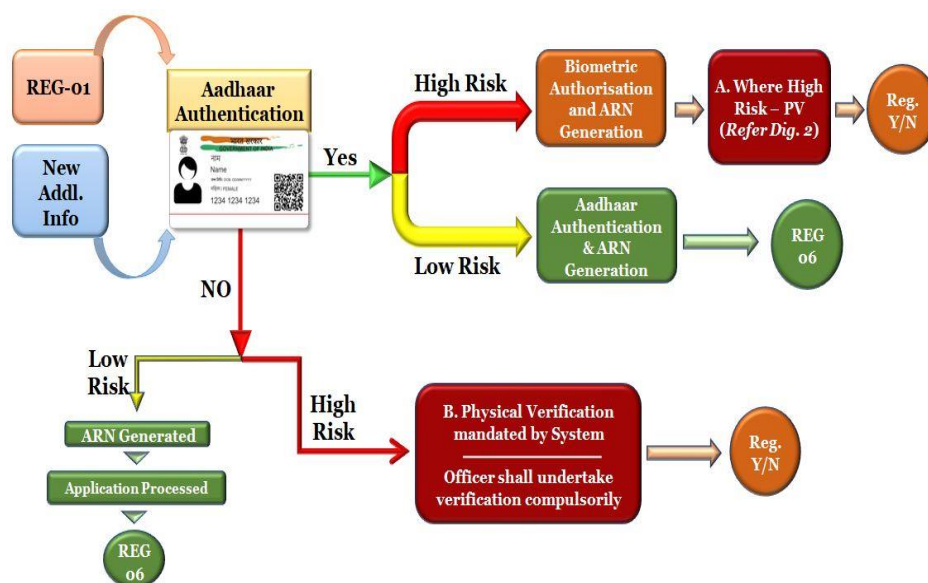
(a) biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (6D) of Section 25, if he has opted for authentication of Aadhaar number; or

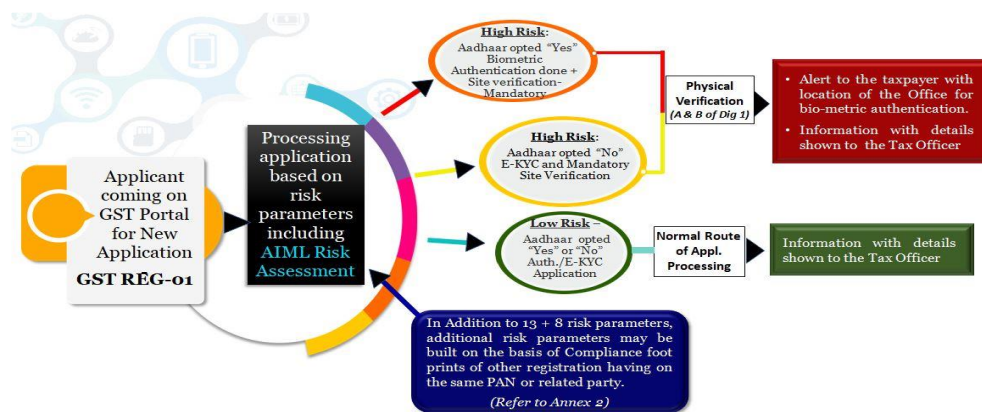
(b) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of Section 25, if he has opted not to get Aadhaar authentication done,

of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of Section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.”

1.2 However, the said provision has not yet been notified.

2 The Group of Ministers on GST System Reforms in its first report inter alia approved the proposal to improve the registration process by using mandatory biometric authentication for high-risk applicants for registration under GST and the pilot for the same is proposed to be conducted by the State of Gujarat.





3 The GoM recommended mandatory physical verification for High-risk applicants only, even where the Aadhaar authentication was not opted or failed. However, the same was discussed in law committee meeting held on 26.08.2022 and it was recommended to mandate physical verification in all cases where Aadhaar authentication is not opted or fails. The corresponding provision is already there in Rule 9, and therefore no Rule amendment is required for this.

4.1 The Law Committee in its meetings held on 26.08.2022 and 07.09.2022 examined the issues relating to biometric-based Aadhaar authentication, and recommended that:

(i) to mandate biometric-based Aadhaar authentication for high-risk applicants who opt for authentication of Aadhaar number, sub-rule (4A) of Rule 8 may be substituted as under:

*“(4A) Every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of Section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of Section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in **FORM GST REG-01** at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.”*

(ii) to provide for exemption from biometric-based Aadhaar authentication in States / UTs where the pilot is not being undertaken, sub-rule (4B) may be inserted in Rule 8 of the CGST Rules, 2017, as under:

“(4B) The Government may, on the recommendations of the Council, by notification specify the States and/ or Union Territories wherein the provisions of sub-rule (4A) shall not apply.”

(iii) to provide that acknowledgement shall be issued to the applicant only after completion of biometric-based Aadhaar authentication, sub-rule (5) of Rule 8 may be amended as under:

*“(5) On receipt of an application under sub-rule (4) or sub-rule (4A), as the case maybe, an acknowledgement shall be issued electronically to the applicant in **FORM GST REG-02**.”*

(iv) To provide for mandatory physical verification of an applicant who has undergone biometric-based Aadhaar authentication and is identified on the common portal, based on data analysis and risk parameters, for carrying out such physical verification of places of business, Rule 9 may be amended as under:

“(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of seven working days from the date of submission of the application:

Provided that where –

(a) a person, other than a person notified under sub-section (6D) of Section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under Rule 25 and verification of such documents as the proper officer may deem fit;

(2) Where the application submitted under Rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said Rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of seven working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of seven working days from the date of the receipt of such notice.

Provided that where –

(a) a person, other than a person notified under sub-section (6D) of Section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application.

...”

4.2 As it has been proposed to conduct a pilot in the State of Gujarat for such biometric authentication during registration process, it is proposed that:

(i) the above amendments in Rule 8(4A), 8(5) and Rule 9 may be made at present only in Gujarat SGST Rules and in the CGST Rules, 2017 but not in the SGST / UTGST Rules, 2017 of other States / UTs at present.

(ii) Rule 8(4B) may be introduced in the CGST Rules, 2017 only. Subsequently, a notification will be required to be issued by the Centre under Rule 8(4B) for specifying all States and UTs, except Gujarat, where provisions of Rule 8(4A) will not apply.

B. Incorporation of details of electricity bill and property registration in FORM GST REG-01

5 The Group of Ministers on GST System Reforms in its first report also approved the proposal for inclusion of Electricity Bill meta data (CA No.) as a data field during registration by new taxpayers. CA Number shall be verified to improve the quality of registered addresses in GST System. The State of Maharashtra agreed to carry out the pilot project in this regard. The State of Madhya Pradesh also volunteered for the same as well as for the validation of property registration details from Land Revenue Department.

6 Accordingly, the Law Committee on 07.09.2022 recommended as under:

(i) Details of electricity consumer account number (CA Number) and Property registration may be sought under State Specific Information at Sl. No. 24 of **FORM GST REG-01**.

(ii) Details of electricity CA Number may be notified under Sl. No. 24 by the State of Maharashtra.

(iii) Details of electricity CA Number and Property registration may be notified under Sl. No. 24 by the State of Madhya Pradesh.

C. Enhancement in GST Registration to restrict misuse of PAN

7 GST Registration is PAN-based. Currently, OTP-based verification in Part-A of **FORM GST REG-01** is done to verify only the mobile number and email address provided by the authorised signatory. However, no intimation is sent to the PAN holder when a GST registration is applied. This communication gap may result into misuse of PAN of a person without his knowledge by unscrupulous elements.

8 To address this, the Law Committee in its meeting held on 03.08.2022 recommended:

(i) PAN-linked mobile number and email address (fetched from CBDT database) may be captured and recorded in **FORM GST REG-01**.

(ii) OTP based Verification of PAN-linked mobile and email address in Part-A of **FORM GST REG-01** be made mandatory, instead of verification of authorised signatory's self-declared mobile number and email address.

(iii) Accordingly, Part-A of **FORM GST REG-01** may be amended as below:

(i) Legal name of the business

(ii) Permanent Account Number

~~(iii) Email address(Authorised signatory)~~

~~(iv) Mobile number(Authorised signatory)~~

(iii) Email address (PAN linked) <Auto>

(iv) Mobile Number (PAN linked) <Auto>

(v) Sub-rule (1) of Rule 8 may be amended to omit the requirement of declaration of mobile number and e-mail address in Part A of FORM REG-01

(vi) Clauses (b) and (c) to sub-rule (2) of Rule 8 be omitted to do away with the verification of authorised signatory's self-declared mobile number and email address.

(vii) Clause (a) to sub-rule (2) of Rule 8 be amended to provide for OTP-based verification of PAN-linked mobile number and email address, as below:

“(a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes and shall also be verified through separate one-time passwords sent to the mobile number and email address linked to the Permanent Account Number.”

9 Accordingly, the proposals at paras 4, 6 and 8 are placed before the GST Council for deliberation and approval.

Agenda Item 7(ii): Refund to the unregistered persons.

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of Section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as ‘The CGST Act, 2017’) may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

1.2 Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of Section 34 of the CGST, 2017 may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

1.3 Representations have been received requesting for providing a facility to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of service of construction of flats/ building or on termination of long-term insurance policy.

2.1 In this regard, reference is made to sub-section (1) of Section 54 of the CGST Act, 2017, which provides for filing an application of refund by any person. Sub-section (1) of Section 54 is reproduced as under:

“(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner [as may be prescribed](#).”

2.2 In view of the above, as the term used is ‘any person’ and not ‘registered person’, therefore, it can be stated that there is no restriction under GST Law which restricts any unregistered person from claiming refund under GST.

3. Further, clause (e) of sub-section (8) of Section 54 of the CGST Act, 2017 provides that the refundable amount would be paid to the applicant instead of being credited to Consumer Welfare Fund (CWF), where such amount relates to the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person. In cases, where the amount of tax paid and charged from the unregistered person by the supplier has not been refunded to such unregistered person by the supplier, the unregistered person may have borne the incidence of such tax paid without passing on the incidence to any other person. Therefore, the unregistered person may be eligible for refund to be paid to him, instead of being credited to CWF, under the provisions of clause (e) of sub-section (8) of Section 54.

4. In order to enable such a unregistered person to file application for refund under sub-section (1) of Section 54, GSTN has recently introduced a new functionality on the common portal that allows

unregistered persons to take a temporary registration and apply for refund under the category '**Refund for Unregistered person**'.

5. As regards the relevant date in respect of such refund claims, clause (g) in Explanation (2) under Section 54 appears to be applicable in cases of refund by unregistered persons, being the recipient. Clause (g) in Explanation (2) under Section 54 is reproduced below:

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

5.1 In view of the above, the relevant date in case of refund by unregistered persons would be the date of receipt of goods or services. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in installments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, **it is proposed that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under Section 54 of the CGST Act, 2017, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier may be considered as the date of receipt of the services by the applicant.**

6. In addition, an amendment would be required in sub-rule (2) of Rule 89 of the CGST Rules, 2017, to prescribe the documents which would be required to be furnished along with the refund claim in order to establish that refund is due to the applicant. Accordingly, the proposal for **amendment in the CGST Rules, 2017** for refund to unregistered persons is attached as **Annexure 'A'**.

7. Further, it is proposed to issue a Circular clarifying the procedure for filing application of refund by the unregistered persons and processing of such refunds thereof. Accordingly, a **draft Circular** for the same is attached as **Annexure-B**.

8. The aforesaid proposal has been deliberated in the Law Committee in its meeting held on 26.08.2022 and 07.09.2022 wherein it was approved.

9. In view of the above, the agenda is placed before the GST Council for deliberation and approval.

Proposal for amendment in the CGST Rules, 2017:

(a) Insertion of following clauses after clause (k) of sub-rule (2) of Rule 89:

(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement/registered agreement/contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation/ termination of agreement/contract for supply of service, details of payment received from the supplier against cancellation/ termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement/ contract for supply of service has been cancelled/ terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement/ contract for supply of service has been cancelled/ terminated;

(b) Insertion of proviso under clause (m) of sub-rule (2) of Rule 89:

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax;

(c) Insertion of a statement 8 in FORM GST RFD-01as per proposed clause (ka) of Rule 89(2):

*Statement-8 [Rule 89(2)(ka)]
Refund Type: Refund for unregistered persons*

Sl. No.	GS TIN of supplier	Document/Invoice Details				Tax Paid				Details of payment of invoice value to the supplier		Details of payment received against cancellation/ termination		Refund Amount Claimed (I+C+S +Cess)
		Type of document	No.	Date	Taxable Value	Integrated Tax	Central Tax	State / UT Tax	Cess	Date	Amount	Date	Amount	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

F. No. CBIC-20023/3/2021-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated **the , 2022**

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Prescribing manner of filing an application for refund by unregistered persons.

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of Section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'The CGST Act, 2017') may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

1.2 Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of Section 34 of the CGST, 2017 may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

1.3 Representations have been received requesting for providing a facility to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of service of construction of flats/ building or on termination of long-term insurance policy.

2. It would be pertinent to mention that sub-section (1) of Section 54 of the CGST Act, 2017 already provides that any person can claim refund of any tax and interest, if any, paid on such tax or any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner as may be prescribed. Further, in terms of clause (e) of sub-section (8) of Section 54 of the CGST Act, 2017, in cases where the unregistered person has borne the

incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

2.1 In order to enable such unregistered person to file application for refund under sub-section (1) of Section 54, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category '**Refund for Unregistered person**'. Further, the CGST Rules, 2017, (hereinafter referred to as 'The CGST Rules, 2017') have been amended to provide for the documents required to be furnished with the refund by the unregistered persons and the statement to be uploaded along with the refund application vide Notification No. XX/2022-CT dated xx.xx.2022.

3. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by Section 168(1) of the CGST Act, 2017, hereby clarifies the following:

3. Filing of refund application

3.1 The unregistered person, who wants to file an application for refund under sub-section (1) of Section 54 of the CGST Act, 2017, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of Rule 10B of the CGST Rules, 2017. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

3.2 The application for refund shall be filed in **FORM GST RFD-01** on the common portal under the category '**Refund for unregistered person**'. The applicant shall upload the **statement 8** (in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of Rule 89 of the CGST Rules, 2017. The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed. Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of Rule 89 of the CGST Rules, 2017 along with his refund application. The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

3.3 Separate applications for refund has to be filed in respect of invoices issued by different suppliers. Further, where the suppliers in respect of whose invoices refund is to be claimed are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

3.4 Where the time period for issuance of credit note under Section 34 of the CGST Act, 2017 has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the

time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under Section 34 of the CGST Act, 2017 has already been expired.

4. **Relevant date for filing of refund:**

4.1 As per sub-section (1) of Section 54 of the CGST Act, 2017, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under Section 54 of the CGST Act, 2017. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in installments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under Section 54 of the CGST Act, 2017, **date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier** will be considered as the date of receipt of the services by the applicant.

5. **Minimum refund amount**

5.1 Sub-section (14) of Section 54 of the CGST Act, 2017 provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no refund shall be claimed if the amount is less than one thousand rupees.

6. The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other FORM RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.

6.1 In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

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

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

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 7 (iii): Decriminalization of the CGST Act, 2017

The issue of decriminalization of various laws, including GST law, to reduce compliance burden on the taxpayers, was discussed in the meeting of Committee of Secretaries (CoS) on **Decriminalization of existing Acts/Rules**. It was discussed that the provisions of prosecution under various laws need to be reviewed, so as to decriminalize some of the minor offences. It was also deliberated that there is a need to examine whether any enhancement is required in the threshold for prosecution of offences under Section 132 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017, 2017). Besides, it was also desired that there is a need to make the provisions of compounding of offences more attractive to the taxpayers so that more and more taxpayers can avail the benefit of these provisions.

2. Accordingly, Law Committee in its meeting held on 07.09.2022 deliberated on the various provisions pertaining to prosecution and compounding in the CGST Act, 2017, so as to rationalize the same and to remove ambiguity, if any, and also to make compounding provisions more attractive in GST for the taxpayers.

3. After detailed deliberations, Law Committee recommended the following amendments in GST Law with the aim to decriminalize various provisions of the GST Act:

3.1 Decriminalization of minor offences in the CGST Act, 2017,:

3.1.1 Offences specified in clause (g), (j) and (k) of sub-section (1) of Section 132 are in nature of pure criminal offences. Maximum punishment is six months in case of offences under clause (g) and (j) whereas in case of clause (k), punishment depends on tax amount. The offences covered under the said clauses are as follows :-

- (a) obstructs or prevents any officer in the discharge of his duties under this Act. **[clause (g) of sub-section (1) of Section 132]**
- (b) tampers with or destroys any material evidence or documents. **[clause (j) of sub-section (1) of Section 132]**
- (c) fails to supply any information which he is required to supply under this Act or the Rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information. **[clause (k) of sub-section (1) of Section 132]**

3.1.2 Further, under Section 122 of the CGST Act, 2017, these types of offences are liable to penalty of **ten thousand rupees only**, if not linked to tax amount. However, minor offences specified in *clause (g) and (j)* even when not linked to tax amount, if committed, would remain liable for punishment of imprisonment up to six months.

3.1.3 All the offences under clause (g), (j) and (k) are specifically covered in detail and punishable under Indian Penal Code. The comparison of minor offences under the CGST Act, 2017, with corresponding provisions in Indian Penal Code, 1860 for same offence is as below:

Sl. No.	Offence clause under the CGST Act, 2017	Offence under Indian Penal Code
1.	obstructs or prevents any officer in the discharge of his duties under this Act.[clause (g) of sub-section (1) of Section 132]	186. Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both. Non-cognizable& bailable; Who can try: any magistrate
2.	tampers with or destroys any material evidence or documents. [clause (j) of sub-section(1) of Section 132]	Chapter XI of IPC (OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE) 204. Destruction of document to prevent its production as evidence.—Whoever secretes or destroys any [document and electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such [document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to <u>two years, or with fine, or with both</u> Non-cognizable & bailable offence; Who can try: any magistrate
3.	fails to supply any information which he is required to supply under this Act or the Rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;	CHAPTER X of IPC {OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS} 176. Omission to give notice or information to public servant by person legally bound to give it. Non-cognizable & Bailable offence; Who can try: The Court in which the offence is committed, subject to provisions of Chapter XXVI;

	[clause (k) of sub-section(1) of Section 132]	or, <u>if not committed in a Court, any magistrate</u>

3.1.4 Law Committee recommended that to avoid duplication, it may be desirable that these types of offences may be excluded from the CGST Act, 2017 as they are already covered under IPC, which is a complete code for these type of criminal offences.

3.1.5 **Proposed Amendment:**

In view of above, the following **amendments are proposed in sub-section (1) of Section 132:**

(a) Deletion of the *clause (g), (j) and (k)* of sub-section (1) of Section 132:

~~(g) — obstructs or prevents any officer in the discharge of his duties under this Act;~~

~~(j) — tampers with or destroys any material evidence or documents;~~

~~(k) — fails to supply any information which he is required to supply under this Act or the Rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or~~

(b) Amendment in clause (l) of sub-section (1) of Section 132:

“(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (i) ~~(k)~~ of this Section,”

(c) Amendment in clause (iv) of sub-section (1) of Section 132:

“(iv) in cases where he commits or abets the commission of an offence specified in clause (f) ~~or clause (g) or clause (j)~~, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.”

3.2 **Align the prosecution threshold with arrest threshold**

3.2.1 It is mentioned that minimum threshold for launching prosecution in respect of the offences punishable under clause (iii) of sub-section (1) of Section 132 of the CGST Act, 2017, is **Rs. one crore**. However, as per Section 69 of the CGST Act, 2017, arrest for specified offences of sub-section (1) of Section 132 can be made only in cases involving minimum amount of tax evaded of **Rs. two crore**.

3.2.2 Feedback received from the field formations depicts that **hardly any prosecution case has** been filed under the clause (iii) of sub-section (1) of Section 132 which provides for prosecution in cases involving amount between Rs one crore and Rs two crore. Moreover, limited manpower is available in field formations for filing prosecution in such large number of cases where tax amount is more than rupees one crore but less than two crore rupees. Prosecution complaint also requires sustained efforts on the part of department right from investigation to the conclusion of case before all judicial forums. In view of above, it may be desirable to file prosecution only in suitable cases,

having significant revenue implications. **Therefore, Law Committee recommended to delete clause (iii) of sub-section (1), so that the monetary limit for prosecution is raised to Rs two crore from the current Rs one crore.**

Proposed amendment:

- (A) The minimum threshold for launching prosecution may be increased to two crore rupees and the clause (iii) of sub-section (1) of Section 132 may be deleted.

~~“(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;”~~

- (B) **Amendment in Section 132 (3):** In view of increase threshold for prosecution, the sub-section (3) of Section 132 also requires deletion of reference to clause (iii).

“(3) The imprisonment referred to in clauses (i), ~~(ii)~~ and ~~(ii) (iii)~~ of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.”

3.3 Rationalization of compounding provisions to make them more attractive:

I. Making Compounding provisions more attractive to taxpayers:

Sub-section (2) of Section 138 of The CGST Act, 2017 provides for range of monetary limit for compounding which is currently between 50% (minimum) to 150% (maximum) of tax amount involved. This range for compounding amount is very high due to which persons eligible for compounding of offences may be dissuaded to come forward for compounding their offence. In this regard, data received from field formations for usage of compounding provisions by trade in field shows that almost no one has applied to take the benefit of these provisions even after 5 years of implementation of GST. **Therefore, rationalization of such compounding amount is needed so that accused persons can take benefit of compounding provisions and litigation costs to Government are minimized.** This will require amendment in sub-section (2) of Section 138 of the CGST Act, 2017.

Further, the phrase ‘**not being less than**’ used in sub-section (2) of Section 138 for higher limit is not conveying proper meaning as it leads to a misleading conclusion that maximum amount has to be more than the higher of Rs 30,000 or 150% of Tax, which means that the maximum amount is limitless. Instead, the phrase should have been ‘**not being more than**’. Moreover, with deletion of minor offences clauses (g), (j) and (k) of sub-section (1) of Section 132, there will practically not be any case in which compounding amount can fall between Rs. Ten thousand and Rs. Thirty thousand. Therefore, reference to these amounts in sub-section (2) of Section 138 is also required to be deleted. **Hence, an amendment in Section 138 (2) has been recommended by the Law Committee.**

Proposed Amendment:

The range of compounding amount is proposed to be reduced suitably to **minimum of 25% of the tax amount to maximum of 100%** of tax amount in the CGST Act, 2017, to make compounding provisions attractive and to promote the trade to utilize the same, by amending sub-section (2) of Section 138, as below:

*“(2) The amount for compounding of offences under this Section shall be such as may be prescribed, subject to the minimum amount not being less than ~~ten thousand rupees or fifty per cent.~~ **twenty five per cent. of the tax involved, whichever is higher,** and the maximum amount not being ~~more than less than thirty thousand rupees or one hundred and fifty one hundred per cent. of the tax involved, whichever is higher.~~”*

II. Anomaly in clause (c) of proviso to Section 138 (1) and 2nd proviso to Section 138 (1):

One of the **conditions** mentioned at **clause (c) of proviso to sub-section (1) of Section 138 of the CGST Act, 2017** is that the **compounding provisions are not applicable to a person, who has been accused of committing an offence under the CGST Act, 2017 which is also an offence under any other law in force**. On the other hand, **2nd proviso to Section 138 (1)** of the CGST Act, 2017, mentions that *“Provided further that any compounding allowed under the provisions of this Section shall not affect the proceedings, if any, instituted under any other law”*. Therefore, joint reading of clause (c) of proviso to Section 138(1) and 2nd proviso to Section 138(1) creates an ambiguity that when the compounding provisions are not applicable to the persons who have committed an offence which is also punishable under any other law in force at time being, then what is the need of second proviso to Section 138(1), as no such situation can arise, when the compounding under the CGST Act, 2017 cannot be done in such cases as per provisions of 2nd proviso of Section 138(1) of the CGST Act, 2017. Further, clause (c) of Section 138(1) of the CGST Act, 2017, stipulates a situation where the proper officer will have to exclude the category of person from taking benefits of compounding provisions in case such person is accused of committing an offence under this Act which is also an offence under any other law for the time being in force. The practical issue while implementing this sub-clause is that, it may not be possible for a tax officer to have complete knowledge of all the other laws of land and what will be the mechanism to found out whether the offence committed by accused person is also an offence under any other law. Also, who would be the competent authority to decide whether the said person has committed an offence under any other law except the CGST Act, 2017, or whether the person has not breached provisions of any other law. **Therefore, clause (c) of proviso to sub-section (1) of Section 138 of the CGST Act, 2017 needs to be deleted.**

Also, it is to be noted that to curb the menace of fake invoice and to control passing of ITC by such fake/ non-existent units, it is imperative that mastermind of such a crime is not afforded any opportunity to compound their offence by using benefits of these provisions under Section 138 of the CGST Act, 2017. The compounding provisions are to minimize the legal proceedings with genuine and existing traders who have committed the offence but are ready for cleaning up their actions and to further do their business as per law and nowhere, the intent of compounding provisions can be to provide an opportunity to masterminds creating fake entities and perpetrating economic frauds deliberately to escape prosecution. Hence, Law Committee recommended excluding **such class of persons from the compounding provisions by inserting a clause to this effect in sub-section (1) of Section 138.**

Proposed Amendment:

It is proposed to substitute clause (c) of sub-section 1 of Section 138:

~~(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force~~

“(c) person who has retained the benefit of a transaction covered under clause (ii) of sub-section (1) of Section 122 and at whose instance such transaction has conducted.”

III. Complex language of clause (a) and (b) of first proviso to sub-section (1) of Section 138:

Clause (a) of the first proviso to sub-section (1) of Section 138 provides that compounding provisions will not be applicable to a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of Section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section. It is to be seen that once clauses (g), (j) and (k) of sub-section (1) of Section 132 are deleted, there will be no need to make a reference to (a) to (f) and excluding the remaining sub-clauses. **It is therefore, proposed to make this clause simpler by amending to the effect that a person who has been allowed to compound once in respect of any of the offences specified in any clauses of sub-section (1) of Section 132, compounding provisions will be not applicable.**

Further, clause (b) of the first proviso to sub-section (1) of Section 138 provides that compounding provisions will not be applicable to a person who has been allowed to compound once in respect of any offence, under the CGST Act, 2017 or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act, in respect of supplies of value exceeding one crore rupees. Law Committee recommended that **this clause may be deleted** as it becomes duplicate and redundant subsequent to deletion of clauses (g), (j) and (k) of sub-section (1) of Section 132 and simplification of clause (a) of first proviso to sub-section (1) of Section 138, as discussed in para above.

Proposed amendment:

Clauses (a) and (b) of the first proviso to sub-section (1) of Section 138 of the CGST Act, 2017 are proposed to be amended as below:

“(a) a person who has been allowed to compound once in respect of any of the offences specified in ~~clauses (a) to (l)~~ of sub-section (1) of Section 132 ~~and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;~~

~~(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;”~~

IV. Consequential Amendment due to deletion of minor offences from Section 132:

Clause (e) of the first proviso to sub-section (1) of Section 138 is proposed to be deleted in view of proposed amendment in Section 132 with respect to deletion of minor offences.

~~(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of Section 132; and~~

Therefore, after all the above amendments, the first proviso to sub-section (1) of Section 138 shall be as follows:

“Provided that nothing contained in this Section shall apply to—

(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (l) ~~(a) to (f)~~ of sub-section (1) of Section 132 ~~and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;~~

~~*(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;*~~

~~*(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force*~~

~~*(c) person who has retained the benefit of a transaction covered under clause (ii) of sub-section (1) of Section 122 and at whose instance such transaction has conducted;*~~

~~*(d) a person who has been convicted for an offence under this Act by a court;*~~

~~*(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of Section 132; and*~~

~~*(f) any other class of persons or offences as may be prescribed.”*~~

4. Law Committee also recommended that subsequent to the amendment in Section 138 of the CGST Act, 2017, as per the above recommendations, corresponding amendments will also be required to be made in the CGST Rules, 2017, inter alia providing for different amount of compounding for different type of offences. The same will be deliberated by the Law Committee in due course of time.

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

Agenda Item 7 (iv): Amendment in Rule 94 of the CGST Rules, 2017 and Section 56 of the CGST Act, 2017 to provide for exclusion of time period of delay in sanction and disbursal of refund where such delay is attributable to applicant.

Section 56 of the CGST Act, 2017 provides that if the tax ordered to be refunded is not paid to the applicant within 60 days of the receipt of the refund application, interest shall be paid to the applicant from the date immediately after expiry of sixty days till the date of refund. Section 56 is reproduced as under:

“If any tax ordered to be refunded under sub-section (5) of Section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that Section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

***Provided** that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.*

***Explanation.**-For the purposes of this Section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of Section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).”*

1.2 Further, Rule 94 of the CGST Rules, 2017 provides for order sanctioning interest on delayed refunds. The same is reproduced below:

*“Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a payment order in **FORM GST RFD-05**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.”*

2. Reference is also invited to para 34 of the Master Circular No. 125/44/2019-GST dated 18.11.2019 on refunds wherein tax authorities have been advised to issue the refund sanction order within 45 days so that the refund is disbursed to the applicant within 60 days. Para 34 of the Circular No. 125/44/2019-GST dated 18.11.2019 reads as below:

“34. Section 56 of the CGST Act, 2017 clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified vide notification No. 13/2017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of

*receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the applicant. **Accordingly, all tax authorities are advised to issue the final sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.***

3. In this regard, it is worth mentioning that different steps in the refund processing, along with the time period within which such step is to be carried out, have been clearly prescribed in the CGST Rules, 2017. The timelines prescribed for various refund processing steps are mentioned below:

- i. Issuance of Deficiency Memo in FORM GST RFD-03/Acknowledgement in Form GST RFD-02 - within 15 days from the date of filing of application in FORM GST RFD-01
- ii. Issuance of Provisional refund in FORM GST RFD-04 – within 7 days from date of acknowledgement
- iii. Submission of Reply to notice in FORM GST RFD-09 – within 15 days from date of receipt of notice in FORM GST RFD-08

3.1 No time period has been prescribed for issuance of notice in FORM GST RFD-08 or that of passing an order after examination of reply to notice furnished by the applicant in FORM GST RFD-06. However, it has to be noted that the refund sanction order in FORM GST RFD-06 has to be issued within 60 days from the date of receipt of the application, in terms of the provisions of sub-section (7) of Section 54 of the CGST Act, 2017.

4. As stated above, in terms of Section 56 of the CGST Act, 2017, the sanctioned refund amount is required to be credited to the bank account of the applicant within 60 days from the date of receipt of application, which is complete in all aspects, failing which interest @ 6% p.a. has to be paid to the applicant on such delayed refund till such delay continues. Therefore, the officer has to not only ensure that the refund is sanctioned within 60 days but also to ensure that the said sanctioned amount is paid to the applicant within 60 days.

5. It is observed that there are a number of cases, where the applicant does not file reply to the notice in FORM RFD-08 within the prescribed time of 15 days and seeks additional time for filing reply, or for providing additional documents/ reply, or for personal hearing. In such cases, it may not be possible for the officers to stick to the timeline of 60 days for sanction and disbursal of refunds. However, the present provisions in the CGST Act, 2017 and Rules do not provide for any exceptions from payment of interest in cases of such delayed refunds, where the delay is attributable to the applicant.

6. There are also cases where though the refund is sanctioned to the applicant within time but the refund could not be credited to the bank account of the applicant within 60 days due to PFMS bank account validation error, on account of wrong details of bank account being submitted by the applicant. In such cases, the responsibility of correctly furnishing the details of the bank account, in which the refund is being sought, lies with the applicant. However, as stated above, the present provisions in the CGST Act, 2017 and Rules do not provide for any exceptions from payment of interest in cases of such delayed refunds, where the delay is attributable to the applicant.

7. In this regard, it is felt that where the delay in sanction or payment of refund is attributable to the applicant, there should be no liability on the department for payment of interest on account of delayed refund, to the extent the delay is attributable to the applicant. Therefore, there is a need to make provisions in the Act/ Rules to provide for exclusion of time period taken by the applicant in excess of 15 days in replying to notice in FORM GST RFD-08, any additional time sought by the applicant for submitting additional documents/ reply and the period taken for providing correct bank account details in case of PFMS bank account validation error and removal of such error thereof, for computation of time period of 60 days for sanction and disbursement of refund and calculation of interest on delayed refunds thereof.

8. Here, it would be pertinent to mention that CAG has also made the said recommendation in its report No. 5 of 2022 which has been laid before the Parliament on 08.08.2022, which is reproduced below:

“The provisions regarding payment of interest on delayed refunds need to be amended to exclude the period of delays that is attributable to the taxpayers such as delay in reply to SCN or incorrect bank details for payment.”

9. The said issue was deliberated by the Law Committee in its meetings held on 21.09.2022 and 23.11.2022. The Law Committee recommended making the following amendment in Rule 94 of the CGST Rules, 2017:

*“(1) Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a payment order in **FORM GST RFD-05**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.*

(2) The following periods shall not be included in the period of delay under sub-rule (1):

(a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of Rule 92, that the applicant takes:

- i. to furnish a reply in FORM GST RFD-09, or*
 - ii. for submitting additional documents or reply, on the request of the applicant;*
- and*

(b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.”

10. The Law Committee also felt that as Section 56 of the CGST Act, 2017 does not contain any provision empowering government to prescribe any Rules for computation of period of delay under the CGST Rules, 2017, there is also a need to provide enabling provision in Section 56 of the CGST Act, 2017 to provide for prescribing the manner of computation of period of delay for purpose of calculation of interest payable on delayed refund in the CGST Rules, 2017. Accordingly, the Law Committee recommended that in addition to making amendment in Rule 94 of the CGST Rules, 2017, as proposed in Para 9 above, an amendment may also be made in Section 56 of the CGST Act, 2017 as below:

Section 56 Interest on delayed refunds.-

If any tax ordered to be refunded under sub-section (5) of Section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that Section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund ~~for such period of delay beyond from the date immediately after the expiry of~~ sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax, ~~to be computed in such manner and subject to such conditions and restrictions as may be prescribed:~~

11. Accordingly, the agenda for amendment in Section 56 of the CGST Act, 2017 and Rule 94 of the CGST Rules, 2017, as recommended by the Law Committee, is placed before GST Council for deliberation and approval.

Agenda Item 7 (v): Clarifying the manner of re-determination of demand in terms of sub-section (2) of Section 75 of the CGST Act, 2017.

Section 75(2) of the CGST Act, 2017 provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of Section 74 is not sustainable for reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as “noticee”), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of Section 73. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of Section 73, specially in cases where time limit for issuance of order as per sub-section (10) of Section 73 has already been over. Doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of Section 73.

2. The issue was deliberated by the Law Committee in its meeting held on 12.10.2022. The Law Committee recommended for clarifying the doubts by way of issuing a circular. The draft Circular as approved by Law Committee is attached as **Annexure-A**.

3. Accordingly, the agenda is placed before the GST Council for deliberation and approval.

Circular No. XXX/YY/2022-GST

CBEC-20/06/04/2020-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

Dated the xxth December, 2022

To,

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

Subject: Clarification with regard to applicability of provisions of Section 75(2) of CGST Act, 2017 and its effect on limitation -reg.

Madam/Sir,

Attention is invited to sub-section (2) of Section 75 of CGST Act, 2017 which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of Section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as “noticee”), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of Section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of Section 73, specially in cases where time limit for issuance of order as per sub-section (10) of Section 73 has already been over. Further doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of Section 73.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	In some of the cases where the show cause notice has been issued by the proper officer to a notice under sub-section (1) of Section 74 for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of Section 74 for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of Section 73, in accordance with the provisions of sub-section (2) of Section 75. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	• Sub-section (3) of Section 75 provides that an order required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court has to be issued within two years from the date of communication of the said direction. • Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of Section 73 in accordance with the provisions of sub-section (2) of Section 75, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of Section 75, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.
2.	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of Section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of Section 75?	• In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of Section 75 of CGST Act, 2017 the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of Section 73, read with sub-section (10) of Section 73. • Sub-section (1) of Section 73 provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of Section 73 provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of Section 73 for issuance of order. As per sub-section (9) of Section 73, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an

		order. As per sub-section (10) of Section 73, an order under sub-section (9) of Section 73 has to be issued by the proper officer within three years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund. • It transpires from a combined reading of these provisions that in cases which do not involve fraud or wilful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of Section 73 has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund. • Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of Section 73 in terms of sub-section (2) of Section 75, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under sub-section (2) of Section 73 read with sub-section (10) of Section 73. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized along with interest and penalty payable in terms of Section 73 relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund. • In case, where the show cause notice under sub-section (1) of Section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of

		2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under sub-section (1) of Section 74 thereby deeming the notice to have been issued under sub-section (1) of Section 73, the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in Section 73. Similarly, where show cause notice under sub-section (1) of Section 74 was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped. • In cases, where the show cause in terms of sub-section (1) of Section 74 was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9 months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, the entire amount of the said demand in the show cause notice would be covered under re-determined amount. • Where the show cause notice under sub-section (1) of Section 74 was issued for multiple Financial Years, and where notice had been issued before the expiry of the time period as per sub-section (2) of Section 73 for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of Section 73 shall be re-determined only in respect of that Financial Year for which show cause notice was issued before the expiry of the time period as specified in sub-section (2) of Section 73.

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

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

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 7 (vi): Amendment in the CGST Rules, 2017.

Law Committee, in its various meetings, has deliberated upon several issues and has recommended changes in some of the provisions of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”). In addition to the changes in the CGST Rules, some changes in the FORMS have also been recommended by the Law Committee. These changes are discussed below:

I. Amendment in sub-rule (3) of Rule 12

1.1 References have been received from the trade that there is no option available presently for an e-commerce operator having TCS registration to apply for cancellation of TCS registration in case of the closure of the operations of e-commerce operator. It has been requested to provide an option to cancel TCS registration. Similarly, there is also no option presently for a TDS registrant to apply for cancellation of TDS registration. The following paras examine this issue in detail.

1.2 Electronic commerce operator who is required to collect tax at source under Section 52 of the CGST Act, 2017 is required to be compulsorily registered in terms of clause (x) of Section 24 of the said Act. Similarly, persons who are required to deduct tax under Section 51, whether or not separately registered, are required to be compulsorily registered in terms of clause (vi) of Section 24.

1.3 Section 29 of the CGST Act, 2017 provides that the proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person is no longer liable to be registered under Section 22 or Section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of Section 25.

1.4 Rule 20 of CGST Rules provides for application for cancellation of registration by a registered person, other than a person to whom a registration has been granted under Rule 12 or a person to whom a Unique Identity Number has been granted under Rule 17, seeking cancellation of his registration under sub-section (1) of Section 29. Such person is required to electronically submit an application in **FORM GST REG-16** within a period of thirty days of the occurrence of the event warranting the cancellation. However, **the said Rule specifically excludes a person to whom a registration has been granted under Rule 12.**

1.5 It may be noted that **Rule 12 deals with grant of registration to persons required to deduct tax at source or to collect tax at source.** Accordingly, TDS deductors and TCS collectors are not covered within the ambit of Rule 20 and as such, there is no procedure prescribed under Rule 20 for such persons to apply for cancellation of registration.

1.6 Cancellation of such registration by proper officer is provided under Rule 12(3), but there is no mechanism for the said person to apply for cancellation himself. Rule 12(3) provides for cancellation of registration as under:

(3) Where, upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in **FORM GST REG-06** has been issued is no longer liable to deduct tax at source under Section 51 or collect tax at source under Section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in **FORM GST REG-08**:

Provided that the proper officer shall follow the procedure as provided in Rule 22 for the cancellation of registration.

7. The issue was deliberated by the Law Committee in its meeting held on 23.11.2022, wherein Law Committee recommended for amendment in sub-rule (3) of Rule 12 to provide an option to the TCS and TDS operators to apply for cancellation of their registration. The proposed amendment in sub-rule (3) of Rule 12 is shown, in red color, as below:

Sub-rule (3) of Rule 12

(3) Where, *on a request made in writing by a person to whom a registration has been granted under sub-rule (2) or* upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in **FORM GST REG-06** has been issued is no longer liable to deduct tax at source under Section 51 or collect tax at source under Section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in **FORM GST REG-08**:

Provided that the proper officer shall follow the procedure as provided in Rule 22 for the cancellation of registration.

II. Amendment in sub-rule (1) of Rule 37

2.1 2nd proviso to Section 16(2) of the CGST Act provides for the cases where a recipient fails to pay to the supplier the amount towards the value of supply along with tax payable thereon within a period of 180 days. The same reads as under:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

2.2 It may be noted that to align with the GSTR-1/2B/3B return filing system, 2nd and 3rd provisos to Section 16(2) have separately been recommended to be amended as below:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input

tax credit availed by the recipient shall be ~~added to his output tax liability~~ paid by him, along with interest ~~thereon payable under Section 50~~, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him ~~to the supplier~~ of the amount towards the value of supply of goods or services or both along with tax payable thereon.

2.3 The said manner to be followed by such a recipient is prescribed in Rule 37(1) of the CGST Rules. However, to align with the GSTR-1/2B/3B return filing system, FORM GSTR-2 and FORM GSTR-3 in CGST Rules, 2017 have been omitted and the Rule 37(1) of CGST Rules, 2017 has been amended with effect from 01.10.2022 vide Notification No. 19/2022 - CT dated 28.09.2022, as under:

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, ~~other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards~~ the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of Section 16, shall ~~furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month~~ pay an amount equal to the input tax credit availed in respect of such supply, along with interest payable thereon under Section 50, while furnishing the return in **FORM GSTR-3B** for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

2.4 It is observed that, before the said amendments, sub-rule (1) of Rule 37 required the recipient to furnish the details of “the amount of input tax credit availed of **proportionate** to such amount not paid to the supplier” and under sub-rule (2) of Rule 37, the amount of such input tax credit was to be added to the output tax liability of the said recipient for the month in which the details were furnished. Resultantly, only amount of ITC proportionate to the amount of payment withheld vis-à-vis the value of supply was to be added to the output tax liability.

2.5 However, the amended Rule 37(1) requires the said recipient to pay an amount equal to the input tax credit availed in respect of such supply. It gives an impression that the whole of ITC pertaining to such supply is to be reversed even though a part of the payment may have been made by the recipient to the supplier. This appears to be an inadvertent departure from the principle of proportionate reversal under the original Rule.

2.6 In view of the above, the Law Committee in its meeting held on 05.11.2022 deliberated on a proposal to address this anomaly and recommended that sub-rule (1) of Rule 37 may be amended **retrospectively with effect from 01.10.2022**. The proposed amendment in sub-rule (1) of Rule 37 is shown, in red color, as below:

Sub-rule (1) of Rule 37

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply, ~~whether wholly or partly,~~ along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of Section 16, shall pay ~~or reverse~~ an amount equal to input tax credit availed in respect of such supply, ~~proportionate to the amount not paid to the supplier,~~ along with interest payable thereon under

Section 50, while furnishing the return in **FORM GSTR-3B** for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

III. Insertion of Rule 37A

3.1 Section 106 of the Finance Act, 2022 has been notified w.e.f. 1st October, 2022 vide Notification No. 18/2022 – CT to substitute Section 41 of the CGST Act, 2017. Sub-section (2) of Section 41 provides as under:

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

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

3.2 The Law Committee in its meetings held on 26.08.2022, 07.09.2022 and 05.11.2022 deliberated the manner in which such ITC may be reversed and re-availed. Considering various practical issues in the implementation of the said provision and for ease of doing business, the Law Committee recommended the following mechanism for such reversal of credit and re-availment thereof:

(i) Recipient may avail credit in the return in FORM GSTR-3B based on amount available as per his FORM GSTR-2B in a tax period (as he may not be aware of return filing status of supplier at the time of filing his return in FORM GSTR-3B as the due date of filing return for both the supplier and recipient is the same).

(ii) Where the supplier of the registered person has furnished details of a supply in his FORM GSTR-1 or using IFF for a tax period, but the corresponding return in FORM GSTR-3B is not furnished by the said supplier till 30th September following the end of corresponding financial year, the ITC in respect of such supplies shall be reversed by the registered person.

(iii) The reversal shall be made by the registered person while furnishing a return in FORM GSTR-3B on or before 30th November following the end of such financial year, during which such input tax credit has been availed.

(iv) Where the said ITC is not reversed by the registered person in a return in FORM GSTR-3B on or before 30th November following the end of the financial year, during which such input tax credit has been availed, such amount shall be payable along with interest under Section 50. Therefore, no interest burden lies on the taxpayer if reversal is done upto the specified time period and the interest liability arises only if reversal is done after that.

(v) The registered person can re-avail the said credit in a subsequent return in FORM GSTR-3B when the concerned supplier files his return in FORM GSTR-3B for the corresponding tax period of the said invoice.

3.3 Therefore, the Law Committee recommended insertion of Rule 37A to the CGST Rules. The proposed Rule 37A is shown in red color below:

Rule 37A

37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.- Where input tax credit has been availed by a registered person in the return in **FORM GSTR-3B** for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility, but the return in **FORM GSTR-3B** for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in **FORM GSTR-3B** on or before the 30th day of November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in **FORM GSTR-3B** on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under Section 50.

Provided further that where the said supplier subsequently furnishes the return in **FORM GSTR-3B** for the said tax period, the said registered person may re-avail the amount of such credit in the return in **FORM GSTR-3B** for a tax period thereafter.

IV. Amendment in Rule 46

4.1 Clause (e) of Rule 46 of the CGST Rules, 2017 provides that a tax invoice issued by a registered person shall contain the name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and where the value of taxable supply is fifty thousand rupees or more. Further, clause (f) of Rule 46 provides that a tax invoice issued by a registered person shall contain the name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and the value of taxable supply is less than fifty thousand rupees but where the recipient requests that such details be recorded in the tax invoice.

4.2 General provisions relating to place of supply of services as provided in sub-section (2) of Section 12 of the IGST Act, 2017 provide that the place of supply of services made to an unregistered person shall be the location of the recipient, where the address on record exists, and the location of the supplier of services, in other cases. Location of the recipient of service is the usual place of residence in case of an unregistered person in accordance with clause (d) of sub-section (70) of Section 2 of the CGST Act. Hence, it becomes imperative to capture the proper address of the recipient in the invoice in case of supply of service to ensure flow of revenue to the appropriate consuming State.

4.3 The issue was deliberated by the Law Committee in its meeting held on 26.08.2022 and 07.09.2022. Law Committee observed that in case of supply of services to unregistered persons through online platforms, in particular, recipients' addresses are not properly captured, which affects flow of revenue to the appropriate destination states. Law Committee recommended insertion of a proviso to clause (f) of Rule 46 to ensure mandatory recording of address of unregistered recipients of service along with the PIN code when the said services are provided through the online platform by a

registered person even if the value of taxable supply is less than fifty thousand rupees. The LC recommended insertion (shown in red color) of proviso in clause (f) of Rule 46 as below:

Rule 46

Rule 46. Tax invoice.-Subject to Rule 54, a tax invoice referred to in Section 31 shall be issued by the registered person containing the following particulars, namely, -

(a)

(b)

(c)

(d)

(e)

(f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice; :

Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.

(g)

V. Amendment in Rule 46A

5.1 Rule 46 of the CGST/SGST Rules, 2017 prescribes the particulars that a tax invoice issued by a registered person shall contain. Rule 49 of the said Rules prescribes the particulars that a bill of supply issued by a supplier shall contain. Rule 54 of the said Rules further prescribes the particulars in respect of tax invoices issued in special cases.

5.2 Rule 46A of the CGST/SGST Rules, 2017 provides that, notwithstanding anything contained in Rule 46 or Rule 49 or Rule 54, a registered person supplying taxable as well as exempted goods or services or both to an unregistered person may issue a single “invoice-cum-bill of supply” for all such supplies. It may be observed in this regard that, the *non-obstante* clause in Rule 46A actually removes the obligation on the part of a registered person who is supplying taxable as well as exempted goods or services or both to an unregistered person to include the particulars as prescribed in Rule 46 or Rule 49 or Rule 54, as applicable, while issuing the single “invoice-cum-bill of supply”. Hence, it was felt by Law Committee that Rule 46A is required to be amended accordingly to make it obligatory on the part of a registered person, who

is supplying taxable as well as exempted goods or services or both to an unregistered person, to include the relevant particulars as prescribed in Rule 46 or Rule 49 or Rule 54, as applicable, while issuing the single “invoice-cum-bill of supply”.

5.3 Accordingly, the Law Committee in its meeting dated 26.08.2022 and 07.09.2022 recommended insertion of a proviso (shown in red color) in Rule 46A as below:

Rule 46A

Rule 46A. Invoice-cum-bill of supply.- Notwithstanding anything contained in Rule 46 or Rule 49 or Rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single “invoice-cum-bill of supply” may be issued for all such supplies: :

Provided that the said single “invoice-cum-bill of supply” shall contain the particulars as prescribed under Rule 46 or Rule 54, as the case may be, and Rule 49.

VI. Insertion of proviso in sub-rule (8) of Rule 87

6.1 GST System enables taxpayers paying their taxes through e-payment mode on real-time basis. As per the Joint Committee Report on GST Payment Process, GST System generates CPIN at the time of creating Challan and the banks on realizing payment from the taxpayers’ account generate CIN against each CPIN and send to GST System. Based on the signed CIN received from the banks, the GST System updates payment in Electronic Cash Ledger (**ECL**) of the taxpayer.

6.2 However, in certain cases, where the bank fails to communicate the signed CIN details to GST system, two API calls are made by GST System automatically at the interval of 5 minutes to the concern banks for sharing signed CIN of transactions. Subsequently, taxpayers may also trigger on call demand of such payment transactions from GST System to the bank in case payments are not updated in their ECL even after the above API calls.

6.3 It has been learnt that even after all these efforts, the bank fails to share CIN details with GST System in few cases and payments are not integrated with the ECLs, whereas, banks share the CIN details and payment of such transaction with RBI subsequently. RBI after reconciliation of payment with CINs received from the banks, share such transaction details with GST System next day in the RBI e-Scroll file.

6.4 Since RBI e-Scroll contains the successful payment made against the CINs, and Para 112 and 113(i) of the Joint Committee Report on GST Payment Process also requires integration of Payments on the basis of RBI e-Scroll file, the ECL of such taxpayers are updated by GST System based on e-Scroll of RBI received next day. It has also been specified under Para 113 of the Joint Committee Report that the Accounting Authority shall carry out the accounting based on Scroll data received from RBI. As on 31.03.2022, a total of 2953 transactions have been updated by GST System in ECL on the basis of RBI e-Scrolls which is 0.00128 percent of total 23.05 Crore payment transactions.

6.5 CAG has raised a Para on this process of ECL update. Though, they don’t have objection on the authenticity of payment integration, still they have held that instead of continuing such ad-

hoc process, the DoR should set a right process by taking a decision to ensure proper accounting and reconciliation.

6.6 Therefore, a process may be prescribed under the law to allow ECL updates on the basis of e-Scroll of RBI in such cases, where banks fail to provide signed CIN to GST System but take the payment from taxpayers successfully and share such payments with RBI. Since payment is debited from the taxpayers account and RBI has transferred such payment to Government, the accounting/ reconciliation may be made by the Pr. CCA based on the RBI e-Scroll in such cases.

6.7 The matter was deliberated by the Law Committee to regularize the process of updating ECL on the basis of e-Scroll data received from the RBI (the account aggregator on behalf of Government of India and State Governments) in the cases where payment has been received successfully but bank fails to share the signed CIN with GST System, with a view to protect taxpayers' genuine interest and mitigate the hardships faced due to such technical challenges. Considering this miniscule volume, payments of which are caught in unavoidable technical problems and the hardship of the taxpayers, Law committee in its meeting dated 07.09.2022 recommended for amendment of Rule 87 of CGST Rules by inserting a new proviso (shown in red color) to sub-rule (8) of Rule 87 of the CGST Rules, 2017, as below:

Sub-rule (8) of Rule 87

(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in [FORM GST PMT-07](#) through the common portal to the bank or electronic gateway through which the deposit was initiated :-

Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the RBI in cases where the details of the said e-Scroll are in conformity with the details in challan generated in **FORM GST PMT-06** on the Common Portal.

VII. Amendment in Rule 108 and Rule 109

7.1 In terms of sub-section (1) of Section 107 of the CGST Act, 2017, any person aggrieved by any decision or order passed by an adjudicating authority may appeal to the concerned appellate authority within three months from the date of communication of the said decision or order to such person. Similar provision exists under sub-section (2) of Section 107 of the CGST Act, 2017 to provide for filing appeal by an officer authorised by the Commissioner to the appellate authority within six months from the date of communication of the said decision or order.

7.2 In terms of sub-rule (3) of Rule 108 of the CGST Rules, 2017 in respect of an appeal filed in terms of the provisions of sub-section (1) of Section 107 of CGST Act, 2017 a certified copy of the decision or order appealed against is required to be submitted within seven days of filing the appeal in FORM GST APL-01 under sub-rule (1) of Rule 108. On receipt of such certified copy, the appellate authority is required to issue a final acknowledgment in Form GST APL-02. It has also been provided that the date of issuance of the provisional acknowledgment is considered as the date of filing of appeal in case the certified copy is submitted within seven days of filing of

Form GST APL 01; however, in case the same is not furnished within the aforesaid period of seven days, the date of submission of the certified copy is considered as the date of filing appeal. Hence, submission of the certified copy of the decision or order appealed against is mandated for issuance of final acknowledgment of appeal or its admissibility.

7.3 Similarly, sub-rule (2) of Rule 109 of CGST Rules, 2017 provides for requirement of submission of certified copy of the order appealed against within seven days of filing application in FORM GST APL-03 in terms of sub-section (2) of Section 107 of CGST Act, 2017.

7.4 In GST regime, when an order, which is appealed against, is issued or uploaded by the adjudicating authority on the common portal, the same can be viewed by the appellate authority. Further, certification of a document serves the purpose of vouching for the authenticity of its content. **Accordingly, the requirement of submission by the appellant of a certified copy of such an uploaded order to vouch for its authenticity, pales into insignificance considering that, the order has been uploaded by the adjudicating authority using his Digital Signature Certificate and the same is available for viewing or downloading by the appellate authority on the portal.**

7.5 However, in cases where the decision or order has been passed manually and has not been uploaded on the common portal, the same is not available to the Appellate Authority on the common portal. In such cases, non-submission of the certified copy by the appellant restricts the Appellate Authority in entertaining the same. Doubts are being raised on the requirement of submission of a certified copy of the decision or order appealed against for admissibility of appeal by an Appellate Authority.

7.6 The issue was deliberated by the Law Committee. The Law Committee in its meeting held on 05.11.2022 and 23.11.2022 recommended that to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority, an amendment may be made in sub-rule (3) of Rule 108 and in Rule 109 of the CGST Rules, 2017.

7.7 The Law Committee also observed that **on the common portal, the procedure of filing of appeal in accordance with Rule 109 of the CGST Rules, 2017 by the Department is similar to the procedure of filing of appeal in accordance with Rule 108 of the CGST Rules, 2017**, i.e. once an appeal is filed by the Department in FORM GST APL-03, a provisional acknowledgement is issued immediately by the system, subsequent to which the final acknowledgment in FORM GST APL-02 is issued by the Appellate Authority. Accordingly, the Law Committee recommended that Rule 109 of the CGST Rules, 2017 may be re-drafted in the similar manner as Rule 108 of the CGST Rules, 2017. Subsequent to the amendment in Rule 108 and 109, label changes would be required in FORM GST APL-02.

7.8 The proposed amendment in Rule 108, Rule 109 and FORM GST APL-02 are shown in red color, as below:

Rule 108

Rule 108. Appeal to the Appellate Authority.-

(1)

(2)

(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

Explanation. -

Rule 109

Rule 109. Application to the Appellate Authority.-

(1) An application to the Appellate Authority under sub-section (2) of Section 107 shall be filed in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.

(2) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

FORM GST APL – 02

[See Rule 108(3) & 109(2)]

Acknowledgment for submission of appeal

<Name of applicant><GSTIN/Temp ID/UIN/Reference Number with date >

Your appeal has been successfully filed against < Application Reference Number >

1. Reference Number-
2. Date of filing-
3. Time of filing-
4. Place of filing-
5. Name of the person filing the appeal-
6. Amount of pre-deposit-
7. Date of acceptance/rejection of appeal-
8. Date of appearance-

Date: Time:

9. Court Number/ Bench

Court: Bench:

Place:

Date:

Signature>

Name:

Designation:

On behalf of Appellate Authority/Appellate
Tribunal/Commissioner / Additional or Joint Commissioner

VIII. Insertion of Rule 109C

8.1 Sub-section (1) of Section 107 of CGST Act, 2017 provides for filing of appeal by any aggrieved person before first appellate authority against any decision or order passed by the adjudicating authority. Similarly, sub-section (2) of Section 107 of CGST Act, 2017 provides for the appeal to be filed by an authorised officer with the first appellate authority against any decision or order of an adjudicating authority. However, no provision in CGST Act or CGST Rules presently provides for withdrawal of such an appeal application either by the aggrieved person or by the authorised officer. The issue was deliberated by the Law Committee and it was felt that an option of withdrawal of Appeal application upto a specified stage before the issuance of Order-in-Appeal needs to be made available to the taxpayer and tax officer.

8.2 Accordingly, GSTN has developed functionality for withdrawal of the appeal application by taxpayer as well by the tax officer. For enabling such functionality, requisite changes are required to be carried out in CGST Rules, 2017 and a new form for withdrawal of appeal application is also required to be introduced.

8.3 The issue was deliberated by the Law Committee in its meeting held on 03.08.2022, which recommended insertion of Rule 109C in CGST Rules 2017 to provide for withdrawal of appeal as below. Further, Law Committee in its meeting held on 12.10.2022 recommended introduction of FORM GST APL-01/03W in CGST Rules, 2017, to enable the appellant to file application for withdrawal of appeal application. The proposed Rule 109C and FORM GST APL-01/03W is shown, in red color, as below:

Rule 109C

109C. Withdrawal of Appeal.-

*The appellant may, at any time, before issuance of show cause notice under sub-section (11) of Section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in **FORM GST APL-01**, file an application for withdrawal of the said appeal by filing an application in **FORM GST APL-01W**:*

***Provided that** where the final acknowledgment in **FORM GST APL-02** has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within 7 days of filing of such application:*

***Provided further that** any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of Section 107, as the case may be.*

FORM GST APL-01/03 W

[Refer Rule 109C]

Application for Withdrawal of Appeal Application

1. GSTIN:

2. Name of Business (Legal) (in case appeal is filed under sub-section (1) of Section 107)

3. Name and designation of the appellant (in case appeal is filed under sub-section (2) of Section 107):

4. Order No.& Date:

5. ARN of the Appeal & Date:

6. Reasons for Withdrawal:

- i. Acceptance of order of the adjudicating authority.
- ii. Acceptance of order of an Higher Appellate Authority/ Court on similar subject matter
- iii. Need to file appeal again after rectification of mistakes/omission in the filed appeal
- iv. Amount involved in appeal is less than the monetary limit fixed for Appeal by the Board/Commissioner
- v. Any other reason

7. Declaration (applicable in case appeal is filed under sub-section (1) of Section 107):

I/We <Taxpayer Name> hereby solemnly affirm and declare that the information given herein is true and correct to the best of my/ our knowledge and belief and nothing has been concealed therefrom.

Place:

Signature

Date:

Name of Applicant /Applicant Officer

Designation/ Status.

IX. Deletion of clause (d) of sub-rule (14) of Rule 138

9.1 The threshold limit for generation of e-way bill has been prescribed in Rule 138 of CGST Rules, 2017. As per sub-rule (1) of Rule 138 of the CGST Rules, 2017, a registered person who causes movement of goods of consignment value exceeding fifty thousand rupees shall before commencement of such movement has to generate the e-way bill. Further, sub-rule (14) of Rule 138 of CGST Rules, 2017 prescribes the conditions when the e-way bill is not required to be generated.

9.2 As per clause (d) of the said sub-rule, e-way bill is not required to be generated in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of [Rule 138](#) of the SGST or UTGST Rules in that particular State or Union territory. Therefore, for intra-state movement of goods, the said threshold limit for generation of e-way bill is to be notified by the Commissioner of State Tax, in consultation with the Principal Chief Commissioner/ Chief Commissioner of Central Tax as per the provisions of clause (d) of sub-rule (14) of the Rule 138 of the respective SGST or UTGST Rules. Therefore, e-way bill is not required to be generated for intra-state movement of goods where the consignment value of goods being transported is less than the threshold value as notified by the respective Commissioner of State Tax.

9.3 Consequently, different States/ UTs have notified different threshold limits for requirement of generation of e-way bill for intra-state movement of goods within their state/ UT. While most of the States/ UTs have kept the threshold limit for generation of e-way bill for intra-state movement at the consignment value of fifty thousand rupees but some of the States/ UTs like Delhi, Punjab, Bihar, Jharkhand, West Bengal and Tamil Nadu have kept the said threshold value at one lac rupees. Further, Union Territory of Jammu and Kashmir has exempted generation of e-way bill for intra-state movement of goods. Gujarat has exempted the same for some specified goods transported for the purpose of job-work. In some of the States, intra-city movement of goods has either been exempted from generation of e-way bill or higher threshold limits have been prescribed for the same.

9.4 Representations have been received from various quarters that different threshold for generation of e-way bill for intra-state movement of goods in different States/ UTs is creating confusion and difficulties for the trade and industry.

9.5 Law Committee deliberated on the issue in its meeting held on 05.11.2022 and recommended that the threshold for intra-state generation of e-way bill may be brought at the same level in all the States/ UTs at par with that for inter-state movement of goods (i.e. Rs 50,000) by deletion of clause (d) of sub-rule (14) of Rule 138 of CGST Rules, 2017. The proposed amendment in sub-rule (14) of Rule 138 is shown, in red color, as below:

Sub-rule (14) of Rule 138

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

.....

~~(d) in respect of movement of goods within such areas as are Notified under clause (d) of sub-rule (14) of [Rule 138](#) of the State or Union territory Goods and Services Tax Rules in that~~

~~particular State or Union territory;~~

.....

Explanation. -

X. Amendment in Entry (5) of Annexure appended to sub-rule (14) of Rule 138

10.1 In terms of clause (a) of sub-rule (14) of Rule 138 of the CGST/SGST Rules, 2017, e-way bill is not required to be generated in case of transportation of goods as specified in the Annexure appended to the said sub-rule. Entry No.4 & 5 of the aforesaid Annexure **cover the entire Chapter 71** of the First Schedule to the Customs Tariff Act, 1975, **including Imitation Jewellery**, thereby exempting the generation of e-way bill for transportation of imitation jewellery.

10.2 It has been contended by the field formations that in common parlance, imitation jewellery does not fall in the same genre as jewellery made of Gold and Silver. One of the reasons to exempt Jewellery made of gold, silver and precious metal from the requirement of generation of e-way bill was the security concern. The said reason may not be applicable in case of imitation jewellery. Moreover, imitation jewellery is an item prone to evasion of tax. It has, therefore, been suggested by field formations to mandate requirement of generation of e-way bill for movement of consignments of imitation jewellery in the interest of revenue.

10.3 LC in its meeting held on 05.11.2022 deliberated on the issue and recommended a modification in the Entry No. 5 of the Annexure appended to sub-rule(14) of Rule 138 of the CGST Rules, 2017 so as to exclude imitation jewellery from the exemption from the generation of e-way bill for its movement. Law Committee also recommended that GSTN and NIC should ensure requisite enabling functionality on the e-way bill portal for the generation of e-way bills for imitation jewellery. The proposed Amendment in Entry No. 5 in Annexure appended to sub-rule (14) of Rule 138 of CGST Rules, 2017 is shown, in red color, as below:

Annexure appended to sub-rule (14) of Rule 138

S.No.	Description
(1)	(2)
5.	<i>Jewellery, goldsmiths', and silversmiths' wares and other articles (Chapter 71) excepting Imitation Jewellery (7117)</i>

XI. Substitution of FORM GST REG-19

11.1.1 Under Rule 22(3) of CGST Rules, 2017, **FORM GST REG-19** is the order for cancellation of registration. Therein, the proper officer is required to select appropriate status from the following options:

- (i) Whereas no reply to notice to show cause has been submitted; or
- (ii) Whereas on the day fixed for hearing you did not appear; or
- (iii) Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

11.1.2 There could be more scenarios based on whether the reply to the show cause notice has been submitted or not and whether the concerned person has appeared for personal hearing or not. Therefore, GSTN proposed an elaborate list of such options to choose from in **FORM GST REG-19** in order to clearly bring out the status.

11.2 Further, “Determination of amount payable pursuant to cancellation” along with a table is also a part of the said order in **FORM GST REG-19**. Display of this table with nil value in cancellation order may be misleading if no tax liability to be discharged by taxpayer has been ascertained and mentioned by the tax officer in the table in the said order. Moreover, according to Section 29(3) of CGST Act, 2017 cancellation of registration does not affect the liability to pay tax and other dues or to discharge any obligation under CGST Act or the Rules made thereunder for any period prior to the date of cancellation, whether or not such tax and other dues are determined before or after the date of cancellation. Also, an electronic liability register specified under sub-section (7) of Section 49 is maintained in **FORM GST PMT-01** for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him are debited to the said register. Therefore, it was proposed to remove the said table for determination of amount payable pursuant to cancellation from **FORM GST REG-19**.

11.3 The matter was deliberated by the Law Committee in its meeting held on 05.11.2022. The Law Committee felt that in addition to the above, the registered person, whose registration is being cancelled through **FORM GST REG-19**, should also be communicated certain other compliances due on his part such as furnishing the pending returns and the final return.

11.4 The Law Committee, accordingly, recommended that **FORM GST REG-19** may be substituted. New **FORM GST REG-19** is shown, in red color, as under:

FORMGSTREG-19

[SeeRule22(3)]

Reference Number

Date

To

Name

Address

GSTIN/UIN

Application Reference Number(ARN)

Date

Order for Cancellation of Registration

This has reference to show cause notice issued dated ----

- ☐ *Whereas no reply to the show cause notice has been submitted;
and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or*
- ☐ *Whereas reply to the show cause notice has been submitted vide <ARN Number> dated_____;
and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or*
- ☐ *Whereas no reply to the show cause notice has been submitted and on day fixed for personal hearing, you did not appear in person or through an authorized representative;
and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or*
- ☐ *Whereas no reply to the show cause notice has been submitted, but you/ your authorised representative attended the personal hearing and made a written or verbal submission;
and whereas, the undersigned on examination of your written or verbal submission made during personal hearing and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or*
- ☐ *Whereas reply to the show cause notice has been submitted vide <ARN Number> dated_____. But, you or your authorised representative did not attend the personal hearing on scheduled or extended date;
and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or*
- ☐ *Whereas reply to the show cause notice has been submitted vide <ARN Number> dated_____ and you/ your authorised representative attended the personal hearing, made a written/oral submission during personal hearing;
and whereas, the undersigned has examined your reply to show cause notice as well as submissions made at the time of personal hearing and is of the opinion that your registration is liable to be cancelled for following reason(s):*

i.

ii.

The effective date of cancellation of your registration is <<DD/MM/YYYY>>.

- 2. Kindly refer to the supportive document(s) attached for case specific details.*
- 3. It may be noted that a registered person furnishing return under sub-section (1) of*

Section 39 of the CGST Act, 2017 is required to furnish a final return in **FORM GSTR-10** within three months of the date of this order.

4. You are required to furnish all your pending returns.

5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the Rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

Place:

Date:

Signature
<Name of the officer>
Designation
Jurisdiction

XII. Amendment in FORM GST REG-17

12. Under Rule 22(1) of CGST Rules, 2017, FORM GST REG-17 is show cause notice for cancellation of registration. GSTN proposed that “*Kindly refer to the supportive documents attached for case specific details.*” may be added at the end of **FORM GST REG-17**. The Law Committee in its meeting held on 05.11.2022 recommended the same. The proposed amendments in **FORM GST REG-17** are shown, in red color, as below:

FORM GST REG -17

[See Rule 22(1)]

Reference No. -

<< Date >>

To

Registration Number (GSTIN/UIN)

(Name)

(Address)

Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons: -

1

2

3

....

☐ You are hereby directed to furnish a reply to this notice within seven working days from the date of service of this notice.

☐ You are hereby directed to appear before the undersigned on DD/MM/YYYY at HH/MM

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided *ex parte* on the basis of available records and on merits.

☐ *Kindly refer to the supportive document(s) attached for case specific details.*

Place:

Date:

Signature

< Name of the Officer>

Designation

Jurisdiction

[Note: - Your registration stands suspended with effect from ----- (date).]

XIII. Amendment in FORM GST DRC-03

13.1 Circular No. 174/06/2022-GST dated 06.07.2022 has been issued prescribing the manner of re-credit of amount of erroneous refund deposited by the taxpayer, in terms of provisions of sub-rule (4B) of Rule 86, in electronic credit ledger using FORM GST PMT-03A. In this regard, GSTN has been requested to make certain amendments in FORM GST DRC-03 to include the following options in the drop-down regarding cause of payment:

- i. Deposit of erroneous refund of unutilised ITC
- ii. Deposit of erroneous refund of IGST, obtained in contravention of sub-rule (10) of Rule 96 of the CGST Rules, 2017.

13.2 Further, GSTN has been requested to develop an automated functionality for online transmission of intimation of payment of amount of erroneous refund through FORM GST DRC-03 to the jurisdictional proper officer for issuance of FORM GST PMT-03A for re-credit of amount so deposited by the taxpayer in his electronic credit ledger. For development of this functionality, certain additional information has to be sought from the taxpayer in FORM GST DRC-03 regarding the details of refund application or the shipping bill, date of credit of refund in the taxpayer's bank account etc. for making the said information available to the proper officer in order to automate the functionality.

13.3 In view of the above, GSTN has placed a proposal for making certain amendments in FORM GST DRC-03 before the Law Committee in its meeting held on 21.09.2022 wherein LC has recommended the changes in FORM GST DRC-03 with the following suggestions:

- a) The options for drop down need not be specified in FORM GST DRC-03 and same may be made available on the portal under drop down options.
- b) A drop-down option may also be provided in the said Form for deposit of refund in case of non-realisation of export proceeds under Rule 96B.
- c) Taxpayer may be provided facility to choose multiple options in the drop down.

13.4 The proposed amendments in FORM GST DRC-03, as suggested by LC, are shown, in red color, as below:

FORM GST DRC- 03

[See Rule 142(2) & 142 (3)]

Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement [or intimation of tax ascertained through FORM GST DRC-01A

1.	GSTIN											
2.	Name	< Auto>										
3.	Cause of payment	<< drop down>>										
3 A	Shipping bill details of erroneous IGST refund (to be enabled only if the specified category is chosen in drop down menu)	(i) Shipping Bill/ Bill of Export No. & Date: (ii) Amount of IGST paid on export of goods: (iii) Notification No. used for procuring inputs at concessional rate or exemption: (iv) Date of notification: (v) Amount of refund received: (vi) Amount of erroneous refund to be deposited: (vii) Date of credit of refund in Bank Account:										
4.	Section under which voluntary payment is made	<< drop down>>										
5.	Details of show cause notice, if payment is made within 30 days of its issue, scrutiny, intimation of tax ascertained through Form GST DRC-01A, audit, inspection or investigation, GST RFD-01, others (specify)	Reference No./ARN							Date of issue/filing			
6.	Financial Year											
7.	Details of payment made including interest and penalty, if applicable (Amount in Rs.)											
Sr. No.	Tax Period	Act	Place of supply	Tax / Cess	Interest	Penalty, if applicable	Fee	Others	Total	Ledger utilized	Debit entry	Date of debit

			(PO S)			ble				(Cas h / Cred it)	no.	t en tr y
1	2	3	4	5	6	7	8	9	10	11	12	13

8. Reasons, if any - << Text box>>

9. Verification-

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory

Name

Designation / Status

Date

Note -

1.Payment to be only in cash for deposit of erroneous refund of unutilised ITC and for deposit of erroneous refund of IGST, obtained in contravention of sub-rule (10) of Rule 96.

2. ARN of FORMGST RFD-01 to be mentioned mandatorily if cause of payment is selected as – ‘deposit of erroneous refund of unutilised ITC’.

3. Details of shipping bill numbers to be entered in the same pattern in which the details have been entered in the return.

Accordingly, the agenda note is placed before the GST Council for deliberation and approval. *Pari-Materia* changes would also be required in the respective SGST Rules.

Agenda Item 7(vii): Supplies by unregistered person and composition dealers through e-commerce operators

Attention is drawn to an agenda on the cited subject which was deliberated by the GST Council in its 47th meeting held on 28th-29th June, 2022. The Council had given in-principle approval for relaxation in the provisions for suppliers making supplies through E-Commerce Operators (ECOs), as under:

- (I) Waiver of requirement of mandatory registration under Section 24(ix) of the CGST Act, 2017 for person supplying goods through ECOs, subject to certain conditions, such as:
 - a. The aggregate turnover on all India basis does not exceed the turnover specified under sub-section (1) of Section 22 of the CGST Act, 2017 and notifications issued thereunder.
 - b. The person is not making any inter-state taxable supply
- (II) Composition tax payers would be allowed to make intra-state supply through e-commerce operators subject to certain conditions.
- (III) The details of the scheme will be worked out by the Law Committee of the Council. The scheme would be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by ECOs.

2.1 In this regard, the detailed recommendations made by the Council in its 47th meeting are as follows:

For unregistered persons supplying goods through electronic commerce operators

2.2. In respect of supplier supplying goods through electronic commerce operators, who are required to be mandatorily registered under Section 24(ix) of the CGST Act, 2017, the Council had deliberated the proposal to provide exemption from mandatory registration under Section 23(2) of the CGST Act, 2017 for class of suppliers making supplies of goods through E-commerce operators, subject to conditions that-

- a. The exemption is available upto aggregate turnover on all India basis not exceeding the turnover specified under sub-section (1) of Section 22 of the CGST Act, 2017 and notifications issued thereunder.
- b. such unregistered persons shall not make any inter-state taxable supply;
- c. they would be mandatorily required to declare their Permanent Account Number (PAN) and Principal place of business.
- d. such unregistered person shall be restricted to declare principal place of business in only one State.
- e. The electronic commerce operators would be required to declare the supplies made by unregistered persons through them in **FORM GSTR-8** statement (by inserting a suitable table in it). E-commerce operators would also be mandated to ensure that no inter-state supply through them is allowed in respect of such unregistered persons by making necessary checks and validations on their system/platform; failing which the penalty would be imposable on the ECO.

- f. The electronic commerce operators will not be required to deduct any TCS in respect of such supplies made by unregistered persons through them.

For composition taxpayers supplying through electronic commerce operators

2.3. In respect of composition taxpayers who are restricted under Section 10(2)(d) of the CGST Act, 2017 from making supplies through E-Commerce operators, the Council had deliberated to make a special procedure under Section 148 of the CGST Act, 2017 for persons supplying through electronic commerce operators to opt for composition scheme by fulfilling all other eligibility conditions provided under Section 10(1) and (2) or Section 10(2A), as the case may be, of the CGST Act, 2017. This may be subject to conditions such as the following:

- a. he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;
- b. he is not engaged in making any inter-state outward supplies of goods or services;
- c. he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council
- d. he is neither a casual taxable person nor a non-resident taxable person.
- e. Further, electronic commerce operators would be required to declare the supplies made by such composition dealers through them through existing GSTR-8 statement (by inserting a suitable table in it, if required). Electronic commerce operators would also be mandated to ensure that no inter-state supply through them is allowed in respect of composition dealers by making necessary checks and validations on their system/platform.
- f. Whenever a registered person (including composition taxpayer) makes a supply through e-commerce operator, TCS collected by e-commerce operator would be credited to electronic cash ledger of such registered person making supply. Given that composition sellers are required to remit taxes in cash only, they can then make payment of GST on outward supplies using TCS balance available in the electronic cash ledger.

3. The Law Committee in its meeting held on 03.08.2022 and 05.11.2022 deliberated on the requisite legal changes to implement the aforementioned recommendations of the Council. The recommendations of the Law Committee in this regard are as follows:

A. Recommendations in respect of unregistered persons supplying goods through electronic commerce operators

4.1. Notification may be issued under Section 23(2) of the CGST Act, 2017 for exempting unregistered persons from obtaining mandatory registration for supplying goods through electronic commerce operators (enclosed as **Annexure A** to this agenda note).

4.2. Notification may be issued under Section 148 of the CGST Act, 2017 for providing special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons (enclosed as **Annexure B** to this agenda note).

4.3. **FORM GSTR-8** may be amended for capturing the information of supplies made by unregistered suppliers through electronic commerce operators by insertion of the following two tables in **FORM GSTR-8**:

3.1. Details of supplies made through e-commerce operator by un-registered suppliers

Enrolment no. of supplier	Gross value of supplies made	Value of supplies returned	Net value of the supplies
1	2	3	4

4.1. Amendments to details of supplies made through e-commerce operator by unregistered suppliers

Original details			Revised details		
Month	Enrolment no. of supplier	Enrolment no. of supplier	Gross value of supplies made	Value of supply returned	Net value of the supplies
1	2	3	4	5	6

4.4. Rule 67(2) of CGST Rules, 2017 may be amended to clearly bring out that the details of TCS furnished by ECOs in **FORM GSTR-8** shall be made available only to the registered suppliers, as, supplies by unregistered persons do not attract TCS. Accordingly, the said Rule may be amended as under:

(2) The details of tax collected at source under sub-section (1) of Section 52 furnished by the operator under sub-rule (1) shall be made available electronically to each of the registered suppliers on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

B. Recommendations in respect of the composition taxpayers supplying through electronic commerce operators

5.1. To remove the condition restricting registered persons engaged in supplying through electronic commerce operators from opting for the Composition Levy, clause (d) to sub-section (2) and clause (c) to sub-section (2A) of Section 10 of CGST Act, 2017 may be amended as under:

(i) clause (d) to sub-section (2) of Section 10 of CGST Act, 2017 may be amended as under:

(d) he is not engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under Section 52;

(ii) clause (c) to sub-section (2A) of Section 10 of CGST Act, 2017 may be amended as under:

(c) engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under Section 52;

5.2. Notification may be issued under Section 148 of the CGST Act, 2017 for providing special procedures to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers (enclosed as **Annexure C** to this agenda note).

C. Recommendations in respect of the penal provisions for non-compliant electronic commerce operators

6.1. The scheme approved by the Council is based on certain compliances on part of the electronic commerce operators in respect of the supplies made by the unregistered persons and Composition taxpayers through them. Such compliances include the following:

- (i) Not allowing unregistered persons to supply goods through electronic commerce operators without enrolment as prescribed.
- (ii) Not allowing inter-state supplies through electronic commerce operators by unregistered persons or composition taxpayers.
- (iii) Reporting the details of supplies made by unregistered persons through electronic commerce operators in **FORM GSTR-8**.

6.2. An examination of the existing provisions of the CGST Act, 2017 reveals that no specific provisions exist in CGST Act, 2017 presently providing for demand or penalty in cases of violation of the aforementioned compliances by electronic commerce operators. In the absence of such provisions, there may not be any effective guard against violations by the electronic commerce operators.

6.3. Therefore, the Law Committee in its meeting held on 05.11.2022 has recommended that relevant provisions may be made in the CGST Act for such instances by inserting **sub-section (1B) in Section 122**, as under:

(1B) Any electronic commerce operator who-

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration through a notification or an order issued under this Act to make such supply through an electronic commerce operator;*
- (ii) allows an inter-state supply of goods or services or both through it by a person who is not eligible to make such inter-state supply; or*
- (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of Section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under the provisions of this Act,*

shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the amount of tax involved considering the said supply to have been made by a registered person, other than a person paying tax under Section 10, whichever is higher.

D. Recommendations in respect of the deferment of implementation of the scheme

7.1. The GST Council in its 47th meeting, while approving in-principle the scheme of allowing unregistered persons and composition taxpayers to make supplies through electronic commerce operators, recommended that the details of the scheme will be worked out by the Law Committee of the Council. The Council had also recommended that the scheme would be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by electronic commerce operators.

7.2. GSTN has informed that the said functionality to implement recommendations of the Law Committee on the portal will be ready by June 2023. Thereafter, the same will also be required to be made available to the electronic commerce operators for testing before it is implemented.

7.3. Further, industry representatives have given a feedback that sufficient time needs to be provided for testing the APIs of on boarding unregistered online sellers (i.e., for enrollment number) in the sandbox environment. This will help electronic commerce operators to prepare themselves as well as unregistered online sellers. Accordingly, requests have been received that in order to provide adequate time for testing and effective implementation, the planned schedule of January 1, 2023 should be reconsidered and appropriate extension be provided to the Industry.

7.4. In view of the above, the Law Committee in its meeting held on 05.11.2022 has recommended deferring the implementation of the scheme till **01.10.2023**. Wherever amendments in CGST Act/ SGST Act/ UTGST Act are required, the same may also be carried out by the Center and States/ UTs by that date.

8. Accordingly, the recommendations of the Law Committee at para 4, 5, 6.3 and 7.4 are placed for approval of the Council.

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

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS**

NOTIFICATION

No. --/2022- Central Tax

New Delhi, the --October, 2022

G.S.R.(E).— In exercise of the powers conferred by sub-section (2) of Section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby specifies the persons making supplies of goods, through an electronic commerce operator who is required to collect tax at source under Section 52 of the said Act, and having an aggregate turnover, in the preceding financial year and in the current financial year, not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union Territory in accordance with sub-section (1) of Section 22 of the said Act, read with clause (iii) of the Explanation to that Section, as the category of persons exempted from obtaining registration under the said Act, subject to the following conditions:

- (i) such persons shall not make any inter-state supply of goods;
- (ii) such persons shall not make supply of goods through electronic commerce operator in more than one State or Union Territory;
- (iii) such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961);
- (iv) such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961), address of their Place of Business and the State or Union Territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;
- (v) such persons have been granted an enrolment number on the common portal on successful validation of the Permanent Account Number declared as per clause (iv);
- (vi) such persons shall not be granted more than one enrolment number in a State or Union Territory;

(vii) no supply of goods shall be made by such persons through electronic commerce operator unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under Section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.

[F. No. CBIC-20001/2/2022-GST]

(Rajeev Ranjan)

Under Secretary

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

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS**

NOTIFICATION

No. --/2022 – Central Tax

New Delhi, the-- October, 2022

G.S.R. (E):— In exercise of the powers conferred by Section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifiesthe electronic commerce operator who is required to collect tax at source under Section 52 (hereinafter referred to as the said electronic commerce operator) as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by the persons exempted from obtaining registration in accordance with Notification No. --/2022- Central Tax, dated the -- October, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. --- (E), dated the -- October, 2022 (hereinafter referred to as the said person):-

- (i) the said electronic commerce operator shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;
- (ii) the said electronic commerce operator shall not allow any inter-state supply of goods through it by the said person;
- (iii) the said electronic commerce operator shall not collect tax at source under sub-section (1) of Section 52 in respect of supply of goods made through it by the said person; and
- (iv) the said electronic commerce operator shallfurnish the details of supplies of goods made through it by the said person in the statement in **FORM GSTR-8** electronically on the common portal.

[F. No.CBIC-20001/2/2022-GST]

(Rajeev Ranjan)

Under Secretary

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

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS**

NOTIFICATION

No. --/2022- Central Tax

New Delhi, the --October, 2022

G.S.R.(E).— In exercise of the powers conferred by Section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the electronic commerce operator who is required to collect tax at source under Section 52 (hereinafter referred to as the said electronic commerce operator) as the class of persons who shall, in addition to other compliances under the said Act, also follow the following special procedure in respect of supply of goods made through it by the persons paying tax under Section 10 of the said Act (hereinafter referred to as the said person):-

- (i) the said electronic commerce operator shall not allow any inter-state supply of goods through it by the said person;
- (ii) the said electronic commerce operator shall collect tax at source under sub-section (1) of Section 52 of the said Act in respect of supply of goods made through it by the said person and pay to the Government as per provisions of sub-section (3) of Section 52 of the said Act; and
- (iii) the said electronic commerce operator shall furnish the details of supplies of goods made through it by the said person in the statement in **FORM GSTR-8** electronically on the common portal.

[F. No. CBIC-20001/2/2022-GST]

(Rajeev Ranjan)
Under Secretary

Agenda Item 7(viii): Amendments in the CGST Act, 2017

A. Amendment in second proviso to Section 16 of CGST Act, 2017 to align with GSTR-1/3B

In the 42nd GST Council meeting held in October 2020, it was recommended that the present system of GSTR-1/3B return filing to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system. Such amendments have been carried out vide the Finance Act, 2022 and notified w.e.f. 01.10.2022.

2. However, the Law Committee in its meeting held on 26.08.2022 observed that 2nd and 3rd provisos to Section 16(2) also require amendments in order to align with the GSTR-1/2B/3B return filing system.

3. Therefore, the Law Committee has recommended that 2nd and 3rd provisos to Section 16(2) may be amended as below:

“Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be ~~added to his output tax liability~~ paid by him, along with interest ~~thereon~~ payable under Section 50, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him ~~to the supplier~~ of the amount towards the value of supply of goods or services or both along with tax payable thereon.”

B. Amendment to Section 23 to provide overriding effect over Sections 22(1) & 24

4. Section 22 of the CGST Act, 2017 provides for persons liable for registration and Section 24 provides for compulsory registration in certain cases. On the other hand, Section 23 provides for persons not liable for registration and exemption of specified categories of persons from obtaining registration.

5. However, existing Section 23 does not have any clause overriding the registration requirement imposed vide Section 24 and Section 2(1). Therefore, a doubt arises whether provisions of compulsory registration under Section 24 prevail over the exemption under Section 23.

6. Accordingly, the Law Committee in its meeting held on 05.11.2022 recommended that to avoid any conflict within the said provisions and to provide more clarity, Section 23 may be amended retrospectively w.e.f. 01.07.2017 as under:

Section 23. Persons not liable for registration.-

(1) Notwithstanding anything to the contrary contained in sub-section (1) of Section 22 or Section 24, the ~~The~~ following persons shall not be liable to registration, namely:-

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who, *notwithstanding anything to the contrary contained in sub-section (1) of Section 22 or Section 24, but subject to such conditions and restrictions as may be specified in the notification*, may be exempted from obtaining registration under this Act.

C. Amendments in CGST Act, 2017 to restrict filing of returns / statements after completion of specified time in view of data archival policy

7. GSTN has informed that GST System has completed more than five years and the huge data size of all these years is putting an excessive load on the server and compromising performance. Keeping massive data available online slows down the GST system applications and impacts return filing, especially during peak filing days. Also, keeping data in big data format for either taxpayers or tax officers involves considerable cost in terms of infrastructure requirements.

8. Considering this, GSTN proposed a data archival policy for the smooth functioning of the GST Portal and also to provide superior experience to the taxpayers.

9. While deliberating on the proposed data archival policy for GST portal in its meetings held on 12.10.2022 and 05.11.2022, the Law Committee inter alia recommended that the maximum time limit for filing returns / statements be fixed as three years beyond the due date of filing and accordingly, CGST Act, 2017 may be amended as below:

(i) sub-section (5) may be inserted in Section 37 as below:

“(5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after expiry of 3 years from the due date of furnishing the said details:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of 3 years from the due date of furnishing the said details.”

(ii) sub-section (11) may be inserted in Section 39 as below:

“(11) A registered person shall not be allowed to furnish a return for a tax period after expiry of 3 years from the due date of furnishing the said return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of 3 years from the due date of furnishing the said return”

(iii) sub-section (2) may be inserted in Section 44 as below:

“(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after expiry of 3 years from the due date of furnishing the said annual return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of 3 years from the due date of furnishing the said annual return.”

(iv) sub-section (15) may be inserted in Section 52 as below:

“(15) An electronic commerce operator shall not be allowed to furnish a statement under sub-section (4) for a month after expiry of 3 years from the due date of furnishing the said statement:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an electronic commerce operator or a class of electronic commerce operators to furnish a statement for a month under sub-section (4), even after the expiry of 3 years from the due date of furnishing the said statement.”

D. Proposal for amendment of sub-section (6) of Section 54 of CGST/SGST Act, 2017

10. Sub-section (6) of Section 54 of the CGST/SGST Act, 2017, provides for **provisional refund** of ninety percent of the total amount claimed as refund on account of zero rated supplies of goods or services or both **excluding the amount of input tax credit provisionally accepted**.

11. In this regard, it is worth mentioning that the concept of ‘provisionally accepted input tax credit’ was related to the GSTR-1-2-3 system of return filing which has never been implemented. However, in the absence of implementation of GSTR-1-2-3 system of return filing, it was clarified vide para 2.0 of Circular no 24/24/2017 –GST dated 21.12.2017 that provisionally accepted input tax credit would be sanctioned upon obtaining of an undertaking in relation to Sections 16(2)(c) and 42(2) of the CGST/SGST Act, 2017. The same has also been reiterated in para 7 of Circular No. 125/44/2019 – GST dated 18.11.2019 issued by the CBIC. Therefore, in practice, no deduction on account of provisionally accepted input tax credit is being made while granting provisional refund.

12. Further, Section 41 of the CGST/SGST Act, 2017 that provided for availing of eligible input tax credit as self-assessed in the return on a provisional basis in terms of GSTR-1-2-3 system of return filing has been amended in Finance Act, 2022 w.e.f. 01.10.2022 by doing away with the provision of availment of input tax credit on a provisional basis.

13. In view of the above, as the provision relating to availment of input tax credit on provisional basis has been done away with, it is proposed to omit the words **“excluding the amount of input tax credit provisionally accepted,”** in sub-section (6) of Section 54 of the CGST Act as under:

*(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, **refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted,** in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.*

14. The said proposal was placed before the Law Committee in its meeting held on 05.12.2022 wherein Law Committee has approved the amendment in sub-section (6) of Section 54 of the CGST Act.

15. Accordingly, the recommendations of the Law Committee in para 3, 6, 9 and 14 are placed before the Council for deliberation and approval.

Agenda Item 7(ix): Amendment in the tables of GSTR-1 for reporting ECO Supplies made under Section 9(5) of CGST Act and attracting TCS under Section 52 of CGST Act, 2017.

As per current notified format of **FORM GSTR-1**, the supplies made by a registered person through e-commerce operators (ECOs) attracting TCS under Section 52 of CGST Act, 2017 are to be reported in various tables of **FORM GSTR-1** i.e. 4C, 5B, 7A(2), 7B(2), 10A(1) & 10B(1). The details are to be provided invoice-wise and e-commerce operator-wise. However, these tables have not yet been made functional on GST Portal.

2. Further, amendment has been made in **FORM GSTR-3B** vide Notification no. 14/2022-Central Tax dated 05.07.2022, to provide that the taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under sub-section (5) of Section 9 of CGST Act, 2017, are required to be reported by both the registered persons as well as the E-commerce operator in their respective returns in **FORM GSTR-3B**. However, there is no separate table in **FORM GSTR-1** to furnish the aforementioned details.

3. In view of this, the issue was deliberated by the Law Committee in its meeting held on 18.11.2021, 29.12.2021 and 05.11.2022. The Law Committee has recommended certain changes in **FORM GSTR-1** (enclosed as **Annexure** to this agenda note). A summary of the existing form and the proposed changes is as below:

S. No.	Table No.	Existing	Proposed	Rationale of the change
1	2	3	4	5
1.	3	Aggregate turnover in preceding year and April-June, 2017.	Aggregate turnover may be replaced with ARN and date of ARN (ARN & ARN date will be shown in GSTR-1 pdf after filing of GSTR-1)	The requirement was for the first year of implementation of GST. It can be replaced with ARN and date of ARN. AATO is being computed separately.
2.	4A	Supplies other than those (i) attracting reverse charge and (ii) supplies made through e-commerce	Supplies other than those attracting reverse charge [including supplies made through e-commerce operator attracting TCS]	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14. (Label changes only)
3.	4C	Supplies made through e-commerce operator attracting TCS (operator wise, rate wise)	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
4.	5A	Outward supplies (including other than supplies made	Outward supplies (including supplies made through e-commerce	Consequent change due to omission of e-commerce table 5B.

S. No.	Table No.	Existing	Proposed	Rationale of the change
1	2	3	4	5
		through e-commerce operator, rate wise)	operator, rate wise)	(Label changes only)
5.	5B	Supplies made through e-commerce operator attracting TCS (operator wise, rate wise)	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
6.	7A(2)	7A (2). Out of supplies mentioned at 7A(1), value of supplies made through e-Commerce Operators attracting TCS(operator wise, rate wise)	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
7.	7B(2)	7B (2). Out of the supplies mentioned in 7B (1), the supplies made through e-Commerce Operators (operator wise, rate wise)	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
8.	9	Amendments to taxable outward supply details furnished in returns for earlier tax periods in Table 4, 5 and 6 [including debit notes and, credit notes, refund vouchers issued during current period and amendments thereof]	Amendments to taxable outward supply details furnished in returns for earlier tax periods in Table 4, 5 and 6 [including debit and credit notes issued during current period and amendments thereof]	Advance is reported in table 11. Refund vouchers can also be included in table 11 by reporting the values as net-of. (Label changes only)
9.	10A(1)	Out of supplies mentioned at 10A, value of supplies made through e-Commerce Operators attracting TCS	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.

S. No.	Table No.	Existing	Proposed	Rationale of the change
1	2	3	4	5
10.	10B(1)	Out of supplies mentioned at 10B, value of supplies made through e-Commerce Operators attracting TCS	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
11.	11	Consolidated Statement of Advances Received/Advance adjusted in the current tax period/Amendments of information furnished in earlier tax period	Consolidated Statement of Advances Received/Advance adjusted in the current tax period/ Amendments of information furnished in earlier tax period (Net of refund vouchers, if any)	Values can be reported as net of refund vouchers. (Label changes only)
12.	14, 14A, 15, 15 A	-	Insertion of new tables to capture the details of the supplies made through e-commerce operators attracting TCS as well as under Section 9(5).	Supplies made through e-commerce operators attracting TCS will be reported by the supplier here. Also, supplies u/s 9(5), on which ECO is required to pay tax,were not being reported separately in GSTR-1, either by the supplier or the ECO. Such supplies shall now be required to be reported in GSTR-1 by both the supplier as well ECO in these tables.In resepct of supplies made u/s 9(5), ECOs shall separately provide details for registered and unregistered suppliers, as well as registered and unregistered recipients.

4. Accordingly, the proposed changes in FORM GSTR-1 shown in **Annexure** to the agenda note and as detailed in para 3 above, are placed for deliberation and approval of the Council.

FORM GSTR-1

[See Rule (59(1))]

Details of outward supplies of goods or services

Financial Year				
Month-Tax period				

1.		GSTIN																	
2.	(a)	Legal name of the registered person																	
	(b)	Trade name, if any																	
3.	(a)	~~Aggregate Turnover in the preceding Financial Year~~ ARN																	
	(b)	~~Aggregate Turnover – April to June, 2017~~ Date of ARN																	

4. Taxable outward supplies made to registered persons (including UIN-holders) other than supplies covered by Table 6

(Amount in Rs. for all Tables)

GSTIN /UIN	Invoice details			Rate	Taxable value	Amount				Place of supply (Name of State / UT)
	No.	Date	Value			Integrated tax	Central tax	State /UT tax	Cess	
1	2	3	4	5	6	7	8	9	10	11
4A. Supplies other than those ~~(i)attracting reverse charge and (ii) supplies made through e-commerce operator~~ [including supplies made through e-commerce operator attracting TCS]										
4B. Supplies attracting tax on reverse charge basis										
4C. ~~Supplies made through e-commerce operator attracting TCS (operator wise, rate wise)~~										
~~GSTIN of e-commerce operator~~										

5. Taxable outward inter-state supplies to un-registered persons where the invoice value is more than Rs 2.5 lakh

Place of Supply (State/UT)	Invoice details			Rate	Taxable Value	Amount	
	No.	Date	Value			Integrated Tax	Cess
1	2	3	4	5	6	7	8
~~5A. Outward supplies (including other than supplies made through e-commerce operator attracting TCS, rate wise)~~							
~~5B. Supplies made through e-commerce operator attracting TCS (operator wise, rate wise)~~							
~~GSTIN of e-commerce operator~~							

6. Zero rated supplies and Deemed Exports

GSTIN of recipient	Invoice details			Shipping bill/ Bill of export		Integrated Tax			Central Tax			State / UT Tax			Cess
	No.	Date	Value	No.	Date	Rate	Taxable value	Amt.	Rate	Taxable value	Amt.	Rate	Taxable value	Amt.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
6A. Exports															
6B. Supplies made to SEZ unit or SEZ Developer															
6C. Deemed exports															

[illegible]

Rate of tax	Total Taxable value	Amount			
		Integrated	Central	State Tax/UT Tax	Cess
1	2	3	4	5	6
7A. Intra-State supplies					
~~7A (1).~~ Consolidated rate wise outward supplies [including supplies made through e-commerce operator attracting TCS]					
~~7A (2).~~ Out of supplies mentioned at 7A(1), value of supplies made through e-Commerce Operators attracting TCS(operator wise, rate wise)					
GSTIN of e-commerce operator					
7B. Inter-state Supplies where invoice value is upto Rs 2.5 Lakh [Rate wise] ~~Consolidated rate wise outward supplies [including supplies made through e-commerce operator attracting TCS]~~					
~~7B (1).~~ Place of Supply (Name of State)					
~~7B (2).~~ Out of the supplies mentioned in 7B (1), the supplies made through e-Commerce Operators (operator wise, rate wise)					
GSTIN of e-commerce operator					

Description	Nil Rated Supplies	Exempted (Other than Nil rated/non-GST	Non-GST supplies

		supply)	
1	2	3	4
8A. Inter-state supplies to registered persons			
8B. Intra- State supplies to registered persons			
8C. Inter-state supplies to unregistered persons			
8D. Intra-State supplies to unregistered persons			

9. Amendments to taxable outward supply details furnished in returns for earlier tax periods in Table 4, 5 and 6 [including debit ~~notes and~~, credit notes, ~~refund vouchers~~ issued during current period and amendments thereof]

Details of original document			Revised details of document or details of original Debit/Credit Notes ~~or refund vouchers~~					Rate	Taxable Value	Amount				Place of supply	
GSTIN	~~In~~ N o.	~~In~~ D a t e	GSTIN	~~Invoice~~ Document		Shipping bill				Value	Integrated Tax	Central Tax	State /UT Tax		C e s s
				N o	D a t e	N o	D a t e								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
9A. ~~Amendment of If the~~ invoice/Shipping bill details furnished earlier ~~were incorrect~~															
9B. Debit Notes/Credit Notes/ ~~Refund voucher~~ [Original]															
9C. Debit Notes/Credit Notes/ ~~Refund voucher~~ [~~Amended~~ amendments thereof]															

10. Amendments to taxable outward supplies to unregistered persons furnished in returns for earlier tax periods in Table 7

Rate of tax	Total Taxable value	Amount			
		Integrated	Central	State/UT Tax	Cess
1	2	3	4	5	6
Tax period for which the details are being revised		<Month/ ~~Quarter~~ >			
10A. Intra-State Supplies [including supplies made through e-commerce operator attracting TCS] [Rate wise]					
~~10A (1). Out of supplies mentioned at 10A, value of supplies made through e-Commerce Operators attracting~~					
~~TCS (operator wise, rate wise)~~					
~~GSTIN of e-commerce operator~~					
10B. Inter-state Supplies [including supplies made through e-commerce operator attracting TCS] [Rate wise]					
Place of Supply (Name of State)					
~~10B (1). Out of supplies mentioned at 10B, value of supplies made through e-Commerce Operators attracting~~					
~~TCS (operator wise, rate wise)~~					
~~GSTIN of e-commerce operator~~					

11. Consolidated Statement of Advances Received/Advance adjusted in the current tax period/
Amendments of information furnished in earlier tax period (~~Net of refund vouchers, if any~~)

Rate	Gross Advance Received/adjusted	Place of supply (Name of State / UT)	Amount			
			Integrated tax	Central Tax	State/UT	Cess

					T ta x					
1	2	3	4	5	6	7				
I Information for the current tax period										
11A. Advance amount received in the tax period for which invoice has not been issued (tax amount to be added to output tax liability)										
11A (1). Intra-State supplies(Rate Wise)										
11A (2). Inter-state Supplies(Rate Wise)										
11B. Advance amount received in earlier tax period and adjusted against the supplies being shown in this tax period in Table Nos. 4, 5, 6 and 7										
11B (1). Intra-State Supplies (Rate Wise)										
11B (2). Inter-state Supplies(Rate Wise)										
II Amendment of information furnished in Table No. 11[1] in GSTR-1 statement for earlier tax periods[Furnish revised information]										
Mon th						Amendment relating to information furnished in S. No.(select)	11A(1)	11A(2)	11B (1)	11B (2)

HSN-wise summary of outward supplies

Sr. No.	HSN	Description (Optional if HSN is provided)	UQC	Total Quantity	Rate of tax	Total Taxable Value	Amount			
							Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6	7	8	9	10	11

13. Documents issued during the tax period

Sr. No.	Nature of document	Sr. No.		Total number	Cancelled	Net issued
		From	To			
1	2	3	4	5	6	7
1	Invoices for outward supply					
2	Invoices for inward supply from unregistered person					
3	Revised Invoice					
4	Debit Note					
5	Credit Note					
6	Receipt voucher					
7	Payment Voucher					
8	Refund voucher					
9	Delivery Challan for job work					
10	Delivery Challan for supply on approval					
11	Delivery Challan in case of liquid gas					
12	Delivery Challan in cases other than by way of supply (excluding at S no. 9 to 11)					

14. Details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under Section 52 or liable to pay tax u/s 9(5) [Supplier to report]

Nature of supply	GSTIN of e-commerce operator	Net value of supplies	Tax amount			
			Integrated tax	Central tax	State / UT tax	Cess
1	2	3	4	5	6	7

(a) Supplies on which e-commerce operator is liable to collect tax u/s 52						
(b) Supplies on which e-commerce operator is liable to pay tax u/s 9(5)						

. Amendment to details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under Section 52 or liable to pay tax u/s 9(5) [Supplier to report]

Nature of supply	Original details		Revised details	Net value of supplies	Tax amount			
	Month / Quarter	GSTIN of e-commerce operator	GSTIN of e-commerce operator		Integrated tax	Central tax	State / UT tax	Cess
1	2	3	4	5	6	7	8	9
(a) Supplies on which e-commerce operator is liable to collect tax u/s 52								
(b) Supplies on which e-commerce operator is liable to pay tax u/s 9(5)								

15. Details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report]

Type of supplier	Type of recipient	GSTIN of supplier	GSTIN of recipient	Document no.	Document date	Rate	Value of supplies made	Tax amount				Place of supply
								Integrated tax	Central tax	State / UT	Cess	

										tax		
1	2	3	4	5	6	7	8	9	10	11	12	13
Registered	Registered											
	Unregistered											
Unregistered	Registered											
	Unregistered											

15A (I). Amendment to details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report, for registered recipients]

Type of supplier	Original details				Revised details				Rate	Value of supplies made	Tax amount				Place of supply
	GSTIN of supplier	GSTIN of recipient	Doc. no.	Doc. date	GSTIN of supplier	GSTIN of recipient	Doc. no.	Doc. date			Integrated tax	Central tax	State / UT tax	Cess	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Registered															
Unregistered															

15A (II). Amendment to details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report, for unregistered recipients]

Type of supplier	Original details		Revised details	Rate	Value of supplies made	Tax amount				Place of supply
	GSTIN of supplier	Tax period	GSTIN of supplier			Integrated tax	Central tax	State / UT tax	Cess	

1	2	3	4	5	6	7	8	9	10	11
Registered										
Unregistered										

16. Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from and in case of any reduction in output tax liability the benefit thereof has been/will be passed on to the recipient of supply.

Signature

Place

Name of Authorised Signatory

Date

Designation /Status

A. General Instructions

1. Terms used:

- a. GSTIN: Goods and Services Tax Identification Number
- b. UIN: Unique Identity Number
- c. UQC: Unit Quantity Code
- d. HSN: Harmonized System of Nomenclature
- e. POS: Place of Supply (Respective State)
- f. TCS: Tax collection at source by e-commerce operator
- g. SEZ: Special Economic Zone
- h. ECO: E-commerce operator
- i. DTA: Domestic Tariff Area
- j. B to B: Supplies from one registered person to another registered person
- k. B to C: Supplies from registered person to unregistered person

2. Quarterly taxpayers filing invoice details through GSTR-1/IFF for the first two month(s) of the quarter shall not repeat such details while filing GSTR-1 of the quarter.

B. Table specific instructions-

Sr. No.	Table No.	Instructions

1	2	3
1.	4A	i. Supplies made to registered persons including supplies made through e-commerce operator attracting TCS u/s 52, but excluding supplies attracting tax on reverse charge basis, shall be reported. ii. Supplies made u/s 9(5) for which e-commerce operator is liable to pay tax shall not be reported in this table. iii. The supplies made by SEZ on cover of a bill of entry shall not be reported by SEZ unit /developer.
2.	4B	Supplies made to registered persons, attracting tax on reverse charge basis, shall be reported. Supplies made u/s 9(5) for which e-commerce operator is liable to pay tax shall not be reported in this table.
3.	5	Inter-state supplies made to unregistered persons having invoice value more than Rs. 2.50 lakh shall be reported.
4.	6A	Exports with or without IGST shall be reported. Shipping bill details, if applicable, can be provided later through table 9 if such details are not available at the time of filing the statement.
5.	6B	Supplies made to SEZ units or SEZ developers, with or without IGST, shall be reported.
6.	6C	Deemed export supplies shall be reported.
7.	7	Supplies made to unregistered persons other than those reported in table 5 shall be reported. Values shall be net of credit and debit notes.
8.	8	Supplies having no tax liability (Nil rated, exempted and non-GST supplies) shall be reported. Supplies made through E-commerce Operator under Section 9(5) shall not be included under exempted supplies of supplier.
9.	9A	Amendment of values reported in table 4A, 4B, 5, 6A, 6B and 6C shall be reported.
10.	9B	Credit and debit notes issued during the period shall be reported.
11.	9C	Amendment of credit and debit notes reported in table 9B shall be reported.
12.	10	Amendment of unregistered supplies reported in table 7 shall be reported.
13.	11(I)A	Advances received shall be reported. The values shall be net of refund vouchers, if any.
14.	11(I)B	Advances adjusted during the period shall be reported.
15.	11(II)	Amendment to advances received or adjusted shall be reported.
16.	12	HSN details as per notifications issued by Government from time to time shall be reported.
17.	13	Details of the documents issued during the period shall be reported.
18.	14(a)	Details of the supplies reported in any table from 4 to 10, made through e-commerce operator on which ECO is liable to collect tax at source (TCS) under Section 52, shall be reported by the supplier.
19.	14(b)	Details of supplies made through ECO, on which ECO is liable to pay tax u/s 9(5), shall be reported by the supplier. Tax on such supplies shall be paid by the

Sr. No.	Table No.	Instructions
1	2	3
		ECO and not by the supplier.
20.	14A(a)	Amendment to supplies reported in table 14(a) in earlier tax period shall be reported.
21.	14A(b)	Amendment to supplies reported in table 14(b) in earlier tax period shall be reported.
22.	15	(i) ECO shall report details of the supplies made through him/ her on which he/she is liable to pay tax u/s 9(5). (ii) GSTIN of supplier and recipient, if registered, shall be reported. (iii) Details of the documents issued by ECO shall be reported, if recipient is registered.
23.	15A(I)	Amendment to the details reported in table 15 in earlier tax periods in respect of registered recipients shall be reported.
24.	15A(II)	Amendment to the details reported in table 15 in earlier tax periods in respect of unregistered recipients shall be reported.

Instructions—

1. ~~Terms used:~~

l. ~~GSTIN: Goods and Services Tax Identification Number~~

m. ~~UIN: Unique Identity Number~~

n. ~~UQC: Unit Quantity Code~~

o. ~~HSN: Harmonized System of Nomenclature~~

p. ~~POS: Place of Supply (Respective State)~~

q. ~~B to B: From one registered person to another registered person~~

r. ~~B to C: From registered person to unregistered person~~

2. ~~The details in GSTR 1 should be furnished by 10th of the month succeeding the relevant tax period.~~

3. ~~Aggregate turnover of the taxpayer for the immediate preceding financial year and first quarter of the current financial year shall be reported in the preliminary information in Table 3. This information would be required to be submitted by the taxpayers only in the first year. Quarterly turnover information shall not be captured in subsequent returns. Aggregate turnover shall be auto-populated in subsequent years.~~

4. ~~Invoice level information pertaining to the tax period should be reported for all supplies as under:~~

- (i) ~~For all B to B supplies (whether inter-state or intra-State), invoice level details, rate wise, should be uploaded in Table 4, including supplies attracting reverse charge and those effected through e-~~

commerce operator. Outwards supply information in these categories are to be furnished separately in the Table.

- (ii) For all inter-state B to C supplies, where invoice value is more than Rs. 2,50,000/- (B to C Large) invoice level details, rate wise, should be uploaded in Table 5; and
- (iii) For all B to C supplies (whether inter-state or intra-State) where invoice value is up to Rs. 2,50,000/- State-wise summary of supplies, rate wise, should be uploaded in Table 7.

5. Table 4 capturing information relating to B to B supplies should:

(i) be captured in:

- a. Table 4A for supplies relating to other than reverse charge/ made through e-commerce operator, rate wise;
- b. Table 4B for supplies attracting reverse charge, rate wise; and
- c. Table 4C relating to supplies effected through e-commerce operator attracting collection of tax at source under Section 52 of the Act, operator wise and rate wise.

(ii) Capture Place of Supply (PoS) only if the same is different from the location of the recipient.

6. Table 5 to capture information of B to C Large invoices and other information shall be similar to Table 4. The Place of Supply (PoS) column is mandatory in this table.

7. Table 6 to capture information related to:

- (i) Exports out of India
- (ii) Supplies to SEZ unit/ and SEZ developer
- (iii) Deemed Exports

8. Table 6 needs to capture information about shipping bill and its date. However, if the shipping bill details are not available, Table 6 will still accept the information. The same can be updated through submission of information in relation to amendment Table 9 in the tax period in which the details are available but before claiming any refund / rebate related to the said invoice. The detail of Shipping Bill shall be furnished in 13 digits capturing port code (six digits) followed by number of shipping bill.

9. Any supply made by SEZ to DTA, without the cover of a bill of entry is required to be reported by SEZ unit in GSTR-1. The supplies made by SEZ on cover of a bill of entry shall be reported by DTA unit in its GSTR-2 as imports in GSTR-2. The liability for payment of IGST in respect of supply of services would, be created from this Table.

~~10. In case of export transactions, GSTIN of recipient will not be there. Hence it will remain blank.~~

~~11. Export transactions effected without payment of IGST (under Bond/ Letter of Undertaking (LUT)) needs to be reported under — 01 tax amount heading in Table 6A and 6B.~~

~~12. Table 7 to capture information in respect of taxable supply of:~~

- ~~(i) B to C supplies (whether inter-state or intra-State) with invoice value upto Rs 2,50,000;~~
- ~~(ii) Taxable value net of debit/ credit note raised in a particular tax period and information pertaining to previous tax periods which was not reported earlier, shall be reported in Table 10. Negative value can be mentioned in this table, if required;~~
- ~~(iii) Transactions effected through e-commerce operator attracting collection of tax at source under Section 52 of the Act to be provided operator wise and rate wise;~~
- ~~(iv) Table 7A (1) to capture gross intra-State supplies, rate-wise, including supplies made through e-commerce operator attracting collection of tax at source and Table 7A (2) to capture supplies made through e-commerce operator attracting collection of tax at source out of gross supplies reported in Table 7A (1);~~
- ~~(v) Table 7B (1) to capture gross inter-state supplies including supplies made through e-commerce operator attracting collection of tax at source and Table 7B (2) to capture supplies made through e-commerce operator attracting collection of tax at source out of gross supplies reported in Table 7B (1); and~~
- ~~(vi) Table 7B to capture information State wise and rate wise.~~

~~13. Table 9 to capture information of:~~

- ~~(i) Amendments of B to B supplies reported in Table 4, B to C Large supplies reported in Table 5 and Supplies involving exports/ SEZ unit or SEZ developer/ deemed exports reported in Table 6;~~
- ~~(ii) Information to be captured rate-wise;~~
- ~~(iii) It also captures original information of debit / credit note issued and amendment to it reported in earlier tax periods; While furnishing information the original debit note/credit note, the details of invoice shall be mentioned in the first three columns, While furnishing revision of a debit note/credit note, the details of original debit note/credit note shall be mentioned in the first three columns of this Table,~~
- ~~(iv) Place of Supply (PoS) only if the same is different from the location of the recipient;~~

- (v) ~~Any debit/ credit note pertaining to invoices issued before the appointed day under the existing law also to be reported in this table; and~~
- (vi) ~~Shipping bill to be provided only in case of exports transactions amendment.~~

~~14. Table 10 is similar to Table 9 but captures amendment information related to B to C supplies and reported in Table 7.~~

~~15. Table 11A captures information related to advances received, rate wise, in the tax period and tax to be paid thereon along with the respective PoS. It also includes information in Table 11B for adjustment of tax paid on advance received and reported in earlier tax periods against invoices issued in the current tax period. The details of information relating to advances would be submitted only if the invoice has not been issued in the same tax period in which the advance was received.~~

~~16. Summary of supplies effected against a particular HSN code to be reported only in summary table. It will be optional for taxpayers having annual turnover upto Rs. 1.50 Cr but they need to provide information about description of goods.~~

~~17. It will be mandatory to report HSN code at two digits level for taxpayers having annual turnover in the preceding year above Rs. 1.50 Cr but upto Rs. 5.00 Cr and at four digits level for taxpayers having annual turnover above Rs.~~

~~5.00 Cr.~~

~~18. It will be mandatory to specify the number of digits of HSN code for goods or services that a class of registered persons shall be required to mention as may be specified in the notification issued from time to time under proviso to Rule 46 of the said Rules.~~

Agenda Item 7(x): Retrospective applicability of para 7, 8(a) and 8(b) of Schedule III of the CGST Act, 2017

1. Taxability of supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India:

1.1 Para 7 of Schedule III to Central Goods and Services Tax Act, 2017 (CGST Act) provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India, is an activity which is to be treated as neither supply of goods or services. The said para was inserted in Schedule III of CGST Act vide the Central Goods and Services Tax (Amendment) Act, 2018 and was made applicable vide Notification No. 02/2019-Central Tax dated 29.01.2019 with effect from 01.02.2019.

1.2 The said notification was not made applicable retrospectively from 01.07.2017 which implies that before the said amendment of the CGST Act, such transactions were subject to GST. Moreover, as per sub-section (5) of Section 7 of the Integrated Goods and Services Tax Act, 2017, the supply of goods or services or both, when the supplier is located in India and the place of supply is outside India shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce. However, the taxpayers are taking the plea that the insertion of the para 7 in Schedule III of CGST Act is only for clarifying that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India is neither supply of goods nor supply of services, and therefore, may be treated similarly before 01.02.2019 also.

2. Taxability of High Sea Sales:

2.1 High Sea Sales (hereinafter referred to as, “HSS”) refers to the sale of the goods that takes place on the high seas when the goods are still en-route to India and have not entered into the territorial waters of the country.

2.2 It is pertinent to note that vide CGST (Amendment) Act, 2018, clause (b) of para 8 was inserted in Schedule III of the CGST Act with effect from 01.02.2019, to provide that *“Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption” will be treated neither as supply of goods nor as supply of services*. Thus, with the insertion of the said entry in schedule III of the CGST Act, the said supply has been taken outside the ambit of GST. However, it is significant to note that as the said amendment has been brought into effect only from 01.02.2019, thereby implying that before the said amendment, such supply was taxable under GST.

2.3 Many taxpayers engaged in HSS transactions may not have paid GST on the said transactions during the period 01.07.2017 to 31.01.2019 claiming the said transactions as non-taxable on account of the presumption that since the sale of the goods did not take place within the territory of India, the same are non-taxable. In such cases, the taxpayers are taking the plea of Circular No.33/2017- Customs dated 01.08.2017 which states that IGST on high sea sales transactions of imported goods shall be levied and collected only at the time of importation of goods. The relevant portion of the said Circular is reproduced below:

“IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition

accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.”

It is pertinent to note that the said Circular was issued as per the decision of the GST Council in its 18th meeting dated 30.07.2017. The Council deliberated on the “Agenda Item 3(viii) - High Sea Sales” in the said meeting and decided the following :

*"High Sea Sales" is a terminology used in common parlance for "Sales in the course of import." In such cases, sale taking place by transfer of documents of title to goods before goods are cleared from Customs, is a sale in the course of import. There is need to bring clarity on the issue of levy of IGST, when such sale (supply in GST parlance) takes place in high sea and a second-time levy of IGST when goods are cleared through Customs. It is proposed to clarify by way of a Circular that when goods sold on high sea sales basis are imported the first time, IGST would be levied at the time of importation and the value addition due to high sea sales shall be part of the value on which IGST is collected. **The Council agreed to this proposal.***

2.4 Taxpayers are also taking the view that the amendment made in Schedule III with effect from 01.02.2019 needs to be considered clarificatory, and should be applicable with effect from 01.07.2017.

3. Taxability of supply of warehoused goods to any person before clearance for home consumption

3.1 Some taxpayers are engaged in supply of warehoused goods to a person before clearance for home consumption and treat such transactions as non-taxable. It is pertinent to mention here that Para 8(a) of Schedule III to CGST Act provides that the supply of warehoused goods to any person before clearance for home consumption, is an activity which is to be treated as neither supply of goods or services. The said para was inserted vide the Central Goods and Services Tax (Amendment) Act, 2018 and was made applicable vide Notification No. 02/2019-Central Tax dated 29.01.2019 with effect from 01.02.2019.

3.2 In such cases, the taxpayers are taking the plea that the insertion of the para 8(a) in Schedule III of CGST Act is only for clarifying that supply of warehoused goods to a person before clearance for home consumption is neither supply of goods nor supply of services, and therefore, may be treated similarly before 01.02.2019 also. However, the said notification was not made applicable retrospectively from 01.07.2017 which implies that before the said amendment of the CGST Act, supply of warehoused goods to any person before clearance for home consumption was subject to GST.

4. Considering the issues discussed in paras above, to avoid unnecessary litigation and doubts, there is a need to provide clarity in the GST law with respect of treatment of the transactions covered by Para 7, 8(a) and 8(b) of Schedule III of CGST Act for the period from 01.07.2017 to 31.01.2019, i.e. before the said paras were inserted in Schedule III of CGST Act.

5. The abovementioned amendments in Schedule III of CGST Act were carried out in accordance with the decision taken in the 28th GST Council Meeting. The relevant portion of the Agenda Note “Agenda Item 6(i): Proposals for amendments in the CGST Act, 2017, IGST Act, 2017, UTGST Act, 2017 and GST (Compensation to States) Act, 2017” and signed minutes of the said meeting are attached as **Annexure-A** and **Annexure-B** respectively.

6. Law Committee recommendations

Law Committee deliberated on these issues in its meeting dated 12.10.2022 and 23.11.2022 and recommended the following:

- a. Para 7, Para 8(a) and Para 8(b) in Schedule III inserted vide the Central Goods and Services Tax (Amendment) Act, 2018 should have retrospective effect w.e.f. 01.07.2017.
- b. However, in cases where any tax has already been paid in respect of transactions/supplies covered under Para 7, 8(a) and 8(b) of Schedule III of CGST Act during the period 01.07.2017 to 31.01.2019, no refund shall be available in respect of such tax paid.

7. Accordingly, the recommendations of the Law Committee as detailed in para 6 above, are placed before the GST Council for deliberation and approval.

Agenda Item 6: Issues recommended by the Law Committee for consideration of the GST Council

Agenda Item 6(i): Proposals for amendments in the CGST Act, 2017, IGST Act, 2017, UTGST Act, 2017 and GST (Compensation to States) Act, 2017

I. Background

1.1 As per the decisions of the 22nd GST Council Meeting held on 06.10.2017, a Law Review Committee was constituted in order to review and propose changes in the CGST/SGST Acts and the IGST Act, taking into account feedback from all the stakeholders, and bring these proposals before the Council. In pursuance of the same, a Law Review Committee (hereinafter referred to in this note as 'LRC'), as well as an Advisory Group to the LRC were constituted to review the laws and make proposals for making amendments in the Acts.

1.2 The LRC submitted its first draft report on 04.01.2018, taking into consideration the issues raised by the Advisory Group to the LRC, the representations forwarded by GST Council Secretariat and the suggestions received from the State Governments and CBIC formations. The final report of the LRC was submitted on 11.07.2018.

1.3 In addition, the representations received in the GST Policy Wing of CBIC (GSTPW for short), from July to December 2017, from the field formations, GST Feedback and Action Room (FAR) and various trade associations were analysed and a broadsheet containing the proposals for review of the Acts was prepared by the GSTPW.

1.4 The recommendations of the LRC, along with the broadsheet prepared by the GSTPW were discussed in a joint meeting of the LRC and the Law Committee held on 10.01.2018. The combined recommendations of the LRC and Law Committee were thereafter discussed in the meeting of the officers of the Central and the State Governments on 11.01.2018 and the consolidated recommendations of the officers' meeting was placed before the GST Council at its 25th meeting held on 18.01.2018.

1.5 The Council accorded its in-principle approval for the proposals, subject to certain modifications therein. It was stated by the Hon'ble Chairperson of the Council that on the basis of the approval of the proposed changes, the Law Committee would draft the legislative changes and after vetting by the Union Law Ministry, it would be brought before the Council for approval.

1.6 Thereafter, four joint meetings of the Law Committee and LRC were held on 17th and 18th February, 2018, 05th to 07th April, 2018, 10th to 12th May, 2018 and 07th to 09th June, 2018, to finalise the proposals and draft formulations. The draft proposals that were agreed upon after the above four meetings were further discussed by the Law Committee on 06.07.2018. The finalised proposals for amending the law have been collated in the broadsheet placed as **Annexure 1** to this note, wherein the proposed changes have been indicated in **red colour**.

II. Stakeholder Consultation and Feedback

2.1 The broadsheet containing the proposals (as finalised by the Law Committee on 06.07.2018) was placed in the public domain (<https://www.mygov.in/>) from 09.07.2018 to 15.07.2018, for inviting comments from the trade and public.

2.2 A total of 1270 suggestions were received. Out of this, 158 suggestions relate to the proposed law amendments. On analysis of these 158 suggestions, 13 actionable suggestions on the proposed

amendments have been identified and have been incorporated in **blue colour** in the **Annexure 1**. However, these suggestions have not been discussed in the Law Committee.

III. Amendments resulting from changes in the return format

3.1 It is submitted that at Sl. No. 27 of the **Annexure**, on the basis of the proposed new return scheme, it is proposed to insert a new section, viz., section 43A, in order to provide for the procedure for furnishing returns (including amendment thereto) and availing input tax credit.

3.2 As per the extant legal provisions, all taxpayers are required to make monthly tax payment along with monthly filing of return. However, a fresh proposal to allow filing of a quarterly return with monthly tax payment for taxpayers with annual turnover upto Rs. 1.5 crore has been discussed. It was decided to ascertain the feasibility of its quick implementation from GSTN and they have replied in the affirmative.

3.3 A fresh proposal for allowing quarterly return filing for small taxpayers with monthly tax payment is part of a separate Agenda Note. The modalities for implementing the proposal along with its consequential legal amendments relating to payment of tax and input tax credit etc, is being discussed in the Officers' meeting scheduled to be held on 20.07.2018. Changes suggested in the said meeting would be placed before the GST Council separately.

IV. Approval sought

Accordingly, the approval of the GST Council is sought for the following:

- a) Amending the CGST Act, 2017, IGST Act, 2017, UTGST Act, 2017 and GST (Compensation to States) Act, 2017, as detailed in the **Annexure 1**;
- b) Granting in-principle approval for allowing quarterly return filing for small taxpayers with monthly tax payments, and for carrying out the necessary law amendment proposals in this regard; and
- c) Placing the requisite law amendment Bills before the Parliament and the respective State/Union territory legislatures.

Sl. No.	Section/Sub-section/Clause	Amendments as shown in Red and Strikethrough	Rationale/Remarks
			from any of their establishments outside India.
8.	Schedule III, new insertion	7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory. Trade has represented for retrospective amendment from 01.07.2017.	It is sought to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non-taxable territory.
9.	Schedule III, new insertion	8 (a) Supply of warehoused goods to any person before clearance for home consumption. (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. Explanation. - For the purposes of this clause, the expression “warehoused goods” shall have the meaning as assigned to it in the Customs Act, 1962 (52 of 1962) Trade has represented for retrospective amendment from 01.07.2017.	It is sought to ensure that there is no double taxation of transactions where supply of goods occurs in the course of high sea sales and sale of warehoused goods before clearance for home consumption. It was observed that in case of supply of goods as high seas sales and sale of warehoused goods, before being cleared for home consumption, IGST was being levied twice, once under the Customs Tariff Act, 1975 (read with the IGST Act) and then for a second time, on clearance for home consumption under the IGST Act. Since double taxation needs to be avoided, Circulars were issued to state that IGST would be payable only once at the time of clearance of goods for home consumption. However, it is imperative that such situations are squarely mentioned as ‘no supply’ in Schedule III.
Levy and Collection			
10.	9 (4)	9 (4) ~~The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient~~	Section 9 (4), which mandates that all registered persons shall pay the tax on reverse charge basis on purchases made from unregistered persons, is presently under suspension. This sub-section is being omitted for trade facilitation.



threshold for registration could then be increased for those Special Category States which so desired in future. The Hon'ble Minister from Haryana stated that this provision was deliberated in great detail during the original drafting of the GST law and the benefit of lower annual turnover threshold for registration under GST was given to a class of Special Category States. It needed to be examined whether a further class within this class of Special Category States should be created or whether all Special Category States should be persuaded to increase their annual turnover threshold for registration from Rs.10 lakh to Rs.20 lakh. The Hon'ble Chairperson stated that this issue should be kept open and the Special Category States should be given flexibility to increase their annual turnover threshold to Rs.20 lakh for registration as and when they felt comfortable with it. Dr. Rajiv Mani, Joint Secretary, Ministry of Law stated that an enabling provision could be made in the GST Law so that the Council could approve the names of the Special Category States as and when they wanted to increase their threshold for registration from annual turnover of Rs.10 lakh to Rs.20 lakh. The Council approved this suggestion as well as the proposed amendment to include names of four more States, namely Arunachal Pradesh, Himachal Pradesh, Meghalaya and Uttarakhand in Explanation to Section 22 of the CGST Act, 2017.

(vi) **S. No. 46 of Presentation relating to new Section 10 (3A) of GST (Compensation to States), Act, 2017:** The Hon'ble Chairperson suggested that the proposed formulation should have more flexibility. Instead of providing that the amount remaining unutilised in the Fund shall be distributed between the Centre and the States, the law should provide that such amount may be distributed between the Centre and the States, as the Council may decide. He suggested to change the phrase 'distribute the amount remaining unutilized in the Fund' to 'distribute such amount remaining unutilized in the Fund'. The Council agreed to this proposal.

(vii) **S.No.1 of Table relating to Returns:** The Hon'ble Chief Minister of Puducherry suggested that this proposal should be examined further. The Hon'ble Minister from Assam stated that this was only an enabling provision and it could be agreed upon. The Council agreed to the formulation shown in the presentation.

14.13. The Hon'ble Deputy Chief Minister of Delhi stated that the report of the Law Review Committee should be tabled in the Council along with the reasons as to why its 46 proposals were not considered. He also suggested that the website link containing the proposed 1270 suggestions received from the stakeholders on the proposed changes to the GST Law should also be shared with the States. He further suggested that the report of the Law Review Committee should not be closed. The Commissioner (GST Policy Wing), CBIC pointed out that these suggestions were available on the MyGov.in portal of the Government of India. The Council approved the proposals of the Hon'ble Deputy Chief Minister of Delhi.

15. For **Agenda Item 6(i)**, the Council approved the following:

15.1. Amendments in the CGST Act, 2017; IGST Act, 2017; UTGST Act, 2017; and GST (Compensation to States) Act, 2017 as proposed in the presentation attached as Annexure 4 to the Minutes with the following changes:

CHAIRMAN'S
INITIALS

MINUTE BOOK



Agenda Note No. 6 (i): Proposed amendments to GST Law CGST Act (Amendment 6 of 48)

Sl. No.	Section	Proposed amendments
6.	7	7. (2) Notwithstanding anything contained in sub-section (1),— (a) activities or transactions specified in Schedule III; or (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services. (3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as— (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods. • Title of Schedule II to be amended as below: ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

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Agenda Note No. 6 (i): Proposed amendments to GST Law CGST Act (Amendment 7 & 8 of 48)

Sl. No.	Section	Proposed amendments
7.	Schedule I	Schedule I 4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.
8.	Schedule III, new insertion	7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into ~~the taxable territory~~ India. Trade has represented for retrospective amendment from 01.07.2017.

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CHAIRMAN'S
INITIALS

MINUTE BOOK

Agenda Note No. 6 (i): Proposed amendments to GST Law CGST Act (Amendment 9 of 48)

Sl. No.	Section	Proposed amendments
9	Schedule III, new insertion	8 (a) Supply of warehoused goods to any person before clearance for home consumption. (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. Explanation- For the purposes of this clause, the expression "warehoused goods" shall have the meaning as assigned to it in the Customs Act, 1962 (52 of 1962) ~~Trade has represented for retrospective amendment from 01.07.2017.~~

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Agenda Note No. 6 (i): Proposed amendments to GST Law CGST Act (Amendment 10 of 48)

Sl. No.	Section	Proposed amendments
10	9 (4)	~~9 (4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.~~ 9 (4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of such taxable goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

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CHAIRMAN'S
INITIALS

Agenda Item 7(xi): Mechanism to deal with differences in liabilities between GSTR-1 and GSTR-3B, along with draft rules and proposed FORM DRC-01B for implementing the same.

The Law Committee in its meetings held on 05.11.2022, 23.11.2022 and 05.12.2022 deliberated upon ways to safeguard revenue by finding suitable manner of handling and controlling the difference in liabilities reported between **FORM GSTR-1** and **FORM GSTR-3B** by the taxpayers. Law Committee felt that considering large number of taxpayers involved, such a mechanism should be based on system based identification of the taxpayers based on certain approved risk criteria and a procedure of auto-compliance on the part of the taxpayers to explain/ take remedial action in respect of such difference.

2. The Law Committee opined that where the tax liability as per **FORM GSTR-1** for a tax period exceeds the tax liability as per **FORM GSTR-3B** for that period by more than a certain extent, the registered person maybe intimated on the portal of such difference and be directed to either pay the differential tax liability along with interest, or explain the difference. Unless he either deposits the amount specified in the said intimation or furnishes a reply explaining the reasons for any amount remaining unpaid, such a person may not be allowed to furnish the details of outward supplies in **FORM GSTR-1** or using invoice furnishing facility for a subsequent tax period. However, in cases where the taxpayer deposits the said differential tax liability only partly, with or without an explanation for such short payment, a separate procedure may be formulated for examination of such cases by the proper officer, and for further action for recovery of the unpaid amount in accordance with the provisions of Section 79, to the extent no satisfactory explanation has been provided by the taxpayer for such differential unpaid amount.

3. To implement the said approach, the Law Committee recommended as follows:

(i) Insertion of new **Rule 88C** to communicate the difference between **FORM GSTR-1** and **FORM GSTR-3B** and to direct payment of the differential or explain the difference as below:

88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.-

*(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in **FORM GSTR-1** or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in **FORM GSTR-3B** by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in **Part A** of **FORM GST DRC-01B**, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—*

*(a) pay the differential tax liability, along with interest under section 50, through **FORM GST DRC-03**, or*

(b) explain the aforesaid difference in tax payable on the common portal,

within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,

*(a) pay the amount of the differential tax liability, as specified in **Part A** of **FORM GST DRC-01B**, fully or partially, along with interest under section 50, through **FORM GST DRC-03** and furnish the details thereof in **Part B** of **FORM GST DRC-01B** electronically on the common portal, or*

*(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in **Part B** of **FORM GST DRC-01B**,*

within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of Section 79.

(ii) Insertion of a new **clause (d) in sub-rule (6) of Rule 59** to enable blocking of **FORM GSTR-1** for a subsequent tax period unless the taxpayer has deposited the amount specified in the intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as below:

*(d) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of Rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under Section 37, in **FORM GSTR-1** or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of Rule 88C.*

(iii) **FORM GST DRC-01B** may be inserted as required under Rule 88C(1) (enclosed as **Annexure** to this agenda note).

(iv) To begin with, difference between liability declared in **FORM GSTR-1** & that declared in **FORM GSTR-3B** of more than 20% as well as more than Rs. 25 lakhs may be taken for the purpose of intimation under proposed Rule 88C(1).

(v) Law Committee to formulate a separate procedure for examination of such cases by the proper officer, where the taxpayer deposits the differential tax liability only partly, with or without an explanation for such short payment, and for further action for recovery of the unpaid amount in accordance with the provisions of Section 79, to the extent no satisfactory explanation has been provided by the taxpayer for such differential unpaid amount.

4. Accordingly, the recommendations of the Law Committee in para 3 are placed before the Council for deliberation and approval.

FORM GST DRC-01B**[See Rule 88C]****PART-A (System Generated)****Intimation of difference in liability reported in statement of outward supplies and that reported in return****Ref No:****Date:****GSTIN:****Legal Name:**

1. It is noticed that the tax payable by you, in accordance with the statement of outward supplies furnished by you in **FORM GSTR-1** or using the invoice furnishing facility, exceeds the amount of tax paid by you in accordance with the return furnished in **FORM GSTR-3B** for the period <from><to> by an amount of Rs. The details thereof are as follows:

Form Type	Liability declared/ paid (in Rs.)				
	IGST	CGST	SGST/UTGST	Cess	Total
FORM GSTR-1 / IFF					
FORM GSTR-3B					
Difference in liability					

2. In accordance with sub-rule (1) of rule 88C, you are hereby requested to either pay the said differential tax liability, along with interest under section 50, through **FORM GST DRC-03** and furnish the details thereof in **Part-B** of **FORM GST DRC-01B**, and/or furnish the reply in **Part-B** of **FORM GST DRC-01B** incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, within a period of seven days.

3. It may be noted that where any amount remains unpaid within a period of seven days and where no explanation or reason is furnished by you or where the explanation or reason furnished by you is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79 of the CGST Act, 2017.

4. This is a system generated notice and does not require signature.

PART-B

Reply by Taxpayer in respect of the intimation of difference in liability

Reference No. of Intimation:

Date:

A. I have paid the amount of the differential tax liability, as specified in **Part A** of **FORM GST DRC-01B**, fully or partially, along with interest under section 50, through **FORM GST DRC-03**, and the details thereof are as below:

ARN of FORM GST DRC-03	Paid Under Head	Tax Period	IGST	CGST	SGST/UTGST	CESS

AND/OR

B. The reasons in respect of that part of the differential tax liability that has remained unpaid, are as under:

S. No	Brief Reasons for Difference	Details (Mandatory)
1	Excess Liability paid in earlier tax periods in FORM GSTR-3B	
2	Some transactions of earlier tax period which could not be declared in the FORM GSTR-1/IFF of the said tax period but in respect of which tax has already been paid in FORM GSTR-3B of the said tax period and which have now been declared in FORM GSTR-1/IFF of the tax period under consideration	
3	FORM GSTR-1/IFF filed with incorrect details and will be amended in next tax period (including typographical errors, wrong tax rates, etc.)	
4	Mistake in reporting of advances received and adjusted against invoices	
5	Any other reasons	

Verification

I _____ hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory

Name:

Designation/Status:

Place:

Date:

Agenda Item 7(xii): Clarification on various issues in GST.

A. Clarification on taxability of No Claim Bonus offered by Insurance companies

Representations have been received from General Insurance Council and various insurance companies regarding seeking clarity on the treatment of **No Claim Bonus (‘NCB’) under GST. It has been represented that NCB** is a discount given by insurance companies on the premium payable by the customer/insured for a particular year, if the insured has not made any claim during the previous year. However, some of the field formations/ investigation agencies are treating NCB as supply by the customer to the insurance company and are not permitting the same to be deducted from the value of supply of the insurance services being provided by the insurance company to the customer.

1.2 Some of the field formations/ investigative agencies are taking a view that two supplies of services are taking place simultaneously in the transaction, the first of insurance services provided by the insurer to the insured in exchange for insurance premium, and the second supply where the insured is providing insurer a service by not making any claims during the previous year in exchange for the NCB discount (by treating NCB as the consideration for the alleged supply of service by the insured to the insurer). In view of the same, they are claiming that the insurer is liable to pay GST on the gross premium, and deduction for discount on account of NCB should not be allowed for the purpose of calculation of value of supply made by insurer to the insured.

1.3 Insurance companies, on the other hand, have submitted that insurance is a business of indemnity and the risk premium for indemnity is determined based on various parameters, including the probability of a claim against the policy. If the insured has not made any claim in the previous year(s), considering the lower probability of claims by such person, the premium to be charged from the insured for the following year gets reduced, and this reduction is passed to the insured in form of “No Claim Bonus”, i.e. NCB. NCB is not in respect of any service rendered by the insured to the insurance company. NCB is allowed to the insured as an upfront discount from the premium payable by him for the supply of insurance services by the insurer to the insured and therefore, the same is deductible for the purpose of calculation of value of supply of insurance services under Section 15 of CGST Act, 2017.

1.4 RELEVANT GST PROVISIONS:

1.4.1 For, determining value of supply of a service, reference needs to be made to sub-section (1) of Section 15 of the Central Goods and Services Tax Act, 2017 (‘CGST Act’) which provides that the value of taxable supply shall be the transaction value if the supplier and recipient of the supply are not related, and price is the sole consideration for the supply.

1.4.2 Further, sub-section (3) of Section 15 of the CGST Act, provides that:

“(3) The value of the supply shall not include any discount which is given-

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if-

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.”

1.5 Therefore, from the perusal of clause (a) of sub-section (3) of Section 15 of the CGST Act, it is clear that the value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. Here, it is to be noted that NCB amount is fully disclosed at the time of renewal of the policy and is included in the policy document as well.

1.6. It is mentioned that the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period, and the amount or percentage of such No Claim Bonus varies depending upon the consecutive period for which no claim is made by the insured. There is no obligation on the insured, either as per the terms of the insurance policy, or otherwise, not to claim insurance claim during any period covered under the policy. Further, the insured is also not in any business of refraining to make any claim from the insurance company. There is also no contractual agreement between insurer and insured for not claiming any insurance claim from the insurer in lieu of the consideration of No Claim Bonus. On the other hand, the insured has procured insurance policy from the insurance company to indemnify himself from the loss, if any, during the policy period, which is covered by the said insurance policy, and has not procured the said policy for the purpose of or under obligation of refraining from making claim or tolerating any act of the insurance policy from the said insurance company, in lieu of consideration in form of No Claim Bonus. Accordingly, there does not appear to be any supply from the insured to the insurer on account of receipt of No Claim Bonus.

1.7 It is further mentioned that the insurance policy documents make the disclosure of the fact of availability of discount in form of No Claim Bonus to the insured subject to certain conditions. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of Section 15 of the CGST Act, 2017.

1.8 Law Committee deliberated on the issue in its meeting held on 05.11.2022 and recommended that the issue may be clarified through a Circular, specifying that the No Claim Bonus (NCB) cannot be considered as a consideration for a supply by the insured to the insurance company, but is to be considered as a permissible deduction under clause (a) of Section 15(3) of CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured, and accordingly, GST shall be leviable only on actual insurance premium amount, after deduction of No Claim Bonus, payable by the policy holders to the insurer in respect of insurance services received from the insurer.

Clarifications, as recommended by the Law Committee, are covered at Sl. No 1 and 2 of the draft Circular enclosed with the agenda note.

B. Clarification on applicability of e-invoicing w.r.t an entity-reg

2. As per Rule 48(4) of the CGST Rules, 2017, the notified class of registered persons has to prepare invoice by uploading specified particulars of invoice (in **FORM GST INV-01**) on Invoice Registration Portal (IRP) and obtain an Invoice Reference Number (IRN). Vide Notification No. 13/2020-Central Tax dated 21.03.2020, as amended, the class of registered persons to whom e-invoicing shall be applicable under Rule 48(4) of the CGST Rules, 2017 has been notified. Further, SEZ units, government departments, local authority and those referred in sub-rules (2), (3), (4) and (4A) of Rule 54 of the CGST Rules have been exempted from e-invoicing. In terms of the said notification, as amended, the following entities/sectors have been exempted from issuance of e-invoice and the same is also clarified as per Question 17 of Frequently Asked Questions (Version 1.4 dated 30.03.2021) available on GST Portal:

- a. Special Economic Zone Units
- b. Insurers
- c. Banking companies or financial institutions, including a non-banking financial company (NBFC)
- d. Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage
- e. Suppliers of passenger transportation service
- f. Suppliers of services by way of admission to exhibition of cinematograph films in multiplex screens
- g. Persons registered in terms of Rule 14 of CGST Rules (OIDAR)

2.1 Further, as per Question 18 of Frequently Asked Questions (Version 1.4 dated 30.03.2021) available on GST Portal, it has been clarified that the exemption from e-invoicing is with respect to an entity:

“18. The exemption from e-invoicing is w.r.t the nature of supply/transaction or w.r.t the entity?”

It is with respect to the entity.”

2.2 Representations have been received from banking entities that banks are being subjected to investigation by tax authorities wherein the tax officers are insisting that e-invoices are required to be generated by banks for movement of goods, including bullion, arguing that said exemption from generation of e-invoices is available to a banking company only with respect to the banking services provided by it and not for the goods or for the Banking Company as a whole. The tax officers are, therefore, insisting that generation of e-invoice and related compliances are mandatory in case of supply/movement of goods by such banking companies. It has been represented by banking entities that banks continue to face multiple challenges in movement of goods, including bullion, from one state to another, on account of alleged non issuance of e-invoice which is causing undue hardship in the regular movement and business operations. Thus, it has been requested to issue a suitable clarification on the issue.

2.3 Law Committee deliberated on the issue in its meeting held on 5.11.2022 and recommended that it may be clarified through a Circular that the exemption from mandatory issuance of e-invoices is with respect to the entity as a whole and not just with respect to the nature of supply/transaction.

Clarification, as recommended by the Law Committee is covered at Sl. No 3 of the draft Circular enclosed with the agenda note.

3. The agenda note along with the draft Circular (**enclosed as Annexure**) is placed before the GST Council for deliberation and approval.

Circular No. XXX/XX/2022-GST

F. No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the November , 2022

To,

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

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on various issue pertaining to GST-reg.

Various representations have been received from the field formations seeking clarification on certain issues with respect to –

- i. taxability of No Claim Bonus offered by Insurance companies;
- ii. on applicability of e-invoicing w.r.t an entity.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarify the issues as under:

S. No.	Issue	Clarification
Taxability of No Claim Bonus offered by Insurance companies		
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the during the previous year?	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period. The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus. It is, therefore, clarified that there is no supply

		provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the during the previous year and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.
2.	Whether the No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?	As per clause (a) of sub-section (3) of Section 15 of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of Section 15 of the CGST Act, 2017. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of Section 15 of the CGST Act, 2017 for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.

Clarification on applicability of e-invoicing w.r.t an entity		
3.	Whether the exemption from mandatory generation of e-invoices in terms of Notification No. 13/2020-Central Tax, dated 21 st March, 2020 as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	In terms of Notification No. 13/2020-Central Tax dated 21stMarch, 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of Rule 48 of CGST Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoice is for the entity as a whole and is not restricted by the nature of supply being made by the said entity. Illustration: A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax, dated 21st March, 2020 as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

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

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

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 7(xiii): Clarification regarding treatment of the difference in ITC availed in GSTR-3B as compared to that available in GSTR-2A for FY 2017-18 and 2018-19

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

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

(1) ...

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

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

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

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

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

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

Provided that ...

¹ Inserted w.e.f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021 by Sr.No. 109 of The Finance Act, 2021 (No. 13 of 2021)

1.1 A perusal of the above Section leads to the conclusion that input tax credit can be availed by a registered person only if the conditions specified in Section 16 of the CGST Act, 2017 are fulfilled. One of the conditions for availment of ITC is that the tax charged in respect of the said supply should have been paid to the Government by the concerned supplier.

1.2 During the initial period of implementation of GST, especially during the financial years 2017-18 and 2018-19, many suppliers failed to furnish the correct details of outward supplies in their FORM GSTR-1. Because of such discrepancies in FORM GSTR-1 of the suppliers, FORM GSTR-2A of their recipients was incomplete. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B, as restrictions in availment of ITC upto certain specified limit beyond the ITC available to the registered persons as per FORM GSTR-2A were provided under Rule 36(4) only with effect from 9th October 2019.

1.3 The discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing

to FORM GSTR-2A of the registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged by them seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19.

3. The matter was deliberated by the Law Committee in its meeting held on 12.10.2022 and 05.12.2022. The Law Committee considered the following scenarios:

- a) Where the Supplier has failed to file FORM GSTR-1 for a tax period;
- b) Where the supplier has filed FORM GSTR-1 but failed to report the supply in the same;
- c) Where the supplier has filed FORM GSTR-1 but reported a particular supply as B2C supply instead of B2B supply;
- d) Where the supplier has filed FORM GSTR-1 but declared the supply under wrong GSTIN.

4. Law Committee recommended the following procedure to deal with such cases for FY 2017-18 and 2018-19:

i) In cases, where the difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

ii) In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier, to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

5. The Law Committee recommended that a Circular may be issued to clarify the manner of dealing with discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19. The draft Circular as recommended by the Law Committee is enclosed as **Annexure-I**.

6. Accordingly, the recommendations of the Law Committee as detailed in **para 4 and 5 above** are placed before the GST Council for deliberation and approval.

Circular No. //2022-GST

F. No. - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the xx December, 2022

To,

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

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A in for FY 2017-18 and 2018-19 – Regarding.

Section 16 of the CGST Act, 2017 provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, especially during the **financial years 2017-18 and 2018-19**, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged by them seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions in availment of ITC upto certain specified limit beyond the ITC available to the registered persons as per FORM GSTR-2A were provided under Rule 36(4) only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act, 2017 from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during **FY 2017-18 and FY 2018-19**.

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

S. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B, for said tax period due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 and return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules, 2017, containing GSTIN of the recipient, but supplier has reported the said supply as B2C supply instead of B2B supply in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply under wrong GSTIN in FORM GSTR-1.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual claimant shall intimate the concerned jurisdictional tax authority of the registered person whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B.

		However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of the CGST Act, 2017 in respect of the input tax credit availed on such invoices by the registered person:

i) he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

ii) he has received the goods or services or both;

iii) he has made payment for the amount towards the value of supply along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with Section 17 or Section 18 of the CGST Act, 2017 and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of Section 16 of the CGST Act, 2017.

4.1 In order to verify the condition of Section 16 of CGST Act, 2017 that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icaai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier, to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period **FY 2017-18**, as per proviso to Section 16(4) of the CGST Act, 2017 the aforesaid relaxations shall not be applicable to the claim of ITC made in the **FORM GSTR-3B** return filed after the due date of September 2018 return till the due date of

furnishing returns for March 2019, if supplier had not furnished details of the said supply in his **FORM GSTR-1** till the due date of furnishing **FORM GSTR 1** for March 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the *bonafide* errors committed in reporting during **FY 2017-18 and 2018-19**. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for **FY 2017-18 and 2018-19** and not to the completed proceedings. However, these instructions will apply in those cases for **FY 2017-18 and 2018-19** where any adjudication or appeal proceedings are still pending.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner
(GST)

Agenda Item 7(xiv): Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under the Insolvency and Bankruptcy Code, 2016.

In some cases, the insolvency or bankruptcy proceedings are initiated against a corporate debtor due to default in payment of their debts in timely manner, in accordance with the provisions of the **Insolvency and Bankruptcy Code, 2016 (IBC)**. In such cases, claims are required to be filed by the tax officers in respect of statutory dues pending against such corporate debtor before the appropriate authority specified under IBC. The adjudicating authority under IBC may pass an order approving the resolution plan in respect of such entity. In number of cases, as a result of such proceedings, the amount of government dues, payable by the said taxpayer, as per resolution plan approved by the adjudicating authority, may be totally extinguished or may be reduced vis-à-vis the amount claimed by the tax officers. Doubts are being raised by various tax authorities regarding the modalities for implementation of the order of the adjudicating authority under IBC, after finalization of the proceedings thereof, with respect to demand for recovery against such corporate debtor under the CGST Act, 2017.

2. As per Section 84 of the CGST Act, 2017, if the government dues against any person under the CGST Act, 2017 are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

2.1 Section 84 of the CGST Act, 2017 reads as follows:

“Section 84 - Continuation and validation of certain recovery proceedings.-

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this Section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then-

..

*(b) where such Government dues are reduced in such appeal, revision or **in other proceedings-***

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

*(ii) the Commissioner shall give **intimation** of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;*

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.”

2.2 Further, Rule 161 of the CGST Rules, 2017 prescribes **FORM GST DRC-25** for issuing order for such reduction of demand. Rule 161 reads as follows:

Rule 161. Continuation of certain recovery proceedings . -

The **order** for the reduction or enhancement of any demand under Section 84 shall be issued in FORM GST DRC- 25.

3. The word ‘other proceedings’ is not defined in the CGST Act, 2017. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan.

3.1 The issue was deliberated by the Law Committee in its meetings held on 12.10.2022 and 05.12.2022. The Law Committee was of the view that as the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act, 2017 or under existing laws against the corporate debtor, the same appear to be covered under the term ‘other proceedings’ in Section 84 of the CGST Act, 2017.

3.2 Law Committee was also of the view that in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner may issue an intimation in **FORM GST DRC-25** reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

3.3 The Law Committee, accordingly, recommended issuing a Circular to clarify the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under the Insolvency and Bankruptcy Code, 2016. Draft Circular recommended by the Law Committee is enclosed as **Annexure – I**.

4. Law Committee also observed that whereas as per Section 84 of the CGST Act, 2017 a demand notice (in case where the demand has been enhanced) and an intimation (in case where the demand has been reduced) are to be issued to the taxable person or any other person, the relevant Rule, i.e. Rule 161 of the CGST Rules, 2017 uses only the word “order”. Hence, there is a requirement to amend Rule 161, as below, to align the same with Section 84 of the CGST Act, 2017:

Rule 161. Continuation of certain recovery proceedings . -

The ~~order~~/intimation/ notice for the reduction or enhancement of any demand under Section 84 shall be issued in FORM GST DRC- 25.

5. Law Committee also recommended that **FORM GST DRC 25** may also be amended slightly, to specifically include the authorities under IBC in the said FORM. The proposed amended **FORM GST DRC-25** is enclosed as **Annexure – II**.

6. Accordingly, the recommendations of the Law Committee as detailed in **paras 3.3, 4 and 5 above** are placed before the GST Council for deliberation and approval.

CBIC-20016/11/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated **the xx December, 2022**

To,
 The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
 Commissioners of Central Tax (All)
 The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under the Insolvency and Bankruptcy Code, 2016- regarding.

Attention is invited to Circular No.134/04/2020-GST dated 23rd March, 2020, wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of CIRP (Corporate Insolvency Resolution Process). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") with respect to demand for recovery against such corporate debtor under the CGST Act, 2017 as well under the existing laws and the treatment of such statutory dues under the CGST Act, 2017 and existing laws, after finalization of the proceedings under IBC.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168(1) of the CGST Act, 2017 hereby clarifies as follows.

4.1 Section 84 of the CGST Act, 2017 reads as follows:

“Section 84 - Continuation and validation of certain recovery proceedings.-

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this Section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then-

..

*(b) where such Government dues are reduced in such appeal, revision or **in other proceedings-***

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

*(ii) the Commissioner shall give **intimation** of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;*

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.”

4.2 As per Section 84 of the CGST Act, 2017 if the government dues against any person under the CGST Act, 2017 are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

4.3 The word ‘other proceedings’ is not defined in the CGST Act, 2017. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term ‘other proceedings’ in Section 84 of the CGST Act, 2017.

5. Rule 161 of the CGST Rules, 2017 prescribes **FORM GST DRC-25** for issuing intimation for such reduction of demand specified under the Section 84 of CGST Act, 2017. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been **finalised** against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in **FORM GST DRC-25** reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

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

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)

Principal Commissioner (GST)

FORM GST DRC – 25*[See Rule 161]*

Reference No << --- >>

<<Date >>

To,

GSTIN -----

Name -----

Address -----

Demand Order No.:

Date:

Reference number of recovery:

Date:

Period:

Reference No. in Appeal or Revision or any other proceeding

Date:

Continuation of Recovery Proceedings

This has reference to the initiation of recovery proceedings against you vide above referred recovery reference number for a sum of Rs.....

The Appellate /Revisional authority / **Adjudicating Authority or Appellate authority under IBC** /Court << name of authority / Court>> has enhanced/reduced the dues covered by the above mentioned demand order No..... dated.....vide order no. ----- dated ----- --- and the dues now stand at Rs. The recovery of enhanced/reduced amount of Rs..... stands continued from the stage at which the recovery proceedings stood immediately before disposal of appeal /revision/**any other proceedings**. The revised amount of demand after giving effect of appeal / revision/**any other proceedings** is given below:

Financial year:

(Amount in Rs.)

Act	Tax	Interest	Penalty	Fees	Other Dues	Total Arrears
1	2	3	4	5	6	7
Central tax						
State / UT tax						
Integrated tax						
Cess						

]1

Signature

Name

Designation

Place:

Agenda Item 7(xv): Amendment in provisions related to OIDAR Services under the IGST Act, 2017

Taxation of cross border e-commerce services poses a significant challenge due to physical absence of supplier in India and services by very nature being intangible and difficult to track. India introduced a unique concept of Online Information Database Access and Retrieval (OIDAR) Services in the erstwhile Service Tax law in 2016 and with implementation of GST, carried forward a similar levy in GST regime as well. OIDAR is intended to tax digitally supplied services nature of which renders their supply impossible to ensure in the absence of information technology. With the growth of digital economy, the OIDAR services are expected to grow immensely in volume. Thus, it becomes pertinent to take steps to ensure compliance under GST by OIDAR service providers.

1. PRESENT LEGAL PROVISIONS

1.1 DEFINITION OF OIDAR:

Section 2(17) of the IGST Act, 2017 defines “*Online Information and database access or retrieval services*”, as services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, —

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming;

1.2 PLACE OF SUPPLY & TAXABILITY OF OIDAR UNDER GST:

Sub-section 12 of Section 13 of the IGST Act, 2017 lays down the **place of supply provisions** for OIDAR services as follows:

The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following noncontradictory conditions are satisfied, namely:—

- (a) the location of address presented by the recipient of services through internet is in the taxable territory;*
- (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;*
- (c) the billing address of the recipient of services is in the taxable territory;*
- (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;*
- (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;*
- (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;*
- (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.*

1.3 PAYMENT OF TAX

Section 14 of the IGST Act, 2017 deals with special provision for payment of tax by a supplier of OIDAR services. The Section is as under,

*(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a **non-taxable online recipient**, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:*

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non- taxable territory;*
- (b) the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;*
- (c) the intermediary involved in the supply does not authorize delivery; and*

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services. Special provision for payment of tax by a supplier of online information and database access or retrieval services.

(2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

1.4 NON-TAXABLE ONLINE RECIPIENT

Section 2(16) of the IGST Act, 2017 defines “non-taxable online recipient” as any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation.—For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body,—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

1.5 COMPULSORY REGISTRATION:

Section 24(xi) of the CGST Act, 2017:

The registration is compulsory for every person supplying online information and database access or retrieval services (OIDAR) from a place outside India to a person in India, other than a registered taxable person.

The supplier (or intermediary) of online information and database access or retrieval services shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme in Form GST REG-10 (Section 14(2) of the IGST Act, 2017 read with Rule 14 of CGST Rules, 2017).

1.6 RETURN FILING:

In terms of Section 39 of the CGST Act, 2017 read with Rule 64 of the CGST Rules, 2017, every registered person providing online information and data base access or retrieval services from a place outside India to a person in India other than a registered person shall file return in **FORM GSTR-5A** on or before the twentieth day of the month succeeding the calendar month or part thereof.

It is to be noted that GSTR-5A is required to be filed only by the service provider (or his representative) providing OIDAR services from outside India to a non-taxable online recipient in India. Other categories of OIDAR service providers (like those supplying OIDAR services from India) will have to file regular returns (GSTR 1, 3B) prescribed for general categories of registered persons.

2. As it becomes pertinent to take steps to ensure compliance under GST by OIDAR service providers, various ways need to be explored to do so. One way is to designate the payment gateways or AD Banks as reporting entities for GST purposes to file information on such foreign remittances processed by them for specified services such as OIDAR. Also, possibility can be explored of imposing some liability in form of TCS on such payment gateways with regard to payment transactions for OIDAR services through them by supplier located in non-taxable territory to recipients in India, as a mechanism to collect the revenue upfront. It is pertinent to note that while the above alternatives may be deliberated and explored in the future, amendments in law may be required for exploring the abovementioned alternatives so as to reduce the requirement of interpretation for deciding whether the said supply is covered under the scope of OIDAR services or not for taxation under GST.

3. PROPOSED LAW RELATED CHANGES

3.1 Definition of non-taxable online recipient

3.1.1 As per Section 14 of the IGST Act, 2017 on supply of OIDAR services by any person located in a non-taxable territory and **received by a non-taxable online recipient**, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services. A “non-taxable online recipient” is defined under Section 2(16) of the IGST Act, 2017 to mean any Government, local authority, governmental authority, an individual or any other person **not registered** and receiving online information and database access or retrieval services **in relation to any purpose other than commerce, industry or any other business or profession**, located in taxable territory.

There are two requirements under this definition:

- (a) Service recipient is not registered under the GST law, and
- (b) Service recipient uses the OIDAR services for any purpose other than commerce, industry or any other business or profession.

3.1.2 Above are twin cumulative conditions which both need to be fulfilled for a person to be considered as non-taxable online recipient. It is pertinent to note that the second condition of non-business is very difficult to ascertain and not capable of being substantiated by the service provider who is located in the non-taxable territory. This condition not being met can potentially result in the service being outside the levy. Further, any person who is otherwise not required to register under

GST but is receiving OIDAR services in relation to any purpose related to commerce, industry or any other business or profession is required to pay tax under reverse charge basis as per Notification No. 10/2017-Integrated Tax(Rate) dated 28th June, 2017. As a result, such person receiving OIDAR services is required to take compulsory registration under GST as per clause (iii) of Section 24 of the CGST Act, 2017. This puts additional burden on these otherwise exempt entities to register only for the purpose of complying with RCM on import of OIDAR services for business purposes and it may be practically very difficult to ensure implementation of the same, considering nature of OIDAR services.

3.1.3 Further, in some countries, the only condition is that the recipient should be an unregistered person and to this end only responsibility which is cast on the service provider is to check if the service recipient has furnished his registration number. Similar mechanism may be adopted under GST in India as well. If the person located in taxable territory is receiving OIDAR services from a service provider located in non-taxable territory and the said person receiving OIDAR services does not furnish his GSTIN number to the OIDAR service provider, it may be assumed that the recipient is unregistered and thus may be covered under the definition of “non-taxable online recipient”. If the said person receiving OIDAR services furnishes his GSTIN number to the OIDAR service provider, the recipient will be required to pay tax under reverse charge basis. Thus, removing the second condition from the definition of non-taxable online recipient i.e. service recipient uses the OIDAR services for any purpose other than commerce, industry or any other business or profession, would make the administration of the levy easier and also make it easier for the service provider to comply. However, there may be requirement to keep the entities, which are required to be registered solely for the purpose of TDS on supplies made to them as per clause (vi) of Section 24, read with Section 51, of the CGST Act, 2017 within definition of non-taxable online recipients, so as to exclude such entities from requirement of payment of tax on RCM basis on OIDAR supplies from a service provider located in non-taxable territory.

3.1.4 Thus, the definition of non-taxable online recipient under Section 2(16) of the IGST Act, 2017 may be amended as under:

“(16) “non-taxable online recipient” means any ~~Government, local authority, governmental authority, an individual or any other person not registered and unregistered person~~ receiving online information and database access or retrieval services ~~in relation to any purpose other than commerce, industry or any other business or profession~~, located in taxable territory.

~~Explanation.—For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body,—~~

~~(i) set up by an Act of Parliament or a State Legislature; or~~

~~(ii) established by any Government,~~

~~with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;—~~

Explanation.—For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of Section 24 of Central Goods and Services Tax Act, 2017.

3.2 Issue of minimal human intervention

3.2.1 Currently for a service to be classified as OIDAR services under Section 2(17) of the IGST Act, 2017 an essential condition is that the supply of such service must be essentially automated and should involve minimal human intervention. However, many a times interpretation of what is ‘human intervention’ and what is ‘minimal’ becomes contentious and litigative. Representations have been received from taxpayers asking for clarity on the meaning of the term “minimal human intervention”.

3.2.2 The intention of GST on OIDAR services is to remove the anomaly of taxation between similar services provided by a resident and a non-resident supplier. Any supply of services by a resident supplier electronically whether with or without or minimal human intervention is subject to levy of GST. Restricting the scope of GST on cross border supply by non-resident suppliers only on those services with minimal human intervention does not provide a level playing field.

3.2.3 Further, many countries are doing away with the requirement of “minimal human intervention’. Thus, the definition of OIDAR services under Section 2(17) of the IGST Act, 2017 may be amended as under:

(17) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply ~~essentially automated and involving minimal human intervention and~~ impossible to ensure in the absence of information technology and includes electronic services such as,—

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming;

4. Law Committee deliberated on the issue in its meeting held on 05.12.2022 and approved the above mentioned law amendments proposed in para 3 above.

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

Agenda Item 7(xvi): In Section 17 of the CGST Act, 2017 regarding ITC in respect of CSR (Corporate Social Responsibility) expenditure

Doubts have been raised by trade as well field formations in respect of availability of ITC on CSR expenditure incurred by companies in accordance with the provisions of Companies Act, 2013 due to various contradictory advance rulings. Some of these advance rulings are as follows:

1.2. Telangana AAR ruling in Bambino Pasta Food Industries Private Limited (2022):

The question before the AAR was whether ITC is available on CSR expenditure spent by the company. The AAR observed that the Companies Act, 2013 requires Companies with a specified net worth or net profit to incur a minimum of 2% of their net profit towards their corporate social responsibility and failure to do so attracts penalty under sub- section 7 of Section 135 of the said Act which may go upto a maximum of Rs.1 Cr. Thus, the running of the business of a company will be substantially impaired if they do not incur the said expenditure. Therefore, AAR Ruled that the expenditure made towards corporate responsibility under Section 135 of the Companies Act, 2013, **is an expenditure made in the furtherance of the business and hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.**

1.3. UP AAR ruling in Dwarikesh Sugar Industries Ltd (2020): Two questions were placed before the AAR, namely –

(a) whether CSR expenses under Companies Act, 2013 qualify as being incurred in the course of business and eligible for ITC in terms of Section 16 of the CGST Act, 2017 ; and

(b) whether free supply of goods as part of CSR activities is restricted under Section 17(5)(h) of the CGST Act, 2017.

The ruling refers to the definition of “business” under Section 2(17) of the CGST Act, 2017 as well as the obligation cast upon companies under Section 135 of Companies Act, 2013 to mandatorily spend 2% of its profit on CSR expenditure. Further, any failure to comply with CSR expenditure norms would invite penalty against the defaulting companies. As CSR activities are compulsorily required to be undertaken by companies in order to run its business, it becomes an essential part of its business process as a whole. Thus, the said **CSR activities are to be treated as incurred “in the course of business”**. Unlike gifts which are voluntary and occasional in nature, CSR expenditure is not incurred voluntarily. Therefore, **AAR Ruled that it cannot be treated as ‘gift’ in terms of Section 17(5)(h) of the CGST Act, 2017 and accordingly, ITC in respect of CSR expenditure is not restricted.**

1.4. Kerala AAR ruling in Polycab Wires Pvt. Ltd(2019): The question before AAR was to determine the admissibility of ITC in relation to goods that are supplied free of cost to Kerala State Electricity board (KESB) for flood restoration work. The applicant stated that since GST amount was paid while procuring such supplies, they are entitled to avail ITC on the same. However, the **AAR Ruled that such supplies are in the nature of ‘gifts’ in terms of Section 17(5)(h) of CGST Act, 2017 and therefore, ITC is inadmissible on the same.**

1.5. Gujarat AAR ruling in Adama India Private Limited (2022): The AAR inter alia observed that as per Rule 4(1) of the Companies (CSR Policy) Rules, 2014 (for the period prior to 23-1-2021), the CSR activities undertaken by the company shall exclude activities undertaken in pursuance of its normal course of business. As per Section 2(d) of the Companies (CSR policy) Amendment Rules

2021 (w.e.f. 23-1-2021), ‘Corporate Social Responsibility’ does not include activities undertaken in pursuance of normal course of business of the company. Accordingly, the AAR found that the CSR activities are not activities undertaken in pursuance of applicant’s normal course of business. **The AAR Ruled that CSR activities, as per the Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act, 2017.**

2. From the foregoing, it appears that there are contradictory rulings on the issue as to whether the CSR expenditure can be considered as the expenses incurred in the course of business. One view is that CSR expenditure is incurred to meet the obligations of corporate social responsibility under Section 135(5) of the Companies Act, 2013 and non-compliance on this count attracts penal action. It is also claimed that Section 16 of the CGST Act, 2017 entitles a registered person to take credit of input tax charged on any supply of goods or services which are used or intended to be used in the course or furtherance of his business and that CSR expenditure being mandatory under the Companies Act, such expenses should be considered to be in the course or furtherance of business and accordingly, ITC should be available in respect of inputs and input services for CSR activities in terms of Section 16(1) of the CGST Act, 2017. However, another view is that ‘Corporate Social Responsibility’ does not include activities undertaken in pursuance of normal course of business of the company and therefore, the CSR activities are not activities undertaken in pursuance of applicant’s normal course of business. Accordingly, input tax credit may not be available to the registered person on CSR expenditure under Section 16(1) of the CGST Act, 2017.

3.1 Section 135(5) of the Companies Act, 2013 reads as under:

Section 135(5) of the Companies Act, 2013:

*(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, **at least two per cent. of the average net profits of the company** made during the three immediately preceding financial years, **in pursuance of its Corporate Social Responsibility Policy**:*

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of Section 134, specify the reasons for not spending the amount.

Explanation.—For the purposes of this Section “average net profit” shall be calculated in accordance with the provisions of Section 198.

3.2 Further, Section 16(1) of the CGST Act, 2017 reads as follows:

Section 16(1) of the CGST Act, 2017:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

3.3. Besides, Section 17(1) of the CGST Act, 2017 reads as under:

Section 17(1) of the CGST Act, 2017:

*(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is **attributable to the purposes of his business**.*

...

4. Further, as per Section 17(5)(h) of the CGST Act, 2017 notwithstanding anything contained in Section 16(1), input tax credit is not available in respect of **goods** disposed of by way of gift or free samples. There are divergent rulings of AAR as to whether goods supplied free of cost under CSR can be termed as gifts or not for the purpose of Section 17(5) (h), as detailed in Para 1.3 and 1.4 above. Further, restriction in Section 17(5)(h) is only with respect of supply of goods as gifts and not in respect of free services supplied as part of CSR.

5.1. Parallel needs to be drawn from another tax law i.e. the Income Tax Act. Explanation 2 to Section 37(1) of the Income Tax Act, 1961 provides that the expenditure incurred by an assessee on CSR activities shall not be deemed to be an expenditure incurred by the assessee for the purposes of business or profession. Thus, Income Tax Act categorically states that CSR expenditure shall not be treated as being in the 'course or furtherance of business', as under:

Section 37 (1) of Income Tax Act, 1961:

(1) Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Explanation 1. For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2. For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in Section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

5.2. While no deduction as business / professional expenditure in respect of CSR expenditure is allowed under Income Tax Act for the purpose of calculation of tax liability, it appears only logical that in GST law also no benefit of ITC may be provided in respect of such CSR expenditure.

6. In view of the above, the Law Committee in its meeting held on 05.12.2022 opined that ITC in respect of CSR expenditure incurred by Companies under Section 135 of the Companies Act, 2013 should not be allowed. To unambiguously state such position, the Law Committee recommended that such CSR expenditure may be included in the list of blocked credit under Section 17(5) as under:

(5) Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of the following, namely:-

.....

(j) goods or services or both received by a taxable person and which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in Section 135 of the Companies Act, 2013 (18 of 2013);

.....

7. Accordingly, the proposal at para 6 is placed for deliberation and approval of the Council.

Agenda Item 7(xvii): Issues related to place of supply in terms of the proviso to Section 12(8) of the IGST Act, 2017

Place of supply (PoS) of services by way of transportation of goods, including by mail or courier, where location of supplier and recipient is in India, is specified in sub-section (8) of Section 12 of the IGST Act, 2017. The said sub-section reads as follows:

“The place of supply of services by way of transportation of goods, including by mail or courier to, –

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation;

Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.”

1.2 The proviso was inserted in the aforesaid sub-section vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

2.1 Further, in terms of clause (a) of sub-section (5) of Section 7 of the IGST Act, 2017, supply of goods or services or both are treated as an inter-state supply when the supplier is located in India and the place of supply is outside India. Applicability of the aforesaid proviso of sub-section (8) of Section 12 for determination of the PoS has given rise to doubts in respect of the availment of input tax credit (ITC) by the recipient of such services. The same is illustrated as under:

X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an Air Freight Agency Z, who is also registered under GST in the state of West Bengal.

The following may be observed in the above scenario:

(a) The PoS of the service provided by Z to X shall be the destination of goods i.e. Singapore, in terms of the proviso to sub-section (8) of Section 12 of IGST Act;

(b) Z, the supplier of services for transportation of goods by air shall charge IGST on supply of said service from X in terms of sub-section (5) of Section 7, read with sub-section (8) of Section 12 of the IGST Act, 2017. However, Z while furnishing his **FORM GSTR-1** may report the place of supply as “Other Territory”.

(c) PoS being different from the location of the recipient of services, doubts arise in respect of the availment of input tax credit by X. Also, there are doubts regarding the correct state code under which the place of supply has to be declared in **FORM GSTR-1**.

(d) Section 16 of the CGST/SGST Act, 2017, which deals with eligibility and conditions for taking input tax credit, does not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India.

2.2 Effect of insertion of the aforesaid proviso in determining the PoS is summarized as under:

Prior to insertion of the proviso in Section 12(8)		After insertion of the proviso in Section 12(8)	
Location of the supplier of services	West Bengal	Location of the supplier of services	West Bengal
Location of the recipient of services	West Bengal	Location of the recipient of services	West Bengal
Place of supply	West Bengal	Place of supply	Singapore
Tax to be charged by the supplier	CGST + WBGST	Tax to be charged by the supplier	IGST

2.3 Similar would be the case in respect of supply of services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India w.e.f. 01.10.2022.

3.1 The aforesaid supply of services by way of transportation of goods by an aircraft or by a vessel from customs station of clearance in India to a place outside India was exempted from IGST from 25.01.2018 till 30.09.2018 vide Notification No . 2/2018-Integrated Tax (Rate) dated 25.01.2018. The said exemption was extended from time to time, the last one being vide Notification No.07/2021-IntegratedTax (Rate) dated 30.09.2021extending the exemption till 30.09.2022. No further extension from exemption was provided for the supply of the aforesaid services after 30.09.2022. Thus, during the period from 01.07.2017 to 24.01.2018, when the aforesaid supplies were taxable and were supplied to a registered person, PoS was determined based on the location of such registered person involving no dispute in availing of ITC by the said registered recipient, as the proviso to Section 12(8) was inserted in the IGST Act, 2017 only w.e.f. 01.02.2019.

3.2 However, w.e.f. 01.10.2022, supply of services by way of transportation of goods by an aircraft or by a vessel from customs station of clearance in India to a place outside India has become taxable and the PoS in respect of supply of such services by a person located in India to a registered person located in India would be outside the country as per proviso to Section 12(8) of the IGST Act, 2017. Thus, IGST would be payable on the said supply as illustrated in para 2.1 above, raising doubts regarding availment of input tax credit by the recipient.

4. Recommendations of the Law Committee

The Law Committee deliberated on the issue in its meeting held on 05.11.2022 and 23.11.2022 and recommended the following:

- a. **A Circular may be issued** for clarifying that input tax credit would be available to the registered person located in India, in respect of receipt of services of transportation of goods where supplier of the service is based in India, and where the place of supply is outside India in terms of the proviso to sub-section (8) of Section 12 of the IGST Act, 2017 and that in such cases, PoS is to be declared in FORM GSTR-1 on the common portal under the state code

“96- Foreign Country”(and not under “97-Other Territory”). The draft Circular as recommended by the Law Committee is attached as **Annexure-A**.

- b. No useful purpose is being served by the **proviso** to Section 12(8) of IGST Act, 2017 inserted w.e.f. 01.02.2019. On the other hand, the proviso is giving rise to complications in such cases as highlighted above. **Therefore, the Law Committee recommended that the proviso to Section 12(8) of IGST Act, 2017 may be omitted.**

5. Accordingly, the recommendations of the Law Committee as detailed in **para 4 above**, are placed before the GST Council for deliberation and approval.

DRAFT Circular No. //2022-GST

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

New Delhi, Dated.....2022

To,

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

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of Section 12 of the IGST Act, 2017 – Reg

Attention is invited to sub-section (8) of Section 12 of IGST Act, 2017, which provides for the place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India. As per clause (a) of the aforesaid sub-section, the place of supply of services by way of transportation of goods, including by mail or courier, to a registered person shall be the location of such registered person. However, the proviso to the aforesaid sub-section which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 provides that where the transportation of goods is to a place outside India, the place of supply of the said service shall be the place of destination of such goods. In such cases, as the place of supply of service, as per the proviso to sub-section (8) of Section 12 of IGST Act, is the concerned foreign destination and not the State where the recipient is registered under GST, doubts are being raised regarding the availment of input tax credit of the said services by the recipient located in India.

2. In order to clarify this issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issues as under:

Sl. No	Issue	Clarification
1.	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipient are located in India, is determined in terms of sub-section (8) of Section 12 of the IGST Act, 2017 which reads as follows: <i>“(8) The place of supply of services by way of transportation of goods, including by mail or courier to,—</i> <i>(a) a registered person, shall be the location of such person;</i> <i>(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:</i> <i>Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods”</i> Hence, in case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported in accordance with the proviso to the sub-section (8) of Section 12 of IGST Act which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. Illustration: <i>X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo operator Z, who is also registered under GST in the state of West Bengal.</i> <i>In this case, the place of supply of the services provided by Z to X is the place of destination of goods i.e., Singapore, in terms of the proviso to sub-section (8) of Section 12 of IGST Act.</i>
2.	In the case given in Sl. No. 1, whether the supply of services will be treated as inter-state supply or intra-State supply?	The aforesaid supply of services would be considered as inter-state supply in terms of sub-section (5) of Section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, IGST would be chargeable on the said supply of services. In respect of the illustration given in Sl. No. 1. above, Z

		would charge IGST from X in terms of sub-section (5) of Section 7 of the IGST Act, for supply of services by way of transportation of goods.
3.	In the case given in Sl. No. 1, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?	Section 16 of the CGST Act lays down the eligibility and conditions for taking input tax credit whereas, Section 17 of the CGST Act provides for apportionment of credit and blocked credits under circumstances specified therein. The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India. Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in Section 16 and 17 of the CGST Act. In the illustration given in Sl. No. 1 above, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in Section 16 and 17 of the CGST Act.
4.	In the case mentioned at Sl. No. 1, what state code has to be mentioned by the supplier of the said service of transportation of goods, where the transportation of goods is to a place outside India, while reporting the said supply in FORM GSTR-1 ?	The supplier of service shall report place of supply of such supply by selecting State code as '96-Foreign Country' from the list of codes in the drop-down menu available on the portal in FORM GSTR-1 .

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

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 08: Issues recommended by GSTN

Agenda Item 8 (1) : Proposed Changes in HR Policies and Transition Management from GSTN

1.1 The GST Council in its 27th meeting held on 4th May 2018 and the Union Cabinet in its meeting held on 26th September 2018 decided to convert GSTN into a fully-owned Government company. As per this decision, 50% equity of the company is held by the Central Government and the balance 50% is held by the various States and Union Territories. The due process for the same has been completed on **30th June 2022**.

1.2 Union Cabinet in its meeting dated 26th September 2018 gave following directions in relation to the HR policy of GSTN as a government company.

Flexible hiring & appropriate remuneration policy may be evolved by GSTN considering criticality of the IT manpower, prevailing market compensation etc. and placed before the GST council for its approval in due course.

1.3 The decision of the Union Cabinet was subsequent to similar directions which were given by GST Council in its meeting dated 4th May 2018.

1.4 A transition period of five years was provided to the company to work under the old HR policy. Accordingly, now the new HR policy is being placed before GST Council for approval.

1.5 The HR policy has been made taking into consideration that the compensation of employees hired from the Market was fixed in the year 2014 and since then 8 years have elapsed without any change. This has led to difficulty in hiring new talent, old executives moving out of GSTN for better salaries and stagnation of existing executives.

1.6 GSTN followed three step process to finalize the proposal. First, the compensation benchmarking study was done by M/s Deloitte. Second, the HR and Remuneration Committee (a Sub-Committee of GSTN Board) went through the proposal and finalized its report on HR policies and Transition Management with suitable changes. Third, the Board of GSTN approved the proposal on HR policies and Transition Management in its 51st Meeting held on 16th Nov 2022.

1.7 Summary of the proposal approved by the GSTN Board:

1.7.1 The policy has been made by the GSTN board to cater to the needs of a lean and dynamic IT company providing services to taxpayers and tax administrations. An executive summary of the same is presented below for the approval of GST Council. Further, the entire document from Annex I to Annex XI is placed for reference and approval.

1.7.2 New Grade Structure

- a. The management levels are proposed to be revised to three instead of existing four (i.e. Senior, Middle and Junior).
- b. It is proposed to introduce designations prevalent in IT industry for hiring technical manpower and corresponding equivalent non-tech designations. Both kind of designations shall be implemented for future hiring after approval.
- c. Addition of two grades is proposed i.e. 5 c – Executive / Associate Engineer at level 5 and 4 b – Associate VP/Principal Engineer at level 4 is proposed.
- d. The employees of GSTN (both regular and tenured) would be placed in 5 levels and 10 grades. The levels and grades to be followed in future are shown in Table below:

Table - 1

Level	Existing Grades	New Grades	Designation	Years of Experience
Level 1	G1	1	Chairman CEO	20 years +
Level 2	G2	2	EVP	18 years
Level 3	G3	3a	SVP	15-18 years
	G4	3b	VP	14-16 years
Level 4	G5	4a	Assistant VP / Chief Engineer	12-14 years
	New	4b	Associate VP / Principal Engineer	10-12 years
	G6	4c	Sr. Manager/ Technical Lead	8-11 years
Level 5	G7	5a	Manager /Sr. Engineer	7-10 years
	G8	5b	Assistant Manager/ Engineer	5-9 years
	New	5c	Executive / Associate Engineer	0-5 years

**Senior Management
Grades in Level 1, 2 &3**

**Middle Management
Grades in Level 4**

**Junior Management
Grades in Level 5**

1.7.3 New Pay Ranges:

- a. The pay ranges applicable as per the approved proposal for employees of **GSTN hired from the market** (not on Deputation) is detailed in the table below.

Table – 2 New Ranges* Annual Cost to Company (CTC) and Existing Pay Ranges					
Level	Grade	Designation	Min	Median	Max
1	1	Chairman CEO	93,13,000	1,46,17,000	2,09,30,000
	(Old Range)		1,00,00,000	-	-
2	2	EVP	58,20,000	88,59,000	1,22,40,000
			45,69,396	60,92,528	76,15,660
3	3a	SVP	41,57,000	61,95,000	84,41,000
			33,12,902	44,17,302	55,21,503
	3b	VP	29,70,000	42,43,000	61,62,000
			22,95,628	30,60,837	38,26,046
4	4a	Assistant VP /Chief	22,80,000	34,30,000	48,83,000

Table – 2 New Ranges* Annual Cost to Company (CTC) and Existing Pay Ranges					
Level	Grade	Designation	Min	Median	Max
		Engineer			
			15,02,615	20,03,487	25,04,359
	4b	Associate VP /Principal Engineer	18,24,000	27,44,000	42,47,000
	Newly introduced Grade	-	-	-	-
	4c	Sr. Manager/ Tech Lead	15,41,000	23,33,000	36,92,000
			10,41,943	13,89,258	17,36,572
5	5a	Manager / Sr. Engineer	11,67,000	17,15,000	26,37,000
			7,12,500	9,50,000	11,87,500
	5b	Assistant Manager/ Engineer	9,84,000	14,66,000	22,42,000
			4,57,500	6,10,000	7,62,500
	5c	Executive/ Associate Engineer	7,03,000	10,86,000	16,37,000
	Newly introduced Grade	-	-	-	-

*The pay ranges shown above are inclusive of monetised benefits.

Note: The rows in white are the new pay ranges and the grey coloured rows are the existing pay ranges. The new salary of the existing executives will be fixed as per the transition management policy referred at **para 1.7.4** (complete details at Annexure- IV)

- The CTC figures in the Pay ranges are exclusive of Gratuity as per the provisions of the Gratuity Act. Gratuity will be paid to regular employees only, tenured employees shall not be paid Gratuity as the tenure shall be of 4 years.
- Welfare Benefits viz. Medical Insurance shall be over and above the CTC.
- The regular, tenured and employees on deputation from Government Departments on the pay roll of GSTN will be eligible for being paid the monetised benefits. The monthly monetised benefits/entitlements shall be in the range of 14,000 to 75,000 per month depending on the rank.
- Hot Skills Allowance (HSA) for any Hot Skill prevalent in the IT industry and required in GSTN may be offered as a payment of discretionary amount. Based on the market trends and study/reports by consulting firms, the HSA list shall be revised annually. It is to be given to not more than ten percent of the sanctioned strength. (Shall be proposed by GSTN HR and approved by CEO, GSTN).

1.7.4 Transition Management:

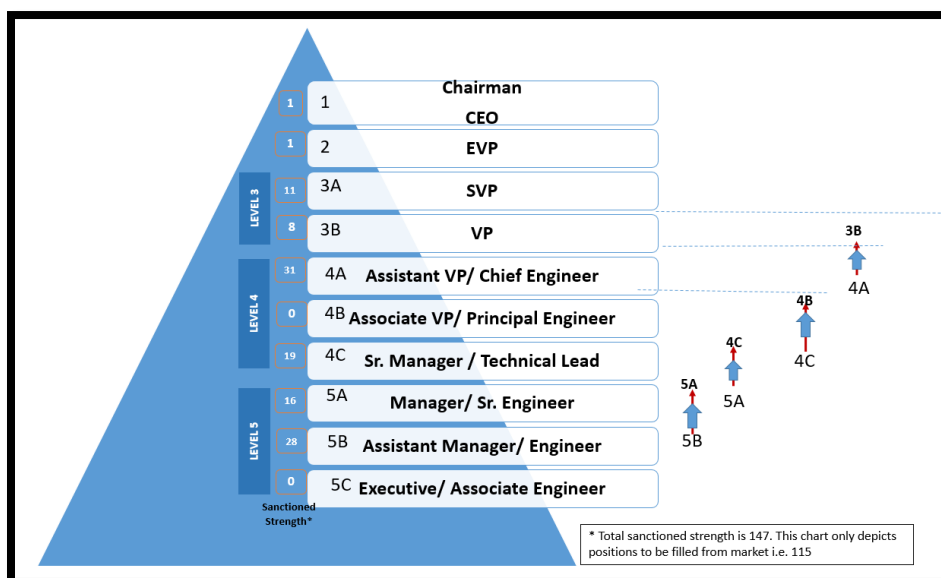
- a. In future, GSTN shall hire employees on a tenure basis with each tenure being of four years. Based on performance of an employee, a new tenure may be granted. The details of this policy are provided under the heading recruitment guidelines.
- b. Existing employees of GSTN would not be converted to tenure employee and would be mapped to the new grade structure on as is where basis (i.e. designation) and the salary correction shall be done by granting the following benefits:
 - Transition Increment
 - Progression along with an Increment to eligible employees at the time of transition (FY 2022-23).
 - Outlier Management at the time of transition (FY 2022-23).

1.7.5 Transition increment shall be based on the following table:

Table - 3

No	Criteria	Particulars of Transition Increment
1	All existing regular employees with more than 4 years tenure at same grade.	Transition increment with amount equivalent to one increment- as per the Remuneration Committee approved percentage for corresponding management level.
2	All existing regular employees with more than 6 months (should have completed probation period successfully) but less than 4 years at same grade.	Transition increment on pro rata basis - as per the RC approved percentage for corresponding management level.

1.7.6 Progression: The grade up to which each grade of employees in the organization can progress



during transition is depicted in the chart below:

- a. Eligibility at the time of transition for progression shall be as follows:
 - i. All existing employees up to Senior Manager level, with more than 4 years tenure at same grade and having secured 18 & above merit points in past four years subject to the condition that the employee has been awarded a rating of “A” in Financial Year 2021-22.
 - ii. Existing employees at Assistant Vice President level with 7 years or more tenure at same grade having secured 32 & above merit points in the past seven years and have been awarded a rating of “A” in the Financial Year 2021-22 to be given one time progression to the level of Vice President.
- b. Employees with less than 4 years at same grade at all levels shall not be eligible for progression at the time of transition.
- c. Employees of the Level of 2 & 3 i.e. VP, SVP & EVP shall not be eligible for progression to next grade.

1.7.7 Outlier Management: During the time of progression in the process of transition, employees shall be given increment so that their salaries reach the minimum of the new pay range. Similarly, while giving either transition or progression increment, if an employee’s salary has reached or breached the maximum, his/her salary would be capped at the maximum of the pay range or shall not be given an increment at all.

1.7.8 Transition of NISG employees: The positions occupied by NISG employees shall be advertised and the positions shall be filled up after interviews. If any employee on NISG payroll gets selected he/she shall be offered a new contract of 4 years directly with GSTN as per the Recruitment Guidelines of GSTN (Part II). They shall also be eligible for transition increment as per Table-3 above.

1.7.9 Performance Management Policy:

In the performance management policy it is envisaged that suitable changes be made in rating scale, rating distribution and variable pay etc. which in turn shall bring meritocracy in the organization.

- a. A bell-shaped curve would be followed for rating distribution to achieve performance differentiation and rewarding good performance while finalizing the performance ratings for Variable Pay and Progression Increment. The distribution of various appraisal grading proposed to be achieved is as follows:

Table - 4

Final Score in Appraisal Process	Performance Rating	% of ratings to be awarded in each group (i.e. Technology & Non Technology)
85.1 and Above	A+	20%
70.1 to 85	A	40%
60.1 to 70	B	30%
50.1to 60	C	5%
Below 50	D	5%

- b. The employees shall be paid PLI based on their individual ratings in the performance appraisal process after moderation of ratings to fit the bell shaped curve defined in above table. The percentage of PLI disbursement at each rating is detailed in the following table (**Table 5**):

Table- 5

Final Score in Appraisal	Mod. Perf. Rating	Rating Description	% PLI disbursement
85.1 and Above	A+	Exceeds Performance Standards	110
70.1 to 85	A	Achieves Performance Standards	100
60.1 to 70	B	Slightly Below Performance Standards	80
50.1to 60	C	Barely Achieves Performance Standards	70
Below 50	D	Needs to Improve Performance	50

- c. Outlier Management: The following guidelines (**clause d to h**) would apply to those employees whose pay does not fall within the new pay range for their respective grade after giving the annual/progression increment.
- d. If employee's salary is below their grade minimum after giving annual/progression increment; such employees would be given pull to minimum increment to bring the employee to the minimum of the pay range.
- e. If employee's salary goes above their new grade's maximum pay while giving the annual/progression increment the following would be adopted:
- f. In such cases, the quantum of annual/progression increment shall be capped at the maximum of the grade pay range.
- g. Such employees would be given minimum salary increase (i.e. 50%) based on the rating only for next 2 years.
- h. Also, in case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

1.7.10 Recruitment Guidelines for Hiring Market Recruits

Following new policy elements are proposed to be added to the existing recruitment guidelines.

- In future, hiring of tenured employees shall be for a contract period of 4 (four) years directly with GSTN.
- A balance shall be maintained between the number of regular employees of GSTN and tenured employees of GSTN. The ratio shall be reviewed from time to time.
- After completion of existing contract of employees (4 years), it shall be examined if the role performed by the concerned employee is required or not. If the role is required in GSTN, it shall be further examined if the concerned employee has rendered meritorious service before initiating the rehiring process.

- d. GSTN proposes to engage independent Consultants for its various verticals, for a tenure of 2 years for specific projects. The remuneration of the independent consultants shall be in the range of 60,000 to 3, 80,000.
- e. A maximum of 25 number of Independent Consultants may be engaged by GSTN. The hiring shall however, depend on the actual requirement at a particular point of time. These engagements shall be above the sanctioned strength of 147 positions in GSTN.

1.7.11 Revision in Miscellaneous Entitlements and Leave Rules:

- a. The proposal is to revise number of leave admissible as per present policy (EL 20 to 30), (SL 7 to 8), (CL 7 to 8) and accumulation limits to be revised for earned leave (30 to 50) and sick leave (21 to 30). For serving employees, option will be given to employees for encashment of 50% of the EL balance at the end of calendar year.
- b. All reimbursements viz. telephone bill, newspaper, OPD etc. are proposed to be dis-continued and a fixed monetised value shall be paid on a monthly basis to the employees. It would form a part of CTC but would be shown separately as monetised benefits. This amount would also be admissible to deputationists.
- c. The official tour related entitlements such as daily allowance and room tariff etc. are also proposed to be revised to offset inflation.

1.7.12 Allowances to Deputationists:

Allowances admissible to deputationists are also proposed to be revised as they were fixed in the year 2014. These officers are business process specialists who are needed for two reasons. First, to convert law into a viable and programmable business process, and second, to interact with tax administrations, tax payers and technologists as a bridge to deliver the product and services to the satisfaction of these stakeholders.

- a. Deputationists would continue to be paid their parent cadre Basic pay and DA.
- b. The PLI paid to deputationists shall be replaced by an IT and Professional Allowance. The rate shall vary between 40% - 50% of the Basic Pay plus DA.
- c. There would be an increase of 10 to 20 percent in the HRA of deputationists to offset inflation as GSTN is not an authorized office for allotment of Govt. quarters.
- d. There would be an increase of ₹ 6000/- to ₹ 11000/- in the fuel allowance of deputationists as cars in GSTN are provided only to the senior most officers. The senior officer's including Joint Secretary level officers shall be given an option to either avail company car or receive ₹ 50,000/- as fuel allowance using which they can hire a car themselves.
- e. Fixed monetised amount per month in lieu of LTC and CEA shall be paid.

1.7.13 Dates of Implementation: The new HR Policy shall be implemented from 1st Jan 2023 onwards in a staggered manner, over the first quarter of the calendar year 2023.

1.7.14 Estimated Cost: The Estimated Cost of the proposed changes based on present manpower strength in GSTN would be approximately ₹ 5.66 crore per annum which is an increase of around 12 percent in the total wage budget of GSTN which at present stands at ₹ 46.53 crore.

1.8 Accordingly, the following proposal is placed before the GST Council for consideration and approval:

- a. The new HR policy (Annexures I to X1) approved by the GSTN Board in its 51st meeting held on 16th Nov 2022, for which the summary has been presented in this agenda, may please be approved.
- b. The power to review and approve operational, HR and administrative matters from time to time may kindly be delegated to the Board of GSTN as these are regular Company matters requiring intervention based on market conditions.
- c. In case of deputationists from Central and State Government, any review or change in these approved proposals shall also need approval of the Union Finance Minister.

Agenda Item 8 (2): Proposal for Changes in the Revenue Model of GSTN and transition to the new Revenue Model

2.1 The present revenue model of GSTN was approved by the empowered committee of States finance ministers in the year 2016. On GSTN becoming a government company a review of this model was done and it was felt that there are limitations in the present model and change is required.

2.2 To briefly recapitulate, presently, GSTN receives funds from Central and State governments based on the invoices it raises as per the present revenue model. The present Revenue Model of GSTN has the following limitations, which need to be addressed:

- a. Existing Revenue Model does not provide any funding options for the capital expenditure post-go-live of the GST Project. This is a serious gap for an evolving project as periodic CAPEX would be needed in the foreseeable future also. Currently, the user charges received from the Centre and States Governments (OPEX) are being used for CAPEX also.
- b. For the daily operation of GSTN, there are no provisions for minimum working capital that should be maintained.
- c. There is no clarity on the treatment of Interest earned on the surplus funds available with GSTN, i.e. whether it should be treated as GSTN's income or the Government's contribution.

2.3 To address the above limitations a new Revenue Model has been designed and placed before the Audit Committee of GSTN (a subcommittee of the GSTN Board) for deliberation and suggestions. The Audit Committee of GSTN is chaired by the independent Director Shri Anand Sinha (Ex-Deputy Governor of RBI). The suggestion and guidance of the committee have been incorporated in the new revenue model. The same has approval of the GSTN management also.

2.4 The salient aspects of the four important changes proposed in the existing revenue model are as follows:

2.4.1 Funding for Capital Expenditures

2.4.1.1 GSTN is an evolving technology platform which needs regular capital expenditure. Funding for future capital expenditure can be arranged by multiple methods. Options for meeting the capital expenditure of GSTN have been evaluated, and funds for capital expenditure by way of Grant-in-Aid from the Centre and States Governments is the best option available in terms of ease of the procedure and also the accounting treatment.

2.4.1.2 In the case of term loans from banks, the cost of Interest would be an additional cost to the Governments. **Therefore Grant in Aid for CAPEX is proposed for the approval of the GST council. For the past i.e. till FY 2021-22, the accounting treatment for CAPEX shall not be changed.**

2.4.2 Working Capital Requirement for Smooth day-to-day Operations

2.4.2.1 For working capital requirements, GSTN will follow the current model of collecting the Advance User Charges in future also. **The Users Charges demand cycle would managed in a way that enough funds for regular operation of six months are available at all times.** Thus it will cater to the working capital requirement of six months of operations which is presently assessed at Rs 300 crore (It will be reviewed by GSTN Board periodically).

2.4.3 Treatment of Interest Earned on Surplus Funds

2.4.3.1 **GSTN proposes to adjust the Interest earned to reduce the invoice raised to the Centre and States Governments.** The Interest earned will be adjusted in the invoices based on the weighted

average balance of Advance User Charges received from the respective Governments during the years. For the Interest earned in the earlier years GSTN would follow the same methodology.

2.4.4 Continuity of Credit Facility

2.4.4.1 GSTN would continue to keep the Credit Facility to the tune of Rs. 500 Crore or as assessed by the GSTN Board from the commercial banks to cater for the emergency needs of either Capital Expenditure or Revenue Expenditure. Such Credit Facility will be backed by the Government Guarantee from the Central Government.

2.5 The Revised Revenue Model (Annexure-A) is placed for approval of the GST Council. Any incidental changes further needed shall be approved by the Chairman GSTN.

Agenda Item 8 (3): Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC.

3.1 As per the Revenue Model of GSTN approved by the Empowered Committee of State Finance Ministers (EC) in its meeting held on 30th August 2016, cost incurred on the project along with GSTN's own expenses are shared equally by the Centre and States in the form of User Charges to be remitted by them in two (2) installments on a half-yearly basis by 1st March and 1st September of the year.

3.2 Further, as per Para iii (b) of the Revenue Model "Any Government that fails to pay the Advance User Charges (AUC) before the due date will pay the defaulted amount together with interest at the rate at which GSTN borrows money from the banks for this purpose".

3.3 Status of Payment of AUC as on 07th December 2022

3.3.1 As per the approved Revenue Model, GSTN had raised demand for the payment of AUC to the Central and State Governments for the FY 2020-21 and 2021-22. The status of AUC demanded and received (as on date) is given below:

(Rs. in Crores)

Financial Year	Amount demanded	Amount received	Amount Pending	Pending States
2020-21	539.36	539.36	-	NIL
2021-22	474.46	474.27	0.19	Ladakh – 0.10 Mizoram – 0.09

3.4 Waiver of Interest on late payment of AUC for FY 2020-21 and 2021-22

3.4.1 Late payment of AUC for FY 2020-21

- The GST Council in its 42nd & 43rd meeting held on 5th /12th Oct 2020 and 28th May 2021 respectively approved the extension of payment of AUC of FY 2020-21 till 31st March 2021 and subsequently till 31st Dec 2021.
- However, some of the States remitted the amount of AUC for FY 2020-21 after expiry of extension period i.e. 31st December 2021. No payment for FY 2020-21 is pending now.
- The interest payable on the delay remittance of AUC has worked as Rs.0.087 crore (**Annexure-B**), the interest is calculated considering the rate of interest @8.25%, the lending rate of IDFC bank, which is as per the Revenue Model.

3.4.2 Late payment of AUC for FY 2021-22

- For the FY 2021-22, there were no extension granted on the remittance of AUC for FY 2021-22. Accordingly, the interest on delayed remittance of AUC has been worked out for the periods after the due date i.e. 1st May 2021 and 1st September 2021 for 1st Instalment and 2nd Instalment respectively.
- The details of Interest payable of Rs.15.27 Crores by the State Governments and CBIC for delay in remitting the amount of AUC or for amount yet to be paid by State Governments are placed at **Annexure-C**.

3.5 **Proposal:** Keeping into consideration the above and past practice of waiver of the interest amount payable on AUC, following proposal is submitted for the kind consideration and approval of the Council:

- The interest payable by the defaulting Governments of Rs.0.087 Crores for FY 2020-21 due to delayed payment of AUC till 07th December 2022 may be waived of.
- The interest payable by the defaulting Governments of Rs.15.27 Crores for FY 2021-22 due to delayed payment of AUC till 07th December 2022 may be waived of.

- c. It is also requested that State and Central Governments may pay their due in time so that in future there is no need for waiver of interest by the GST Council.

Agenda Item 8 (4): Data Archival Policy for the GST System

4.1 GST data has been increasing rapidly every year on account of increase in taxpayer base, improved compliance and introduction of new initiatives by the GST Council such as EWB & e-invoice. Further, in consideration of the time limitation under Section 73 and 74, the data of 2017 has to be retained in production up to 2025. This is a huge data which leads to GST System performance issues and hence, a data archival policy is needed.

4.2 The issue was deliberated by the LC and a sub-committee consisting of Bihar, Gujarat, Maharashtra, GSPTW and GSTN was formed to suggest a data archival policy for the GST system. The recommendations of the subcommittee were submitted to LC on 24 September 2022.

4.3 In its meeting dated 12 October 2022 LC deliberated upon the recommendations of the subcommittee and approved the archival policy. The salient features of the policy are as follows:

- a. All data which may be needed under section 73 and 74 to issue SCN (Show Cause Notice), for which the time period has not expired, will be kept in a live production environment. This data would be available to both taxpayers and tax officers for download.
- b. A separate archival data lake shall be created. After the expiry of the period in clause (a), data will be kept in the archival data lake in the following manner:
 - (i) In granular form for taxpayers having cases under litigation during the period of litigation.
 - (ii) In summary form for the rest of the taxpayers.
- c. Further, for cases under litigation and cases not under litigation, two different formats has been finalized and the data in such format would be removed from production and kept in a separate data lake.
- d. Data shall be deleted from the archival lake after **seven** years where there is no litigation and on the conclusion of the litigation where there is litigation. The facility would be given to the jurisdictional officers to report the conclusion of litigation.
- e. Tax officers shall have access to the archival data lake. Taxpayers shall also have access to archival data lake in cases where there is an ongoing litigation.
- f. Clause (a) shall also apply to the data stored in the BIFA Lake.

4.4 **The above draft data archival policy is submitted before GST Council for its kind information.**

Agenda Item 8 (5): Implementation of facility to Generate Document Identification Number in GST Back Office for Model 2 States in compliance with the Supreme Court judgement in W.P 320 of 2022.

5.1 Hon'ble Supreme Court in its judgement of W.P. No. 320 of 2022 dated. 18.07.2022 directed Union of India/**GST council** to issue advisories to the states for implementing Document Identification Number (DIN) generation system. It was felt that the system generated Document Identification Number (DIN) will bring transparency and accountability in the tax administrations.

5.2 In this regard, the operating para of the judgement is reproduced as under for ease of reference:

Para 7 of Writ Petition, “ *In view of the implementation of the GST and as per Article 279A of the Constitution of India, **the GST Council** is empowered to make recommendations to the States on any matter relating to GST. The GST council can also issue advisories to the*

*respective states for implementation of the DIN system, which shall be in larger public interest and which may bring in transparency and accountability in the indirect tax administration. Therefore, we dispose of the present writ petition by directing the Union of India / **GST council** to issue advisory/ instructions/ recommendations to the respective states regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration, which is already being implemented by the States of Karnataka & Kerala. We impress upon the concerned State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest.*

5.3 In relation to generation of DIN, it was discussed in LC on 07th September, 2022. Following directions were received by GSTN from the law committee:

- a. A facility for electronic generation of DIN for manual communications, similar to that available with CBIC, be made available by GSTN to states.
- b. An advisory may also be issued by GSTN that the reference number generated on the documents issued on the common portal is also an identification number of the document. GSTN may also examine providing a facility for verifying the reference number without logging on the portal.

5.4 GSTN is in process of development of this functionality and currently it is in the documentation for coding stage. The functionality will be having the following features:

- a. The Back Office automation of GSTN regarding all important business processes uses “case management system” and for each case generates reference numbers. Therefore, the requirement as directed in the judgment of Hon’ble Supreme Court applies only to communications outside the case management system.
- b. In case of such manual communications (Outside case management system) from tax officers to taxpayers, basic information would be required to be entered by the tax officer to generate a reference number (RFN) for that communication. The reference number can be used by the Tax administration as an identification number of the document issued manually.
- c. A facility will be provided to the taxpayers on the GST portal to verify the authenticity of the RFN mentioned in the manual communication. The facility will display the details of RFN.
- d. It will work in the same way as DIN functionality of CBIC, except that it will be called RFN instead of DIN.

5.5 **The status is submitted before the GST Council as Hon’ble Supreme Court had given the direction to the GST Council.**

Revised Revenue Model of GSTN

1) Sharing of User Charges between Centre and States:

- i. The GST System infrastructure managed by GSTN will be used by taxpayers, tax administrations, banks etc. but the user charges will be paid entirely by the Central Government and the States Governments in equal proportion i.e. 50:50 on behalf of all the users. The States share will be apportioned to individual States in proportion to the number of active dealers in the respective States at the end of period (month/quarter/year). For calculation of the Advance User Charges, number of active dealers in the States as on 31st December of the previous year or any date specified by GSTN will be considered.

2) Operating Expenses:

- i. On 1st January or a suitable date, of every financial year, GSTN will issue demand letters for payment of Advance User Charges for the next financial year to the Central and the States Governments.
- ii. Advance User Charges will be paid by the respective Governments in two equal instalments. First Instalment will be paid on or before 31st March or any other date as decided by GSTN, of the financial year in which the demand letters are issued for the next financial year. Second Instalment will be paid on or before 30th September or any other date as decided by GSTN, of the relevant financial year for which the demand is raised.
- iii. User Charge for the next year will be comprised of the following components:
 - a. Operating expense payments to be made to the Managed Service Provider next financial year-(as per contract).
 - b. Payments of Revenue Expenditures to be made in the next financial year on account of Change Request issued to MSP or any Service provider.
 - c. Payments of Revenue Expenditures to be made in the next financial year on account of new projects/activities based on the new requirements.
 - d. GSTN's own estimated annual operational expenditure for the next financial years.
 - e. Depreciation amount as per the Company Law on the assets purchased other than through Grant-in-Aid.
 - f. Amount of Interest Cost payable to the bank in the next financial year, if any.
 - g. Guarantee fee payable to the GoI next financial year, if any.
- iv. Amount calculated above will be apportioned to Centre and States Government in the ratio of 50:50 and portion of the States Governments will be apportioned between the States on the basis of number of active dealers in the respective State.
- v. GSTN will raise the user charges bills periodically (monthly /quarterly/half yearly/annual) as per below mechanism:
 - a. Bills for the use of GST Portal and Services (the Front End):

- i. For this purpose, the periodic per dealer user charge will be calculated by subtracting expenses on backend system as per contract from total amount of user charges as defined above and dividing this amount by two (since this expense is to be shared equally by the Central and State Governments) and further dividing the amount so obtained by total number of active dealers.
 - ii. Bill for the Central Govt. will be raised by multiplying per dealer periodic charges as derived above with the total number of active dealers as on the last day of the period.
 - iii. Bill for each State Govt. will be raised by multiplying per dealer periodic charges as derived above with the numbers of active dealers of the respective State as on the last day of the period.
- b. Bills for the use of Back End of GST System:
 - i. For this purpose, per dealer user charge will be calculated by dividing total expenses on backend system as per contract by total number of active dealers in Model-2 states.
 - ii. Bill for each Model 2 state will be raised by multiplying per dealer user charge as derived above with the number of active dealers in that state as on the last day of the period.
- vi. The amount of these bills will be set off against the advance user charges paid by the respective Government in the manner indicated below:
 - a. If the advance user charges paid by a Government exceeds the total amount of the bills for the year, the excess amount will be adjusted against the advance payment to be made by that Government for the next year.
 - b. If the advance user charges paid by a Government is less than the total amount of the bills for the year, the amount of shortfall will be paid by that Government by 30th April of the following year.
 - c. In case States/centre fails to pay the Advance users charges within stipulated time, interest will be levied @12% per annum on the due amount.

3) Working Capital Requirements:

- i. GSTN will raise demand letters for Advance User Charges post finalization of Annual Budget for the next financial year. GSTN will request the Governments to pay Advance User Charges in two equal instalments with the interval of six months. For smooth functioning of the GST System Project (including e-way bill and e-invoicing), GSTN would require sufficient funds in advance atleast for the next six months of operations. The billing cycle would be so managed that GSTN has adequate funds for smooth functioning for next six months.
- ii. In case, requirement of additional working capital requirement arises, governments would be approached for the additional amount.

4) Treatment of Interest earned on Surplus Funds:

- i. Interest earned on the surplus funds available with GSTN will be apportioned between the Governments and adjusted against the invoices on the basis of weighted average

balance of Advance User Charges received from the respective Governments during the years.

5) Funding for Future Capital Expenditures:

- i. GSTN may request for funds for capital expenditure from the Centre and States Governments based on the approved capital expenditure plan for the year in the form of Grant-in-Aid. In case any urgent need of capital expenditure arises, which was not part of Budget, a separate request would be made to the Governments. Such funds request would be on the basis of 50% from Centre Government and 50% from the States Governments. Each State's share would be calculated based on the number of active dealer in the respective States.
- ii. Unutilized amount of Grant-in-Aid along with the interest earned thereon will be carried forward to the next financial year and will be adjusted against the demand of next year.

6) Credit Facility from the Commercial Banks:

- i. GSTN would continue to keep the Credit Facility to the tune of Rs. 500 Crore from the commercial banks to cater the emergency needs of either Capital Expenditure or Revenue Expenditure. Such Credit Facility would be backed by the Government Guarantee.

Annexure-B

Calculation of Interest on pending payment of Advance User Charges for FY 2020-21 as on 07/12/2022:

Sl. No.	CENTRE/STATE/ UT	Interest Liability for Instalment of FY 2020-21 (Rs. In Crores)
1	Andhra Pradesh	0.084
2	Dadra & Nagar Haveli and Daman & Diu	0.000
3	Mizoram	0.000
4	Andaman & Nicobar	0.002
	Total	0.087

Calculation of Interest on pending payment of Advance User Charges for FY 2021-22 as on 07/12/2022

Sl. No.	CENTRE/STATE/UT	Interest Liability for Instalment of FY 2021-22	Interest Liability for Instalment of FY 2021-22
		First Instalment	Second Instalment
1	CBIC	3.24	4.67
2	Andhra Pradesh	0.32	0.18
3	Arunachal Pradesh	0.01	0.01
4	Assam	-	0.05
5	Bihar	0.39	0.23
6	Chhattisgarh	0.03	-
7	Goa	0.03	0.03
8	Gujarat	0.23	0.40
9	Haryana	0.06	0.03
10	Himachal Pradesh	0.07	0.03
11	Jharkhand	0.16	0.10
12	Jammu & Kashmir	-	0.03
13	Karnataka	0.09	0.02
14	Kerala	0.24	0.14
15	Ladakh	0.007	0.005
16	Madhya Pradesh	0.08	0.04
17	Maharashtra	0.41	0.18
18	Manipur	0.01	0.01
19	Meghalaya	0.013	0.003
20	Mizoram	0.01	0.01
21	Nagaland	0.01	0.01
22	Punjab	0.29	0.17
23	Sikkim	0.002	0.004
24	Tamil Nadu	0.42	0.15
25	Tripura	-	0.01
26	Telangana	0.36	0.21
27	Uttar Pradesh	0.55	0.77
28	Uttarakhand	0.003	0.028
29	West Bengal	0.04	0.06
30	Chandigarh	0.011	0.002
31	Daman & Diu and Dadra & Nagar Haveli	0.001	0.003
32	Delhi	0.15	0.39
33	Puducherry	0.003	0.002
34	Andaman & Nicobar	0.001	0.004
35	Lakshadweep	0.0004	0.0002

	Total	7.26	8.02

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Annexure-I



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Background

- The GST Council in its 27th meeting held on 4th May 2018 and the Union Cabinet in its meeting held on 26th September 2018 have decided to convert GSTN into a fully-owned Government company. 50% equity of the company to be held by the Central Government and the balance 50% to be held by the various States and Union Territories. The transition was completed on 30th June 2022.
- Extracts from the minutes of the decision by Union Cabinet on 26 Sep 2018 are given below:
 - Since the current staff are hired on market driven salaries as regular employees of GSTN, their continuation at the current terms & conditions may not be possible after change in the ownership structure of GSTN. Therefore, for ensuring continuity of operation without any disruption, existing regular employees may be allowed to be continued for a period up to 5 years on the same terms & conditions on which they were appointed. For these years, GSTN may be given the flexibility of hiring people through contract on the terms & conditions similar to those used by GSTN earlier while hiring regular employees.
 - The existing employees on deputation may be continued on the same terms & conditions till the completion of their tenure. Also, for the next 5 years, new employees on deputation will be continued to be hired on the terms & conditions similar to those earlier used by GSTN.
 - Flexible hiring & appropriate remuneration policy may be evolved by GSTN considering criticality of the IT manpower, prevailing market compensation etc. and placed before the GST council for its approval in due course.

Background

- GSTN is not a CPSE because share of Centre is 50% i.e. less than 51 %. Confirmation in this regard has been received from DPE. Hence, all decisions would rest with GSTN Board and GST Council.
 - The Board of GSTN in its meeting dated 30th June 2022 decided that the HR and Remuneration committee shall jointly deliberate on the HR Policy of GSTN and recommend the policies for the approval of the Board.
- Accordingly, the Committee deliberated on the HR Policy on 15th & 23rd September 2022. The salient features of the policy, as approved by the Committee, is detailed in Para 2 of the Agenda for the Board. It has been detailed in the following slides for approval.

Rationale for the proposed changes in the HR Policy

- Attrition:** The compensation of employees hired from the Market had been fixed in the year 2014 and since 8 years have elapsed without any change, the salary ranges have become redundant. The fallout can be seen from the attrition data given below which is progressively increasing over the years:

Attrition data	2018-19	2019-20	2020-21	2021 - 22	2022-23 (Up to Sep 2022)
Market Hire Attrition	7	4	11	14	10
Attrition %	6%	5%	10%	14%	15%

- Stagnation:** Besides the above, most of the employees who have joined GSTN in the years 2014/2015 are still in their respective grades as there is no provision for career progression. At present it is also getting difficult to hire technical manpower in GSTN in the existing grades and pay ranges. Therefore, a revision is warranted.

Financial Impact of Revision in HR Policies

- Total Revenue budget of GSTN for 2022-23 – 602.75 Crore
- Total Salary Budget (SB) of GSTN for 2022-23 (Excluding Deputation Salary) – 35.85 Crore
(a) GSTN payroll 15.42 + (b) Third Party Payroll 17.85 + (c) Welfare Benefits 2.58
- Total increase in wage bill on account of proposed revision – 4.89 Cr
- Management fee savings from discontinuation of NISG – 0.88 Crore (Annual)
- Net percentage increase in wage bill (Excluding Deputation Salary) – 11.18%
- Salary budget for employees on deputation (FY 2022-23) – 10.67 crore
- Total increase in wage bill on account of revision in allowances for deputationists – 0.56 Cr
- Total Present Salary Bill (Market + Deputation) – 46.52 Cr
- Total increase in expenditure of the filled positions (4.89+0.56) i.e. (S.no. 3+ 7) – 5.45 Cr
- Total expected increase in expenditure if all vacancies were filled – 8.30 Cr
- Total percentage of increase in wage bill with the filled positions (Market + Deputation) – 11.71%
- Total percentage of increase in wage bill if all vacancies are filled – 17.84%
- Revised Salary bill would be (46.52 + 5.45) – 51.97 Cr

For kind consideration:

The decision on issues involved should be seen from good HR Practice and not from the perspective of budget, as the expenditure involved on the issue is quite low. The effort should be to hire and retain best talent from market as well as deputation.

(All calculations are based on person in position as on 1st July 2022)

Existing and Proposed Grade Structure



The grade and designation structure was defined for employees sourced through both deputation and through private channels in the 8th Board meeting in 2014 as shown alongside.

Level	Grades	Designation	
L1	G1	Chairman & CEO	Top
L2	G2	Executive Vice President	
L3	G3	Senior Vice President	Senior
	G4	Vice President	
	G5	Assistant Vice President	
L4	G6	Senior Manager	Middle
	G7	Manager	
L5	G8	Assistant Manager	Junior

- The management levels are proposed to be revised to three instead of existing four keeping in view the industry practices in the IT sector.
- It is proposed to introduce designations prevalent in IT industry for hiring technical manpower and corresponding equivalent non-tech designations. Both kind of designations shall be implemented for future hiring after approval.
- Addition of two grades is proposed i.e. 5c - Executive / Associate Engineer at level 5 and 4b - Associate VP/Principal Engineer at level 4 in line with generally accepted designations in the industry.
- The proposed grade structure is detailed in the following slide.

Existing and Proposed Grade Structure



Level	Existing Grades	Proposed Grade	Designation	Years of Experience
Level 1	G1	1	Chairman	-
Level 1	G1	1	CEO	20 years +
Level 2	G2	2	EVP	18 years
Level 3	G3	3a	SVP	15-18 years
	G4	3b	VP	14-16 years
Level 4	G5	4a	Assistant VP / Chief Engineer	12-14 years
	-	4b	Associate VP / Principal Engineer	10-12 years
	G6	4c	Sr. Manager/ Technical Lead	8-11 years
Level 5	G7	5a	Manager / Sr. Engineer	7-10 years
	G8	5b	Assistant Manager/ Engineer	5-9 years
	-	5c	Executive / Associate Engineer	0-5 years

Senior Management : Grades in Level 1, 2 & 3 Middle Management : Grades in Level 4 Junior Management : Grades in Level 5

Existing and Proposed Pay Ranges (Details Later)



Existing pay ranges in Table 1 were approved 8 years ago and market aligned pay ranges are in Table 2 below (Figures represent the Yearly Emoluments – CTC per annum). The "Broad Pay Range Approach" was being followed in GSTN which is proposed to be retained as all the levels encompass different roles and therefore the salaries are paid to each role based on IT industry benchmarking and last drawn salary of individual incumbent.

Level	Grades	Designation	Min	Maximum
L1	G-1	Chairman	Person Specific	
	G-1	CEO	1,00,00,000	
L2	G-2	EVP	45,69,396	76,15,660
	G-3	SVP	33,12,902	55,21,203
L3	G-4	VP	22,95,628	38,26,046
	G-5	AVP	15,02,615	25,04,359
L4	G-6	SM	10,41,943	17,36,572
	G-7	Manager	7,12,500	11,87,500
L5	G-8	AM	4,57,500	7,62,500

Level	Grade	Designation	Min	Max
Level 1	1	CEO	93,12,596	2,09,30,433
Level 2	2	EVP	58,20,373	1,29,40,019
Level 3	3a	SVP	41,57,409	84,41,392
	3b	VP	29,69,578	61,61,601
Level 4	4a	Assistant VP / Chief Engineer	22,80,365	48,83,891
	4b	Associate VP / Principal Engineer	18,24,292	42,46,861
	4c	Sr. Manager/ Technical Lead	15,40,828	36,92,923
Level 5	5a	Manager / Sr. Engineer	11,67,204	26,37,802
	5b	Assistant Manager/ Engineer	9,84,239	22,49,735
	5c	Executive/ Associate Engineer	7,63,028	16,37,033



PROPOSED COMPENSATION STRUCTURE

A. Proposed Composition of CTC



CTC will comprise of the following components:

- Fixed Base Salary :** Basic Pay (30-40% of CTC)
- Fixed Cash Allowances:**
 - HRA, PF and LTA as a percentage of CTC
 - Conveyance Allowance, CEA, Medical Reimbursement, Fuel Allowance and Driver's Salary as fixed amounts
 - Special Allowance as a balancing figure
- Variable Pay:** Performance Linked Incentive (PLI) as a percentage of CTC viz. 10%, 15% and 20% at Junior, middle and Senior management levels respectively.
- Gratuity, Insurance premium, Reimbursement for Mobile Phone, Periodicals, Internet, Newspaper etc. are **exclusive** of the CTC.

Grade	Designation	Basic Pay (Monthly)		Yearly Emoluments (CTC)	
		Min	Max	Min	Max
5a	Manager/ Engineer	26,097	59,466	8,94,763	20,38,850
5b	Assistant Manager/ Engineer	18,641	43,406	6,39,116	14,88,212

Compensation Structure	Existing Structure	Proposed Structure
Basic (A)	30-40% of CTC	
Basic Pay		
Cash Allowances (B)		
House Rent Allowance	Metro - 50% of Basic Non-Metro - 40% of Basic	No Change
Conveyance Allowance	INR 19,200 p.a.	Fully variable
Child Education Allowance	INR 2,400 p.a.	
Special Allowance	Balancing Figure	
Retiral Benefits (C)		
PF - Employer Contribution	12% of Basic	No Change
Gratuity	4.81% of Basic	To be excluded from CTC
Other Benefits and Reimbursements (D)		
Leave Travel Allowance	INR 15,000 - 25,000 p.a.	8.33% of Annual Basic Pay
Medical Reimbursement	INR 15,000 p.a.	
Fuel Allowance	Up to INR 2,47,500 p.a.	No Change
Driver's Salary	0 - INR 1,44,000 p.a.	
Performance Linked Incentive	10-20% of CTC	
Cost to Company (E)	A+B+C+D	A+B+C+D
Gratuity		4.81% of Basic (Over and above CTC)
Insurances (premium amount for Medical, Accident & Life Insurances)	Over and above CTC	
Reimbursement for entitlements like Mobile bill, Periodicals, Internet, Newspaper	Over and above CTC	No Change

Proposed Changes



- Gratuity** - At present it is offered, at the standard 4.81% & is included in the CTC. As per the Gratuity Act, this is proposed to be excluded from the CTC to comply with the law.
- Leave Travel Allowance** - It is proposed to pay 8.33% of Basic salary (without any change in the CTC) as per industry practice instead of current practice of paying fixed amounts.
- Hot skills allowance** - A discretionary amount for Hot Skills to be paid during hiring for niche skills. This would cease when the skills are easily available.
- Joining Bonus** - A discretionary payout negotiated with the candidate and not necessarily paid to all. To be recovered proportionately as per the guidelines in case the executive resigns within 2 yrs.
- Additional components** - would continue to be paid. Insurance premium, Reimbursement for Mobile Phone, Periodicals, Internet, Newspaper etc. are exclusive of the CTC.

B. Proposed Pay Ranges



Level	Grade	Designation	Min	P25	Median	P75	Max
Level 1	1	CEO	93,12,596	1,19,61,077	1,46,17,456	1,79,37,662	2,09,30,433
Level 2	2	EVP	58,20,373	70,77,561	88,59,063	1,06,77,180	1,22,40,019
Level 3	3a	SVP	41,57,409	49,84,197	61,95,149	74,14,708	84,41,392
	3b	VP	29,69,578	34,85,452	42,43,253	53,34,322	61,61,601
Level 4	4a	Assistant VP / Chief Engineer	22,80,365	26,68,805	34,30,508	41,32,352	48,83,891
	4b	Associate VP / Principal Engineer	18,24,292	21,69,760	27,44,407	35,95,147	42,46,861
	4c	Sr. Manager/ Tech Lead	15,40,828	18,93,221	23,33,647	30,98,172	36,92,923
	4d	Manager / Sr. Engineer	11,67,294	14,12,852	17,15,916	22,28,900	26,37,802
Level 5	5a	Assistant Manager/ Engineer	9,84,239	11,20,211	14,66,596	18,45,852	22,42,735
	5b	Executive/ Associate Engineer	7,03,028	8,48,645	10,86,367	13,18,466	16,37,033
	5c						

Note: Pay Ranges are the CTC figures exclusive of Gratuity, Health Insurance etc.



C. Comparison of Proposed Pay Range & CPSE Pay Range



Comparison		Proposed Pay Ranges		CPSE Aligned Pay Ranges (Excluding Cafeteria Benefits*)	
Grades	Designation	Min	Max	Min	Max
CMD (Sb- A)	Chairman	Person Specific		61,84,560	1,14,41,436
Director (Sb- A)	CEO	93,12,596	2,09,30,433	55,66,104	1,05,13,752
E9	EVP	58,20,373	1,22,40,019	42,78,420	85,56,840
E8	SVP	41,57,409	84,41,392	37,10,736	86,58,384
E7	VP	29,69,578	61,61,601	30,32,280	78,83,928
E6	AVP/ Pr. Engineer	22,80,365	48,83,891	27,29,052	72,77,472
E5	Chief Manager/ Sr. Tech Lead	18,24,292	42,46,861	24,25,824	66,71,016
E4	Sr. Manager/ Tech Lead	15,40,828	36,92,923	20,80,596	59,44,560
E3	Manager/ Sr. Engineer	11,67,294	26,37,802	17,83,368	53,50,104
E2	Deputy Manager/ Sr. Engineer	9,84,239	22,42,735	14,86,140	47,55,648
E1	Assistant Manager/ Engineer	7,03,028	16,37,033	11,64,012	40,77,192

* Generally the Cafeteria Benefits are equivalent to 35% of Basic Pay. CPSEs don't operate in IT Sector which has higher spread in pay ranges



C. Comparison of Proposed Pay Range & CPSE Pay Range



Grade	Designation	Min		Max	
		Difference	%	Difference	%
1	CEO	37,46,492	+40%	1,04,16,681	+50%
2	EVP	15,41,953	+26%	36,83,179	+30%
3a	SVP	4,46,673	+11%	2,16,992	-3%
3b	VP	-62,702	-2%	-17,22,327	-28%
4a	Assistant VP / Chief Engineer	-4,48,687	-20%	-23,93,581	-49%
4b	Associate VP / Principal Engineer	-6,01,532	-33%	-24,24,155	-57%
4c	Sr. Manager / Technical Lead	-5,39,768	-33%	-22,51,637	-61%
5a	Manager / Sr. Engineer	-6,16,074	-33%	-27,12,302	-103%
5b	Assistant Manager / Engineer	-5,01,001	-51%	-25,12,913	-112%
5c	Executive / Associate Engineer	-4,61,884	-66%	-24,40,159	-149%

Note: Pay Ranges are the CTC figures exclusive of Gratuity, Health Insurance etc. The CTC figures of CPSE excludes Cafeteria Benefits.

(+) denotes Proposed Ranges are more and (-) denotes that CPSE Ranges are more



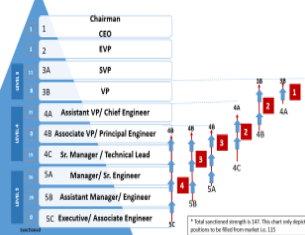
INTRODUCTION TO PROPOSED PROGRESSION POLICY



Introduction to Proposed Progression Policy



- The eligible employees up to Senior Manager level, who have completed four years, will be given progression to the next grade along with an increment during the transition process. The same policy shall be implemented henceforth.
- Similarly, the eligible employees at Assistant Vice President level will be given progression to the next grade (VP) along with an increment if they have completed seven years during the transition process. The same policy shall be implemented henceforth.
- The employees at Level 2 & 3 (VP, SVP and EVP) will not be given any progression to the next grade.
- The progression increment shall be as per the RC approved annual increment percentage for the respective Financial Year.



Introduction to Proposed Progression Policy



- The effect of progression increment at the time of transition shall be given as per the date approved by the Board of GSTN/ GST Council.
- Irrespective of progression given to individual employees to higher grade, the level wise sanctioned positions approved initially by the Board will be followed for the purpose of filling the positions in future. Eg. An AVP might be given a progression to the level of VP. However, on his resignation the post will be filled up as AVP.





TRANSITION MANAGEMENT

Step (i) Transition Increment

The tenure based scenarios of existing employees who will be eligible for transition increment shall be as per the table below:

No	Employees to be transitioned	Proposed Transition Increment
1	All existing employees with more than 4 years tenure at same grade (i.e. employees on regular employment & those on NISG Payroll)	• Transition increment with amount equivalent to one increment- as per the RC approved percentage for corresponding management level.
2	All existing employees with more than 6 months (should have completed probation period successfully) but less than 4 years at same grade (i.e. employees on regular employment & those on NISG Payroll)	• Transition increment on prorata basis - as per the RC approved percentage for corresponding management level.
3	Existing Consultants hired on GSTN payroll prior to implementation of Recruitment Guidelines would be offered a new Contract with a tenure of 2 years as per the new guidelines of hiring consultants at appropriate Level when their existing contract gets over.	• No transition increment is proposed.

The proposed transition increment shall be given as per the RC approved % for FY 2021-22 (i.e. 13.13, 10.6, 9.7 at the respective management levels from bottom to top). Transition increment shall be restricted to the maximum of the pay range of the respective employee.

The formula for calculating transition increment for employees at point No. 2 shall be:

$(\text{Tenure in months}) \times (\text{RC approved level wise percentage increase})$

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Step (ii) Progression along with an increment to eligible employees at the time of transition (FY 2022-23)

The existing employees who will be eligible for progression shall be done as per the table below:

No	Criteria for Progression	Summary of Proposed considerations
1	Existing employees up to Senior Manager level: • with more than 4 years tenure at same grade and • have secured 18 & above merit points in past 4 years and • also have been awarded a rating of "A" in FY 2021-22.	Progression to the next grade in the proposed grade structure along with an increment. The rate of progression increment would be the percentage approved by the RC* for the grade from which the employee is being progressed. (In total such employee gets grade change and two increments i.e. Progression + Transition).
2	Existing employees at Assistant Vice President level: • with 7 years or more tenure at same grade and • have secured 32 & above merit points in past 7 years and • also have been awarded a rating of "A" in FY 2021-22 to be given one time progression to Vice President level.	Progression to Vice President level in the proposed grade structure along with an increment. The rate of progression increment would be the percentage approved by the RC* for the grade of Assistant Vice President. (In total such employee gets grade change and two increments i.e. Progression + Transition).
3	Existing employees at the level of VP & above	No progression is proposed as it will make the organization top heavy.
4	Employees with less than 4 years at same grade at all levels	No progression is proposed.

*RC approved percentage for FY 2021-22 - 13.13, 10.6, 9.7 from bottom to top management levels

Step (ii) Progression along with an increment to eligible employees at the time of transition (FY 2022-23)

Grade wise ageing of employees

Rank	0 - 6 months	6 months - 4 years	4 years - 7 years	7 years and above
SVP	1	1	1	4
VP	4	6	2	1
AVP	1	3	2	5
SM	1	4	2	1
Manager	1	6	3	2
Assistant Manager	1	10	3	0
Total	9	30	13	13

Note: The number of eligible employees for progression during transition are shown in green (i.e. 16 employees)

Step (iii) Outlier management at the time of transition (FY 2022-23)

Outlier management at the time of progression during transition shall be done with following guiding principles:

- If employee's salary is below the new grade's minimum pay after giving progression increment:** Such employees would be given pull to minimum increment to bring the employee close to the minimum of the pay range.
 - Pull to minimum increment shall be given at the time of transition to only those employees who are progressing to the next grade.
 - Pull to minimum increment at the time of progression during transition shall be looked into with reference to the minimum of the pay range to which the employee is being progressed.
 - The pull to minimum increment shall be capped such that it is not more than the RC approved average increment percentage for the employee's current grade.
 - As a result of above, it is not necessary that the employee will reach to the minimum of the pay range.
- If employee's salary goes above their new grade's maximum pay while giving the progression increment:** In such cases the quantum of progression increment shall be capped at the maximum of the new grade of the employee. Also, In case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

B. Transition Of NISG Employees to GSTN as tenured employees



Guidelines for transition:

- The employees on NISG payroll will be offered a new contract of four years directly with GSTN by revising terms & conditions of the contract (to legally make it strong). The contract for hiring of NISG employees shall be suitably drafted to protect the interest of the company.
- It shall be examined if the role performed by the concerned employee is required or not. If the role is required in GSTN, it shall be further examined if the concerned employee has rendered meritorious service. The following steps would be taken in this regard:
 - If the above conditions are fulfilled, the employee may be offered next tenure based contract for 4 years with GSTN directly after internal review.
 - If the role is not needed or the performance of employee is below par, CEO may decide to relieve the employee concerned on any date decided by the management. If the management decides to relieve the employee, he/she shall be given three months notice.
 - The position shall be advertised if the role is needed in the organization.
- The tenure on the payroll of NISG and tenure on contract directly with GSTN shall be considered in conjunction as relevant experience for the purpose of giving progression

The transition plan of NISG employees is detailed in the next slide.



SECTION 2



B. Transition Of NISG Employees to GSTN as tenured employees



The employees on NISG Payroll shall be transitioned to four years tenured employment with GSTN in four batches as per the following schedule.

Transition Plan	Number of employees	Schedule of batch wise transition of employees on NISG payroll to be considered for on boarding
Employees who have gone through at least one annual performance appraisal cycle.	16	1. First batch of 10 employees in the order of tenure (who have served max. tenure with GSTN), basis the past performance appraisal ratings shall be transitioned to GSTN Payroll after the approval of the Board. 2. Second batch of 6 employees in the order of tenure (who have served max. tenure with GSTN), basis the past performance appraisal ratings shall be transitioned to GSTN Payroll w.e.f. 1st April 2023 .
Employees who would complete probation period by 31st Oct 2022	7	3. Such employees (7 in nos.) shall be transitioned to GSTN payroll w.e.f. 1st July 2023 , basis the performance report submitted by their respective reporting manager for confirmation of the employee.
Employees who will not complete probation period on 31st Oct 2022	7	4. Such employees shall be transitioned to GSTN payroll w.e.f. 1st Oct 2023



Performance Management Policy



The Performance Appraisal process would have the following steps:

- Employees joining on or before 31st Dec in a FY shall be eligible for Annual Appraisals for the period worked.
- The appraisal shall be initiated at the beginning of the financial year by goal setting process.
- Performance assessment would comprise of KRAs (70%) Behavioral Competencies (15%) & Functional Competencies (15%).
- Thereafter at the end of the financial year Self assessment would done by the employee, then reporting manager would give the evaluation and the reviewing manager awards the final rating.
- A Performance Management Committee (PMC) headed by the CEO would be formed annually to moderate the payment of PLI and Progression Increment.
- A bell shaped curve would be introduced in order to moderate the payment of Variable Pay (PLI) and Progression along with increment. All eligible employees shall be divided into two groups viz. Technology and Non-Technology for moderation.



Performance Management Policy



- The employees shall be entitled to the following based on the ratings awarded in the Annual Appraisals:

- Annual Increment – based on rating awarded by reviewing manager
- Variable Pay: Performance linked incentive (PLI) - based on moderated rating awarded by PMC
- Progression along with an Increment - based on moderated rating awarded by PMC.

- The rating scale is proposed as below:

Final Score in Annual Appraisals	Existing Rating Scale	Proposed Rating Scale
85.1% and Above	A	A+
70.1% to 85%	B	A
60.1% to 70%	C	B
50.1% to 60 %	D	C
Below 50%	E	D



Performance Management Policy



(A) Annual Increment:

- The Annual increments will be given based on ratings awarded by the reviewing manager.
- The RC may decide the increment percentage across levels in the range of 0.8 to 1.8 times of the industry average increment taking into account the industry practice and attrition observed by GSTN in the last financial year.
- The formula for calculation of Annual Increment shall be weightage of rating awarded to the employee multiplied by RC approved percentage increase (Level wise).
- Full increment would be given to the employee who have joined in the first quarter of the FY i.e. 1st April to 30th June.
- Pro-rata increment would be given to those employees who have joined in the period of 1st July to 31st Dec.
- No Increment would be given to the employees who join in the last quarter i.e. 1st Jan to 31st March. The increment for this period shall be paid as arrears in the next evaluation cycle on pro rata basis as per rating.



Performance Management Policy



Outlier management at the time of annual increment will be done with following guiding principles in future, for FY 2022-23 for which assessment would be done in FY 2023-24 and thereafter:

- If employee's salary is below their grade's minimum pay after giving annual increment:** Such employee would be given pull to minimum increment to bring the employee close to the minimum of the grade's pay range.
 - Pull to minimum increment shall be given to only those employees who have secured top rating of A+ in the appraisals.
 - The pull to minimum increment shall be capped such that it is not more than the RC approved average increment percentage for the respective management level.
 - As a result of above, it is not necessary that the employee will reach to the minimum of the pay range.
- If employee's salary goes above their grade's maximum pay while giving the annual increment:** In such cases the quantum of annual increment shall be capped at the maximum pay of the grade of the employee. Such employees would be given minimum increase of 50% based on the rating from next FY which shall be available only for 2 years. Thereafter, salary of such employees shall freeze.



Performance Management Policy



(C) Progression Policy (FY 2023-24 onwards)

Progression will allow an employee to progress one grade above along with one increment, if he/she meets the eligibility criteria, detailed below:

Particulars	Criteria for Progression (FY 2023-24 onwards)
	i. For the employees from Grade 5c up to Grade 4b (Associate Vice President) min 4 years at the same grade as on 31 st March of the

Performance Management Policy



Salient Features of Grade Progression Policy for future:

- List of eligible employees shall be prepared by HR based on defined eligibility criteria.
- Performance Management Committee (PMC) shall be constituted annually for every appraisal cycle and would comprise of CEO, Head of Support, EVP and any other member nominated by CEO. The PMC shall be headed by the CEO.
- Performance Management Committee would select employees for progression based on interview.
- The administrative reporting after progression may continue to a person at same grade.
- The tenure on the payroll of NISG and tenure on contract directly with GSTN shall be considered in conjunction as relevant experience for the purpose of giving progression.
- Irrespective of progression given to individual employees to higher grade, the level wise sanctioned positions approved initially by the Board will be followed for the purpose of filling the positions. E.g. An AVP might be given a progression to the level of VP. However, on his resignation the post will be filled up as AVP. Overall total sanctioned strength shall not be breached within the organization.



Performance Management Policy



(B) Variable Pay - Performance Linked Incentive (PLI) :

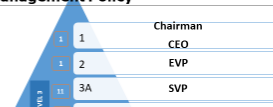
- The proposed compensation structure will have the Variable Pay component fully variable as opposed to existing practice of disbursing 50% of variable pay at the end of Financial Year without assessment.
- PLI will be fully variable and impacted by the performance rating (bell-shaped distribution) as per table below after creating two groups viz. Technology & Non-technology functions.

Bell Shaped Distribution (Percentages)				
A+	A	B	C	D
30	50	10	5	5

- The employees who have joined on or before 31st Dec in the respective FY, will be paid on the basis of assessment for the period worked on prorata basis.
- The employees who have joined in last quarter (1st Jan – 31st March) will be paid 75% of the PLI for the period worked without assessment (i.e. less than or equal to a quarter) on prorata basis.
- The PLI would be paid based on ratings of employees decided by the PMC. The amount of PLI would range between 50 and 110 per cent.



Performance Management Policy



Engagement of Independent Consultants



A maximum of 25 number of Independent Consultants for a short tenure may be engaged in GSTN based on requirement over and above the sanctioned strength of 147.

- The engagement shall be initially for a period of two years which may be extended up to three years, depending on the performance evaluation.
- The Guidelines have been drawn up on the same pattern that is being followed by various Ministries in the Government of India.
- They shall be engaged only for fixed periods of time for short term projects or works in GSTN; they shall be paid fixed amounts of money and there would be no employer-employee relationship with these manpower. The Maximum age limit is 67 years.
- Approving authority for hiring may be decided (Chairman or CEO).



Engagement of Independent Consultants



V. Experience, Age and Qualification Remuneration for engaging Independent consultants:

Position	Upper Age Limit	Post qualification Experience Years	Relevant experience (No. of years)
Young Professionals	35 years	Minimum 0 - 1 year	0
Associate	45 years	Minimum 1 - 3 years	1
Consultant	50 years	Minimum 6 years	3
Senior Consultant	55 years	15 years and above	5

- The remuneration will be inclusive of all applicable taxes and no other facility or allowance will be allowed.
- The range of remuneration for each of the positions are as given in the table below.

Position	Remuneration per month (Rs.)*	IT Skills Allowance**
Young Professional	60,000	20,000
Associate	80,000 - 1,45,000	30,000
Consultant	1,45,000 - 2,65,000	40,000
Senior Consultant	2,65,000 - 3,30,000	50,000

*Same as per the latest circular of Ministry of Commerce

**This is an additional allowance to hire IT Skills

*** Remuneration over and above the rates mentioned in the table for deserving candidates may be paid with the approval of Chairman GSTN.

- Remuneration for any selected candidates shall be fixed, based on the following:
 - The range of Remuneration proposed in the above table for the position in which the candidate has been selected.
 - Years of Experience
 - Last Pay Drawn



Leave Policy



- Revision in number of leave admissible as per present policy (EL 20 to 30), (SL 7 to 8), (CL 7 to 8)
- Accumulation limits revised for earned leave (30 to 50) and sick leave (21 to 30)
- Option to be given to employees for encashment of 50% of the EL balance at the end of calendar year
- The policy to be adopted for allowing employees to Work from home shall be decided at CEO level.
An appropriate SOP for the same shall be put in place.



Miscellaneous Benefits



The proposed revision in benefits shall be applicable to all employees (i.e. Market Hires & Deputationists).

- 20% increase in the existing limits as per the grade for purchasing mobile handset but it shall be replaced after three years from the last purchase against the existing practice of two years.
- Employees can claim food allowance amounting to 25% of Hotel rates on production of bills or only 15% of Hotel rates without production of bills while on tour.
- 20% revision is proposed for room tariff in Tier 1 cities like Delhi, Mumbai, Bangalore, Chennai, Kolkata, Pune & Ahmedabad.
- The OPD reimbursement policy started during COVID shall continue.



Recognising Talent for Exemplary Performance



To reward the excellence in performance, two awards as follows are proposed:

- Employee of the month:** One employee from each function (i.e. Technology, Services & Support/others) shall be given buffet dinner coupons for up to 4 family members.
- Best team of the quarter:** Module & Function wise best performing team will be selected for the reward. Company sponsored buffet dinner coupons for all the concerned team members.
- A committee will be formed to decide the winners and GSTN will negotiate the coupon rates with nearby hotels.





Revision in Allowances for Employees on Deputation



- The allowances for employees on deputation would be implemented after due approval from the competent authority. Till the time the same is approved the allowances being paid to deputationists shall be continued.
- The following Allowances admissible to deputationists in GSTN require revision as in some cases the amounts paid in GSTN are less than what is admissible in Government currently as the allowances in GSTN are static whereas the allowances in Government are linked to Dearness Allowance:
 - Fuel Allowance
 - Leave Travel Allowance (LTA)
 - Children Education Allowance (CEA)
 - Medical Reimbursement
- PLI being paid to deputationists shall be dis-continued.
- Employees on deputation in GSTN shall be given IT and Training Allowance as per the new proposed policy.
- The HRA is proposed to be revised by approximately 10-20%.



Revision in Allowances for Employees on Deputation



Transition policy for deputationists:

- The old policy to continue till the new policy is approved;
- New deputationists to be on boarded as per the new policy after the same has been approved;
- Existing deputationists (20) were on boarded as per the advertised old policy and therefore would be given option to change their perks as per the new policy or stay with old policy for balance of their tenure.



Revision in Allowances for Employees on Deputation



1. Fuel Allowance

Details	Chairman (L-16)	CEO (L-15)	EVP (L-14)	SVP (L-13)	VP (L-12)	AVP (L-11)	Associate VP (Level 10 with 5 yrs in the Level)	SM (L-10)	Manager (L-9)	AM (L-8)	Executive (L-7)
GSTN (Old Fuel Allowance)	Company Car	Company Car	Company Car	Company Car	14000	12000	-	10000	-	9000	8000
GSTN (Proposed Fuel Allowance per month)	Company Car	Company Car	Company Car	Company Car	25000	21000	19000	17500	16500	15500	14000
Proposed fractional hike (times)	-	-	-	-	1.79	1.75	-	1.75	-	1.72	1.75

2. Leave Travel Allowance

The reimbursement of LTA as practiced in the Government of India shall be followed based on block years' adopted by the Government.



Revision in Allowances for Employees on Deputation



2. House Rent Allowance

Designation	Pay Level	Basic Pay Range (As on Date)	Present HRA paid in GSTN	Proposed
Chairman	L-16	205400-224400	1,25,000	1,50,000 *
CEO	L-15	182200-224100	1,10,000	1,25,000 *
EVP	L-14	144200-218200	80,000	1,00,000
SVP	L-13	123100-215900	70,000	85,000
VP	L-12	78800-209200	60,000	80,000
AssistantVP	L-11	67700-208700	50,000	75,000
Associate VP	L-10 (with 5 years experience in the level)	56100-177500	-	70,000
Senior Manager	L-10	56100-177500	40,000	65,000
Manager	L-9	53100-167800	-	60,000
Asstt. Manager	L-8	47600-151100	40,000	55,000
Executive	L-7	44900-142400	40,000	50,000

*Company lease facility along with maintenance and GST may be provided by GSTN for Chairman & CEO.

Lease can be considered for other levels as an optional facility.

* GSTN employees are not entitled to General Pool Accommodation.



Revision in Allowances for Employees on Deputation



3. IT and Training Allowance

- The PLI being paid to deputationists shall be done away with as it is a not for profit company and an IT and Training Allowance introduced which shall be similar to Training Allowance paid in the Government.
- Payment of Training Allowance is followed in the Government in Training Institutes where officials are paid 30 per cent of basic pay without levy of Income Tax on the amount which effectively adds up to nearly 40 percent of Basic Pay (30% + IT of 31.2%).
- GSTN is a critical network for collection of revenue and therefore attracting talent is necessary for its success. GSTN platform is responsible for collecting revenues every month of 1 lakh cr. and filing of returns to the tune of 1.8 cr. every month.
- Unlike field revenue officers who have statutory process and functions. GSTN roles are very service and facilitation oriented. Therefore GSTN needs to attract talent by paying IT and Training allowance.



Revision in Allowances for Employees on Deputation



v. The IT and Training Allowance shall be introduced in GSTN for deputationists as per table in the subsequent slide to compensate the deputationists for the following:

- GSTN imparts regular training to the trade directly and through preparation of audio-visual training material and officials not only monitor development but also are exclusive faculty to impart trainings to tax officers on the modules and therefore, are entitled to training allowance as admissible in Training Institutes.
- Working 24 x 7 on the system at individual level without any support unlike in the Government;
- Performing integrated roles in the Company on account of very less sanctioned strength;
- Working under stress for completion and proper running of modules and introducing changes/fixes in the system which develops high pressure amongst the employees;
- Handling very high volumes of the transactions;
- Attending Bridge Calls at odd hours for emergencies.



Revision in Allowances for Employees on Deputation



Proposed IT and Training Allowance

Designation	Pay Level	Basic Pay Range (As on Date)	Present PLI paid in GSTN (Percentage of Basic Pay & DA)	Proposed (Percentage of Basic Pay & DA)
Chairman	L-16	205400-224400	50	40
CEO	L-15	182200-224100	50	40
EVP	L-14	144200-218200	50	45
SVP	L-13	123100-215900	50	45
VP	L-12	78800-209200	50	45
Assistant VP	L-11	67700-208700	50	50
Associate VP	L-10 (with 5 years experience in the level)	56100-177500	-	50
Senior Manager	L-10	56100-177500	50	50
Manager	L-9	53100-167800	-	50
Assistant Manager	L-8	47600-151100	50	50
Executive	L-7	44900-142400	50	50

Dates of implementation



Particulars	Dates of implementation
Transition - Transition Increment - Progression Increment during transition - Pull to/near minimum for progression cases	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD
Performance Management Policy - Annual Increment - PLI Based on Bell Curve for the Year 2022-23 & onwards - Progression Based on Bell Curve for the Year 2022-23 & onwards	FY 22-23 onwards (Assessment in FY 23-24 onwards) 1 April 23 1 April 23 1 Oct 23
Recruitment Policy	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD
Leave Rules	1 Jan 2023
Entitlements for Mobile Handset & other allowances	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD
Reward and Recognition	1 Jan 2023
Allowances for Deputationists	After approval by competent authority. Till such time old practice to be continued.

Saving and difficulty removal during implementation



- The issues not listed in the proposal shall continue to be guided as per the existing clauses in the HR Manual viz. Joining, Attendance, Grievance & Disciplinary procedures etc. After the in-principle approval of BOD/ Council, the HR Manual would be revised to incorporate the changes and all policies would be consolidated for adherence in future.
- All existing decisions of the Board and Management taken prior to the date on which these policies become operational shall continue to apply for the specific case in which it was taken notwithstanding any conflict with the present policies provided that specific decision taken in relation to any of the past decisions to overrule the past decision shall lead to the new specific decision prevailing.
- Difficulty removal clause: Any difficulties/challenges during implementation of the transition process/policy shall be resolved by CEO, GSTN.
- Where there is a conflict or lack of clarity in this presentation, details as provided in the Annexures II to XI shall prevail.



Thank you

Background, Rationale for the changes in the proposed HR Policy, Financial Impact of Revision in HR Policies and Existing and Proposed Grade Structure.

1. Background

1.1 The GST Council in its 27th meeting held on 4th May 2018 and the Union Cabinet in its meeting held on **26th September 2018** decided to convert GSTN into a fully-owned Government company with 50% equity of the company to be held by the Central Government and the balance 50% to be held by the various States and Union Territories. The transition was completed on 30th June 2022.

1.1.1 Extracts from the minutes of the decision by Union Cabinet on 26th September 2018 are given below:

1.1.2. Flexible hiring & appropriate remuneration policy may be evolved by GSTN within the next five years considering criticality of the IT manpower, prevailing market compensation etc. and placed before the GST council for its approval in due course.

1.1.3. GSTN is not a CPSE because share of Centre is 50% i.e. less than 51 %. Confirmation in this regard has been received from DPE. Hence, it is proposed that all decisions would be approved by GSTN Board and GST Council.

1.1.4. The Board of GSTN in its meeting dated 30th June 2022 decided that the HR and Remuneration committee shall jointly deliberate on the HR Policy of GSTN and recommend the policies for the approval of the Board. Accordingly, the Committee deliberated on the HR Policy on 15th & 23rd September 2022. The salient features of the policy as approved by the Committee is detailed in the following slides for approval.

2. Rationale for the proposed changes in the HR Policy

2.1 Attrition: The compensation of employees hired from the Market had been fixed in the year 2014 and since 8 years have elapsed without any change, the salary ranges have become redundant. The fallout can be seen from the attrition data given below which is progressively increasing over the years:

Table-1

Attrition data	2018-19	2019-20	2020-21	2021 - 22	2022-23 (Up to Sep 2022)
Market Hire Attrition	7	4	11	14	10
Attrition %	6	5	10	14	15

2.2 Stagnation : Besides the above, most of the employees who have joined GSTN in the years 2014/2015 are still in their respective grades as there is no provision for career progression. At present it is also getting difficult to hire technical manpower in GSTN in the existing grades and pay ranges. Therefore, a revision is warranted.

3. Financial Impact of Revision in HR Policies

- a. Total Revenue budget of GSTN for 2022-23 – 602.75 Crore
- b. Total Salary Budget (SB) of GSTN for 2022-23 (Excluding Deputation Salary) – 35.85 Crore
(i) GSTN payroll 15.42 + (ii) Third Party Payroll 17.85 + (iii) Welfare Benefits 2.58)
- c. Total increase in wage bill on account of proposed revision – 4.89 Cr
- d. Management fee savings from discontinuation of NISG – 0.88Crore (Annual)
- e. Net percentage increase in wage bill (Excluding Deputation Salary) – 11.18%
- f. Salary budget for employees on deputation(FY 2022-23) – 10.67 crore
- g. Total increase in wage bill on account of revision in allowances for deputationists – 0.56 Cr
- h. Total Present Salary Bill (Market + Deputation) - 46.52 Cr
- i. Total increase in expenditure of the filled positions (4.89+0.56) i.e. (S.no. 3+ 7) - 5.45 Cr
- j. Total expected increase in expenditure if all vacancies were filled – 8.30 Cr
- k. Total percentage of increase in wage bill with the filled positions (Market + Deputation) - 11.71%
- l. Total percentage of increase in wage bill hypothetically, if all vacancies are filled - 17.84%
- m. Revised Salary bill would be (46.52 + 5.45) - 51.97 Cr

3.1 For kind consideration: The decision on issues involved should be seen from good HR Practice and not from the perspective of budget, as the expenditure involved on the issue is quite low. The effort should be to hire and retain best talent from market as well as deputation.

Note: (All calculations are based on person in position as on 1st July 2022)

4. Existing and Proposed Grade Structure

4.1 The grade and designation structure was defined for employees sourced through both deputation and through private channels in the 8th Board meeting in 2014 as shown alongside.

Table-2

Levels	Grades	Designation	
L 1	G1	Chairman & CEO	Top
L 2	G2	Executive Vice President	
L 3	G 3	Senior Vice President	Senior
	G 4	Vice President	
L 4	G 5	Assistant Vice President	Middle
	G 6	Senior Manager	
L 5	G 7	Manager	Junior
	G 8	Assistant Manager	

- i. The management levels are proposed to be revised to three instead of existing four keeping in view the industry practices in the IT sector.
- ii. It is proposed to introduce designations prevalent in IT industry for hiring technical manpower and corresponding equivalent non-tech designations. Both kind of designations shall be implemented for future hiring after approval.
- iii. Addition of two grades is proposed i.e. 5 c – Executive / Associate Engineer at level 5 and 4 b – Associate VP/Principal Engineer at level 4 in line with generally accepted designations in the industry.
- iv. The existing and proposed grade structure as well as pay ranges is detailed in the following paragraphs.

5. Existing and Proposed Grade Structure

Table - 3

Level	Existing Grades	Proposed Grade	Designation	Years of Experience
Level 1	G1	1	Chairman & CEO	20 years +
Level 2	G2	2	EVP	18 years
Level 3	G3	3a	SVP	15-18 years
	G4	3b	VP	14-16 years
Level 4	G5	4a	Assistant VP / Chief Engineer	12-14 years
	-	4b	Associate VP / Principal Engineer	10-12 years
	G6	4c	Sr. Manager/ Technical Lead	8-11 years
Level 5	G7	5a	Manager /Sr. Engineer	7-10 years
	G8	5b	Assistant Manager/ Engineer	5-9 years
	-	5c	Executive / Associate Engineer	0-5 years

**Senior Management:
Grades in Level 1, 2 &3**

**Middle Management:
Grades in Level 4**

**Junior Management:
Grades in Level 5**

5.1 Existing and Proposed Pay Ranges

5.1.1. Existing pay ranges in Table 1 were approved 8 years ago and market aligned pay ranges are in Table 2 below (**Figures represent the Yearly Emoluments – CTC per annum**). The “Broad Pay Range Approach” was being followed in GSTN which is proposed to be retained as all the levels encompass different roles and therefore the salaries are paid to each role based on IT industry benchmarking and last drawn salary of individual incumbent.

Table -4

Existing Pay Ranges				
Level	Grades	Designation	Min	Max
L1	G-1	Chairman	Person Specific	
	G-1	CEO	1,00,00,000 (Person specific)	
L2	G-2	EVP	45,69,396	76,15,660
L3	G-3	SVP	33,12,902	55,21,503
	G-4	VP	22,95,628	38,26,046
L4	G-5	AVP	15,02,615	25,04,359
	G-6	SM	10,41,943	17,36,572
L5	G-7	Manager	7,12,500	11,87,500
	G-8	AM	4,57,500	7,62,500

Table - 5

Proposed Pay Ranges				
Level	Grade	Designation	Min	Max
Level 1	1	CEO	93,13,000	2,09,30,000
Level 2	2	EVP	58,20,000	1,22,40,000
Level 3	3a	SVP	41,57,000	84,41,000
	3b	VP	29,70,000	61,62,000
Level 4	4a	Assistant VP / Chief Engineer	22,80,000	48,83,000
	4b	Associate VP / Principal Engineer	18,24,000	42,47,000
	4c	Sr. Manager/ Technical Lead	15,41,000	36,92,000
Level 5	5a	Manager / Sr. Engineer	11,67,000	26,37,000
	5b	Assistant Manager/ Engineer	9,84,000	22,42,000
	5c	Executive/ Associate Engineer	7,03,000	16,37,000

Compensation and Remuneration Policy

1. APPLICABILITY:

The changes in the grade structure and compensation structure approved by the Board shall be effective from the date proposed in Annexure XI.

2. GRADE STRUCTURE

2.1. The employees of GSTN (both regular and tenured) would be placed in 5 levels and 10 grades. The levels and grades to be followed in future are shown in **Table-1**.

2.2. The designations for technology and non- technology roles are also shown below which shall be followed henceforth.

Table - 1

Level	Existing Grades	New Grades	Designation	Years of Experience
Level 1	G1	1	Chairman CEO	20 years +
Level 2	G2	2	EVP	18 years
Level 3	G3	3a	SVP	15-18 years
	G4	3b	VP	14-16 years
Level 4	G5	4a	Assistant VP / Chief Engineer	12-14 years
	New	4b	Associate VP / Principal Engineer	10-12 years
	G6	4c	Sr. Manager/ Technical Lead	8-11 years
Level 5	G7	5a	Manager /Sr. Engineer	7-10 years
	G8	5b	Assistant Manager/ Engineer	5-9 years
	New	5c	Executive / Associate Engineer	0-5 years

**Senior Management
Grades in Level 1, 2 &3**

**Middle Management
Grades in Level 4**

**Junior Management
Grades in Level 5**

2.3. Definition of responsibilities at each level has been defined in the table-2 below:

Table - 2

Level	Profile of a typical role in the Grade at this Level
1	Provides strategic leadership. Visioning, Goal setting & Strategy Formulation. Works with the Board and the GST council to define the future for the organisation and takes accountability for the goals defined
2	Provides operational leadership and drives goals, objectives, and culture. Contributes towards strategy formulation. Integrates and leads complex units and functions. Develops operating frameworks for the respective units
3	Requires high domain exposure with direct and indirect leadership. Involved in designing operational processes, structures, systems or methods for strategy implementation. Would be responsible for delivery. Leads complex processes and contributes to business through personal, professional and technical leadership
4	Routine kind of work, requires domain expertise or high generalist exposure. May warrant some kind direct or indirect leadership. Involved highly in implementation. Oversee, coordinate and control functional processes towards departmental achievement of targets. Acts mostly as individual contributor or first line manager
5	Provides support in day-to-day operational activities. Works as individual contributor. Undertakes standardized routine processes and follow detailed instructions to complete the tasks assigned

3. Compensation Structure

3.1. The broad details of the constituents of CTC are enumerated below:

3.1.1. **Fixed Base Salary :** Basic Pay (30-40% of CTC)

3.1.2. **Fixed Cash Allowances:**

- i. HRA – 50% of Basic Salary in metro cities, 40% of Basic Salary in non-metro cities
- ii. PF – 12% of Basic Salary.
- iii. LTA – 8.33% of Basic Salary.
- iv. Special Allowance payable as a balancing amount.
- v. Conveyance Allowance – Payable as a fixed amount of ₹ 19,200/- per annum for the levels up to Manager in GSTN.
- vi. Child Education Allowance – Payable as a fixed amount of 2,400/- per annum.
- vii. Medical Reimbursement – Payable as a fixed amount of 15,000/- per annum.
- viii. Monetised benefits as detailed in Para 4.1.2 (Though included in CTC shall not be considered for any increments.)
- ix. Fuel Allowance and Driver's Salary is payable as fixed amounts to Senior Manager and above grades. Employees eligible for Fuel Allowance & Driver Salary can either claim reimbursement by producing bills or claim amounts without bill on payment of income tax. The amounts payable on this account grade-wise is shown in the table below:

Table – 3

Grade	Designation	Fuel Allowance Per Month (Rs.)	Driver Salary Per Month (Rs.)
1	Chairman CEO	20,625	12,000
2	EVP		
3a	SVP	15,000	10,000
3b	VP		
4a	Assistant VP / Chief Engineer	12,692	8,000
4b	Associate VP / Principal Engineer		
4c	Sr. Manager/ Technical Lead		
5a 5b 5c	Manager /Sr. Engineer Assistant Manager/ Engineer Executive / Associate Engineer	Conveyance allowance of 19,200 per annum	

3.1.3. Variable Pay: Performance Linked Incentive (PLI) is payable as a percentage of CTC and it will be fully variable. The percentage of variable pay will be 10%, 15% & 20% at Junior, middle and senior level respectively. PLI i.e. the variable portion of the CTC shall be disbursed after completion of the performance appraisal process. The methodology to be adopted for release of annual increments and payment of PLI are described in the Performance Management Policy.

3.1.4. Other components: There would be certain other benefits payable to the employees which would not form a part of the CTC as this would be paid as per Acts and Rules in vogue. Besides, certain welfare measures provided to the employees would also not form a part of the CTC. The details in this regard is given below:

- a) Gratuity shall be over and above the CTC to be paid as per the Payment of Gratuity Act. This will be only applicable for the regular employees of GSTN, as future hiring would be on contract for a tenure of four years and would not come under the ambit of Gratuity.
- b) Insurance premium shall be exclusive of the CTC.
- c) Hot Skills Allowance (HSA) may be offered while hiring the candidate for the required skill set as the percentage of Basic Pay. It is a discretionary amount which shall be given for the tenure of 4 years.
 - i. The eligibility for HSA will be for individuals who not only possess a hot skill but also use that skill at least 50% of the time when performing their jobs.
 - ii. HSA would not be taken into consideration while calculating the ceiling for freezing the salary.
 - iii. HSA will be decided at the time of hiring the candidate for the required skill set, if it is a Hot Skill for GSTN.
 - iv. Individuals must continue securing 'A+' or 'A' rating to maintain their eligibility for HSA for the entire tenure.

- v. HSA will not be a part of CTC for the purpose of annual increments, PLI and retiral benefits like PF.
- vi. Based on the market trends and study/reports by consulting firms, the HSA list shall be revised annually. It is to be given to not more than ten percent of the sanctioned strength based on the criteria listed above (Shall be proposed by GSTN HR and approved by CEO).

The list of Hot Skills presently identified by the Consulting firms in the context of GSTN is given in below table:

Table - 4

Identified Hot Skills for GSTN	Percent of Basic Pay
BIFA - Scrum Master	18%-20%
BIFA - Architects (platform & data)	18%-20%
BIFA - UI/UX	15%-17%
BIFA - Data Science Lead	15%-17%
Business Analyst	12%-14%
Data Science Lead	15%-17%
Data Modelers	15%-20%

- d) Joining Bonus may be offered while hiring the candidate. It is a discretionary payout negotiated with the candidate and not necessarily to be paid to all. This shall be paid based on the need of GSTN to hire and retain critical resources for its functioning. It may be recovered if the new employee quits early.
- i. The value of joining bonus to be paid level wise would be in the range of INR 1,00,000 to INR 3,50,000 as shown in Table below:

Table - 5

Level	Grade	Designation	Joining Bonus
1	1	Chairman CEO	-
2	2	EVP	3,50,000
3	3a	SVP	3,00,000
	3b	VP	3,00,000
4	4a	Assistant VP / Chief Engineer	2,50,000
	4b	Associate VP / Principal Engineer	
	4c	Sr. Manager/ Technical Lead	2,00,000
5	5a	Manager /Sr. Engineer	1,50,000
	5b	Assistant Manager/ Engineer	
	5c	Executive / Associate Engineer	1,00,000

- ii. The employee would have to serve the organization for a minimum period of 2 years failing which he/she would have to return the joining bonus. The amounts of recovery on this account is given in the table below:

Table - 6

Tenure with GSTN	Percentage recovery of the bonus
Less than 6 months	100%
6 months – 1 year	75%
1 – 1.5 years	50%
1.5 – 2 years	25%

Note: The payment of Hot skills Allowance and Joining bonus shall be decided on individual basis by the Management of GSTN depending on the business need or requirement for certain kinds of skills at particular point of time. All the factors for recruitment of a particular resource viz. urgency of GSTN to hire for a particular position, the criticality of the role in GSTN etc. would be considered critically in order to arrive at the decision whether the hot skills allowance and/or joining bonus would be paid to a particular candidate. There would be no bar to pay both the Hot Skills Allowance and the Joining Bonus to the same candidate in case he/she is very deserving as decided by the Management of GSTN.

4. PAY RANGES

The pay ranges applicable for employees of GSTN hired from the market has been detailed in the table below.

Table – 7 New Pay Ranges *- Annual Cost to Company (CTC)							
L e v e l	Grade	Designation	Min	P25	Median	P75	Max
1	1	Chairman CEO	93,13,000	1,19,61,000	1,46,17,000	1,79,38,000	2,09,30,000
2	2	EVP	58,20,000	70,78,000	88,59,000	1,06,77,000	1,22,40,000
3	3a	SVP	41,57,000	49,84,000	61,95,000	74,15,000	84,41,000
	3b	VP	29,70,000	34,85,000	42,43,000	53,34,000	61,62,000
4	4a	Assistant VP /Chief Engineer	22,80,000	26,68,000	34,30,000	41,32,000	48,83,000
	4b	Associate VP /Principal Engineer	18,24,000	21,69,000	27,44,000	35,95,000	42,47,000
	4c	Sr. Manager/ Tech Lead	15,41,000	18,93,000	23,33,000	30,98,000	36,92,000
5	5a	Manager / Sr. Engineer	11,67,000	14,12,000	17,15,000	22,28,000	26,37,000
	5b	Assistant Manager/ Engineer	9,84,000	11,20,000	14,66,000	18,45,000	22,42,000
	5c	Executive/ Associate Engineer	7,03,000	8,48,000	10,86,000	13,18,000	16,37,000

***The pay ranges shown above are inclusive of monetised benefits.**

4.1. The CTC figures in the Pay ranges are exclusive of Gratuity. Gratuity will be paid to regular employees only, tenured employees shall not be paid Gratuity.

4.1.1 Welfare Benefits

- i. Group Medical Insurance
- ii. Group Term Life Insurance
- iii. Group Personal Accidental Insurance

These would be over and above the CTC as a welfare measure for the employees of GSTN.

4.1.2 Monetised Benefits Payable Monthly:

- a) The regular, tenured and employees on deputation from Government Departments on the pay roll of GSTN are eligible for being paid the monetized benefits detailed in the table below on a monthly basis.

Table – 8

Designations (Grades)	Existing Grades (Pay Level- Deputationists)	Monthly monetised benefits payable*
Chairman (1)	G1	75000
CEO (1)	G1 (Level 15)	70000
EVP (2)	G2 (Level 14)	65000
SVP (3a)	G3(Level 13)	60000
VP (3b)	G4(Level 12)	50000
Assistant VP/Chief Engineer (4a)	G5(Level 11)	40000
Associate VP/ Principal Engineer (4b)	(Level 10+ 5 yrs exp in that level)	33000
Sr. Manager /Tech Lead (4c)	G6(Level 10)	28000
Manager / Sr. Engineer (5a)	G7(Level 9)	22000
Assistant Manager / Engineer (5b)	G8(Level 8)	17000
Executive / Associate Engineer (5c)	G9 (Level 7)	14000

**The monthly monetised benefits/entitlements comprise of the following:*

- Mobile Handset
- Mobile/Broadband Bill
- Newspaper/Periodicals
- Hospitality
- Health & Wellness Allowance (OPD)
- Office Bag

Hereafter, the reimbursements on the above elements shall be discontinued.

- b) The amounts mentioned in the above table would be payable to the employees on a monthly basis and would form a part of CTC but would be shown separately as monetised benefits.
- c) CTC including the monetised benefit shall be capped at the maximum of the pay range of the concerned employee. While granting annual increment or progression increment, monetised benefits shall not be taken into account.
5. The Pay, Allowances and Monetised Benefits shall be revised once there is a gap of 33 percent based on the market trends and study/reports by consulting firms. Revision shall be approved by the Board of GSTN.

Transition

1. **Applicability:** The transition management plan shall be implemented from the date of approval by the GST Council.

1.1 Purpose & Scope:

1.1.1. Since the company is being converted into a Government owned company, the future hiring has to be appropriately aligned so as to maintain the flexibility for GSTN to hire appropriate talent for the Company. Existing employees would also be mapped to the new grade structure and the salary correction shall be done by giving the following:

- a. Transition Increment
- b. Progression along with an Increment to eligible employees at the time of transition (FY 2022-23).
- c. Outlier Management at the time of transition (FY 2022-23).

1.1.2. The existing employees on the payroll of GSTN shall be transitioned into the new grade structure on as is and where is basis (i.e. by designation).

1.1.3. The monetised benefit shall not be considered while arriving at new pay during transition and would be included in the CTC even in cases where the employee's pay reaches or breaches the maximum of the pay range. However, after transition the amount would be considered as part of CTC and policy of outlier management shall be applicable thereafter.

1.1.4. The positions occupied by NISG employees shall be advertised and the positions shall be filled up after interviews. If any employee on NISG payroll gets selected he/she shall be offered a new contract of 4 years directly with GSTN as per the recruitment guidelines of GSTN. The employees on NISG payroll who are not selected in the interview process shall either be continued till their existing contract with NISG completes or may be given three months' notice as per the contract of the employees with NISG.

1.1.5. Hiring through NISG may not be continued in future.

1.2 New Grade Structure and Transition to new grades:

New pay band, grade wise is provided in **(Table -1)** with the following salient features:

1.2.1 Two new grades would be introduced in GSTN in order to align the grades to the Industry practices. These are: Grade 5 c – Executive / Associate Engineer at level 5 and Grade 4 b – Associate VP at level 4. The grades are detailed in **Table-1** below. The designations for Tech & non- tech levels & grades have also been given in **Table-1** below.

1.2.2 There will be a total of 5 levels and 10 grades in the Company. The roles that would be performed by each level of employee in the Company has been defined in **Table -2** below.

Table - 1

Levels	Existing Grades	New Grades	Designations
1	G1	1	Chairman & CEO
2	G2	2	EVP
3	G3	3a	SVP

	G4	3b	VP
4	G5	4a	Assistant VP / Chief Engineer
	-	4b	Associate VP / Principal Engineer
	G6	4c	Sr. Manager / Technical Lead
5	G7	5a	Manager /Sr. Engineer
	G8	5b	Assistant Manager/ Engineer
	-	5c	Executive / Associate Engineer

**Senior Management
Grades in Level 1, 2 &3**

**Middle Management
Grades in Level 4**

**Junior Management
Grades in Level 5**

Table - 2

Level	Profile of a typical role in the Grade at this Level
1	Provides strategic leadership. Visioning, Goal setting & Strategy Formulation. Works with the Board and the GST council to define the future for the organisation and takes accountability for the goals defined
2	Provides operational leadership and drives goals, objectives, and culture. Contributes towards strategy formulation. Integrates and leads complex units and functions. Develops operating frameworks for the respective units
3	Requires high domain exposure with direct and indirect leadership. Involved in designing operational processes, structures, systems or methods for strategy implementation. Would be responsible for delivery. Leads complex processes and contributes to business through personal, professional and technical leadership
4	Routine kind of work, requires domain expertise or high generalist exposure. May warrant some kind of direct or indirect leadership. Involved highly in implementation. Oversee, coordinate and control functional processes towards departmental achievement of targets. Acts mostly as individual contributor or first line manager
5	Provides support in day-to-day operational activities. Works as individual contributor. Undertakes standardized routine processes and follow detailed instructions to complete the tasks assigned

1.3 Compensation and remuneration guidelines for future hiring and transition

1.3.1. The guidelines for compensation and remuneration will be applicable as per Annexure III (Compensation & Remuneration Policy of GSTN) for the purpose of transitioning the existing employees to new grade structure and pay ranges.

1.3.2. The existing practice in GSTN is that gratuity forms a part of the CTC for regular employees which is paid at the time of their exit. However, after the transition, as per the new policy their compensation structure shall be modified such that gratuity shall be excluded from CTC to comply with the law. In case employees are on boarded for a period of four years, Gratuity shall not be applicable as per the Act.

1.3.3. It is also proposed to pay LTA as 8.33% of Basic salary, instead of current practice of paying fixed amounts.

1.3.4. Performance Linked Incentive (PLI) will be fully variable and impacted by the performance rating (bell-shaped curve) as opposed to existing practice of giving 50% of variable pay at the end of Financial Year without assessment. The percentage of variable pay will be 10%, 15% & 20% at Junior, middle & senior levels respectively.

1.4 Process and methodology of transition increment:

1.4.1. The compensation & remuneration policy has not been revised since 2014 and employees who have spent a considerable amount of time in GSTN have stagnated in their current roles due to lack of revision in pay ranges. A transition increment shall be given to all the regular employees as per the RC approved percentage for FY 2021-22 (i.e. 13.13, 10.6, 9.7 at the junior, Middle and Senior management levels respectively). The increment at the time of transition shall be given to the employees considering need for the salary correction so that the employees are brought into the new pay ranges. The details of how employees would be brought into the pay ranges are detailed in the subsequent paragraphs.

1.4.2. The tenure based scenarios of existing employees who will be eligible for transition increment is shown in following **Table**:

Table -3

No	Criteria	Particulars of Transition Increment
1	All existing regular employees with more than 4 years tenure at same grade.	Transition increment with amount equivalent to one increment- as per the RC approved percentage for corresponding management level -refer para 1.4.1.
2	All existing regular employees with more than 6 months (should have completed probation period successfully) but less than 4 years at same grade.	Transition increment on pro rata basis* - as per the RC approved percentage for corresponding management level -refer para 1.4.1.

**The calculation of the effective increment on pro rata basis shall be based on the below formula:*

Transition increment = {Tenure (In Months) / 48 Months} x {RC approved increment percentage for the respective management level}

1.4.3. The transition increment shall be given to all the employees of GSTN as per above Table. However, transition increment shall be restricted to the maximum of the pay range of the respective employee.

1.4.4. The process of recruiting employees on NISG payroll to GSTN Payroll as tenured employees

- i. The positions occupied by NISG employees in GSTN shall be advertised. The employees currently working in GSTN will also be given the option to apply for advertised vacancies. This process shall be completed within the next one or two months as per the Recruitment Rules of GSTN and actual induction shall be done after the approval of the GST Council.
- ii. If any employee is selected he/she shall be offered a new contract for 4 years on GSTN payroll.
- iii. If any employee is not selected he/she may be relieved after giving three months' notice or allowed to be continued till completion of his contract with NISG.
- iv. Progression of NISG executives only after contract with GSTN. The period worked under NISG to be considered relevant experience for the purpose.
- v. During the recruitment process, if any NISG employee is selected for any position to be recruited in GSTN as tenured employee, he/she shall be given one transition increment proportionately as detailed in Para 1.4 above. However, if any external candidate is selected for the position, he/she shall be inducted as per the recruitment guidelines of GSTN.

1.4.5. Consultants hired on GSTN payroll prior to implementation of Recruitment Guidelines would be offered, on a case to case basis, a new contract with a tenure of 2 years as per the new guidelines of hiring consultants for short tenure at appropriate level when their existing contract gets over.

2. Career Progression during transition

2.1. Introduction:

During the formation of GSTN as a Section 8 company and thereafter during the initial phase of its functioning, career progression was not envisaged as the project was in its nascent stage. After conversion of GSTN into a fully owned Government company and also due to the fact that the GST System has now stabilised substantially, keeping in view that the employees hired laterally who joined the company in its initial phase have completed more than 6/7 years in the company without any career progression, the career progression for employees on regular employment as well as tenured employees have been contemplated during the transition process of the company from a Private Limited company to a fully owned Government company. The details and methodology of career progression is detailed below:

2.2. Salient Features:

2.2.1. The progression shall be based on the eligibility criteria consisting of performance and minimum service at the same grade.

2.2.2. On the basis of defined eligibility criteria at each grade existing employees shall be considered for progression, which will allow an employee to move to one grade above if he/she meets the eligibility criteria of spending 4 years tenure or more at same grade (for employees up to Senior Manager grade), 7 years or more at the same grade (for employees at Assistant VP grade) with top performance ratings.

2.2.3. There would be change in designation as per the proposed grade structure.

2.2.4. The eligible employees shall be given one increment as approved by the Remuneration Committee for the financial year 2021-22 for the current grade (i.e. grade from which the employee is being progressed) as a progression increment during transition.

2.2.5. The eligible employees up to Senior Manager will be given one progression increment on progression to the next grade after completion of four years (Progression policy is explained later).

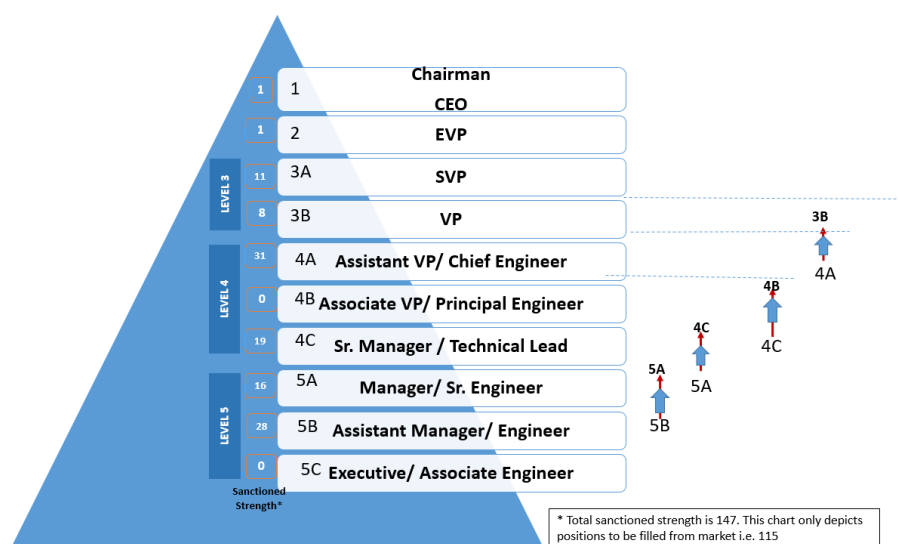
2.2.6. The eligible employees at Assistant Vice President Grade will be given one progression increment on progression to the next grade (VP) if they have completed seven years in the organization.

2.2.7. The employees at Level 2 & 3 (VP, SVP and EVP) will not be given any progression to the next grade.

2.2.8. The effect of progression increment shall be given as per the date approved by the GST Council for implementing the transition.

2.2.9. Irrespective of progression given to individual employees to higher grade, the level wise sanctioned positions approved initially by the Board will be followed for the purposes of filling the position. eg. An AVP might be given a progression to the level of VP. However, on his resignation the post will be filled up as AVP.

2.2.10. The grade up to which each grade of employees in the organization can progress during transition is depicted in the chart below:



2.3. Merit Points:

Merit points would be considered for preparing the list of eligible employees for progression as given in Column (3) in following **Table**.

Table – 4

Existing Rating Scale (1)	Rating Description (2)	Merit Points (3)
A	Exceeds Performance Standards	5
B	Achieves Performance Standards	4
C	Slightly Below Performance Standards	3
D	Barely Achieves Performance Standards	2
E	Needs to Improve Performance	1

2.4. Eligibility Criteria for one time progression at the time of transition:

Table – 5

Sl. No.	Employee to be progressed	Particulars of Progression
1	All existing employees up to Senior Manager level, with more than 4 years tenure at same grade and having secured 18 & above merit points in past four years subject to the condition that the employee has been awarded a rating of “A” in Financial Year 2021-22.	i. Progression to the next grade in the proposed grade structure with amount equivalent to one increment. ii. The rate of the progression increment would be the percentage approved by the Remuneration Committee for the grade from which the employee is being progressed. iii. In total such employees shall get grade change and two increments (i.e. transition and progression increment).
2	Existing employees at Assistant Vice President level with 7 years or more tenure at same grade having secured 32 & above merit points in the past seven years and have been awarded a rating of “A” in the Financial Year 2021-22 to be given one time progression to the level of Vice President.	i. Progression to Vice President Level in the proposed grade structure with amount equivalent to one increment. ii. The rate of the progression increment would be the percentage approved by the Remuneration Committee for the grade from which the employee is being progressed. iii. In total such employees shall get grade change and two increments (i.e. transition and progression increment). Such employees shall be required to sign an undertaking that the administrative reporting after progression may continue to an employee of the same grade (i.e. VP). iv. Role and responsibilities shall continue to be the same in most cases.
3	Employees with less than 4 years at same grade at all levels	No progression is proposed.
4.	Employees of the Level of 2 & 3 i.e. VP, SVP & EVP	No progression is proposed.

2.5. Salary & Emoluments

Pay, Allowances & benefits which are linked to the pay drawn by an employee at higher grade shall become applicable after the progression to next grade.

2.6. Outlier Management at the time of transition: The following guidelines would apply to those employees whose pay does not fall within the new pay range for their respective grade after giving the progression increment. This could either be below the minimum of the pay range or above the maximum of the pay range.

2.6.1. If employee's salary is below the new grade's minimum pay after giving progression increment: Such employees would be given pull to minimum increment to bring the employee to the minimum of the pay range.

- a) Pull to minimum increment shall be given at the time of transition to only those employees who are progressing to the next grade.
- b) Pull to minimum increment at the time of progression during transition shall be looked into with reference to the minimum of the new pay range to which the employee is being progressed.

2.6.2. If employee's salary goes above their new grade's maximum pay while giving the progression increment: In such cases the quantum of progression increment shall be capped at the maximum of the new grade of the employee. Also, In case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

Performance Management Policy

1 Applicability: The new performance management policy and its terms & conditions shall apply from FY 2022-23.

The management by objectives (which essentially means that Manager and the employee agree on specific performance goals and then develop a plan to reach the same) approach shall be followed for Performance Management System for existing employees i.e. the regular and tenured employees on the pay rolls of GSTN.

1.1 Performance Planning

1.1.1. Goal setting process: At the beginning of the financial year the Departmental Head should communicate Goals/Objectives/ Key Result Areas (KRAs) to the employees through the immediate reporting manager at all levels.

- a) Ideally the key result areas and work output should be defined at this stage. Any modifications in the KRAs should be completed at this stage.
- b) This is to be done through discussions and by keeping in view the individual role objective /function.
- c) The KRAs should be measurable & objective.

1.1.2. Components of Performance Assessment: There shall be a prescribed performance appraisal form for all levels of employees in GSTN and the same shall be used for assessing the performance as per the defined parameters in the form. The prescribed percentages for assessment of each employee is given below:

- a) **Key Result Areas** - This aspect would be accorded 70% weightage.
- b) **Assessment of Functional Competencies** – This aspect would be accorded 15% weightage
- c) **Assessment of Behavioural Competencies** - This aspect would be accorded 15% weightage

1.1.3. Performance Rating Description: Overall ratings must be provided against the following five point rating scale.

Table - 1

Final Score in Appraisal Process	Performance Rating	Rating Description
85.1 and Above	A+	Exceeds Performance Standards
70.1 to 85	A	Achieves Performance Standards
60.1 to 70	B	Slightly Below Performance Standards
50.1to 60	C	Barely Achieves Performance Standards
Below 50	D	Needs to Improve Performance

1.1.4. Performance Management Committee: A Performance Management Committee (PMC) shall be constituted annually at the beginning of each financial year and would comprise of CEO, Head of Support, EVP (Technology & Services) and any other member nominated by CEO. The PMC shall be headed by the CEO. The terms of reference of the Committee would be as follows:

- a) Moderate the performance ratings awarded by the reviewing manager after the Annual Appraisal process of all the employees in order to achieve the prescribed bell shaped curve for the purposes of paying PLI and to implement Career Progression.
- b) The moderated performance ratings would be used for deciding PLI disbursement.
- c) Based on the moderated performance ratings the eligible employees for progression would be decided.
- d) They could either award an overall higher or lower percentage in any of the rankings than what is prescribed in the following guidelines depending upon the circumstances of the organisation and individual contributions of the employees (for e.g. the percentage of A is prescribed at 50 percent which can either be reduced or increased based on due justification). Thus, the Committee shall have the power to make any exception to the percentages prescribed for the bell shaped curve depending on the performance of the individual contributors.
- e) The exception so granted shall not be more than 5% of the total number of performance ratings in each group.
- f) The Committee shall exercise the power to moderate the performance ratings of the employees such as either one level higher or lower, based on the detailed deliberations and after discussions with the employee, his reporting manager or reviewing manager, if need be.
- g) The Performance Management Committee would conduct the interviews of the candidates to be considered for Progression.
- h) The Committee would also deliberate & decide on the representations submitted by the employees detailing their grievances, if any, on the performance rating.
- i) The meeting of the Committee shall be convened as and when required during the year.

1.2 Performance Evaluation Process :

1.2.1. All employees who have **joined on or before 31st December** shall be considered for the Performance Appraisals.

1.2.2. At the end of each financial year, the performance of an employee shall be reviewed against the Objectives / Key Result Areas set at the beginning of the year in the performance planning phase as detailed in Para-1.1.1 above.

1.2.3. The employee should fill a Performance Appraisal Form as a part of self-assessment and submit the same to the Reporting Manager.

1.2.4. The Reporting Manager shall hold a formal discussion with the Employee and record his/her observations/comments and ratings in the form.

1.2.5. It should then be submitted to the reviewing manager who shall review, and if required, hold necessary discussions with the Employee and his/her Reporting Manager and record his observations and ratings based on the overall performance of the employee.

1.2.6. Identification of performance gaps must be done and training need identification must be recorded in the appraisal forms by the reporting manager/reviewing manager. Training needs identified through this process shall be fulfilled as per the training policy.

1.2.7. The performance ratings given by the reviewing manager shall be moderated by the PMC.

1.2.8. The ratings awarded by the reviewing manager as well as moderated by the PMC would be communicated to the employee and would serve in the process for providing the following:

- a) **Annual increment** – based on Ratings awarded by the reviewing manager.
- b) **PLI** – based on the moderated rating awarded by the PMC.
- c) **Career Progression** on fulfilment of the eligibility criteria (Para – 2.4) based on the moderated rating awarded by the PMC.

1.2.9. These appraisals should give a feedback to the employee on his/her performance and would also enable the employee to focus, if need be, on the areas which require development.

1.2.10. The employees may appeal against the rating of the reviewing manager and/or the moderated rating given by the PMC.

1.2.11. The PMC shall review and deliberate on the appeals received and convey their decision which shall be final.

1.2.12. The decision of the PMC shall be communicated to the concerned employee and all benefits that accrue to the employee, based on revised rating shall be given, if required.

1.2.13. Employees on deputation will follow the appraisal process (APAR) laid down by their parent departments and guidelines issued by GoI/State Governments concerned.

1.2.14. Guidelines for Managing Annual Appraisal Process

- a) The three level assessment shall be followed viz. Self-Assessment by the employee, Reporting Manager Evaluation, final evaluation by the Reviewing Manager.
- b) The Appraisal forms & formats shall be made available by HR after announcing the appraisal cycle timelines from time to time during the year.
- c) The KRAs/Objectives defined at the beginning of the year can be modified in situations like change of reporting manager, matrix reporting structure, change in role/grade due to progression or getting hired for a different role through Internal Job Posting (IJP) etc.
- d) In case of matrix reporting there will be provision for incorporating KRAs & resulting feedback from concerned reporting managers.
- e) A lenient bell-shaped curve would be followed for rating distribution to achieve performance differentiation and rewarding good performance while finalizing the

performance ratings to start with. However, the employees on deputation will not be considered for rating distribution and application of bell-shaped curve.

- f) Irrespective of the level, the moderation shall be done after dividing the number of employees of all levels into two groups viz. Technology & Non-Technology as detailed below:

Table-2

Technology Roles	Non - Technology Roles
Software & IT Infrastructure	Finance & Accounts
Governance, Risk , Compliance	HR
Project Management	Administration
BIFA - Technical	Procurements & Contracts
	Services
	Legal
	Other functions

- g) The maximum percentage of employees to be placed in a particular rating (viz. A+, A etc.) has been detailed in the **Table-3** below.
- h) The Performance Management Committee shall decide the moderation percentages of employees' ratings as per the adapted bell shaped rating distribution detailed in **Table 3** given below.
- i) Rounding-off at each rating (viz. A+, A etc.) shall be done on the higher side i.e. any decimals arrived at during calculation of the percentage shall always be taken to the higher numeral.
- j) The exception may be so granted by PMC that it shall not be more than 5% of the total number of performance ratings in each group.
- k) The impact of the bell shaped curve will be on calculation of the PLI as it is performance based. It shall also apply to career progression.
- l) Annual increment will be based on the performance rating given by the reviewing manager and it will **not be impacted** by changes in the performance ratings due to application of adapted bell shaped curve.

Table -3

Final Score in Appraisal Process	Performance Rating	% of ratings to be awarded in each group (i.e. Technology & Non Technology)
85.1 and Above	A+	20%
70.1 to 85	A	40%
60.1 to 70	B	30%
50.1to 60	C	5%
Below 50	D	5%

1.2.15. Determination of Annual Increment Percentage

a) **Remuneration Committee (RC):** Based on the industry benchmark and other factors the agenda for determining the Annual Increments would be prepared by HR and approved by the Remuneration Committee.

b) **Eligibility & applicability:**

- i) Full increment would be given to the employees who have joined in the first quarter of the FY i.e. 1st April to 30th June.
- ii) Pro-rata increment would be given to those employees who have joined during the period from 1st July to 31st Dec.
- iii) No Increment would be given to the employees who join in the last quarter i.e. 1st Jan to 31st March. The increment for this period shall be paid as arrears in the next evaluation cycle on pro-rata basis as per performance rating.
- iv) Annual increment will be based on the performance rating given by the reviewing manager and it will not be impacted by the moderation of rating to achieve the defined bell shaped distribution of ratings.
- v) The effect of annual increment shall be given to only those employees who were working with GSTN on 30th April or thereafter. Any employee who is relieved from GSTN before 30th April of the financial year shall not be eligible for annual increment.

c) **Factors to be considered for deciding yearly salary increments:**

- i) Previous year's performance rating of the employee.
- ii) The exact salary increment percentage for every level will be determined annually by HR as per the data published in Salary Increase Survey Report for IT Sector (i.e. product companies, IT Application Development etc.) by consulting firms and placed before the Remuneration Committee (RC) for their approval.

d) **Guiding principle for grant of annual increment:**

- i) The salary increase percentage for each level to be adopted in GSTN (either higher or lower than percentage proposed in Salary Increase Survey Report) shall be approved by the RC. The annual increment or progression increment shall be granted exclusive of monetised benefits.
- ii) The salary increase percentage for each level to be adopted in GSTN on the higher side may only range between 1.1 and 1.8 times of the percentage increase proposed in the Salary Increase Survey Report to be decided by the RC. On the lower side, the percentage would not be less than 0.8 per cent.
- iii) The differential of 1.1 – 1.8 from the average salary increase of the IT industry may be approved by RC upon considering the attrition rate for a small sized organization like GSTN. Whenever, the attrition rate is above 10%, such a differential in the range of 1.1-1.8 may be approved by RC.
- iv) Once the percentage to be adopted in GSTN for each level is decided by the RC (**termed as X**), the following rating based weightages given in **Table -4** would be adopted for granting increments to employees.

Table -4

Rating	Weightage of Rating	Rating Description
A+	1.1	Exceeds Performance Standards
A	1	Achieves Performance Standards

B	0.80	Slightly Below Performance Standards
C	0.70	Barely Achieves Performance Standards
D	0.50	Needs to Improve Performance

- v) Effective percentage increase for every employee shall be based on the rating awarded by the reviewing manager.
- vi) Formula for the calculation is:
Effective Salary Increment Percentage = Weightage of rating (As per the Table-4 above) multiplied by X.
- vii) This effective salary increment percentage will be applied to current CTC to arrive at the annual increment amount.
- viii) Illustration for calculation of Effective salary Increment percentage based on rating is given below:

Level	Average IT Industry Salary Increase	RC Approved Percentage	Effective Salary Increment Percentage based on Performance Rating				
			Exceeds Performance A+	Satisfactory Performance A	Slightly Below Satisfactory B	Barely Meets Performance Standard C	Needs Improvement D
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		(1.2 times of column 2)	Weightage of rating				
			1.1	1.0	0.8	0.7	0.5
Sr. Management	5%	6	6.6%	6%	4.8%	4.2%	3%
Middle Management	8%	9.6	10.56%	9.6%	7.68%	6.72%	4.8%
Junior Management	9%	10.8	11.88%	10.8%	8.64%	7.56%	5.4%

1.2.16. Outlier Management at the time of Annual Increment: The following guidelines would apply to those employees whose pay does not fall within the new pay range for their respective grade after giving the annual increment. This could either be below the minimum of the pay range or above the maximum of the pay range.

1.2.17. If employee's salary is below the grade minimum after giving annual increment: Such employee would be given pull to minimum increment to bring the employee to the minimum of the grade's pay range. It shall be given if employee scores a rating of A+ in the current appraisal cycle.

- Increment given for addressing the pull to minimum cases shall be such that it is at least taking the salary of the employee to the minimum of the respective pay range.
- Pull to min approach shall not be followed at the time of hiring or hired through IJP (i.e. internal candidate is hired against the advertised position).

1.2.18. If employee's salary goes above their grade's maximum pay while giving the annual increment: In such cases the quantum of annual increment shall be capped at the maximum pay of the grade of the employee. The maximum pay of the grade shall be calculated inclusive of the monetised benefit. Such employees would be given minimum salary increase i.e. 50% based on the rating from next financial year to offset inflation.

- Performance rating awarded by reviewing manager would be used to calculate the 50% increment.
- This increase shall be available only for 2 years.

c) The salary of such individuals shall freeze after 2years.

1.2.19. Any exception to be given to employees on account of exceptional achievements/skills etc. shall be approved by the Performance Management Committee.

1.3. Performance Linked Incentive (PLI)

1.3.1. CTC of an employee will be a combination of fixed pay and variable pay. The proposed compensation structure will have the Variable Pay component, fully variable. Variable Pay would be called as Performance Linked Incentive (PLI).

1.3.2. Level wise PLI percentages will be as follows:

Table - 5

Level	Grade	Existing Designation	PLI = Percent of CTC
Level 1	1	CEO	20%
Level 2	2	EVP	
Level 3	3A	SVP	
	3B	VP	
Level 4	4A	Assistant VP / Chief Engineer	15%
	4B	Associate VP / Principal Engineer	
	4C	Sr. Manager/ Technical Lead	
Level 5	5A	Manager / Sr. Engineer	10%
	5B	Assistant Manager/ Engineer	
	5C	Executive/ Associate Engineer	

1.3.3. PLI Disbursement Percentages: The employees shall be paid PLI based on their individual ratings in the performance appraisal process after moderation of ratings to fit the bell shaped curve defined. The percentage of PLI disbursement at each rating is detailed in the following table:

Table-6

Final Score in Appraisal Process	Moderated Performance Rating	Rating Description	PLI disbursement (Percent of Variable Pay)
85.1 and Above	A+	Exceeds Performance Standards	110
70.1 to 85	A	Achieves Performance Standards	100

60.1 to 70	B	Slightly Below Performance Standards	80
50.1to 60	C	Barely Achieves Performance Standards	70
Below 50	D	Needs to Improve Performance	50

1.3.4. Eligibility & applicability for PLI:

- a)** The employees who have joined **on or before 31st Dec of the financial year** shall be paid on the basis of assessment for the period worked on pro-rata basis.
- b)** The employees who have joined in last quarter (**1st Jan – March 31st**) shall be paid 75% of the PLI for the period worked on pro-rata basis without assessment (i.e. less than or equal to a quarter).

1.3.5. Eligibility for PLI in case of separation from the company:

- a)** If the employee has worked for the entire previous FY and has served till 31st March then PLI will be paid for the financial year on the basis of moderated performance rating.
- b)** If the employee is relieved anytime during the financial year, he /she shall be eligible for PLI on the basis of performance rating by the reviewing manager for the duration worked on pro rata basis.

1.4. Performance Improvement Plan (PIP): The non- performing employee shall be given 3 months' time to improve and if there is no improvement in performance he/she may be terminated after following the process of documenting the whole procedure.

- a)** Employees may be put on PIP, if they fail to achieve the minimum objective/KRA set for them i.e. upon securing a rating of “D” in the annual appraisal process. Such employee will be asked to improve his/her performance within a period of three months, which may be extended for another three months based on recommendations of the Unit Head.
- b)** The reporting manager should initiate the PIP by explicitly sending an email stating the KRAs where improvement is required and the time period given for showing improvement.
- c)** Such employee shall be given a fair chance to improve his/her performance and will be monitored very closely by his/her Reporting Officer against the set parameters for improving his/her performance. They would also be given mentoring and counselling.
- d)** The periodic review of performance also should be documented by the reporting manager and report must be submitted at the end of each month to HR. Any written warnings thereafter shall be issued by HR.
- e)** At the end of the period, if the performance of the employee kept on watch list is found to have improved and duly verified by unit head, his/her services would be continued without any change in terms & conditions of his/her employment.
- f)** In case an employee fails to improve, his/her services would be terminated as per the relevant clause in his/her appointment letter.

1.5. Termination Policy

- a)** In case value added by the employee is not commensurate with the salary being paid by the employer, the termination process may be initiated to bring fresh knowledge about the technology within the organization by hiring younger talent.
- b)** GSTN may authorise HR to negotiate termination of service on case to case basis, paying one time severance pay which shall not be higher than one year salary of the executive.

2 Career Progression

2.1. Introduction:

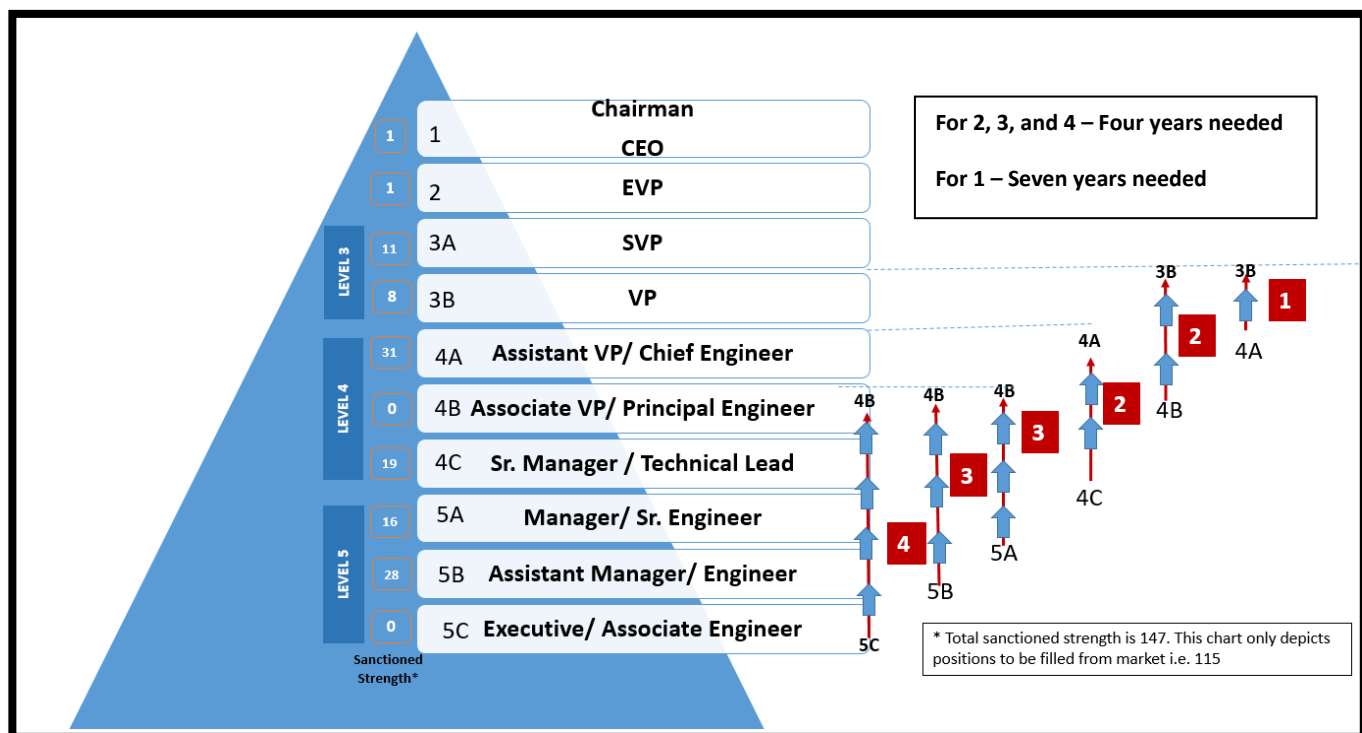
During the formation of GSTN as a Section 8 company and thereafter during the initial phase of its functioning, career progression was not envisaged as the project was in its nascent stage. After conversion of GSTN into a fully owned Government company and also due to the fact that the GST

System has now stabilised substantially, keeping in view that the employees hired laterally who joined the company in its initial phase have completed more than 6/7 years in the company without any career progression. Hence, the career progression for employees on regular employment as well as tenured employees have been contemplated during the transition process of the company. This shall be implemented w.e.f. 1st Oct. 2023. The details and methodology of career progression is detailed below:

2.2. Salient Features:

- a)** The progression shall be based on the eligibility criteria of exemplary performance and minimum service at the same grade. The final decision for progression will be based on the interview by Performance Management Committee (PMC) after employees have been shortlisted on the basis of defined eligibility criteria at each grade.
- b)** Progression will allow an employee to move to one grade above if he/she meets the eligibility criteria of spending 4 years tenure or more at same grade (for employees up to Associate Vice President grade) and 7 years or more at the same grade (for employees at Assistant Vice President grade) with top performance ratings.
- c)** There would be change in designation as per the proposed grade structure.
- d)** Administrative reporting after progression may continue to an employee at the same grade.
- e)** The eligible employee shall be given one progression increment based on the percentage approved by the Remuneration Committee for the corresponding financial year {Effective percentage increase = Weightage of Rating (refer Table 4 above) multiplied by X i.e. the RC approved percentage}.
- f)** The progression increment would be the effective percentage increase for the grade from which the employee is being progressed.
- g)** The employees from Grade 5c up to Grade 4b (Associate Vice President) will be given one extra increment on progression to the next level after completion of four years.
- h)** The employees at Grade 4a (Assistant Vice President) will be given one extra increment on progression to the next level (VP) after completion of seven years.
- i)** The employees at Level 2 & 3 (VP, SVP and EVP) who have spent more than six years and secured 27 and above merit points in the past will only be given one extra increment without any progression to next grade. The counting of the six years would commence only from the date of implementation of the new policy. The increment percentage will be as per the effective percentage increase for that grade. This increment shall be effective from 1st October.
- j)** The tenure on the payroll of NISG and tenure on contract directly with GSTN shall be considered in conjunction as relevant experience for the purpose of giving progression increment.
- k)** The effect of progression increment shall be given from 1st October.
- l)** Pay & benefits which are linked to the pay drawn by an employee at higher grade shall become applicable.
- m)** Irrespective of progression given to individual employees to higher grade, the level wise sanctioned positions approved initially by the Board will be followed for the purposes of filling the position e.g. an AVP might be given a progression to the level of VP. However, on his resignation the post will be filled up as AVP.

- n) The grade up to which each grade of employees in the organization can progress is depicted in the chart below:



2.3. Merit Points:

The employees who have been rated as per the rating scale in Column (1) till FY 2021-22, will be given the merit points as defined in Column (4) in the table below. In future column (2) & (4) would be considered for the purpose of eligibility for progression. Since there is a change in the rating scale, equivalent merit points as given in the table below shall be considered for preparing the list of eligible employees for progression by HR:

Table - 7

Old Rating Scale (1)	New Rating Scale (2)	Rating Description (3)	Merit Points (4)
A	A+	Exceeds Performance Standards	5
B	A	Achieves Performance Standards	4
C	B	Slightly Below Performance Standards	3
D	C	Barely Achieves Performance Standards	2
E	D	Needs to Improve Performance	1

2.4. Eligibility Criteria:

Table -8

Items	Criteria for Progression
Qualifying Service	i. For the employees from Grade 5c up to Grade 4b (Associate Vice President) min 4 years at the same grade as on 31 st March of the respective year ii. For the employees at Grade 4a (Assistant Vice President) min 7 years at the same grade as on 31 st March of the respective year
Performance Rating in Current Year	iii. Top Rating of A+ in the current year
Merit Points	iv. 18 and above up to Associate VP in last 4 years v. 32 and above for Assistant VP in last 7 years
Alternative avenues of progression	Applying and competing with external candidates as per IJP policy

Note:

1. Eligibility shall be determined upon fulfilling **ALL** the conditions listed at point no. (i) to (iv)/(v) in the above table.
2. The progression increment shall be effective from 1st October each year.

2.5. Selection process for Progression:

- a) The HR would prepare the list of eligible employees for progression on the basis of the eligibility criteria defined in para 2.4, after the completion of Annual Appraisal process.
- b) The performance ratings after the application of bell shaped distribution as defined in Table Nos. 2 and 3 shall be used to arrive at the potential employees to be interviewed for progression.
- c) The eligible employees will be interviewed by the Performance Management Committee and final decision will be declared thereafter.

2.6. Outlier Management: The following guidelines would apply to those employees whose pay does not fall within the new pay range for their respective grade after giving the progression increment.

2.6.1. If employee's salary is below their grade minimum after giving progression increment: Such employees would be given pull to minimum increment to bring the employee to the minimum of the pay range.

- a) Pull to minimum increment at the time of progression shall be looked into with reference to the minimum of the pay range to which the employee is being progressed.
- b) Pull to min approach shall not be followed at the time of hiring or hired through IJP (i.e. internal candidate is hired against the advertised position).

2.6.2. If employee's salary goes above their new grade's maximum pay while giving the progression increment: In such cases the quantum of progression increment shall be capped at the maximum of the new grade of the employee. Also, In case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

2.6.3. **Any exception** to be given to employees on account of exceptional achievements/skills etc. shall be approved by the Performance Management Committee.

3 Appeal process: The employees can submit their grievance, if any, in writing to Head HR. However, it would be a time bound process i.e. within 15 days of declaration (or last date notified by HR department) of the performance evaluation results i.e. after the completion of the moderation process (fitting of the Bell-shaped Curve).

- a) The representations made by the employees will be reviewed by the Performance Management Committee and final decision on representations will be taken.
- b) The proceedings of the Performance Management Committee will record all representations and facilitate the resolution.
- c) The Performance Management Committee members may speak with the employee, reporting manager and reviewing manager to satisfy the concerns raised by the employee.
- d) Resolution of the Performance Management Committee will be communicated to the employee by Head HR.

Recruitment Guidelines for Hiring Market Recruits (Part-II)

1. Short Title and Commencement

1.1 This policy will be called as Recruitment Guidelines for hiring Market Recruits (Part-II) (For GSTN from private sector). This shall be read with the Recruitment Guidelines approved by the Hon'ble Finance Minister in March 2021 (to be called Part-I hereinafter). The Recruitment Guidelines (Part-I) were also approved by the Board of GSTN in its 44th meeting held on 11th January 2021 before being placed before the Hon'ble Finance Minister for approval. This was subsequently got approved in the GST Council as well in the 43rd Meeting on 28th May 2021.

1.2 All the provisions of the Recruitment Guidelines (Part-I) would remain unchanged and be followed except (i) tenure of market recruits which are proposed to be changed as was envisaged in Para 7 (iii) (b) of the Recruitment Guidelines (Part-I) and (ii) the Pay Ranges of the Market Recruits as envisaged in Schedule-III of the Recruitment Guidelines (Part-I) which mentioned that the pay ranges to be aligned with market as required for market recruits from time to time. Comparison of change from Recruitment Guidelines (Part-I) and (Part-II) is detailed in Table 1 below:

Table 1

Sl. No.	Subject	Para No. of Recruitment Guidelines (Part-I)	Para No. of Recruitment Guidelines (Part-II)
1.	Tenure of Market Recruits	7 (iii) (b)	Para No. 2
2.	Pay Ranges of the Market Recruits	Schedule III	Included in Para No. 4 of Annexure-III (Compensation and Remuneration Policy)

1.3 The policy shall come into force from the date it is approved by the GST Council.

Guidelines for Selection and Recruitment

Hiring of tenured employees shall be for a contract period of 4 (four) years directly with GSTN.

- a. The policy for hiring in future on 4 years tenure (contract) shall be reviewed from time to time to maintain appropriate balance between regular (37 Nos.) & tenured employees.
- b. The selection process shall comprise of an objective skill-based test for positions in Technology functions.
- c. Job rotation within Technology, Support & Services every 3 years shall be done upon acquiring new skills. Executives are expected to acquire new skills.

- d. A search committee would be formed for recruitment of positions at VP & above level and Executive Search firms would be engaged to search and identify the best suitable candidates for the profile.
- e. GSTN would do brand building initiatives for establishing GSTN as employer of choice for attracting good talent. This would involve showcasing its work at various IT forums/conferences.
- f. If any position occupied by any employee in GSTN becomes vacant, the same shall be filled by 4 year tenured employment.
- g. In order to have a balance between the regular and tenured employees in GSTN, if any position occupied by regular GSTN employee becomes vacant due to whatever reason, it shall be filled from amongst the existing tenured employees hired on contract. The decision as to whom to induct into GSTN regular rolls shall be taken by CEO, GSTN after assessing the requirement as well as the antecedents of the employees.

Sourcing Channels

3.1 The Company shall adopt one or more of the following methods while recruiting:

- Channel 1: Sourcing from Company's internal resources (Through internal job posting i.e., IJP)
- Channel 2: Recruitment and Manpower Agency(s)
- Channel 3: Campus Recruitment
- Channel 4: Sourcing through advertisements in company website, job portals, newspapers, professional social media platforms like LinkedIn etc.
- Channel 5: Direct Applications
- Channel 6: Employee Referrals

3.2 The HR department will receive applications from all the channels used, shortlist candidates by assessing their academic qualifications and experience and organize screening of candidates through initial round of interview by the appropriate Screening Committee and submit a panel of shortlisted candidates for Interview.

3.3 The selection shall be made by the Selection Committee. The selection shall be based on written examination, if required, for the post, performance in the interview or both, as the case shall be. All appointments shall be made from the list prepared by the Selection Committee.

3.3.1 Channel 1: Sourcing from Company's Internal Resources Internal Job Posting (IJP)

- a. The purpose is to nurture high potential talent within the organization by providing them suitable career growth opportunities. Priority and efforts should always be made to fill in specific vacancies from its existing human resource pool.
- b. The process for internal recruitment would be enforced through **Internal Job Posting (IJP) Policy** by inviting job applications from existing employees along with external candidates for advertised positions and communication including the job profile, candidate profile, eligibility (who can apply), application deadline etc. would be made available by HR to the existing employees of the GSTN if they wish to apply for open positions.
- c. The guidelines as laid down in the IJP policy should be referred for internal recruitment.
- d. **Eligibility for Internal Job Posting (IJP):** All existing regular and tenured employees who have spent a minimum of two years in the current role/ Grade with a performance rating of at least A (i.e., Meets Performance Standards) or above in last two appraisal cycles can apply for IJP released for positions within GSTN. The tenure in the current role/ grade will be calculated on the basis of the date of communication of IJP.
- e. The Internal candidates shall compete with external candidates for the advertised post.
- f. Employee must also seek an approval from the HoD concerned and Reporting Manager before applying for the IJP both of whom shall reply within 3 working days failing which it shall be deemed approved.
- g. Any employee who holds any warning letter on disciplinary grounds in last one year shall not be eligible to apply through IJP.
- h. Applications from the concerned employee should be forwarded to HR department of GSTN for further processing.
- i. **Guidelines for employees:**
 - i) An employee can apply for only one vacancy at any point in time. However, the employee should be prudent while applying for roles that do not match his/her skills and experience. In case of any query regarding the role, employee should make efforts to seek all details/clarifications from the HR Team, before applying.
 - ii) An employee who has not been successful in the IJP can apply for another internal role only on the basis of the following guidelines:
 - For the same role - After six months. This duration is required to help the employee address the developmental needs identified for him/her during the assessment process. This period will be calculated on the basis of the date the IJP is closed.
 - For a different role - Can apply immediately after receiving the developmental feedback from the previous application.

3.3.2 Channel 2: Recruitment and Manpower Agency (s)

- a. The job profile and eligibility criteria will be properly conveyed to the empanelled HR Agency(s).
- b. The HR Agency would invite applications following its own procedures by giving reasonable publicity through print media, internet, headhunting etc. The vacancy announcement will be uploaded on GSTN website too.
- c. The HR Agency will receive applications, shortlist candidates by assessing their academic qualifications, relevance of skills and experience, Age and after holding initial round of interview submit a panel of shortlisted candidates to GSTN's HR department.
- d. The candidates' profiles provided by the Agency(s) will be screened by the GSTN's Screening Panel, which will prepare a panel of candidates for final round of Interview by GSTN along with the profiles received from other sourcing channels.
- e. The Agency is expected to operate with the highest standards of accountability and integrity. In order to do so, the Agency should also declare any possible Conflict of Interest to the knowledge of GSTN beforehand.

3.3.3 Channel 3: Campus Recruitment

- a. The HR Department shall make campus presentation in the reputed engineering colleges based on NIRF ranking. A graded policy for offering remuneration shall be adopted for campus hiring based on NIRF ranking i.e. the students from higher ranked colleges shall be offered a higher remuneration vis-vis students from lower ranked colleges who would be comparatively offered lesser remuneration.
- b. The presentation shall comprise of the Company profile, Employee Value propositions, Career opportunity, the recruitment process, dates for written test, if any, and eligibility criteria.
- c. Recruitment drive at the campus comprises of the pre-placement talk followed by sharing of the shortlisted list of interested students by the Campus placement coordinator basis the criteria shared by GSTN HR department. This is followed by technical round interview and personal interview.

3.3.4 Channel 4: Sourcing through Company Website, Job Portals, Print Media & Professional Social Media Sites like LinkedIn etc.

- a. The HR department will upload the job openings on GSTN's website as well as on external job portals to which GSTN may subscribe to. The same may be published in the leading newspaper(s) (for EVPs and SVPs) and professional social media sites like LinkedIn etc (for all ranks)
- b. Copies of the advertisements shall also be circulated internally.
- c. The HR department will receive applications, shortlist candidates by assessing their academic qualifications and experience and organize screening of candidates through initial round of interview by the appropriate Screening Panel and submit a panel of shortlisted candidates for Interview along with the profiles received from other sourcing channels.

3.3.5 Channel 5 – Direct Applications

Direct applications received from time to time would be kept in the live databank of GSTN & whenever a vacancy arises, relevant applications from this data bank will be considered along with applications received through the other sourcing channels.

3.3.6 Channel 6 – Employee Referrals

We believe that our people, as employees of GSTN, are the best suited to recommend top talent to GSTN. Equipped with the knowledge of GSTN values, work culture and processes, our people know how to be selective about the candidates we hire. The Employee Referral Policy is our way of strongly encouraging our people to recommend their friends and ex-colleagues with whom they have personally interacted, to GSTN.

a. Who can recommend referrals?

The ‘**employee staff**’ category, which includes the following, is eligible to recommend candidates:

- i. Regular full-time employees (Market hires and deputationists)
- ii. Tenured Employees
- iii. Contract employees through third party
- iv. Independent consultants

b. Process :

- i. The HR department will upload the current openings on GSTN Intranet and also circulate the same among GSTN employees through email, notice boards etc.
- ii. The referral must be made against a relevant job requisition and should be shared with the HR department using an employee referral form.
- iii. All referral résumés will be valid and in active consideration only for a period of 90 days from the date of submission of the resume/ application against a relevant open job requisition.
- iv. No employee referral can be made in relation to a fresher.

c. Criteria for pay-out of referral bonus:

The employee referral will be considered valid for pay-out only if it has been made through the employee referral process.

- i. Referral bonus will be paid to the referrer subject to the following conditions:
 - The new hire completes 90 calendar days of service with the organisation,
 - The referrer should be working with GSTN at the time the new hire completes 90 calendar days of service, and
 - The new hire would not have resigned at the time of payment to the referrer.
- ii. The Referral bonus amount will be paid through the next payroll cycle and will be subject to deduction of tax as applicable.
- iii. Referrer will **NOT** be eligible for referral bonus if:
 - He/she is part of the selection process and has any influence in the hiring decision (e.g., hiring for own teams/project),

- The referred candidate is in the direct reporting line of the referrer
- iv.** If the referred candidate is selected for a different position than the original position against which the candidate was referred, the referral bonus will be paid to the referrer.
- v. Referral Bonus Pay-out Grid** - If the referred candidate is selected for an employment, the referrer will be eligible to get referral bonus as per the grid below, subject to fulfilment of the criteria for payment of referral

Table 2

S. No.	Referral Bonus Pay-out Grid	
	Grade at which referred candidate is hired	Referral Bonus (INR)
1	3 a, 3 b, 2,1	25,000
2	4 a, 4 b, 4 c	15,000
3	5 a, 5 b, 5 c	10,000

Pay Fixation and Offer Letter:

Following guiding principles are to be used as reference while deciding the hiring salaries of incumbents in the respective grades:

- a. Once a candidate is finally selected and is to be recruited, the HR Recruitment SPOC shall negotiate the CTC to be offered based on “grade -wise approved salary structure” of GSTN; salary level of existing employees similarly placed and the current compensation package of the candidate.
- b. Pay Fixation in the Grade Pay should consider i) Candidates Experience (in comparison to min threshold experience desired from the job as specified in the Job Description) and ii) Candidates last drawn Compensation.
- c. While deciding the offer, the time duration elapsed since their last appraisal or salary hike would also be considered.
- d. The salary range for future hiring of engineers at levels 4&5 shall start at P25 of the proposed pay ranges for technology positions subject to negotiations & last drawn salary of the prospective candidates.
- e. Experienced candidates for technology & non- technology positions, on being hired from market would be given a minimum of 20% increase from last salary drawn. This can lead to offered salary being less than the minimum/P25 of the proposed pay range defined for that level. This is the current industry practice.
- f. Once the CTC offered is accepted by the candidate, the selected candidate shall be issued a Letter of Offer/Intent in the prescribed format.
- g. The selected candidate may be considered for the payment of hot skills allowance (Over and above the CTC) and joining bonus as detailed below:

4.1 Hot skills allowance (HSA):

- a. The niche/hot skills are compensated with a higher pay through additional premium pay in

the IT application services sector. These skills being high in demand, a skill premium value is identified for each of them through the market compensation data analysis.

- b.** It shall be a discretionary payout to be negotiated with the candidate and not necessarily to be paid to all.
- c.** It is for salary differentiation for roles with a requirement for such niche skills. It shall be paid as 12%-20% of base salary, this premium is over and above the CTC.
- d.** The premium value associated with each skill shall be tracked regularly to ensure that GSTN is able to offer compensation as per the market value of a concerned skill and at the same time avoid overpaying for urgent skill requirements which may be hard to hire for.
- e.** The negotiated and decided HSA shall be paid for the entire tenure of 4 years.

4.1.1 Eligibility for HSA:

- a.** The eligibility for HSA will be for individuals who not only possess a hot skill but also use that skill at least 50% of the time when performing their jobs.
- b.** Based on the market trends and study/reports by consulting firms, the HSA list shall be revised annually with approval of the CEO.
- c.** It is to be given to not more than ten percent of the sanctioned strength based on the criteria listed above (Shall be proposed by GSTN HR and approved by CEO).
- d.** HSA would not be taken into consideration while calculating the ceiling for freezing the salary.

4.1.2 Methodology for HSA payment

- a.** HSA will be decided at the time of hiring the candidate for the required skill set, if it is a Hot Skill for GSTN.
- b.** Individuals must continue securing 'A+' or 'A' rating to maintain their eligibility for the HSA
- c.** HSA not a part of CTC for the purpose of annual increments, PLI and retiral benefits like PF, Gratuity computation etc.
- d.** The list of identified Hot Skills for GSTN and corresponding HSA percentages shall be paid as per the table below.

Table 3

Identified Hot Skills for GSTN	HSA percentages (at the rate of basic pay)
BIFA - Scrum Master	18%-20%
BIFA - Architects (platform & data)	18%-20%

BIFA - UI/UX	15%-17%
BIFA - Data Science Lead	15%-17%
Business Analyst	12%-14%
Data Science Lead	15%-17%
Data Modelers	15%-20%

4.2. Joining Bonus

- a. The candidates with niche/hot skills are paid Joining Bonus for attracting talent and ensuring joining after accepting the offer in the IT application services sector.
- b. Market Value of joining bonus level wise ranges from INR 1,00,000 to INR 3,50,000
- c. It is a discretionary payout negotiated with the candidate and not necessarily to be paid to all as per the table below:

Table 4

Level	Grade	Joining Bonus
Level 1	1	-
Level 2	2	3,50,000
Level 3	3a	3,00,000
	3b	3,00,000
Level 4	4a	2,50,000
	4b	
	4c	2,00,000
Level 5	5a	1,50,000
	5b	
	5c	1,00,000

d. Retention Clause for Joining Bonus:

Minimum service requirement of 2 years with clause for return of joining bonus in case of separation within 2 years; through the Full and Final Settlement shall be as per the below approach:

Table 5

Tenure with GSTN	Percentage recovery of the joining bonus
Less than 6 months	100%
6 months – 1 year	75%
1 – 1.5 years	50%
1.5 – 2 years	25%

Note: The payment of Hot skills Allowance and Joining bonus shall be decided on individual basis by the Management of GSTN depending on the business need or requirement for certain kinds of skills at particular point of time. All the factors for recruitment of a particular resource viz. urgency of GSTN to hire for a particular position, the criticality of the role in GSTN etc. would be considered critically in order to arrive at the decision whether the hot skills allowance and/or joining bonus would be paid to a particular candidate. There would be no bar to pay both the Hot Skills Allowance and the Joining Bonus to the same candidate in case he/she is very deserving as decided by the Management of GSTN.

Rehiring of tenured employees: After completion of existing contract of employees (4 years), it shall be examined if the role performed by the concerned employee is required or not. If the role is required in GSTN, it shall be further examined if the concerned employee has rendered meritorious service. The following steps would be taken in this regard:

- i. If the condition of rendering meritorious service, objectively determined, is fulfilled the employee may be offered next tenure-based contract for 4 years with GSTN directly after internal review and after giving one week to one month cooling off period;
- ii. A Committee shall be formed for such internal review, comprising of internal members of GSTN. External members can also be co-opted in the Committee, if deemed necessary by CEO.
- iii. If the role is not needed or the performance of the employee is below par, CEO may decide to relieve the employee concerned at the end of their contract with GSTN or by giving him three months' notice;
- iv. The employee shall be informed about the decision to retain/relieve him before three months of the termination of the contract, after internal review;
- v. If the employee concerned is relieved, the position shall be advertised and fresh recruitment initiated.
- vi. In case of resignation, the employee may be relieved before three months by either allowing the employee to buy out the notice period or obtaining waiver from the CEO, GSTN.

Re-hiring of Ex-Employees

- a.** Re-Hiring ex-employees brings along some benefits as the returnees benefit the company as they come with a fresh perspective, additional skills and wider experience. Additionally, they are familiar to organizations culture, systems and process and thus have a quick learning curve to hit the ground running. An employee who leaves the Company can be considered for re-hiring subject to the following:
- b.** The employee concerned must have had a good track record of performance and satisfactory conduct while he/she was in Company's employment;
- c.** Re-hiring will be treated as fresh employment and the past service will not be considered for any purpose whatsoever. The process for selection will remain the same and the individual candidate will have to go through the assessments/personal interviews as is the case with any other candidate.
- d.** There needs to be a cooling off period of 6 Months before employee can be considered for re-hiring.

Deserving Executive Assistants who have been serving in the organization for 4 years or more would be considered for tenured contract with GSTN based on requirement. Their engagement shall be based on open advertisement. Total number at any point shall not exceed 4 in numbers.

Guidelines for Engagement of Independent Consultants in the Goods and Services Tax Network

(NOTE: Para 10 of Recruitment Guidelines (Part I) shall be replaced by these guidelines)

1. Background: Goods and Services Tax Network (GSTN) has built Indirect Taxation platform for GST to help taxpayers in India to prepare, file returns, make payments of indirect tax liabilities and do other compliances. It provides IT infrastructure and services to the Central and State Governments, taxpayers and other stakeholders for implementation of the Goods and Services Tax (GST) in India.

1.1 The GST System Project is a unique and complex IT initiative as it established for the first time a uniform interface for the taxpayer under indirect taxes through a common and shared IT infrastructure between the Centre and States. The Centre and State indirect tax administrations which used to work under different laws, regulations, procedures and formats and consequently the IT systems worked as independent sites, were integrated into one system with uniform formats and interfaces for taxpayers and other external stakeholders. GSTN provides a strong IT Infrastructure and Service back bone which enables capture, processing and exchange of information amongst the stakeholders (including taxpayers, States and Central Governments, Accounting Offices, Banks and RBI).

1.2 The work of GSTN has been increasing over the period of time due to increase in the number of taxpayers, resulting in filing of increased number of returns by the taxpayers and substantial increase in collection of revenue. Interlinking of data with various other Government Agencies for efficient and effective monitoring of the taxpayers has further expanded the project.

1.3 The work of GSTN would expand over the next few years as the Government of India plans to achieve the \$5 trillion economy which would essentially mean an increase in the overall turnover of Goods and Services in the country. Besides, the digital and physical infrastructure of GSTN would also have to be increased to cope with the increase in number of taxpayers and tax collections.

1.4 Keeping in mind all these developments, GSTN needs to strengthen itself with high quality resources in the required areas. Therefore, GSTN proposes to engage independent Consultants for its various Verticals. This would also allow GSTN to make assessment of additional manpower vis-à-vis sanctioned strength by initially hiring Independent Consultants and eventually converting some of the roles of Independent Consultants into tenured executives.

2. Type and Tenure of Engagement

- a) The Engagements shall be at the level of Independent Consultants (ICs).
- b) The engagement will be purely on a contractual basis.
- c) Approving authority for hiring shall be at the level of CEO and a report of the same shall be submitted to the Board on periodical basis.
- d) These independent consultants would get lump sum payment and not get benefits of regular or tenured executives of GSTN.

- e) These engaged personnel shall have the status of an independent consultant vis-a-vis, GSTN and shall not be regarded, for any purposes, as being either a 'staff member' or an 'official' of GSTN. Accordingly, nothing within or relating to the Contract shall establish the relationship of employer and employee, or of principal and agent, between GSTN and the Individual Consultants.
- f) The engagement shall be initially for a period of two years which may be extended up to three years, depending on the performance evaluation. After three years further extension in only exceptional cases shall be permissible based on the performance and organizational needs with the approval of the CEO, GSTN, keeping the Board informed of the number of independent consultants engaged periodically.
- g) No extension shall be given to an independent consultant after the age of 67 years has been attained by him/her.

3. Qualification, Experience and Vacancies: Applicants with following qualifications and experience would be considered for engagement as Independent Consultants.

3.1. Essential Education Qualification:

Table 1

Discipline	Education Qualification*
Services Department	Graduate or Masters (With extensive GST/Customs/Indirect Taxes knowledge)
Technology Department	Graduate (B.Sc, BE, B.Tech) or Masters (MCA, MBA, M.Tech) equivalent degree with adequate domain knowledge will be considered.
Support Department	Graduate or Master's Degree with adequate domain knowledge in the concerned Wing will be considered.

*For the candidates having degrees from universities/institutes from outside India, Times/OS ranking of such universities/institutes will be taken into account.

3.2 Experience, Age and remuneration:

Table 2

Position	Upper Age Limit	Post qualification Experience Years	Relevant experience (No. of years)
Young Professionals	35 years	Minimum 0 -1 year	0
Associate	45 years	Minimum 1 - 3 years	1

Consultant	50 years	Minimum 8 years	3
Senior Consultant	65 years	15 years and above	5

* Experience includes up to 3 years for Ph.D. holder, provided no work experience is counted during those 3 years.

3.3. Number of Independent Consultants: A maximum of 25 number of Independent Consultants may be engaged by GSTN. The recruitment shall however, depend on the actual requirement at a particular point of time. These engagements shall be above the sanctioned strength of 147 positions in GSTN.

3.4 Independent Consultants shall be appointed for such projects which are short term in nature and requisite skill is either not available within GSTN or the workload of the project needs an Independent Consultant.

3.5. This would also allow GSTN to make assessment of need to augment sanctioned strength from time to time based on the use of these appointments as Independent Consultants as an interim arrangement.

3.6. Approving authority for hiring shall be at the level of CEO and a report of the same shall be submitted to the Board on periodical basis.

4. Remuneration and Annual Enhancement

4.1. Remuneration

- a) The remuneration will be inclusive of all applicable taxes and no other facility or allowance will be provided by GSTN except providing laptop for working in the office with policy on laptop being applicable. The range of remuneration for each of the positions are as given in the table below:

Table 3

Position	Remuneration per month (Rs.)	IT Skills Allowance
Young Professional	60,000	20,000
Associate	80,000 - 1,45,000	30,000
Consultant	1,45,000 - 2,65,000	40,000
Senior Consultant	2,65,000 - 3,30,000	50,000

- b) Remuneration for any selected candidates shall be fixed, based on the following:

- The range of Remuneration proposed in the above table for the position in which the candidate has been selected.
- Years of Experience
- Last Pay Drawn
- Remuneration over and above the rates mentioned in the table for deserving candidates may be paid with the approval of Chairman GSTN.

4.2. TA/ DA: The Independent Consultants may be required to travel to any place in India. While on tour, TA / DA will be admissible to Young Professional, Associate, Consultant and Senior Consultants as are admissible to Assistant Section Officer (Level 7), Section Officer (Level 10), Under Secretary (Level 11) and Director (Level 13) of the Central Government, respectively.

4.3. Annual Enhancement of Remuneration

- a) The remuneration of an independent consultant shall be reviewed after completion of every year of tenure of the independent consultant.
- b) The enhancement in remuneration will be based on his / her performance during the year after the recommendation of the Committee constituted for this, as per the following criteria: -
 - i) Performance shall be judged on the basis of Annual Performance Assessment grading.
 - ii) Performance management of the candidates would be based on clearly defined KPIs/KRAs for the relevant role and achievement of the same.
 - iii) Total enhancement in remuneration shall not exceed 10% annually in any case.
- c) The Remuneration Enhancement shall be purely based on the Performance management methodology adopted by GSTN for all its employees.

5. Orientation and Training:

- a) A capacity building programme shall be designed for these resources for the modules on which they would work, in association with an MSP. Each hired resource shall undergo the orientation-cum-training programme.
- b) There shall be an Induction Module which each of the hired resources shall go through where the Independent Consultants would be inducted within GSTN.
- c) Apart from this, there shall be role specific modules which the resources will go through after joining in their position on an intermittent basis.

6. Terms of Reference: The terms of reference shall include the outputs to be delivered and the functions to be performed. The outputs and functions shall be specific, measurable, attainable, results - based and time-bound. Detailed TOR will be drawn by respective divisions in GSTN to which ICs are posted. The TOR will be deemed to be part of the contract.

7. Payment:

- a) The Independent Consultants will be paid monthly remuneration within 7 days after completion of the month.
- b) The Income Tax or any other tax liable to be deducted, as per the prevailing rules will be deducted at the source before effecting the payment, for which GSTN will issue TDS certificates. Individual consultants shall be liable to pay Goods and Services Tax, as applicable. GSTN undertake no liability for taxes or other contribution payable by the Individual Consultant on payment made under this contract.

8. Working Hours and Leave:

- a) Working Hours shall normally be from 9.30 AM to 6.00 PM with flexi time of 1 hour on both sides during working days including half an hour lunch break in between. However, in exigencies of work, Independent Consultants may be required to sit late and may be called on Saturday / Sunday and other holidays also.
- b) Independent Consultants will be eligible for 08 days leave during the period of one year, on pro-rata basis subject to the prior written approval of the controlling officer. Unavailed leave cannot be carried forward to the next year. Further, leave up to one month can be considered without remuneration with the prior approval of controlling Officer. However, in exceptional cases like need for professional development, training etc., this condition may be relaxed with the approval of Chief Executive Officer, GSTN, subject to official exigencies.
- c) Apart from above, the women Independent Consultants may be eligible for maternity leave as per the Maternity Benefit (Amendment) Act, 2017 issued by Ministry of Labour & Employment vide letter No. S-36017/03/2015-SS-I dated 12th April, 2017.

9. Termination:

- a) The engagement can be terminated at any time by GSTN by giving 30 days' notice or pay in lieu thereof. Similarly, the Independent Consultant may also resign after giving notice for a similar period.
- b) GSTN reserves the right to terminate any Independent Consultant at any stage in the event of a serious failure to perform the task assigned or of failure to observe any standards of conduct.

10. Title Rights, Copyrights, Patents and Other Proprietary Rights:

- a) Title to any equipment and supplies that may be furnished by GSTN to the Independent Consultant for the performance of any obligations under the Contract shall rest with GSTN, and any such equipment shall be returned to GSTN at the conclusion of the contract or when no longer needed by Independent Consultant.
- b) GSTN shall be entitled to all intellectual property and other proprietary rights, including, but not limited to, patents, copyrights and trademarks with regard to products, processes, inventions, ideas, know-how or documents and other materials which the Independent Consultant has developed for GSTN.

11. Force Majeure and other Conditions:

- a) The Force majeure clause shall be applicable under this guidelines and any act arising from causes beyond the control and without the fault or negligence of the individual independent consultant shall not be attributable to the consultant.

12. Audits and Investigations: The Independent Consultants shall be liable to refund any excess amounts paid to them which are brought out/highlighted by auditors during post audit of GSTN.

13. Settlement of Disputes: GSTN and the Independent Consultant shall use their best

efforts to amicably settle any dispute, controversy or claim arising out of the Contract or the breach, termination or invalidity thereof.

14. Arbitration: Any dispute, controversy or claim between the parties arising out of the Contract, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to the CEO, GSTN for arbitration. The CEO, GSTN may appoint an arbitrator for the settlement of the controversy.

15. Conduct of Independent Consultants and Conflict of Interest: The Individual Independent Consultant shall be expected to follow all the rules and regulations of GSTN which are in force. He/ she will be expected to display utmost honesty, secrecy of office and sincerity while discharging his / her duties. In case the services of the Individual Independent Consultant are not found satisfactory or found in conflict with the interests of the GSTNI Government of India, his/her services will be liable for discontinuation without assigning any reason. Decision to terminate any such contract shall need approval of the CEO.

16. General terms and conditions:

- a) GSTN may require the Independent Consultant to submit a Statement of Good Health from a recognized physician prior to commencement of work in any offices or premises of GSTN.
- b) The Independent Consultant shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of his/her obligations under the Contract, as well as for arranging, at the Individual Independent Consultant's sole expense, such life, health and other forms of insurance as the Independent Consultant may consider to be appropriate to cover the period during which the Individual Independent Consultant provides services under the Contract.
- c) The engagement as Independent Consultant is subject to verification of documents related to educational qualification and experience. If any information/ documents submitted by Independent Consultant are found false / wrong at any stage, his/ her engagement will be terminated immediately and appropriate action will be taken against him / her as per rules.
- d) In the unfortunate event of the death, injury or illness while serving GSTN, the Independent Consultant or the next of kin shall not be entitled to any compensation or Appointment.
- e) The period of engagement would commence from the date of joining at GSTN.
- f) The period of engagement as Independent Consultant will not confer any claim or right for subsequent engagement / employment with GSTN or any other Government Department at a later date.
- g) Where the CEO, GSTN is of the opinion that it is necessary or expedient to do so, he may by order and for reasons to be recorded in writing, relax any of the above provisions or impose more conditions which are reasonably required for the functioning of independent consultants and are in the interest of GSTN.

17. Consultants already working in GSTN desirous to avail the benefits of revised scheme will have option to close to enter into a new contract for the balance of their tenure under this policy.

Leave Rules

1. Short Title And Commencement

1.1. These rules may be called the **GSTN Employees Leave Rules, 2023**.

1.2. They shall come into force with effect from **1st Jan 2023**.

2. Extent Of Application

2.1. These rules shall apply to all regular employees, tenured employees directly employed with GSTN for a period of four years but shall not apply to those on contract through third party, casual employment and those engaged as Independent consultants.

2.2. Employees on deputation shall follow the leave rules of their parent department or the Central Government Rules as applicable.

3. Definitions

3.1. In these rules, unless the context otherwise requires:

- a) "Company" means 'Goods & Services Tax Network'.
- b) "Sanctioning Authority" with reference to the exercise of any powers under these rules means the officer or the authority to whom such powers are delegated in accordance with the schedule of delegation of powers and/or any other order issued in general or in particular.
- c) "Employee" means a person appointed to any position in the Company and will include a person on probation, a deputationist in the Company, and a re-employed person but shall not include Apprentices.
- d) "Month" means the calendar month.
- e) "Year" means the calendar year.

4. General Conditions For Grant Of Leave

4.1. An employee before proceeding on leave shall furnish in the application the details about his leave and get it approved from reporting manager.

4.2. Unauthorised absence from duty will render an employee liable to disciplinary action.

4.3. Except in an emergency, application for leave for three days or less shall be made at least twenty-four hours prior to the time from which it is required. Applications for leave for more than three days shall be made at least two days before the date from which the leave is required.

4.4. An employee who desires to extend his leave shall apply to the sanctioning authority giving reasons for extension well in time so as to reach the sanctioning authority before the expiry of leave already granted. He shall not avail the same before it is sanctioned, except in case of an emergency.

4.5. If the application for extension of leave is on the grounds of illness of the employee, it shall be accompanied by a Medical Certificate if the leave is for more than 3 days.

4.6. Except as provided otherwise under these rules, any kind of leave may be granted in combination with or in continuation of any other kind of leave.

- 4.7. Holiday or a series of holidays including RH may be combined with any other type of leave. The rules do not restrict any type of combination.
- 4.8. Leave shall be sanctioned by reporting officer in accordance with delegation of authority. In case of special leave, approval from reviewing officer is also required.
- 4.9. Leave regularization in case of short leave or any missed punching cases, request to be submitted to manager for approval as defined in Attendance rules.
- 4.10. In case of resignation, employees shall ordinarily be allowed to avail EL and SL or CL with due approvals. However, the relieving of the employee may be extended by the number of leave availed by the employee during the notice period. The total number of leave shall not be in excess of five working days in total. In case of any exceptions the approving authority would be CEO, GSTN.
- 4.11. Any restricted holiday can be availed during the notice period after the approval of reporting manager.
- 4.12. When applying for a half day leave, employee is required to spend a minimum of 4 business hours at office. Half day leave can be used in the Casual Leave and Sick Leave category and in the Earned Leave category only if there is no other leave available.
- 4.13. In case of a Bandh/Voting/Natural calamity or any situation decided by the CEO, the affected special advisory may be issued for the same by HR with CEO's approval. Such periods will be treated as special casual leave.
- 4.14. The employee will be eligible for leave proportionate to the period of service computed from the date of joining.
- 4.15. In the event of separation, all forms of Leave that accrue on an annual basis will be computed on a pro-rata basis.
- 4.16. If the leave account of employee doesn't have sufficient leave balance, the notice period may be extended in case employee applies for leave during the notice period subject to salary deduction for the number of days leave is availed.
- 4.17. In case of any exceptions the approving authority would be CEO, GSTN.
- 4.18. Employees will need to seek approval (written/email/HRMS) in the prescribed format before proceeding for leave from the authority as specified in Table below
- 4.19. The reporting manager shall be authorised to approve leave. However, if more than 5 days of leave is requested the approval will be required to be taken from the next level in the hierarchy.

5. Kinds and amount of leave admissible:

- 5.1. **Earned Leave** – Each employee will be entitled to **30 days of earned leave** in a calendar year. It will be credited on a monthly basis at the rate of 2.5 days per month.
- a) Only 10 days of accumulated ELs (earned in the respective calendar year) will be carried forward at the end of calendar year and rest of the accumulated ELs, if any, shall be encashed at the end of calendar year.
 - b) If the EL balance is less than 10 in that case all the ELs will be carried forward and it will not be encashed at the end of calendar year.

- c) Employee cannot accumulate more than **50 days** of ELs over the years. However, after reaching the maximum accumulation limit of 50, on 1st Jan in next calendar year employee will be eligible for 30 days of EL to be credited to leave account as per policy.
- d) For serving employees option will be given to employees for encashment of 50% of the EL balance at the end of calendar year. This facility would be available for each of the FY here after (i.e. 1st Jan 2023 onwards).
- e) If the employee who is in service chooses to take the encashment of EL, it shall be allowed only at the end of calendar year or on termination of service during the year.
- f) Maximum Earned Leave that can be availed continuously, should not exceed 30 days. If due to any exigency, more than 30 days of continuous leave is required, in addition to the approval from reporting & reviewing officer, it should also be approved by the CEO.
- g) The accumulated EL up to a maximum of 50 days will be encashed only at the time of exit.

5.2. Casual Leave – Each employee will be entitled to Casual leaves of **8 days** in a Calendar year.

- a) CL shall be credited at the time of joining on prorata basis for a new employee depending on the date of joining.
- b) For the existing employee 8 CLs will be credited on annual basis on 1st of January.
- c) CL cannot be encashed and it cannot be carried forward.
- d) CL may be granted for half day also. If casual leave for half day is taken, the lunch interval shall be taken as a dividing line.

5.3. Sick Leave – An employee is entitled to **8 days** of Sick leaves (SL) in a Calendar year.

- a) SL shall be credited at the time of joining on prorata basis for a new employee depending on the date of joining.
- b) For the existing employee 8 SLs will be credited on annual basis on 1st of January.
- c) Maximum accumulation of SLs can be up to **30 days** which will **not be** en-cashable at the time of separation or at the end of calendar year.
- d) Even SL can be taken for half day. If SL for half day is taken, the lunch interval shall be taken as a dividing line.
- e) An application for grant of leave or extension of leave on medical grounds must be accompanied by a Medical Certificate if the leave is more than 3 days.

5.4. Special Leave – Maternity leave, Paternity Leave & Compensatory Off will be treated as Special Leave. The duration and other terms of the Maternity leave will be as per the Maternity Benefits Act.

5.4.1. Maternity Leave - Applicable to all eligible women employees as per Maternity Benefits Act-1961 and amendment in 2017. Women employees with less than two surviving children shall be entitled to Maternity Leave not exceeding **26 weeks**. Maternity leave will not commence earlier than **8 weeks** prior to the expected date of delivery.

- a) A women employee (with less than two surviving children) who legally **adopts** a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of **12 weeks** from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

- b) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.
- c) In case of miscarriage or medical termination of pregnancy, a woman employee shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of **6 weeks** immediately following the date of her miscarriage or medical termination of pregnancy.
- d) Maternity leave shall not be debited against the leave account including adoption cases.
- e) Maternity leave will be non-encashable in nature.

5.4.2. Paternity Leave- A male employee with less than 2 surviving children, may be granted paternity leave to be approved by the reviewing manager for a period of up to 15 days, during the confinement of his wife for childbirth i.e. up to 15 days before or up to six months from the date of delivery of the child.

- a) Paternity leave will also be admissible on adoption of child.
- b) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.
- c) The paternity Leave may be combined with leave of any other kind if approved by the competent authority.
- d) If paternity leave is not availed of within the period specified above, such leave shall be treated as lapsed.
- e) The paternity leave shall not be debited against the leave account of the employee.
- f) Paternity leave will be non-encashable in nature.

5.4.3. Compensatory Off-

- a. Employees up to Assistant Vice President grade (with prior approval of Head of Unit) who are required to report for duty in order to attend regular office work on an official holiday/ weekly off/ weekends are entitled to compensatory off, If employee has worked for more than 6 hours.
- b. In order to avail compensatory off, employees will have to utilize the leave within the next 6 months, failing which Compensatory off will lapse.

6. Encashment of leave:

- a) In case of resignation/expiry of tenure, the employee shall be granted leave encashment for the leave balance of EL (up to a maximum of 50 days) as on the date of relieving and the same shall be paid with the full and final settlement of the employee. Any accumulated EL balance in excess of 50 days will be considered lapsed.
- b) Encashment of leave shall be calculated based on CTC.
- c) The Earned Leave will be encashed by the serving employee only at the end of the calendar year as per Para 5.1.
- d) In case an employee dies while in service, cash equivalent of the Earned leave that the deceased employee has accumulated would be paid to the employee's dependent as per the last drawn CTC.
- e) In case the services are terminated by serving notice, encashment may be allowed in respect of EL admissible to him/her.

7. Attendance Rules:

- a) Office Timings applicable for all employees will be 09:30 AM to 06:00 PM
- b) The above timings will include a 30 minute lunch break from 1:30 PM to 2:00 PM

- c) Employees may be required to work beyond office hours due to exigencies of work without any overtime allowance.
- d) Saturdays and Sundays will be non-working days.
- e) Attendance Recording: Regular record of attendance will be kept for all employees.
- f) Flexi Timing: A general flexi time of 30 minutes shall be allowed subject to the employee completing his scheduled working hours. Need based Flexible work timing can also be allowed on approval from Unit Head/CEO
- g) Work from Home will be allowed as per the defined Work From Home Policy (Annexure)
- h) An employee reporting late on a particular day, will be required to take prior permission from her/ his Reporting Manager
- i) Subject to the provisions of flexi time (clause vi above), late coming to office by an hour, twice a month may be ignored. Each subsequent late coming (beyond 15 minutes) would attract deduction of half-day leave from the employee's leave credit and in case there is no leave balance salary will be deducted.
- j) In case of unavoidable delays in reaching office, the employee must inform her/ his Reporting Manager through SMS/phone call/email.
- k) If an employee leaves before the closing time of office, without permission from her/ his Reporting Manager, he/ she will be penalized by half a day deduction from her/ his leave account and in case there is no leave balance then in that case salary will be deducted.

8. Leave Without Pay (LWP):

- a) An employee who has exhausted all his/her leave may be granted leave without pay for such number of days, either at a stretch or intermittently, as the Company deems fit. The employee will be required to obtain prior approval of the approving authority before proceeding on leave. The decision of the CEO will be final in all such cases.
- b) National Holidays, Paid Holidays, Saturdays and Sundays falling between Leave without Pay will be treated as Leave without Pay.
- c) An employee on LWP, will not be entitled to any compensation, including salary, allowances, retires, leave accumulation and other benefits / entitlements. It shall also not be considered in reckoning the period of service for progression or confirmation after probation.

Miscellaneous Entitlements

1. Applicability:

The new entitlements shall be applicable after the proposal is approved by the GST Council (Date).

2. Recognizing Talent for Exemplary Performance

2.1 To reward the excellence in performance of employees and also to promote good and healthy team spirit in the organization, two awards as follows are proposed:

a) Employee of the month: One employee from each function (i.e. Technology, Services & Support/others) shall be given buffet dinner coupons for up to 4 family members every month.

b) Best team of the quarter: Module & Function wise best performing team will be selected for the reward. Company sponsored buffet dinner coupons for all the concerned team members every quarter.

3. Official Travel

3.1 Room Tariff

a) The room tariff for Tier 1 cities viz. Delhi, Mumbai, Bangalore, Chennai, Kolkata, Ahmedabad, Pune room shall be as given in column 3 below.

b) The remaining cities may be classified as Tier 2 and the existing limits given in column 2 below for room tariff may be continued.

Table - 1

Grades	Limits for Tier 2 Cities (inclusive of tax)	Room Tariff for Tier 1 Cities (inclusive of tax)
(1)	(2)	(3)
1	As per actual	As per actual
2	Not exceeding Rs. 12000/-	Not exceeding Rs. 17000/-
3a – 3b	Not exceeding Rs. 12000/-	Not exceeding Rs. 17000/-
4a – 4c	Not exceeding Rs. 7000/-	Not exceeding Rs. 10000/-
5a – 5c	Not exceeding Rs. 7000/-	Not exceeding Rs. 10000/-

3.2 Daily Allowance on Tour:

- a) The per diem shall be applicable as per column 2 in table below.

Table - 2

Grades	Per Diem/Daily Allowance (Rs.)
(1)	(2)
1	6000
2	4000
3a – 3b	4000
4a – 4c	3000
5a – 5c	3000

- b) The local conveyance shall be reimbursed on actual basis on production of bills.

3.3 Local Travel Entitlements

- a) Employees may avail the services of the vehicles hired by GSTN for official local travel. In case of exigencies, employees would get reimbursement of actual fare by public transport. In case employee is using own vehicle for Local travel due to official work, employee may claim conveyance as per rates proposed.
- b) The rates of transportation by four wheeler and two wheeler shall be as given in the table below:

Table - 3

Personal Conveyance Mode	Rates
Four Wheeler	Rs.24per Km
Two Wheeler	Rs. 12per Km

4. Relocation Expense

- a) Currently the entitlement of SVP & above is J class for work related travel. However, for relocation purposes the entitlement is economy class. The same is now being changed and the entitlement for relocation purposes for SVP and above shall be J Class.
- b) Entitlement for transportation of personal effects for all levels shall be Rs.50 per km as per the following table.

Table - 4

Grades	Rates for Transportation of personal effects	Air Travel Entitlements
1.	2.	3.
1	Rs. 50 per km	Air (J Class)
2	-do-	-do-
3a	-do-	-do-
3b	-do-	Air (Economy Class)
4a – 4c	-do-	-do-
5a – 5c	-do-	-do-

Compensation Rules for Deputationists

1. These rules shall be called the “compensation rules for deputationists in GSTN” and shall include all employees in GSTN who are on deputation irrespective of whether they join GSTN from the Central Government, State Government or from PSUs.

1.1 The following Pay and Allowances shall be paid to deputationists working in GSTN unless and otherwise the Pay and Allowances are defined and prescribed by the Department of Revenue while approving or processing the deputation or anytime thereafter:

- a) Basic Pay shall be as admissible in the parent department or fixed in GSTN based on Recruitment Guidelines of GSTN as per the Central Government Pay Matrix. The Basic Pay of State Government employees shall be fixed as per the Central Government Pay Matrix provided they give an undertaking that they opt for Central Government Pay Scales along with allowances admissible in GSTN. In case any employee opts for the State Government pay scales, they would be paid the Pay and allowances as admissible in the respective State Government.
- b) Dearness Allowance as admissible in the Central Government. This would be admissible to State Government Employees on deputation in GSTN only if they have opted for the Central Government pay scales otherwise they would be paid the dearness allowance admissible in their respective State Government.
- c) The following Allowances would be paid to the employees on deputation in GSTN. These allowances would be paid to the State Government employees only if they have opted for the Central Government Pay scales otherwise they would be paid the allowances as admissible in their respective State Governments.

1.2 House Rent Allowance: The employees would be paid house rent allowance at the following rates as they are not eligible for allotment of accommodation under the Central Government Pool of accommodation. However, no HRA would be admissible, if the Central Government allows General Pool Accommodation to any of the executives of GSTN on such representation being made as a special case:

Table - 1

Designation	Pay Level	Basic Pay Range (As on Date)	House Rent Admissible per month
Chairman	L-16	205400-224400	1,50,000 *
CEO	L-15	182200-224100	1,25,000 *
EVP	L-14	144200-218200	1,00,000
SVP	L-13	123100-215900	85,000
VP	L-12	78800-209200	80,000

Assistant VP	L-11	67700-208700	75,000
Associate VP	L-10 (with 5 years' experience in the level)	56100-177500	70,000
Senior Manager	L-10	56100-177500	65,000
Manager	L-9	53100-167800	60,000
Assistant Manager	L-8	47600-151100	55,000
Executive	L-7	44900-142400	50,000

Note (i) * Company lease facility along with maintenance and GST may be provided by GSTN for Chairman and CEO.

(ii) Lease shall include self-lease also.

1.3 Fuel Allowance: The fuel allowance shall be paid to the employees on deputation at the following rates:

Table-2

Details	Chairman (L 16)	CEO (L 15)	EVP (L 14)	SVP (L 13)	VP (L 12)	AVP (L 11)	Associate VP (Level 10 with 5 yrs in the Level)	SM (L 10)	Manager (L 9)	AM (L 8)	Executive (L 7)
Fuel Allowance (per month)	Company Car	Company Car	Company Car Or 50000	Company Car Or 45000	25000	21000	19000	17500	16500	15500	14000

1.3.1 EVPs and SVPs would be given an option to either avail a Company provided Car or opt for getting the monthly fixed amount mentioned in the table above.

1.4 Other Allowance: The employees on deputation to GSTN are neither entitled for Leave Travel Allowance nor for Children Education Allowance as is admissible to them in the Government. These allowances have been monetised and the same would be paid to the deputationists on a monthly basis to different grades of employees as detailed in the following table:

Table - 3

Designations	Other Allowance to be paid monthly (Rs.)

SVP and above	17000
Up to VP	9000

1.5 IT and Professional Allowance: IT and Professional Allowance shall be paid to the employees on deputation in GSTN as per the following table:

Table - 4

Designation	Pay Level	Basic Pay Range (As per 7th CPC)	Proposed (Percentage of Basic Pay & DA)
Chairman	L-16	205400-224400	40
CEO	L-15	182200-224100	40
EVP	L-14	144200-218200	45
SVP	L-13	123100-215900	45
VP	L-12	78800-209200	45
Assistant VP	L-11	67700-208700	50
Associate VP	L-10 (with 5 years' experience in the level)	56100-177500	50
Senior Manager	L-10	56100-177500	50
Manager	L-9	53100-167800	50
Assistant Manager	L-8	47600-151100	50
Executive	L-7	44900-142400	50

- a) The above rules shall be admissible to the employees on deputation in GSTN with effect from the date the same is approved by the GST Council. Till the time same is approved, the allowances being paid under the old policy shall be continued and if this is not approved exit option should be given in further consultation with competent authority (GST Council).
- b) New deputationists to be on boarded as per the new policy after the same has been approved;

- c) Existing deputationists were on boarded as per the advertised old policy and therefore, would be given option to change their perks as per the new policy or stay with old policy for the balance of their tenure.
- d) Any revisions to Pay, Allowances and Monetised Benefits for deputationists shall be as per the company policy after approval of the Board of GSTN.

Dates of implementation and saving & difficulty removal during implementation**1. Dates of implementation****Table - 1**

Particulars	Dates of implementation
Transition • Transition Increment • Progression Increment during transition • Pull to/near minimum for progression cases	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD
Performance Management Policy • Annual Increment • PLI Based on Bell Curve for the Year 2022-23 & onwards • Progression Based on Bell Curve for the Year 2022-23 & onwards	FY 22-23 onwards (Assessment in FY 23-24 onwards) • 1 April 23 • 1 April 23 • 1 Oct 23
Recruitment Policy	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD
Leave Rules	1 Jan 2023
Entitlements for Mobile Handset & other allowances	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD
Reward and Recognition	1 Jan 2023
Allowances for Deputationists	After approval by competent authority. Till the time same is approved, the allowances being paid under the old policy shall be continued and if this is not approved exit option should be given in further consultation with competent authority (GST Council).

2. Saving and difficulty removal during implementation

- a) The points not listed in the proposal shall be continued as per the existing clauses in the HR Manual viz. Joining, Attendance, Grievance & Disciplinary procedures etc. After the in-principle approval of BOD/ Council of these documents (Presentation & Agenda), the HR Manual would be revised to incorporate these changes and revised manual issued with the approval of the CEO, GSTN.
- b) All existing decisions of the Board and Management taken prior to the date on which these policies become operational shall continue to apply notwithstanding any conflict with the present policies provided that specific decision taken in relation to any of the past decisions to overrule the past decision shall lead to the new specific decision prevailing.
- c) Difficulty removal clause: Any difficulties/challenges during implementation of the transition process/policy shall be resolved by CEO, GSTN for employees up to the level of Senior Vice President and by Chairman, GSTN for employees of the level of EVP & above. The resolution shall be provided based on the generally accepted principles laid down in the policies.

Agenda Item 09: Report of Group of Ministers on constitution of Goods and Services Tax Tribunal

GOM CONSTITUTED VIDE OM NO. A-50050/150/2018-CESTAT-DOR

As per the provisions of the CGST Act, 2017, each bench of the Tribunal is composed of one Judicial Member, one Technical Member (Centre) and one Technical Member (State). However, in its order dated 20.09.2019 in WP 21147 of 2018 – Revenue Bar Association Vs. Union of India, Hon’ble High Court of Madras held that “*The number of expert members therefore cannot exceed the number of judicial members on the bench*” and struck down the relevant provisions of the law.

2. In addition to this, Hon’ble Supreme Court of India has laid down various principles with respect to appointment to Tribunals, conditions of service etc. in various other judgements.
3. Accordingly, certain draft amendments were placed before the GST Council in its 47th Meeting held on 28th -29th June, 2022 in Chandigarh and the Council decided that the matter be referred to a Group of Ministers.
4. The 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.
5. The GoM held two meetings for detailed deliberation on a list of issues. The first meeting was held on 26th July 2022 in hybrid mode and deliberated and resolved many issues. The GoM considered the original draft discussed in the 47th meeting of the GST Council and the views expressed by Members during the meeting. The GoM took note of various judgments of Hon’ble Supreme Court in various cases pertaining to Tribunals in the country, 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. The GoM also 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.
6. The GoM met the second time on 17th August 2022 in Bhubaneswar to discuss these issues and finalize its recommendations. The GoM has submitted its report with draft amendments to the CGST and SGST Acts.
7. It is submitted that the draft provisions state that the Chief Secretary of the State in which the Bench is located, shall be a member of the Selection Committee for selection of Technical Member (State) in the Bench. There could be a situation where the Council may constitute a Bench for more than one State. In such cases, it is proposed that Chief Secretary of one of the States to which the jurisdiction of the Bench extends may be nominated by the Council to the Selection Committee. Accordingly, following proviso is proposed to sub-section (5) of Section 110:

Provided that where the jurisdiction of a Bench extends to more than one State, the Council shall nominate Chief Secretary of one of such States to be the Member under sub-clause (i) of clause (c).

8. The final report and recommendations of the GoM is submitted before the GST Council for consideration and approval. It is also proposed that the draft amendments may be approved subject to changes during legislative vetting.



OCTOBER, 2022

**REPORT OF THE GROUP OF MINISTERS
ON CONSTITUTION OF THE GOODS AND
SERVICES TAX TRIBUNAL
SUBMITTED TO THE GST COUNCIL**

GOM CONSTITUTED VIDE OM NO. A-50050/150/2018-CESTAT-DOR

The Goods and Service Tax Appellate Tribunal (GSTAT) constituted under Section 109 of the Central Goods and Services Tax Act, 2017 provides for the GST Tribunal which is to be the second appellate authority within the GST framework. The process of original adjudication as well as the first appeal happens through individual officers under the Act but the second appeal against the orders of the first appellate authorities under Central as well as State GST Act lies with the GST Tribunal constituted under the CGST Act. GST Appellate Tribunal has been provided the responsibility to hear appeals under all the four GST laws namely the CGST Act, SGST Act, UTGST Act and the IGST Act passed by the Central as well as State tax officers. Therefore, this is the first common forum at which the dispute resolution process converges under all GST laws and both tax administrations.

1. Background

1.1 As per the provisions of the CGST Act, 2017, each bench of the Tribunal is composed of one Judicial Member, one Technical Member (Centre) and one Technical Member (State). In its order dated 20.09.2019 in WP 21147 of 2018 – Revenue Bar Association Vs. Union of India, Hon’ble High Court of Madras held that “*The number of expert members therefore cannot exceed the number of judicial members on the bench*” and struck down the relevant provisions of the law.

1.2 In addition to this, Hon’ble Supreme Court of India has laid down various principles with respect to appointment to Tribunals, conditions of service etc. in various other judgements.

1.3 Accordingly, certain draft amendments were placed before the GST Council in its 47th Meeting held on 28-29 June 2022 in Chandigarh and the Council decided that the matter be referred to a Group of Ministers.

2. Constitution of GoM

2.1 Based on the decision in the 47th meeting of the GST Council, the Group of Ministers (GoM) on Goods and Services Appellate Tribunal was constituted with following composition:

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

	Name	Designation and State	
6.	Sh Suresh Kumar Khanna	Finance and Parliamentary Affairs Minister, Uttar Pradesh	Member

2.2 The 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.

2.3 The order of constitution of the GoM is placed at **Annexure A**.

3. Meetings of the GoM

3.1 The GoM held two meetings for detailed deliberation on a list of issues. The first meeting was held on 26th July 2022 in hybrid mode and deliberated and resolved many issues. The GoM considered the original draft discussed in the 47th meeting of the GST Council and the views expressed by Members during the meeting. The GoM took note of various judgments of Hon'ble Supreme Court in various cases pertaining to Tribunals in the country, 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. The GoM also 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.

3.2 The GoM met for the second time on 17th August 2022 in Bhubaneswar to discuss these issues. Various issues discussed by GoM and the decisions are listed in this report.

4. National Vs State Tribunals

4.1 The GoM recognized that this is the most critical issue that needs to be discussed and resolved, which will have an impact on decisions on various other issues as well. The GoM deliberated on whether GST Appellate Tribunal should be a National Tribunal with benches across the country or there should be independent State Tribunals with jurisdiction in individual States. During the 47th Council meeting and later through written comments, some States had argued for separate State Tribunals.

4.2 The GoM noted that when the GST law was originally considered by the Council, this issue was discussed at length and the Council had opted in favour of a National GST Appellate Tribunal. During the 7th GST Council meeting held on 22-23 December 2016, it was noted “*the Secretary to the Council explained that it was proposed to have a National Tribunal with State level benches to facilitate creation of coordinate benches whose judgments would have persuasive value for each other and this would help settle the jurisprudence faster*”. The GoM discussed the pros and cons of having one national tribunal vis-à-vis having thirty-one State Tribunals.

4.3 Hon'ble Minister from Goa stated that the GST legal framework has been designed in the spirit of cooperative federalism and the CGST/SGST Acts are *pari materia* in nature. Therefore, there should be one Tribunal at the national level with benches of the same in every State. The Convener of the GoM acknowledged that this argument is valid even today, more than ever, and there is a need to have one National Tribunal for GST since we have chosen for One Nation One Tax. The Convener

stressed on the need to have persuasive value of the orders passed by the GST Tribunal across the country for successful implementation of the GST Act. He further highlighted that while taking any decision, interest of the taxpayers should be kept at top priority and from taxpayers' perspective having a National Tribunal with State level benches will be extremely beneficial and taxpayer friendly.

4.4 During discussions, Members from Orissa, Andhra Pradesh and Goa agreed with the decision of the Convener to opt for a National Tribunal with such number of benches (discussed later in this report) as may be needed in each State based on their size. However, Members from Uttar Pradesh and Rajasthan argued for separate National Tribunal and State Tribunals and they expressed that their views may be recorded accordingly.

5. Search-cum-Selection Committee

5.1 The next important issue pertains to the method of selection. 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.

5.2 Many States had proposed that the ScSC for Technical Member(State) could be headed by the Chief Justice of the High Court of the State concerned rather than Chief Justice of India or a Judge of Supreme Court nominated by him. The GoM took note that the ScSC for Technical Member(State) and ScSC for other Members cannot be different for the same Tribunal. Since all Members of the Tribunal are equal in terms of their roles and responsibilities, they should all go through the same selection and appointment process.

5.3 GoM concluded that keeping in view the judgement of Hon'ble Supreme Court in Madras Bar Association (2020) case, the most legally tenable option would be to have ScSC chaired by Chief Justice of India or a Judge of Supreme Court nominated by him and the President of the Tribunal (with the President to be replaced by a retired Judge in cases where the President cannot be Members of ScSC) and two officers as members of ScSC.

5.4 The GoM concluded that while one of the officers in ScSC could be a Secretary of Central Government, the other should be the Chief Secretary of the State in which the bench is located for selection of Technical Member (State). For all other Members, Chief Secretary of any State may be nominated by the Council for a period of one year. The GoM acknowledged that this would give necessary representation of the State concerned in the ScSC and it would be as per the spirit of the order of Hon'ble Supreme Court.

5.5 The Chairman of the Committee shall have the casting vote and Revenue Secretary shall be the Member Convener of the Committee with no vote, as per the judgement of Apex court in Madras Bar Association (2020) case.

6. Composition of a bench of the Tribunal

6.1 This is one of the main points on which the legal provisions were struck down and have to be reformulated. The GoM discussed this issue in detail and concluded that the bench should consist of one Judicial and one Technical Member. The Technical Member should be a Technical Member (Centre) or a Technical Member (State) in a 50:50 ratio in every State.

6.2 In cases where there is a difference of opinion between two members, the President may add a third Member from another bench in the same State. If a Member in that State is not available, the same could be taken from a bench in another State. The GoM concluded that a bench larger than that would be impractical and inefficient in terms of speedier conclusion of cases.

6.3 Finance Minister, UP argued that having a 3-member bench with two Judicial Members and one Technical Member should be considered so that the question of 1-1 split does not arise. This proposal was deliberated and the GoM concluded that split verdicts would happen in relatively limited number of cases and it would be more efficient to have a third Member only in those cases rather than in all cases.

6.4 The GoM also considered the provision relating to cases that can be heard by a single Member and suggested that the same may be raised to Rs.50 lakh from current limit of Rs.5 lakh, where no question of law is involved.

7. Qualification of Members

Technical Members

7.1 The GoM considered the qualification of Technical Members (State) in great detail. The GoM took note that the minimum qualification that Hon'ble Supreme Court has laid down in R. Gandhi case is that of Additional Secretary/ Secretary in Central Government. It acknowledged that the requirement of experience of 25 years in Group 'A' posts in Central Government for Technical Member (Centre) would be in line with that judgment but officers of the same rank in State Government would not be available. The GoM concluded that keeping the spirit of the judgments of Apex Court on this matter, it would be advisable to mirror the same requirement for State officers as well, i.e. experience of 25 years in Group 'A' posts in State Government. Officers of the level of Additional Commissioner and above in the State are highly skilled and knowledgeable. They have spent considerable time in tax administration and have extensive experience and are fit for appointment in Tribunals.

7.2 However, the GoM also took note of the fact that in many States, the recruitment is not at Group 'A' level and even the senior most officer in the State hierarchy would not have spent 25 years in Group 'A'. The GoM concluded that, in such cases, the States should have flexibility to reduce this requirement of 25 years in Group 'A' on the recommendations of the Council. This would enable every State to offer their most experienced and competent officers for appointment as Technical Member (State). However, GoM concluded that while the experience in Group 'A' post could be reduced depending on the situation in a State, the officers should have total 25 years of Government service.

7.3 The GoM also noted that some flexibility may be required in fixing the rank as some States do not have the rank of Additional Commissioner altogether or may not have officers in the rank of Additional Commissioner due to various reasons. However, Finance Minister, Andhra Pradesh highlighted that there should be some limit below which the rank should not be allowed to be reduced. In this regard, GoM felt that the rank should be such that the officers are, at least one level senior to the First Appellate level as they would be hearing appeals against their orders.

7.4 The GoM is of the opinion that every State would ensure that the best and most experienced officers of their State are made available for appointment to the Tribunal and every State would ensure that the qualification is not diluted beyond what is required to meet this objective. Since, these actions will be taken after seeking necessary recommendation of the Council based on proposal of the State concerned, it would ensure that undue dilution of qualifications does not happen.

7.5 The GoM discussed in detail the issue of officers of only that State being appointed as Technical Member (State) in which the bench is located. The GoM saw value in this proposition as every State has its own local issue despite GST being a uniform tax system. GoM evaluated that one way could be to allow only officers of that State for appointment in that State and totally prevent officers of other States from even being eligible.

7.6 Hon'ble Minister from Goa opined that though this may be beneficial to larger States, smaller States which do not have large cadres of tax officers will face a challenge in finding the appropriate candidate. GoM accepted this view and also observed that for vacancies in a bench located in a State, making officers of other States ineligible could be overly restrictive and could even be open to legal challenge. GoM concluded that the better option would be that officers of the State could be given first preference in appointment for Technical Member (State) in benches in that State. If, for some reasons, officers of that State are not available, suitable officers from other States could be considered for appointment.

7.7 The GoM considered that All India Service officers that have requisite experience in tax administration are eligible for appointment as Technical Member (State), similar dispensation should be there for Technical Member (Centre) as well. The GoM concluded that such officers should also be considered eligible for appointment as Technical Member (Centre) as well. GoM felt that this would expand the pool of selection for Technical Member (Centre).

Judicial Members

7.8 Finance Minister, Orissa pointed out that the proposed qualification of District Judge/Additional District Judge qualified to be appointed as High Court Judge is vague and could cause issues. Accordingly, GoM considered and decided in favour of adoption of combined experience of 10 years as District Judge/Additional District Judge for appointment as Judicial Member, noting that, today, this qualification exists for eight Tribunals under Tribunal Reforms Act, 2021.

7.9 The GoM also discussed eligibility of Advocates for appointment as Judicial Members. The GoM noted that this point was examined by the Madras High Court in the Revenue Bar Association case and that Court held that *"the argument that section 109 & 110 of CGST Act, 2017 and TNGST Act, 2017 are ultra vires, in so far as exclusion of lawyers from the scope and view for consideration as Members of the Tribunal, is rejected."* The Court held that just because Advocates are eligible in some other Tribunals, the fact that the GST law does not make them eligible for appointment cannot be held to be against Article 14. However, Hon'ble High Court recommended that including lawyers for being eligible for appointment as Judicial Members should be considered.

7.10 The GoM acknowledged the recommendation made by the Hon'ble High Court and discussed that the eligibility conditions for Members of the Tribunal is a policy decision to be taken by the GoM and GST Council. The GoM discussed the issue in detail and concluded that at this stage there is no reason to depart from the original decision taken by the Council while finalizing the GST laws and a decision regarding the same may be taken later after seeing the experience of working of GST Appellate Tribunal for few years.

8. Term of appointment and re-appointment

8.1 The GoM discussed merits and demerits of re-appointment and having a retirement age of 67 years for Members and 70 years for Chairman. Member from Goa argued that reappointment is helpful in case of smaller States where enough eligible officers may not be available. Convener also argued that no scope for re-appointment would significantly shorten effective tenure and discourage talent from being attracted. However, GoM also noted that re-appointment may work against newer talent being inducted in the Tribunal.

8.2 GoM noted that currently proposed provisions of retirement age are in line with the Tribunal Reforms Act, 2021 and that the Apex Court in its Judgment in Madras Bar Association (2020) case has sought for reappointment to be provided. GoM discussed that these are policy issues and should be decided based on the requirement of this Tribunal. The GoM discussed that the retirement age and re-

appointment provisions should be such that they ensure availability of best candidates for the Tribunal. Therefore, the GoM concluded that it is better to have early retirement at the age of 65 years for Members and 67 years for President and recommends retirement age of 65 years against 67 years for Members and 67 years against 70 years for President.

8.3 Members of the GoM discussed that re-appointment is an important provision since there may be instances where new members may not be available for replacing the sitting Members and it is also important to provide suitable re-appointment opportunity to sitting Members. Therefore, a balanced view was adopted by the GoM and it was concluded that it is better to have a term of four years with possible re-appointment for another two years.

8.4 The issue of transfer of Members by the President was also considered by the GoM. The GoM discussed that since the entire set up of GST Tribunal is new, it was better if there is flexibility in the law for unforeseen circumstances. The GoM noted that while a situation of transfer of a Member appointed for four years may rarely arise, a complete bar on to transfer in the law may not be advisable as such exigencies may arise. After detailed discussion and evaluating the merits and demerits, the GoM concluded that the proposed provision ensures required balance and could be retained.

9. Number of Benches in each State

9.1 The Convenor proposed that for deciding number of benches in each State, Council should adopt a guiding formula. The GoM considered a formulation that States with population upto 2 crore may have one bench, States with population more than 2 crore and upto 5 crore may have upto two benches, States with population more than 5 crore and upto 10 crore may have upto three benches, States with population more than 10 crore and upto 15 crore may have upto four benches and States with population more than 15 crore may have upto five benches. Hon'ble Member from Rajasthan suggested that their State being a geographically big State may require three benches to avoid making people travel long distances.

9.2 Hon'ble Member from Andhra Pradesh expressed whether population is a better criterion or should the number of benches be linked to number of registered persons in a State. It was discussed that GST being a consumption-based tax, population would be a better proxy for consumption. Additionally, population is a steadier parameter as compared to number of registered persons, which would go up or down with registration and cancellation.

9.3 The GoM concluded that there should be some guiding principle for any State to request and the Council to recommend the number of benches in each State. The GoM finally concluded that States with less than 5 crore population may have upto maximum 2 benches and no State shall have more than 5 benches.

10. Summary of Recommendations

10.1 The recommendations of the GoM on various issues are finalised below:

- (i) There should be one National GST Appellate Tribunal with as many benches as may be required, in every State, depending on the size of the State.
- (ii) The Search-cum-Selection Committee should be chaired by the Chief Justice of India or a Judge of Supreme Court nominated by him. The other members of the Committee should be the President of the Tribunal (or a retired Judge of Supreme Court or Chief Justice of High Court nominated by Chief Justice of India if the President is not available), one Secretary of Central Government and Chief Secretary of the State in which the bench is located for selection to the post of Technical Member (State) or

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

- (iii) Each bench should consist of a Judicial Member and a Technical Member, who could be Technical Member (Centre) or Technical Member (State) in 50:50 ratio in every State. Single Member bench should be empowered to hear cases with tax implication upto ₹ 50 lakh.
- (iv) Basic qualification for becoming Technical Member should be 25 years of experience in Group A posts. For Technical Member (State), State Government should have the flexibility to reduce the experience requirement in Group A service with the approval of Council due to certain State specific limitations but with total experience of 25 years of Government Service and rank not below that of First Appellate Authority in the State.
- (v) High Court Judges or Judges who have combined experience of 10 years as District Judge and/or Additional District Judge should be eligible for appointment as Judicial Member.
- (vi) President and Members should have retirement age of 67 and 65 years respectively and have term of four years with provision for re-appointment for another two years.
- (vii) States with less than 5 crore population should have maximum 2 benches and no State should have more than 5 benches.

10.2 The draft provisions as approved by GoM are at Annexure B.

A-50050/150/2018-CESTAT-DOR

**Government of India
Ministry of Finance
Department of Revenue**

New Delhi, dated 6th July, 2022OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on Goods and Services Tax Appellate Tribunal (GSTAT).

In its 47th meeting held on 28-29 June 2022 in Chandigarh, the GST Council discussed the changes required in provisions pertaining to the GST Appellate Tribunal in the GST Laws to bring it in conformity with judgements of the Courts in relation to various aspects concerning Tribunals. In the aforesaid meeting, the Council has decided to constitute a GoM to look into the issues involved.

2. Accordingly, a Group of Ministers on Goods and Services Tax Appellate Tribunal is being constituted with following composition:

Sl.No	Name	Designation and State	
1.	Shri Dushyant Chautala	Deputy Chief Minister, Haryana	Convenor
2.	Shri Buggana Rajendranath	Minister for Finance & Planning, Commercial Taxes, Legislative Affairs, Skill Development and Training, Andhra Pradesh	Member
3.	Shri Mauvin Godinho	Minister for Transport, Industries, Panchayat and Protocol, Goa	Member
4.	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal Affairs, Rajasthan	Member
5.	Shri Suresh Kumar Khanna	Minister for Finance and Parliamentary Affairs, Uttar Pradesh	Member
6.	Shri Niranjan Pujari	Minister for Finance and Parliamentary Affairs, Odisha	Member

3. The GoM on GSTAT shall 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 judgements of Courts in relation to various aspects of Tribunal and are legally sustainable.

-1-

4. The GoM shall submit its report for consideration of the Goods and Services Tax Council by 31.07.2022. While making its recommendations, the GoM may consult legal experts.

5. The GoM shall be assisted by Joint Secretary (Revenue).


(Dr.N. Gandhi Kumar)
Director (State Taxes)
Tel. 011-23092613

To,

1. All Members of GoM and Officers
2. Revenue Secretary, North Block, New Delhi
3. Chairperson, CBIC, North Block, New Delhi
4. GST Council Secretariat, New Delhi
5. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
6. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.

Amended Section 109, 110 and 114 of CGST Act**109. Constitution of Appellate Tribunal and Benches thereof**

- (1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.
- (2) The powers of the Appellate Tribunal shall be exercisable by Benches constituted under sub-section (3) and sub-section (5).
- (3) The Principal Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of a Technical Member (Centre) or a Technical Member (State).
- (4) The jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply shall lie only with the Principal Bench.
- (5) In addition to the Principal Bench, Government shall, by notification, constitute such number of Benches at such locations as may be recommended by the Council, based on the request of the State Government.
- (6) Benches, other than Principal Bench, shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (4).
- (7) The President shall, by general or a special order, distribute the business or transfer cases among the Benches.
- (8) Each Bench of the Appellate Tribunal shall consist of a Judicial Member and a Technical Member (Centre) or a Technical Member (State).
- (9) The senior most Judicial Member within such Benches as may be prescribed, shall act as the Vice President for such Benches and he shall exercise such powers of the President as may be prescribed but for all other purposes shall continue to be considered as a Member.
- (10) Where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single Member.
- (11) If the Members of a Bench differ in opinion on any point or points, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points to another Member from a Bench within the State or another State, where no such Member is available in a Bench within the State, and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.
- (12) The Government, in consultation with the President may, for the administrative convenience, transfer Members from one bench to the other.
- (13) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

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

(1) A person shall not be qualified for appointment as—

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court;

(b) a Judicial Member, unless he –

(i) has been a Judge of the High Court; or

(ii) has, for a combined period of ten years, been a District Judge or an Additional District Judge;

(c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A or of the All India Service with at least three years of experience in the administration of an existing law or goods and services tax, and has completed at least twenty-five years of service in Group A;

(d) a Technical Member (State) unless he is or has been an officer of State Government or an officer of the All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, higher than the First Appellate Authority, as may be notified by the concerned State Government, on the recommendations of the Council and has completed twenty-five years of service in Group A 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:

Provided that the State Government may, on the recommendations of the Council, by notification, reduce the requirement of completion of twenty-five years of service in Group A in respect of officers of such State where no person has completed twenty-five years of service in Group A, subject to such conditions, and till such period, as may be specified in the notification:

Provided further that the officer should have completed twenty-five years of service in the Government.

(2) The President, Judicial Member, the Technical Member (Centre) and Technical Member (State) shall be appointed by the Government on the recommendations of a search-cum-selection Committee constituted under sub-section (5):

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the Technical Member of the Principal Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the Technical Member of the Principal Bench shall discharge the functions of the President until the date on which the President resumes his duties.

(3) While making selection for Technical Member (State), 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.

(4) In making appointments, the Government shall ensure that, over a period of time, there is adequate balance in the number of appointments as Technical Member (Centre) and number of

appointments as Technical Member (State), overall, as well as, in every State in such manner as may be prescribed.

- (5) The search-cum-selection Committee shall consist of—
- (a) the Chief Justice of India or a Judge of Supreme Court nominated by him—Chairperson of the Committee;
 - (b) Secretary of the Central Government nominated by the Cabinet Secretary — Member;
 - (c) Chief Secretary of
 - (i) the State in which the Bench is located, in case of appointment of Technical Member (State) in the Benches; or
 - (ii) a State to be nominated by the Council, in all other cases — Member;
 - (d) one Member, who—
 - (i) in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or
 - (ii) in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or
 - (iii) in case of the President of the Tribunal seeking re-appointment or where the outgoing President is unavailable or the removal of the President is being considered, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India; and
 - (e) Secretary of the Department of Revenue in the Ministry of Finance of the Central Government — Member Secretary.
- (6) The Chairperson shall have the casting vote and the Member Secretary shall not have a vote.
- (7) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be.
- (8) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the search-cum-selection Committee.
- (9) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, the salary of the President and the Members of the Appellate Tribunal shall be such as may be prescribed, and allowances and other terms and conditions of service shall be same as applicable to Central Government Officers carrying the same pay:
- Provided** that neither salary and allowances nor other terms and conditions of service of the President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment:
- Provided** further that, if the President or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be prescribed.
- (10) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the President of the Appellate Tribunal shall hold office for a term of four

years from the date on which he enters upon his office, or until he attains the age of sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.

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

(12) 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 earliest.

(13) The Government may, on the recommendation of the search-cum-selection Committee, remove from the office the President or a Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(14) The Government, on the recommendations of the search-cum-selection Committee, may suspend from office, the President or a Judicial or Technical Members in respect of whom proceedings have been initiated under sub-section (13).

(15) Subject to the provisions of article 220 of the Constitution, the President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the Principal Bench or the Benches where he was the President or, as the case may be, a Member.

114. Financial and administrative powers of President

The President shall exercise such financial and administrative powers over the Appellate Tribunal as may be prescribed.

Amended Section 109, 110 and 114 of SGST Acts

109. Constitution of Appellate Tribunal and Benches thereof

Subject to the provisions of this Chapter, the Goods and Services Tax Tribunal constituted under the Central Goods and Services Tax Act, 2017 shall be the Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority under this Act.

Sections 110 and 114 can be deleted

Common amendments in Sections 117, 118 and 119

Amendment required to harmonise the terminology – “National and Regional Benches” to be replaced with “Principal Bench” and “State and Area Benches” to be replaced with “Benches”.

Agenda Item 10: Closure of Group of Ministers (GoM) on levy of Covid Cess on Pharma and Power in Sikkim.

In pursuance of the decision of the GST Council at its 43rd meeting on 28th May, 2021, a Group of Ministers (GoM) was constituted on levy of Covid Cess on Pharma and Power in Sikkim vide OM dated 11.06.2021 issued by Department of Revenue (DoR) vide F. No. S-31011/12/2021-DIR(NC)-DOR. The GoM consisted of the following members:

Sl. No.	Name	Designation & State	
1	Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Convenor
2	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3	Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
4	Sh. K.N. Balagopal	Minister for Finance, Kerala	Member
5	Sh. Niranjan Pujari	Minister for Finance, Odisha	Member
6	Sh. B.S. Panth	Minister for Tourism & Industries, Sikkim	Member
7	Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member

2. The GoM examined the proposal moved by Government of Sikkim on levy of Covid Cess on Pharma and Power in Sikkim and made the following recommendations:

- a. State of Sikkim may levy a cess of 1% on of the turnover of pharmaceutical sector (excluding the unorganized sector) restricted to only intra-State supplies.
- b. Since levy of cess on power generation does not fall within the purview of GST, this call may be taken by the State of Sikkim.
- c. Regarding the special package of assistance by Government of India, the matter was under the ambit of Central Government and not the GST council so a decision would be taken by Central Government.

3. The GoM submitted its final report in the 45th GST Council Meeting held on 17th September, 2021. Consequently, the GoM has completed its mandate. Accordingly, Agenda for closure of the GoM is placed before the GST Council.

Agenda Item 11: Closure of Group of Ministers (GoM) to examine the feasibility of implementation of e-way bill requirement for movement of gold and other precious stones.

In pursuance of the decision of the GST Council at its 37th meeting on 20th September, 2019, a Group of Ministers (GoM) was constituted to examine the feasibility of implementation of e-way bill requirement for movement of gold and other precious stones vide OM dated 22.11.2019 issued by GST Council Secretariat vide F. No. 591/GOM/Mvmt Of Gold & Pre. Stones/GSTC/2019.

2. The Terms of Reference for the GoM were to examine the feasibility of implementation of e-Way bill requirement for movement of Gold and precious Stones or otherwise and to suggest a mechanism for controlling tax evasion without compromising on security aspects that may arise from its implementation.

3. The GoM examined the feasibility of implementation of e-way bill requirement for movement of gold and other precious stones. The final report of the GoM was tabled in the 47th GST Council Meeting held on 28th-29th June, 2022. The following recommendations were made by the GoM:

A. E-way bill for intra-state movement of gold and precious stone:

- i.
 - i. The states should be allowed to decide about imposition of the requirement of e-way bill for intra-state movement of gold and precious stones within their states.
 - ii. There will be a minimum threshold value of Rs.2 Lakh, and the states can decide any amount including or above this amount as minimum threshold for generation of E-way bill for intra-state movement of gold/precious stones in their state.
 - iii. Only part 'A' on the e-way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.
 - iv. Further, modalities of generation of e-way bill for intra-state movement of gold/precious stones will be as suggested by NIC/GSTN.
 - v. For deciding about implementation of such a system of e-way bill for intra-state movement of gold and precious stones within the state as well as regarding the threshold value to be adopted for generation of such e-way bill within the state, the procedure of consultations with the jurisdictional Principal Chief Commissioner/Chief Commissioner of Central Tax, or any Commissioner authorized by him, should be followed by the States.
 - vi. Once e-way bill requirement for movement of gold and precious stones is decided, the corresponding suitable amendment in CGST Rules, 2017 would have to be carried out. While finalizing amendment in Rules, it is to be ensured that in case of supply of gold by registered persons to unregistered buyers, the requirement of e-way bill generation is mandated on registered supplier only.

B. E-invoicing for gold and precious stones:

- i. E-invoicing should be made mandatory for B2B transactions by all taxpayers supplying gold/precious stones (goods of HSN 71) and having annual aggregate turnover above Rs.20 Crore.
- II. GSTN, in consultation with NIC, to work out the modalities and timelines for implementation of the proposed requirement of e-invoicing for gold/precious stones.

C. Levy of GST on RCM basis on Old Gold:

- i. (i.) The issue of levy on GST on reverse charge mechanism (RCM) basis on purchase of

old gold by registered dealers/jewellers from unregistered persons may be referred to Fitment Committee for detailed examinations.

4. The recommendations made by the GoM were accepted by the GST council and it was decided that the states are at liberty to implement the said recommendations in their respective States. Consequently, the GoM has completed its mandate. Accordingly, Agenda for closure of the GoM is placed before the GST Council.

Agenda Item 12: GST Data sharing with Ministries and Departments

1. The present Agenda is regarding GST data sharing with Ministries and Departments. After the introduction of GST, large amount of quality data is available with the GST system that can be used within Government for various purposes, including better decision making and better targeting of Government resources. Further, Department of Revenue and State Tax departments have been receiving request from different Ministries/Departments/Agencies, at Central as well as State levels, seeking data related to GST.

The requests for data can be broadly classified into four categories as under:

A. Validating GSTIN using GSTN validation API with the following data field.

These requests are from those agencies that take the GSTIN from their clients for their purpose. Examples could include procurement, subsidy and other benefits. These agencies may like to verify the validity of the GSTIN given by the entity. GSTN has a publicly available facility on their portal, called “search taxpayer”, where the details of the taxpayer for a given GSTIN is made available, including the legal name, trade name, address, date of registration, whether it is Aadhaar authenticated, major goods and services that the entity deals in and even the filing status. While this information is available on the portal, it has to be accessed through manual intervention for each GSTIN.

It is proposed that since this facility is anyway available publicly, it could be made through APIs **to Government Ministries, Departments and Agencies** so that their IT systems can easily access this information.

Any agency that wants to carry out validation through API route and access basic registration data (which is otherwise available on the GST portal on open basis or to registered persons), could approach GSTN directly for the same. GSTN should review the data being made available publicly and to registered entities to make it more useful to other agencies.

B. Aggregated GST data which does not involve disclosure of any personally identifiable information of a taxpayer etc.

The second set of data sharing request pertain to aggregate information, mainly for planning and decision-making purposes. For example, aggregate information of e-way bill can give important insights into movement of goods, that would be useful for National and State Highway organisation. Details of gross GST collection every month is being widely used for macro-economic monitoring.

It is proposed that the aggregate information as may be available from those fields of various statements under GST legal framework that are credible and have a system to ensure its correctness, even if on a risk- based system, but which do not reveal the identity of a taxpayer or an identifiable set of tax payers in any way, can be shared with Government Ministries, Department and Agencies for planning and better decision making.

Any agency that intends to access summary data pertaining to GST should give the details in the following format to Department of Revenue and thereafter DoR shall process the request and get it placed before the GST Implementation Committee for a decision on sharing of the data.

1. Centre/State Government
2. Ministry/ Department
3. Name of Agency
4. Data items on which aggregation needs to be done

Form	Field

5. Data items of which aggregates are required

Form	Field

6. Period for which data is to be aggregated
7. Whether one time or recurring
8. Periodicity, if recurring
9. Purpose for which data is being sought
10. Details of Contact Person
 - a. Name
 - b. Designation
 - c. Phone
 - d. Email

It can also be considered that a subset of this information can be made available even in public domain so that they are available even to industry and research organisations. Currently, details of GST collection and settlement are put in public domain with a delay as per the decision of the GST Council. Depending on request of data that are frequently been received, a decision could be taken to put the data in public domain for wider use.

C. Dis-aggregated data which does not disclose the identity of the tax payer

Apart from the aggregate data, at times agencies request for disaggregated data but with the identity of taxpayer masked. Such data can include details relating to individual e-way bills with the GSTIN of the supplier and the recipient removed. While most of the requirements can be met using aggregate data, many use advance analytics requiring disaggregated data. This would also allow mapping of datasets across IT platforms of different agencies using identifiers that cannot be traced back to the supplier or the recipient

It is proposed that this information could be shared with Government Ministries, Department and Agencies if they are able to demonstrate that their use case requires disaggregated data and there is value in sharing disaggregated data for such a use case.

Any agency that intends to access summary data pertaining to GST should give the details in the following format to Department of Revenue. Department of Revenue shall process the request and get it placed before the GST Implementation Committee for a decision on sharing of the data.

1. Centre/State Government

2. Ministry/ Department

3. Name of Agency

4. Mode of Sharing

5. Data items to be shared

Form	Field

6. Purpose for which data is being sought

7. Reason why the objective cannot be achieved through aggregated data and can only be achieved through disaggregated data

8. Details of Contact Person

a. Name

b. Designation

c. Phone

d. Email

D. Any data sharing request that does not fall under the above category should only be done with specific approval of the GST Council/GST Implementation Committee on a case to case basis. It may be noted that at previous occasions, data of individual taxpayers has been shared with Government agencies where the legal framework required providing such

data, like with National Authority Chemical Weapons Convention (NACWC), Cabinet Secretariat, MSME registration etc. These have been done after approval of the GSTC/GIC. At specific instances, data is being shared with enforcement agencies for enforcement purposes and where GST data is required as an evidence.

2. The proposal further provides that the sharing of data should be subject to following general conditions:
 - a.** The user agency should ensure safety and security of the data received from GST system and put in place proper IT and administrative mechanisms to ensure safety of data shared.
 - b.** The user agency should use the data only for the purpose it was shared and not disseminate the data further to other agencies.
 - c.** The user agency should not use the raw data for commercial benefits since this data has been acquired from the compliances furnished by taxpayers. Agencies can, however, charge for value added services made available based on the data shared.
 - d.** For data shared on recurring basis, right to access may be revoked at any time if it is found that it is not in public interest.
3. The GST data is collectively owned by Centre and States and is held by GSTN under the guidance of GST Council. In view of same, decision has to be taken by both Centre and States as to how the GST data of the taxpayer can be shared with other departments/Ministries for their use.
4. Accordingly, the above agenda is placed before the GST Council for approval.

Agenda Item 13: Review of revenue position under Goods and Services Tax

1. The Figure below shows the trend and Table 1 shows the details of the collection in FY 2022-23 vis-à-vis FY 2021-22.

Figure 1: Monthly gross GST collection (in ₹ lakh crore)

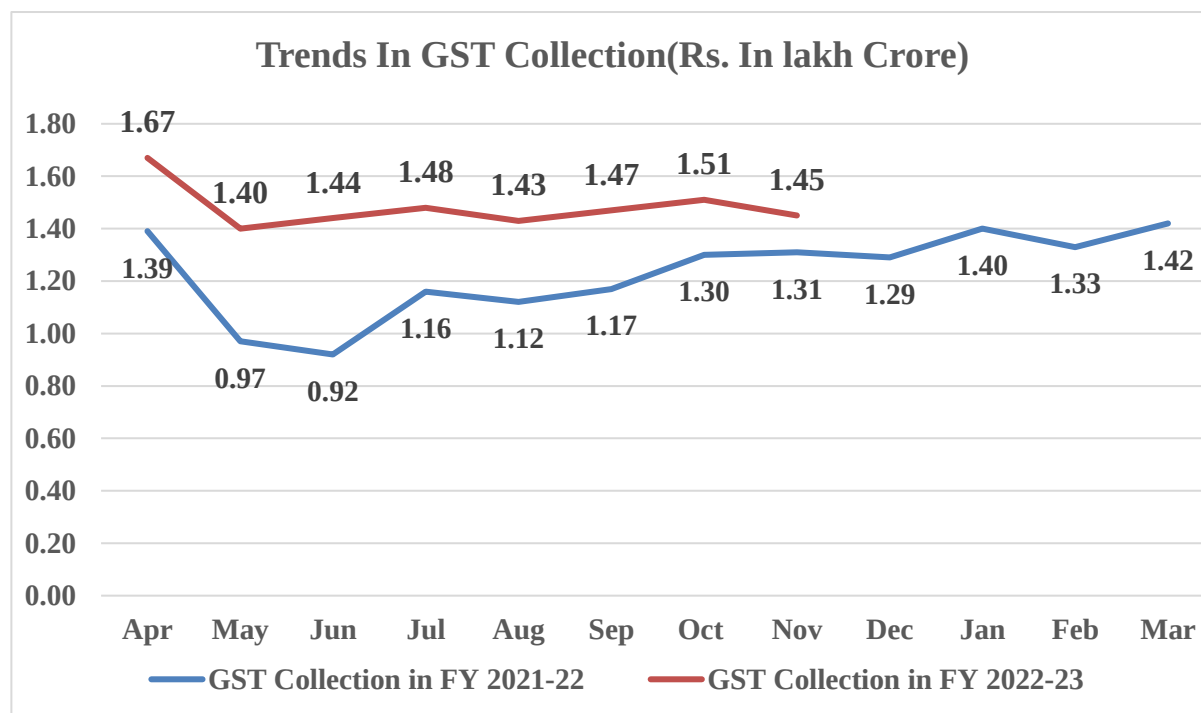


Table 1: Monthly gross GST collection (₹ crore)

GST Collection	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22
CGST	25,306	25,751	24,710	25,271	26,039	25,681
SGST	32,406	32,807	30,951	31,813	33,396	32,651
IGST	75,887	79,518	77,782	80,464	81,778	77,103
Domestic	35,785	38,098	35,715	39,249	44,481	38,468
Imports	40,102	41,420	42,067	41,215	37,297	38,635
Comp Cess	11,018	10,920	10,168	10,137	10,505	10,433
Domestic	9,821	9,925	9,151	9,282	9,680	9,616
Imports	1,197	995	1,018	856	825	817
Total	1,44,616	1,48,995	1,43,612	1,47,686	1,51,718	1,45,867

2. Table 2 shows the IGST collected, refunded and settled/apportioned during FY2022-23 till November, 2022.

Table 2: IGST Collection/Settlement/Appportionment/Refund in FY 2022-23*(Figures in Rs. Crore)*

1	Collections (+)	6,22,861
2	Recovery from IGST Ad-hoc apportionment(+)	-
3	Refunds (-)	1,01,088
4	Settlement (-)	
	i. CGST	2,56,325
	ii. SGST	2,15,038
5	Ad-hoc Settlement (-)	-
	i. CGST ad hoc	24,500
	ii. SGST ad hoc	24,500
6	Net (1+2-3-4-5)	1,410

*Source: PrCCA, CBIC***Compensation Fund**

3. As per provision of GST (Compensation to States) Act, 2017 the Compensation Cess collected since implementation of GST w.e.f. 01.07.2017 till November 2022 and the compensation released are shown in the table below:

Table 3: Compensation Cess collected and compensation released*(Figures in Rs. Crore)*

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 (till Nov)
Opening Balance		21,466	47,271	55,736	9,734 [^]	9,344
Compensation Cess collected (net)	62,612	95,081	95,551	85,191	1,04,609	82,467
Compensation released	41,146	69,275	1,20,498	1,36,988	97,500	1,15,662
Balance	21,466	47,271	55,736 [*]	3939	16,844 ^{\$}	(23,851)

* Centre had transferred Rs. 33,412 crore from CFI to Compensation Cess Fund as part of an exercise to apportion balance IGST pertaining to FY 2017-18

[^] Centre had transferred Rs. 5,795 crore from CFI to cess fund as part of an exercise to apportion balance IGST pertaining to 2018-19 on 08.03.2022

^{\$} Balance GST compensation cess available is Rs. 16844 crore. However, taking into account the interest of back to back loan of Rs. 7,500 crore, GST compensation cess carried forward to FY 2022-23 as opening balance is Rs. 9344 crore

Trends in Return filing

5. The table 4 shows the trend in return filing in FORM GSTR-3B and GSTR-1 till due date for return period Apr'22 to Oct'22. Tables 5 and 6 show the State wise filing for these months.

Table 4: Return filing (GSTR-3B/GSTR-1) till due date

Return Period	GSTR-3B (%)	GSTR-1(%)
Apr'22	78.55	55.14
May'22	75.85	57.35
Jun'22	77.20	54.50
Jul'22	76.87	56.12
Aug'22	76.14	54.61
Sep'22	75.14	53.41
Oct'22	75.91	59.09

Figure 3: GSTR-3B/GSTR-1 Filing till due date

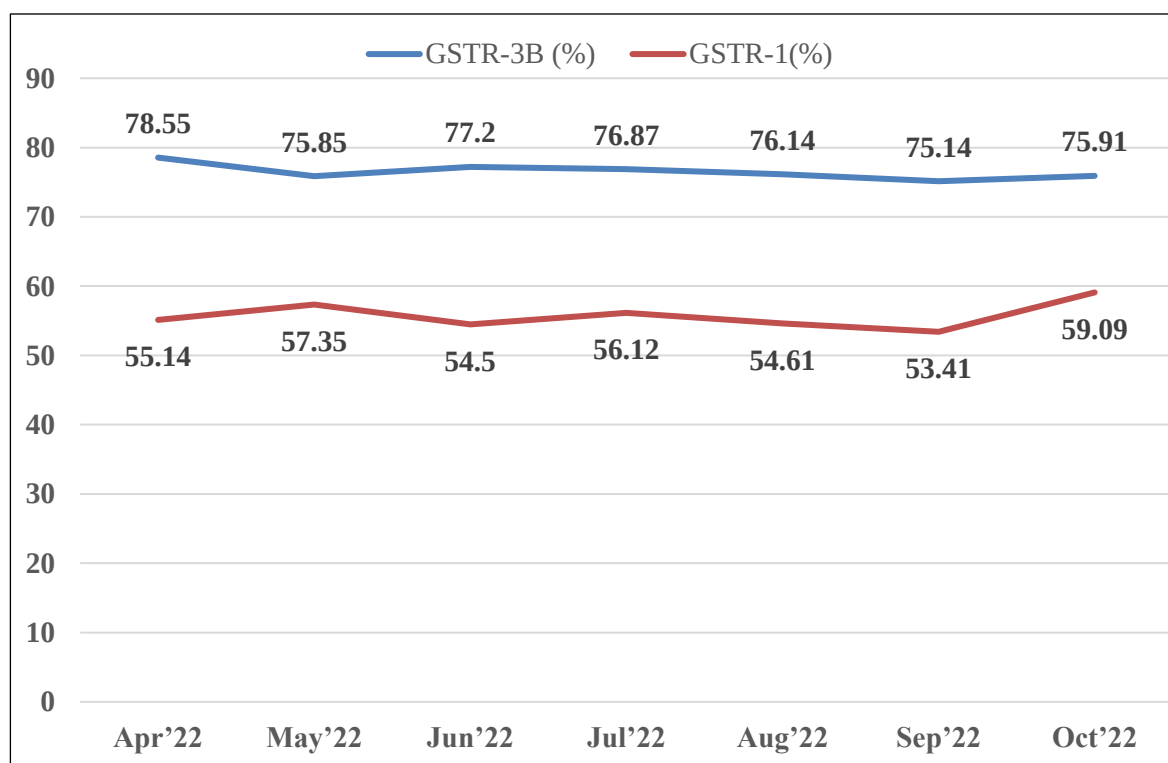


Table 5: State-wise Return filing (GSTR-3B) till due date (Apr'22-Oct'22)

States	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22
Jammu and Kashmir	82%	78%	80%	80%	79%	79%	79%
Himachal Pradesh	81%	76%	79%	78%	76%	77%	77%
Punjab	82%	80%	80%	80%	79%	77%	78%
Chandigarh	85%	83%	82%	83%	82%	78%	82%
Uttarakhand	76%	73%	75%	73%	72%	71%	72%
Haryana	80%	78%	79%	78%	78%	75%	77%
Delhi	81%	79%	80%	78%	79%	76%	77%
Rajasthan	80%	78%	78%	78%	77%	76%	77%
Uttar Pradesh	81%	78%	78%	78%	78%	75%	77%
Bihar	69%	57%	71%	69%	68%	68%	69%
Sikkim	63%	62%	68%	62%	63%	64%	60%
Arunachal Pradesh	50%	51%	56%	53%	53%	53%	53%
Nagaland	66%	66%	67%	66%	67%	65%	65%
Manipur	55%	53%	57%	56%	54%	55%	53%
Mizoram	63%	61%	65%	64%	64%	63%	60%
Tripura	75%	73%	77%	76%	74%	73%	74%
Meghalaya	60%	60%	69%	60%	61%	67%	60%
Assam	68%	66%	68%	68%	66%	66%	67%
West Bengal	81%	79%	80%	80%	79%	78%	79%
Jharkhand	78%	76%	78%	77%	76%	75%	76%
Odisha	75%	72%	75%	74%	73%	72%	72%
Chhattisgarh	68%	66%	68%	69%	66%	68%	67%
Madhya Pradesh	78%	74%	75%	76%	74%	75%	76%
Gujarat	87%	85%	85%	85%	85%	85%	85%
Dadra and Nagar Haveli	79%	75%	76%	77%	77%	75%	75%
Maharashtra	75%	73%	75%	75%	73%	74%	73%
Karnataka	78%	76%	77%	77%	76%	74%	76%
Goa	62%	60%	64%	61%	61%	65%	63%
Lakshadweep	69%	68%	70%	67%	73%	71%	67%
Kerala	77%	74%	75%	76%	73%	72%	73%
Tamil Nadu	83%	80%	80%	80%	79%	78%	80%
Puducherry	79%	75%	75%	75%	75%	72%	75%
Andaman and Nicobar Island	65%	62%	63%	64%	63%	64%	62%
Telangana	70%	67%	69%	67%	67%	67%	67%
Andhra Pradesh	76%	75%	76%	76%	75%	73%	76%
Ladakh	68%	68%	71%	68%	66%	72%	65%
Other Territory	76%	22%	68%	74%	73%	67%	69%
All-India	79%	76%	77%	77%	76%	75%	76%

Table 6: State-wise Return filing (GSTR-1) till due date (Apr'22-Oct'22)

States	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22
Jammu and Kashmir	37%	41%	36%	41%	39%	38%	43%
Himachal Pradesh	56%	57%	49%	56%	54%	49%	59%
Punjab	72%	74%	69%	72%	71%	68%	74%
Chandigarh	75%	77%	73%	75%	74%	72%	77%
Uttarakhand	51%	53%	47%	50%	50%	46%	54%
Haryana	68%	70%	67%	67%	68%	65%	70%
Delhi	69%	71%	70%	69%	70%	69%	71%
Rajasthan	62%	66%	58%	63%	63%	59%	67%
Uttar Pradesh	48%	51%	46%	48%	48%	45%	52%
Bihar	27%	29%	27%	27%	27%	25%	31%
Sikkim	32%	34%	34%	34%	34%	27%	35%
Arunachal Pradesh	21%	24%	23%	23%	23%	21%	26%
Nagaland	29%	29%	29%	29%	28%	27%	29%
Manipur	21%	23%	22%	24%	22%	24%	25%
Mizoram	20%	21%	20%	20%	20%	20%	21%
Tripura	42%	46%	43%	44%	42%	38%	47%
Meghalaya	25%	26%	28%	27%	24%	24%	28%
Assam	33%	37%	33%	36%	35%	30%	39%
West Bengal	51%	53%	51%	53%	52%	47%	55%
Jharkhand	43%	43%	43%	45%	44%	41%	47%
Odisha	37%	40%	35%	38%	38%	33%	41%
Chhattisgarh	44%	48%	42%	46%	46%	42%	51%
Madhya Pradesh	48%	51%	42%	47%	47%	41%	56%
Gujarat	79%	82%	78%	79%	79%	78%	82%
Dadra and Nagar Haveli	72%	73%	71%	72%	73%	72%	76%
Maharashtra	60%	63%	60%	63%	61%	60%	66%
Karnataka	52%	56%	53%	55%	53%	51%	58%
Goa	44%	47%	48%	47%	44%	51%	52%
Lakshadweep	42%	52%	52%	56%	50%	49%	54%
Kerala	56%	59%	55%	60%	50%	54%	60%
Tamil Nadu	58%	58%	57%	59%	55%	55%	61%
Puducherry	51%	52%	50%	52%	49%	50%	54%
Andaman and Nicobar Island	38%	42%	39%	40%	41%	38%	43%
Telangana	43%	44%	42%	43%	41%	41%	46%
Andhra Pradesh	48%	52%	49%	51%	49%	46%	54%
Ladakh	27%	31%	34%	30%	26%	35%	32%
Other Territory	74%	74%	72%	75%	73%	69%	75%
All-India	55%	57%	55%	56%	55%	53%	59%