

Minutes of the 48th Meeting of GST Council held on 17th December, 2022

The 48th meeting of the GST Council was held on 17th December, 2022 through video conferencing under the Chairpersonship of the Hon'ble Union Finance Minister, Smt. 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, States, Union Territories with legislature, GST Council Secretariat and GSTN who attended the meeting is at **Annexure-2**.

1.2 The following agenda items were listed for discussion in the 48th meeting of the GST Council as stated below:

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3	Recommendations of the Fitment Committee for the consideration of the GST Council a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to goods – Annexure-I b) Issues where no change has been proposed by the Fitment Committee in relation to goods – Annexure-II c) Issues deferred by the Fitment Committee for further examination in relation to goods – Annexure-III d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services – Annexure-IV e) Issues where no change has been proposed by the Fitment Committee in relation to services – Annexure-V f) Issues deferred by the Fitment Committee for further examination in relation to services – Annexure-VI
4	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.
5	Performance Report of the NAA (National Anti-profiteering Authority) for the 1 st quarter (April, 2022 to June, 2022) and 2 nd quarter (July, 2022 to September,



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	2022) along with monthly performance report for the months of October and November, 2022 for the information of the Council
6	Ad-hoc Exemptions Orders issued under Section 25(2) of the Customs Act, 1962 to be placed before the GST Council for information
7	Issues recommended by the Law Committee for the consideration of the GST Council
	i. Amendment in the CGST Rules, 2017 for Aadhaar based Biometric authentication of the registrants
	ii. Refund to unregistered persons
	iii. Decriminalization of the CGST Act, 2017
	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 disbursement of refund where such delay is attributable to the applicant
	v. Clarifying the manner of re-determination of demand in terms of sub-section (2) of Section 75 of the CGST Act, 2017
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	II. Amendment in sub-rule (1) of Rule 37
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	VII. Amendment in Rule 108 and Rule 109
	VIII. Insertion of Rule 109C
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	X. Amendment in entry (5) of Annexure appended to sub-rule (14) of Rule 138
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	XII. Amendment in FORM GST REG-17
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	vii. Supplies by unregistered person and composition dealers through e-commerce operators
	viii. Amendments in the CGST Act, 2017
	A. Amendment in second proviso to Section 16 of the CGST Act, 2017 to align with GSTR-1/3B
	B. Amendment to Section 23 to provide overriding effect over Sections 22(1) & 24
	C. Amendments in the CGST Act, 2017 to restrict filing of returns / statements after completion of specified time in view of data archival policy
	D. Proposal for amendment of sub-section (6) of Section 54 of CGST Act, 2017
	ix. Amendment in the tables of GSTR-1 for reporting ECO Supplies made under Section 9(5) of the CGST Act, 2017 and attracting TCS under Section 52 of the CGST Act, 2017
	x. Retrospective applicability of paras 7, 8(a) and 8(b) of Schedule III of the CGST Act, 2017
	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
	xii. Clarification on various issues in GST
	A. Clarification on taxability of No Claim Bonus offered by Insurance companies
	B. Clarification on applicability of e-invoicing w.r.t an entity
	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
	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

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	xv. Amendment in provisions related to OIDAR Services under the IGST Act, 2017
	xvi. Amendment in Section 17 of the CGST Act, 2017 regarding ITC in respect of CSR (Corporate Social Responsibility) expenditure
	xvii. Issues related to place of supply in terms of the proviso to Section 12(8) of the IGST Act, 2017
8	Issues recommended by GSTN:
	1. Proposed Changes in HR Policies and Transition Management from GSTN
	2. Proposal for Changes in the Revenue Model of GSTN and transition to the new Revenue Model
	3. Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC
	4. Data Archival Policy for the GST System
	5. Implementation of facility to Generate Document Identification Number in GST Back Office for Model 2 States in compliance with the Hon'ble Supreme Court judgement in W.P 320 of 2022.
9	Report of Group of Ministers on constitution of Goods and Services Tax Tribunal
10	Closure of Group of Ministers (GoM) on levy of Covid Cess on Pharma and Power in Sikkim
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.
12	GST Data sharing with Ministries and Departments
13	Review of revenue position under Goods and Services Tax
14	Final Report of Group of Ministers (GoM) on Capacity Based Taxation and Special Composition Scheme in certain sectors on GST
15	Recommendations of the 17 th IT Grievance Redressal Committee for approval/decision of the GST Council
16	Agenda on Report of Committee of Officers (CoO) on GST Audit along with Draft Model All India GST Audit Manual
	i. Report of the Committee of Officers (CoO) on GST Audit 2022 (Annexure A)

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	ii. Report of the Sub-Committee (CoO) on GST Audit Policy And practices of the Centre and the States that have already implemented certain procedures (Annexure I)
	iii. Model All India GST Audit Manual (Annexure II)
	iv. Report of the sub-committee constituted to broadly outline the procedural aspects of joint and thematic audit (Annexure III)
	v. Report of the sub-committee constituted on using capability of data analytic developed by DGARM for identification of state taxpayers for Audit (Annexure IV)
	vi. Report of the sub-committee constituted to suggest measures of capacity building in Services for focused approach on audit of Services Sector (Annexure V)
	vii. Report of sub-committee constituted to study, examine and make suggestions on the issue of "To build knowledge on financial accounting and focused approach towards interpreting business contract/agreement and understanding of the system-driven business process through SAP, Oracle, Tally, etc." (Annexure VI)
17	Any other agenda with the permission of the Chair.

1.3 The meeting started with greetings from Hon'ble Members to the Hon'ble Chairperson. The Hon'ble Chairperson welcomed and introduced the new Revenue Secretary, Sh. Sanjay Malhotra to the Hon'ble Members of the Council and thanked ex Revenue Secretary, Sh. Tarun Bajaj for his contribution.

1.4 With the permission of the Chair, the Secretary to the GST Council welcomed all the Hon'ble Members of the Council and participating officers to the 48th meeting of the GST Council.

The Secretary, on behalf of the Council, thanked the following former Hon'ble Members of the Council for their immense contribution –

1. Shri Tarkishore Prasad, ex Member from Bihar
2. Shri Ajit Pawar, ex Member from Maharashtra
3. Shri Sukh Ram Chaudhary, ex Member from Himachal Pradesh

He further extended a warm welcome to the incoming Hon'ble Members of the GST Council to the 48th meeting of the GST Council-

1. *Sh. Devendra Fadnavis, Hon'ble Deputy Chief Minister, Maharashtra*
2. *Sh. Vijay Kumar Chaudhary, Hon'ble Finance and Commercial Tax Minister, Bihar*

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and thanked ex. Revenue Secretary, Sh. Tarun Bajaj for his contributions.

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

1.6 Further, he stated that the GST Council had formed a GoM on Capacity based taxation and Special Composition Scheme in certain Sectors on GST with Sh. Niranjana Pujari, Hon'ble Minister of Finance, Odisha as the Convener and Hon'ble Ministers from Delhi, Haryana, Kerala, Madhya Pradesh, Uttar Pradesh and Uttarakhand as Members. The GoM had submitted its report which was placed before the Council for deliberations. He thanked all the Hon'ble Members of this GoM for their valuable recommendations.

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

1.8 The Secretary informed that the GST Revenue had set new records this year. The gross GST revenue collected in the month of November, 2022 was Rs. 1,45,867 crore which was 11 % higher than the GST revenue in the same month last year. The gross GST revenue collected in the month of October, 2022 was Rs. 1,51,718 crore which was 14 % higher than the GST revenue in the same month last year. GST collections have crossed Rs.1.40 lakh crore mark for the 8th time at a stretch since March, 2022. He thanked all the States, Central GST formations and Union Territories for their remarkable efforts in revenue augmentation.

1.9 He further informed the Council that he had held a meeting with the officers of the States/UTs on 16th December, 2022 and had a very frank and fruitful discussion on various agenda items which would immensely help the Council in steering the agenda of this meeting. He sought the permission of the Chair to proceed with the discussions on the agenda.

1.10 The Hon'ble Chairperson requested the Hon'ble Members to offer comments, if any, before proceeding with the agenda items.


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1.11 The Hon'ble Member from Tamil Nadu suggested that the meeting could be concluded by 01:30 p.m. and all agenda items that could not be discussed, could be rolled over to the upcoming Council meeting to be discussed in physical mode. He explained that due to budget session approaching, Hon'ble Members would be pre-occupied. Hon'ble Members from Telangana, Gujarat, Karnataka, Maharashtra etc. agreed with this suggestion and many States like Gujarat, Haryana, Kerala and Andhra Pradesh suggested that items could be prioritized and the Tribunal agenda could be discussed on priority. Hon'ble Member from West Bengal stated that she was agreeable with any decision taken by the Council in that regard.

1.12 The Secretary stated that the majority view appears to be that the meeting could be concluded by 01:30p.m. He informed that the officers meeting on 16th December was concluded by 03:00 p.m. even when the Law Committee agenda was discussed at length. He suggested that a call could be taken around 1:30 p.m. as the meeting progressed. The Hon'ble Chairperson accorded permission to start with the agenda.

2. Agenda Item 1: Confirmation of the Minutes of the 47th Meeting of the GST Council

The first agenda item pertained to confirmation of the minutes of the 47th GST Council meeting held on 28th and 29th June, 2022 at Chandigarh. The Secretary stated that some comments had been received from few States which were basically editorial changes which had been carried out and the revised minutes incorporated in the agenda and circulated to all the Hon'ble Members.

The Council adopted the Minutes of the 47th meeting of the GST Council.

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

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. Principal Commissioner, GST Policy Wing informed the Council that subsequent to release of the Agenda, Notification No. 25/2022-Central Tax was issued on 13th December, 2022 pursuant to the decision of GIC to provide relief to the taxpayers affected by cyclone 'Mandous' by extending the due date for furnishing Form GSTR-1 for November, 2022 for registered persons whose principal place of business is in specified districts of Tamil Nadu. The Council took note of the

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decisions of the GST Implementation Committee (GIC) and ratified the Notifications, Circulars and Orders issued. Further, the Notifications, Circulars and Orders issued by the States which were *pari materia* with above Notifications, Circulars and Orders were also ratified.

4. Agenda item 3: Recommendations of the Fitment Committee for the consideration of the GST Council

4.1 The Secretary introduced the agenda item relating to the recommendations of the Fitment Committee. These recommendations had been given in six (06) 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 or clarification was being recommended; the second Annexure listed items (goods) where no tax rate changes were being recommended and the third Annexure listed items (goods) where the recommendations would be given by the Fitment Committee after further deliberations and approval of the Council would be sought. Categorization on similar lines had been made in fourth, fifth and sixth Annexures pertaining to the services.

4.2 The Secretary to the Council stated that the recommendations of the Fitment Committee were discussed in detail in the Officer's Meeting on 16.12.2022 and most of recommendations were agreed to by all. Then the Secretary asked JS, TRU to take the Council through a brief presentation on the recommendations of the Fitment Committee.

4.3 Joint Secretary, TRU stated that the agenda note dealt with proposals regarding GST rates and clarifications relating to supply of goods and services. The proposed changes emanated from the recommendations made by the Fitment Committee on the basis of representations received from various stakeholders including Ministries and other offices of Centre and States, seeking changes in GST rates/ issuance of clarifications regarding classification and GST rates applicable on supply of certain goods and services.

4.4 She further informed that the Fitment Committee had examined the representations on 12th & 23rd September, 2022 and 28th October, 2022. After examination, the Fitment Committee had recommended changes in GST rates or issue of clarifications, in relation to certain goods and services. Further, the Fitment Committee had 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 and thus those issues had been deferred.

4.5 Accordingly, Fitment Agenda for consideration of the GST Council was summarized in six Annexures (I to VI). There were a total of 19 issues relating to goods out of which the Fitment



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Committee had recommended rate changes or issue of clarifications in case of nine items (Annexure-I of the Agenda Volume-I), not recommended any change for 8 items (Annexure-II of the Agenda Volume-I) and deferred two issues (Annexure-III of the Agenda Volume-I) for further examination. In case of services, there were a total of 27 issues, out of which the Fitment Committee had recommended rate change in 7 (Annexure-IV of the Agenda Volume-I), not recommended any change for 16 services (Annexure-V of the Agenda Volume-I) and deferred 4 issues (Annexure-VI of the Agenda Volume-I) for further examination.

4.6 Thereafter, JS, TRU presented the Fitment agenda. (Annexure-3)

4.7 The first item of discussion was the proposal for deletion of 'pencil sharpener' from entry no. 180 of Schedule II mentioned at Sl. No. 1 of Annexure-I. She stated that in the 47th meeting of the Council, it was decided to increase the rate on this item from 12% to 18% on the recommendation of the GoM on Rate Rationalization. That rate change was carried out by omitting entry 188 in Schedule II. However, inadvertently in entry 180 of the Schedule II, the tax rate pertaining to pencil sharpener remained at 12%. This agenda had been brought before the Council in order to remove this inconsistency.

4.8 The Hon'ble Member from Punjab, West Bengal and Puducherry requested not to increase GST rate from 12% to 18% on pencil sharpener as the item pertains to education of young children.

4.9 JS, TRU then presented the agenda pertaining to by-products of milling of dal/pulses like Kanda, Churi (also known as Chuni), Chilka wherein the Fitment Committee had recommended that in view of the dual use of these products with differential GST rate (Nil when supplied as cattle feed and 5 % when supplied as cattle feed ingredients), till the GoM on Rate Rationalization takes a view on rationalization of tax 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, these products could be exempted from GST, irrespective of their end use. Fitment Committee also recommended that a clarification be issued to regularize the matter of the intervening period on as is basis from the date of issuance of the last Circular (that is, consequent to 47th GST Council Meeting) on account of genuine doubts.

4.10 The Hon'ble Member from Madhya Pradesh supported the proposal to exempt the by-products of milling of dal/pulses like Kanda, Churi (also known as Chuni), Chilka from GST, irrespective of their end use.



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4.11 The Hon'ble Chairperson suggested that there could be full presentation on agenda 3 (a) and then the floor would be opened for discussion.

4.12 JS, TRU then presented the issue relating to SUV cars wherein doubts had been raised as to whether all four conditions viz. engine capacity exceeding 1500 cc, popularly known as SUV, a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm and above need to be satisfied for levying higher cess rate as per entry 52 B of Compensation Cess Notification No. 1/2017 – Compensation Cess (Rate) dated 28.6.2017 or the conditions in Explanation to the entry are optional. Fitment Committee recommended that a clarification be issued to clarify that all four conditions need to be fulfilled for levy of higher compensation cess rate of 22%.

4.13 JS, TRU further explained that 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. Now, a request had been made to also include *Mentha arvensis*, classifiable under HSN Code 3301 25 90, in Notification No. 10/2021- Central Tax (Rate) dated 30.9.2021 under Reverse Charge Mechanism. The Fitment Committee had recommended to include *Mentha arvensis*, classifiable under HSN Code 3301 25 90, under Reverse Charge Mechanism.

4.14 The next issue was regarding clarification on applicable GST rate and 6/8 digit HS code of carbonated beverages of fruit drink or carbonated beverages with fruit juice. JS TRU explained that in the 45th Meeting, the GST Council had approved a separate entry for carbonated beverages as long as they are carbonated (irrespective of whether carbon dioxide is added as a preservative or additive). The Fitment Committee recommended that 2202 99 is the appropriate 6 digit code and that to remove any ambiguity, an exclusion be created for such beverages in entry No. 48 of Schedule II of Notification 1/2017- Central Tax(Rate) which deals with fruit pulp or fruit juice based drinks.

4.15 JS, TRU stated that the next issue was to clarify the classification of Rab (Rab-Salawat). The Fitment Committee noted that Rab (Salawat) being in liquid or semi-solid form did not qualify to be classified under HSN 1701, which dealt with solid form of cane or beet sugar and chemically pure sucrose, and since its chemical composition was different from that of molasses, that was not classifiable under HSN 1703. Therefore, the Fitment Committee had recommended to clarify that Rab (Rab-Salawat) falls under HSN 1702 attracting 18% GST.



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4.16 The next item presented pertained to issuance of clarification regarding products such as fryums manufactured using the process of extrusion. The Fitment Committee recommended to clarify that the item 'fryums' manufactured using the process of extrusion would fall under CTH 1905 attracting GST @ 18%.

4.17 She presented the next issue regarding clarification sought on applicable IGST rate on items imported for petroleum operations under Notification No. 3/2017-Integrated Tax (Rate) wherein the Fitment Committee had noted that the said Notification provided a concessional rate of duty to such products which attracted a higher rate of GST when those goods were imported for petroleum operations. The Fitment Committee recommended that a clarification could be issued that a taxpayer could claim the lower rate for specific items as given in the Schedule.

4.18 The next item presented was for extending concessional rate of 5% on Ethyl alcohol supplied to refineries for blending with motor spirit (petrol). JS TRU stated that the National Policy on Biofuels – 2018 provided an indicative target of 20% ethanol blending under the Ethanol Blended Petrol (EBP) Program by 2030. 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. The concessional GST rate of 5% was available only to Oil Marketing Companies (OMCs) like IOCL, BPCL and HPCL under entry 102A of Schedule I of Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017. She submitted before the Council that keeping in view the implementation of the Ethanol Blending Programme, and since concessional GST benefit was already given to OMCs for blending ethanol with petrol, the proposal was 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. She submitted that Fitment Committee had recommended that the said entry 102A of Schedule I might be amended to include refineries in addition to Oil Marketing Companies.

4.19 JS, TRU then informed the Council about agenda 3 (b) which pertained to the list of goods where no change in GST rate had been recommended by the Fitment Committee.

4.20 The Hon'ble Chairperson then opened the floor for discussion except for pencil sharpeners and by-products of milling of dal/pulses on which comments had already been made by the Hon'ble Members.

4.21 The Hon'ble Member from Haryana stated that as per proposal on SUVs, a higher rate of Compensation Cess would be applicable on motor vehicles which were popularly known as

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SUVs 'and' which satisfied all the other three conditions, viz. (i) the engine capacity exceeds 1500 cc (ii) the length exceeds 4000 mm; and (iii) the ground clearance was 170 mm and above. He suggested that in case a sedan car which fulfilled all three conditions after and may also be called an SUV so as to avoid any confusion, he suggested to remove the word 'and' in the clarification being recommended by the Fitment Committee. He requested for a clarification in that regard.

4.22 JS, TRU clarified that the definition of SUV had been carried forward from the Central Excise regime and a vehicle to be called SUV, all four conditions need to be fulfilled and would not cover sedan car accordingly.

4.23 The Secretary clarified that that proposal was for vehicles which were popularly known as 'SUV' and also fulfilled remaining three conditions to be classified as a SUV.

4.24 The Hon'ble Member from Haryana further stated that there was a category of cars like Multi Utility Vehicle (MUV), which might also fulfil above conditions, but would not attract a higher rate of tax since that was not called a SUV.

4.25 The Hon'ble Chairperson asked JS TRU from where the definition of SUV was derived. JS, TRU responded that the definition of SUV was carried forward from the Central Excise regime. The Hon'ble Chairperson enquired about how the issue of compensation cess in case of other variants of vehicles like MUV that were available in the market would be addressed. JS, TRU responded that that aspect was yet to be seen.

4.26 The Chairman, CBIC suggested that other types of vehicles could also be included which satisfy the other three conditions as pointed out by the Hon'ble Member from Haryana. The Hon'ble Chairperson further enquired about the treatment of MUVs under that proposal.

4.27 The Chairman, CBIC suggested that MUVs might also be included in the Explanation for levy of higher rate of compensation cess @ 22% like SUVs. The Hon'ble Chairperson enquired whether the suggestion of Chairman, CBIC would satisfy the query of the Hon'ble Member from Haryana. The Hon'ble Member from Haryana responded that there was a need to restudy this proposal and bring that back in the future GST Council meetings to avoid any instances of tax evasion.

4.28 The Hon'ble Chairperson proposed that an additional line might be inserted in the clarification that that was applicable only to SUVs and as regards other descriptions of vehicle

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like MUVs, the matter should be studied and brought back before the Council in the upcoming meetings. The Hon'ble Member from Karnataka supported the view taken by the Hon'ble Chairperson.

4.29 The Hon'ble Member from Uttar Pradesh, referring to the agenda item on 'Rab' suggested that both Jaggery and 'Rab' were made from sugarcane juice and were mostly used by poor people. Thus the rate of GST on both Jaggery and Rab should be kept the same. He further stated that Rab was not a raw material for liquor preparation, so that should not attract GST rate of 18%.

4.30 The Hon'ble Chairperson clarified that the issue brought before the Council was only to clarify the classification of Rab. And that the clarification was necessitated as certain States had issued notices classifying Rab as similar to molasses under Chapter 1703 demanding 28% GST. No new tax had been proposed on Rab. If the Hon'ble Member from Uttar Pradesh wanted to propose a lower rate than 18% on Rab due to genuine reasons, that could be brought back before the Council as a separate agenda in the upcoming meetings.

4.31 The Secretary clarified that the proposal was only for the purpose of clarification on classification and applicable tax rate on Rab, as divergent tax rates were being made applicable on that item across the States. As already stated by the Hon'ble Chairperson, the suggestion for a lower tax rate on Rab could be brought back before the Council as a separate agenda in the upcoming meetings.

4.32 The Hon'ble Member from Punjab stated that the tax rate on ethyl alcohol supplied to refineries for blending with motor spirit (petrol) should not be decreased to 5% as it would lead to tax evasion in the State.

4.33 The Secretary clarified that the concessional GST rate of 5% was available only to Oil Marketing Companies (OMCs). The proposal was 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, keeping in view the implementation of the Ethanol Blending Programme.

4.34 The Secretary to the Council also clarified that the rate on Pencil Sharpener was increased from 12% to 18% on the basis of recommendation of GoM to rectify inverted duty structure and to address the inconsistency. The Hon'ble Chairperson further clarified that the proposal was only for removal of inversion in duty rate structure and to streamline the tax structure on the item. She stated that the inversion scenario on the item, quantum of refunds being given etc.

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could be examined in detail by the Fitment Committee and then a fresh proposal brought as to whether a lower rate of GST on pencil sharpeners could be considered.

4.35 Further, the Secretary stated that the Council may approve the existing proposals in Agenda-3 (a) whereas the issues raised by the Members regarding the lower tax rate on pencil sharpener; compensation cess on vehicles which were similar to SUV and fulfilling the mandated conditions; and lower GST rate on Rab would be taken up in the upcoming GST Council meetings after detailed deliberation by the Fitment Committee.

4.36 The Hon'ble Chairperson instructed that issues regarding enhanced Compensation Cess on vehicles which were similar to SUV, rate of tax on Rab and on pencil sharpeners because of duty inversion would be examined by the Committee again and brought back to the Council for decision as fresh proposals.

The Council approved the proposals as detailed in Agenda 3(a).

4.37 JS, TRU further informed the Council that no change was being proposed in the tax rates of items mentioned in agenda 3(b), while agenda 3(c) contained list of goods on which decision has been deferred for upcoming GST Council meetings.

4.38 The Hon'ble Member from Puducherry requested to reduce the GST rates from 18% to 12% on the items like water pump set, kitchen ware and spoon mentioned in agenda 3(b) respectively as farmers are totally dependent on ground water and no other source of water is available with them while kitchen items are used by common public specially by the women.

4.39 The Secretary clarified that these tax rates were adopted on the recommendations of the GoM/Fitment Committee to remove the inverted duty structure and he requested the Hon'ble Members that such issues should not be reopened so early with a view to providing certainty and consistency in tax policy.

4.40 The Hon'ble Member from Puducherry stated that the current system did not provide a mechanism to States/UTs to present their views and concerns before the Fitment Committee or GoM.

4.41 The Hon'ble Chairperson stated that the Hon'ble Member from Puducherry could raise his concerns to the Council in writing and the Fitment Committee would examine these concerns afresh in detail. As of now the agendas 3 (b) and 3 (c) could be approved.

The Council approved the proposals as detailed in Agendas 3 (b) and 3(c).

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4.42 JS, TRU further presented the agenda 3(d) i.e., Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services. She presented the following issues-

- 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
- Omission of 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.
- To clarify the applicability of GST on revenue apportioned by Indian Railways (IR) to SPVs and O&M costs charged by Indian Railways from SPVs.
- To clarify applicability of GST on Air Force Officers Mess.
- 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.
- To clarify the applicability of GST when the residential dwelling is rented by a person who is the proprietor of a proprietorship firm in his personal capacity for use as his own residential dwelling. The proposal was to amend the entry as well as insert an Explanation to the entry No. 12 of Notification No. 12/2017-CTR
- To specify a positive list of services under Sr. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate).

4.43 The Secretary informed the Council that on the issue of clarificatory circular regarding applicability of GST on Air Force Officers' Mess, a suggestion was received during the officers' meeting to include similarly placed messes also. He stated that if the Council agrees, the proposed circular may be suitably amended to include similarly placed messes.

4.44 JS, TRU informed the Council that pursuant to the suggestions received in the Officers' meeting it was proposed that only Explanation could be inserted in entry No. 12 of Notification No. 12/2017-CTR and the same could be issued only in respect of proprietorship concern, if agreed to by the Council. Further, it could be clarified that incentives paid to banks under the scheme for promotion of RuPay Debit Cards and BHIM-UPI transactions were in the nature of subsidies and thus, not taxable.

4.45 The Hon'ble Member from Tamil Nadu informed that in the meeting at Chandigarh, the State of Tamil Nadu had raised some concerns and submitted a list of concerns in writing also regarding positive list of services. He stated that where all States, Central and Local bodies service procurements were exempt, then imposing a list of positive services would result in additional expenditure and that might be seen as discriminatory against the local Self-Governance Principle. He suggested to leave the entire schedule as exempt for States, Central and Local bodies rather than specifying a positive list.

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4.46 The Hon'ble Member from Maharashtra suggested that a positive list of services should be specified to avoid ambiguity. Otherwise, States would have to come to Council every time for clarification.

4.47 The Hon'ble Member from Telangana sought exemption for minor irrigation work/maintenance services of minor irrigation tanks from GST as State of Telangana had around 46,000 minor irrigation tanks through which 25 lakh acres of land was being irrigated every year which attracted meagre or almost NIL material component. He further requested exemption of the Public Distribution System (PDS) related services like custom milling and transportation services from GST.

4.48 The Hon'ble Member from Delhi requested to follow the lists of functions enumerated in the Eleventh and Twelfth Schedules to Article 243G and Article 243W respectively and if there were instances of tax evasion then the Council can issue some clarifications rather than pruning the said lists. He stated that bringing a positive list would create a lot of ambiguity and confusion.

4.49 The Hon'ble Member from Karnataka suggested that if there were any other additional services then the Council should take that as specific cases. However, all the services which are as per the Constitution should be kept untouched.

4.50 The Hon'ble Member from West Bengal also suggested that there was no requirement to prune the list of services and all functions as listed out in Articles 243G and 243W of the Constitution should be exempted.

4.51 The Hon'ble Member from Uttar Pradesh, Gujarat, Goa, Tripura and Assam supported the proposal of the Fitment Committee to have a positive list of specified Services.

4.52 The Hon'ble Member from Andhra Pradesh requested to exempt pure manpower services which were hired by the Government or Government agencies and that in case of local bodies, entire services mentioned in Eleventh and Twelfth Schedules of the Constitution should be exempted.

4.53 The Hon'ble Member from Kerala suggested to take the issue later as it required more discussion.



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4.54 The Secretary stated that in GST regime there were no end use-based exemption in case of supply of goods to Government. However, in case of services during the Service Tax regime, the tax was collected by the Centre and appropriated by the Centre. Thus, there were certain end use-based exemptions available in case of specific services rendered to Central and State Governments. Under GST regime, the distinction between the Goods and the Services had been removed. He opined that end use exemption in the case of services should also be not there. He stated that the list of 12 services identified by the Fitment Committee covers 90% of the services rendered by the local authorities. Further, he suggested that certain works like construction of tanks etc. had more component of goods and including them would make it difficult for the tax authorities to ascertain whether it was supply of goods or services. Accordingly, the Council had recommended to come up with a pruned list of services under positive list.

4.55 The Hon'ble Member from Tamil Nadu stated that he did not agree that there was consensus on the issue and suggested that vote might be taken on the matter. He also requested that his dissent might be taken on record.

4.56 The Hon'ble Members from Delhi, Kerala, Andhra Pradesh and West Bengal stated that they did not agree with the proposal of the Fitment Committee to specify a positive list of services under Sr. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate).

4.57 The Hon'ble Chairperson, after duly considering the views of the Hon'ble Members, decided to postpone the discussion on the positive list of services for upcoming Council meetings.

The Council decided that all proposals under agenda item 3(d) were approved except the issue of specifying a positive list of services under Sr. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate) which was deferred.

4.58 JS, TRU then presented Agenda 3(e) where no changes were recommended by the Fitment Committee in respect of certain services.

4.59 The Secretary requested for comments from the Hon'ble Members on Agenda item 3(e).

4.60 The Hon'ble Member from Maharashtra raised the issue of GST rate on under construction apartments. In the same building, there were both residential units where no ITC is available as well as commercial units where ITC is available. He informed that it was very

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difficult to keep proper accounting in this scenario. He suggested that in case of residential building with mixed use, there should be uniform 10% GST with ITC on construction service.

The Council approved the proposals in Agenda 3(e).

4.61 JS, TRU further informed the Council that agenda 3(f) was regarding four issues which had been deferred.

The Council approved the proposals in Agenda 3(f).

4.62 The Hon'ble Members from Odisha and Telangana requested to exempt the levy of GST of 18% on Tendu leaves because it was a matter involving the livelihood of tribal people. Further, the Tendu leaves were used only in Bidi making which was leviable to GST @ 28% and there was no possibility of inverted duty structure.

4.63 The Hon'ble Chairperson requested the Hon'ble Members from Odisha and Telangana to forward their submissions to the Fitment Committee which in turn would study the issue in detail.

5. Agenda item 4: 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

The Secretary presented the Agenda No. 4 pertaining to the 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 and informed that this agenda was presented by the Joint Secretary, GST Council Secretariat during the officers meeting held on 16.12.2022 and there was unanimous acceptance by everyone on the proposal being made in that agenda (The detailed presentation attached as **Annexure-5**).

The Council took note of the same and approved the agenda.

6. Agenda item 5: 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, 2022 and November, 2022 for the information of the Council

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The Secretary presented the Agenda No. 5 regarding performance report of National Anti-Profiteering Authority (NAA) 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 and informed the Council that work of NAA had been shifted to Competition Commission of India from 01.12.2022 as per the decision of the GST Council in its 45th meeting.

The Council took note of the same and approved the agenda.

7. 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

7.1 The Secretary presented the Agenda No. 6 i.e., Ad-hoc exemption orders issued under Section 25(2) of the Customs Act, 1962 to be placed before GST Council for information. He informed that in the 26th meeting of the GST Council held on 10.03. 2018, it was decided that all ad-hoc exemption orders issued with the approval of the Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19.08. 2014 as was the case prior to the implementation of GST, shall be placed before the GST Council for information. The Secretary informed the Council that three Ad-hoc exemption orders had been issued since last meeting of the GST Council.

7.2 The Hon'ble Member from Tamil Nadu suggested the word 'for information' be replaced with 'deemed ratification' in case of ad-hoc exemption orders.

7.3 The Hon'ble Member from Goa suggested that it would not make any fundamental difference whether it was 'for information' or 'deemed ratification'. He suggested that present practice of placing ad-hoc exemption orders issued under Section 25(2) of the Customs Act, 1962 before the GST Council for information could be continued.

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

8. Agenda Item 7: Issues recommended by the Law Committee for the consideration of the GST Council

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 16th December, 2022 and there was an agreement in the Officers' meeting on most of the issues. He stated that in the Officers' meeting, concerns were raised on the agenda item pertaining to deletion of clause (d) of sub-rule (14) of Rule 138 of CGST Rules which was proposed for providing a uniform threshold for intra-state movement of goods and it was suggested that the agenda item need not be considered for approval by the Council. He requested Principal Commissioner, GST Policy Wing to make a presentation on the recommendations of the Law Committee and the discussions held in Officers' meeting on 16th December, 2022 on the same. The Principal Commissioner, GST Policy Wing accordingly made the detailed presentation (attached as **Annexure-4**) giving overview of the recommendations made by the Law Committee and the discussions in Officers' meeting on the said agenda.

8.1 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

8.1.1 Principal Commissioner, GST Policy Wing informed that Rule 8 (4A) of the CGST Rules, 2017 inserted vide Notification No. 94/2020-Central Tax dated 22.12.2020 provided for biometric-based Aadhaar authentication but the said provision is yet to be notified. He informed that the GoM on GST System Reforms in its first report had approved the proposal to improve the registration process by using mandatory biometric authentication for high-risk applicants for registration under GST and the pilot project is to be conducted in the State of Gujarat. The GoM had recommended mandatory physical verification only in case of high-risk applicants in cases where the Aadhaar authentication is not opted for or has failed. The issue was deliberated by the Law Committee and it had recommended mandatory physical verification in all cases where the Aadhaar authentication is not opted for or has failed.

8.1.2 Law Committee recommended substitution of Rule 8 (4A) of the CGST Rules, 2017 in order to mandate biometric-based Aadhaar authentication for high-risk applicants who opt for authentication of Aadhaar number. Further, Law Committee recommended insertion of sub-rule (4B) in Rule 8 of the CGST Rules, 2017 to provide for exemption from biometric-based Aadhaar authentication in States/UTs where the pilot project is not being undertaken. It also recommended amendment of sub-rule (5) of Rule 8 of the said Rules in order to provide that acknowledgement shall be issued to the applicant only after completion of biometric-based authentication. In addition, Law Committee recommended amendment to said Rule 9 to provide



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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. The Principal Commissioner, GST Policy Wing further mentioned that Law Committee had also recommended that the above amendments to Rules 8(4A), 8(5) and 9 may be made only in Gujarat SGST Rules, 2017 and in the CGST Rules, 2017 at this stage. He added that Rule 8(4B) needs to be introduced only in the CGST Rules, 2017 and that Centre will need to issue a Notification under Rule 8(4B) for specifying all States and UTs, except State of Gujarat, where provisions of Rule 8(4A) will not apply.

8.1.3 The Hon'ble Member from Haryana stated that at present, the time limit for verification of registration applications in non-Aadhaar cases is 30 days and he requested that the time limit for such non-Aadhaar based verification be raised to 90 days as many fake companies get deemed registered after a period of 30 days. He requested the council to increase the time limit for verification to either 90 days or to 60 days in order to enable the officers to physically verify those companies.

8.1.4 The Secretary clarified that the time limit for processing of the application of registration in cases, where Aadhaar number was not authenticated, had been kept at 30 days in line with ease of doing business for providing registration as quickly as possible.

B. Incorporation of details of electricity bill and property registration in FORM GST REG-01

8.1.5 Principal Commissioner, GST Policy Wing informed that the Group of Ministers on GST System Reforms in its first report had approved the proposal to include Electricity Bill meta data (CA No.) as a data field during registration by new taxpayers and that the CA Number shall be verified to improve the quality of registered address. The States of Maharashtra and Madhya Pradesh had agreed to carry out the pilot project for the same. Besides, the State of Madhya Pradesh had also volunteered for the pilot project for validation of the property registration details from the Land Revenue department.

8.1.6 The issue was deliberated by the Law Committee and recommended that the details of Electricity consumer account number (CA Number) and Property registration be sought under State Specific Information at Sl. No. 24 of FORM GST REG-01. It further recommended that the details of Electricity CA Number could be notified under said Sl. No. 24 by the State of Maharashtra and details of Electricity CA Number and property registration could be notified under said Sl. No. 24 by the State of Madhya Pradesh.



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8.1.7 The Hon'ble Member from Madhya Pradesh thanked the Council for considering their proposal to make the registration process effective. He further submitted that if the documents such as electricity bill or documents related to place of registration submitted by the applicant during the registration process were verified through API, then that would curb the practice of obtaining registration through forged documents. The Hon'ble Member from Madhya Pradesh thanked the Council for including their State in the pilot project. He further stated that as most of the applications of new registration were received from urban areas, therefore, there was a need to utilize the database of Land Revenue department as well as Urban Development department for verification of place of registration and thus, that was advisable to include Urban Development department in point no. 5 & 6 (3) of Agenda item 7(i)(b).

8.1.8 The Secretary informed the Hon'ble Member that this issue was also discussed during the Officers' meeting and that the suggestion of Madhya Pradesh had been taken note of for doing the needful.

C. Enhancement in GST Registration to restrict misuse of PAN

8.1.9 Principal Commissioner, GST Policy Wing informed that at present GST Registration was PAN-based. However, OTP-based verification in Part-A of FORM GST REG-01 was done to verify only the mobile number and email address provided by the authorized signatory and no intimation was sent to the mobile number and email address of the PAN holder when a GST registration was applied for. It was stated that that communication gap might result in misuse of PAN of a person, without his knowledge, by unscrupulous elements.

8.1.10 The issue was deliberated by the Law Committee and it recommended that PAN-linked mobile number and email address (fetched from CBDT database) might be captured and recorded in FORM GST REG-01 and further, OTP based verification in Part-A of FORM GST REG-01 might be done only on PAN-linked mobile and email address, instead of authorised signatory's self-declared mobile number and email address.

8.1.11 Accordingly, Law Committee proposed amendments in CGST Rules and FORM GST REG-01 as detailed in the agenda note.

The Council agreed with the said recommendations of the Law Committee in agenda item 7(i).

8.2 Agenda Item 7(ii): Refund to unregistered persons



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8.2.1 Principal Commissioner, GST Policy Wing stated that representations had been received from unregistered buyers/recipients 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/buildings or on termination of long-term insurance policy etc. wherein they had paid the consideration/premium in full/part, along with the applicable tax.

8.2.2 Those issues were discussed in the Law Committee and it was observed that under Section 54(1) of CGST Act, 2017, there was no restriction under GST law for any unregistered person from claiming refund. Further, it was observed that Section 54(8)(e) of the said Act, provides that the refund 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. GSTN had also introduced a new functionality which allowed unregistered persons to take a temporary registration and apply for refund under the category '*Refund for Unregistered person*'. The Law Committee recommended amendments in CGST Rules, 2017 as detailed in the agenda note and for issuance of a Circular for clarifying the procedure for filing application by the unregistered persons for 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/buildings or on termination of long-term insurance policy and processing of such refunds.

8.2.3 Principal Commissioner, GST Policy Wing also mentioned that in case of refund by a person, other than the supplier, the relevant date for filing refund application would be the date of receipt of goods or services as per clause (g) of Explanation (2) under Section 54 of the CGST Act. The Law Committee observed that in respect of cases where the supplier and the unregistered person had entered into a long-term contract/agreement for the supply, with the provision of making payment in advance or in installments but if the contract was cancelled/terminated before supply of service, partially or fully, for any reason, there might be no date of receipt of service, to the extent supply had not been made/rendered. In this regard, Law Committee recommended that for the purpose of determining relevant date in such cases 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 might be considered as the date of receipt of the services by the applicant.

The Council agreed with the recommendations of the Law Committee detailed in agenda item 7(ii), along with the proposed amendments in CGST Rules, 2017 and the proposed Circular.



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8.3 Agenda Item 7 (iii): Decriminalization of the CGST Act, 2017

8.3.1 Principal Commissioner, GST Policy Wing informed that 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 also deliberated that there might be a need to examine whether any enhancement was required in the threshold for prosecution of offences under Section 132 of the Central Goods and Services Tax Act, 2017.

8.3.2 Accordingly, Law Committee 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. The Law Committee proposed several amendments in GST law as detailed out in the agenda note for decriminalizing various provisions of the GST Act.

8.3.3 The Law Committee recommended that the offences specified in clauses (g), (j) and (k) of sub-section (1) of Section 132 are specifically covered and are punishable under Indian Penal Code, and therefore, these types of offences may be excluded from prosecution under the CGST Act, 2017. It further recommended deletion of clause (iii) of sub-section (1) of Section 132 of the CGST Act, 2017 so that the monetary limit for prosecution is raised to Rs two crore from the current Rs one crore. The Law Committee also recommended to reduce the range of compounding amount to minimum of 25% of the tax amount to maximum of 100% of tax amount in the CGST Act, 2017. The Principal Commissioner, GST Policy Wing informed the Council that during the Officers' meeting, the States of Punjab and Tamil Nadu were of the view that the threshold for prosecution might not be changed for issuers of fake invoices. He stated that detailed deliberations took place on that proposal in the officers' meeting wherein general view was that the proposal made in the agenda note, as recommended by Law Committee, might be agreed to at present and in future, if any misutilization of those provisions was noticed, then the same would be re-visited.

8.3.4 The Hon'ble Member from Tamil Nadu stated that they agreed with proposal for decriminalization of GST Law, except in respect of bill traders who are a bane on the system. He stated that increasing the monetary limit for prosecution to Rs two crore from the current Rs one crore will have serious implications on revenue. He mentioned that in their State, they had detected 471 cases under Rs. one crore with a revenue implication of Rs. 222 crore. He stated if the limit is raised from Rs. one crore to Rs. two crore, only 241 cases could be prosecuted with a revenue implication of Rs. 350 crore. He stated that since bill trading causes greatest revenue loss, therefore bill trading upto Rs. 2 crore should not be decriminalized and threshold should be retained at Rs. one crore as indicated by the data. He further stated that that was quite difficult

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to prosecute such bill traders as civil cases and that was much more effective to prosecute them as criminal cases.

8.3.5 The Hon'ble Member from Puducherry stated that they completely agreed with the views of State of Tamil Nadu and added that in small UTs like Puducherry, it would not be possible for them to book cases if the threshold for prosecution was raised to Rs. two crore.

8.3.6 The Hon'ble Member from Goa stated that if the threshold for prosecution was increased to Rs. two crore then many cases would go out of the prosecution net. He stated that the threshold should be maintained at Rs. one crore so that there was some fear in dodging the payment of GST especially in case of trading of invoices.

8.3.7 The Hon'ble Member from Kerala stated that the limit for prosecution should continue at the present threshold, especially with regard to the bill trading. He suggested that the existing provisions could be continued as of now and the enhancement of threshold might be considered at a later stage.

8.3.8 The Hon'ble Member from Punjab stated that it would be desirable if the limit for prosecution for fake invoices cases could be brought down to 10 lakh rupees.

8.3.9 The Secretary presented before the Council the statistics of arrest and prosecution cases made by CBIC formations. He informed that a total of 1074 cases of arrest were made by CBIC and that majority of cases were more than Rs. 50 crore i.e. 254 cases and in Rs. 30-50 crore limit, there were 106 cases. Thus, the majority of cases pertained to high evasion cases involving amounts of more than Rs 2 crore. The Secretary stated that the Council could consider these statistics while deciding on the issue of threshold limit for prosecution of cases.

8.3.10 The Hon'ble Member from Tamil Nadu stated that besides CBIC, States were also filing prosecutions for GST offences. He also mentioned that whether prosecuted or not, the deterrence value of criminality was a significant component for deciding about the threshold for prosecution. He mentioned that as per his understanding, all the members who had spoken on the agenda item, appeared to be in favour of either keeping the limit at Rs. one crore or lowering that further. He mentioned that offence of issuance of fake bills came under a separate subsection and therefore, there should not be any difficulty in imposing different limit for prosecution of Rs. one crore for bill trading and Rs. two crore for other violations. The Member further stated that at the end of the day, the GST Council, which comprised elected representatives of the different governments, should be the deciding body. The Hon'ble Member stated that that was his humble submission that once the Committee had submitted the report



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then the decision should be that of the Members and in cases where there was unanimous view from Members then that should be taken as consensus.

8.3.11 The Hon'ble Chairperson thanked the Member from Tamil Nadu for his inputs and assured him that when the Law Committee or Fitment Committee recommendations were brought to the Council then that was for the Council to decide on the recommendations. The Hon'ble Chairperson further stated that she would like to gently remind the Council that even if there were one or two voices that were different then that was her understanding that until everyone was convinced there was no unanimity. The Hon'ble Chairperson added that she was conscious that in the meeting there was no majority or unanimity of opinion on the agenda item and that there were voices on both sides.

8.3.12 The Hon'ble Member from Maharashtra stated that they totally supported the proposal made by the Law committee as statistics given by the Secretary held true even for the State of Maharashtra. The Hon'ble Member further elaborated that that was often seen that although that had deterrence value, that was impractical to prosecute so many people. He further stated that when the whole country was moving towards decriminalization, that was a very valid decision to raise the threshold for prosecution in GST to Rs. two crore.

8.3.13 The Hon'ble Member from Chhattisgarh stated that that was a very wise decision for the Chairperson to call for unanimity and he stated that they would go by the decision of the Hon'ble Chairperson.

8.3.14 The Hon'ble Member from Goa stated that there were valid points on both sides and the decision on the said agenda could be left to the decision of the Chairperson of the Council.

8.3.15 The Hon'ble Member from Kerala stated that the Council could continue with the present threshold and in future the matter could be relooked at. He further stated that their State was dealing with large number of cases on bill trading, therefore, deterrence must be there.

8.3.16 The Hon'ble Member from Jharkhand stated that there was no disagreement with the proposal in the said agenda.

8.3.17 The Hon'ble Chairperson stated that while threshold for prosecution might be increased from Rs 1 crore to Rs 2 crore for all other offences, however, for issuance of fake invoices, the threshold limit could be retained at Rs. one crore, instead of raising that to Rs. two crore. The Hon'ble Chairperson left the decision open to the Council and requested the members to speak.

8.3.18 The Hon'ble Member from Tamil Nadu stated that he fully agreed with the Hon'ble Chairperson.

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The Council agreed with the recommendation of the Law Committee in agenda item 7(iii) with modification that the threshold for prosecution be increased to Rs 2 crore from Rs 1 crore for all offences, other than the offence pertaining to issuance of fake invoices.

8.4 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.

8.4.1 Principal Commissioner, GST Policy Wing informed that the provisions of Section 56 of the CGST Act, 2017, Rule 94 of the CGST Rules, 2017 and Para 34 of the Master Circular No. 125/44/2019-GST dated 18.11.2019 did not provide for any exceptions from payment of interest in cases of delayed refunds, where the delay in sanction or payment of refund was attributable to the applicant, as detailed in the agenda note, on account of not filing reply in prescribed time limit or seeking additional time to file documents/reply or for personal hearing. Further, there could be instances where the refund was sanctioned 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 or wrong details of bank account submitted by the applicant.

8.4.2 The Law Committee deliberated on that issue and recommended amendment in Section 56 of the CGST Act, 2017 in order to provide enabling provision 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. The Law Committee also recommended amendment in Rule 94 of the said Rules for prescribing the manner of computation of period of delay for purpose of calculation of interest payable on delayed refund.

The Council agreed with the recommendation of the Law Committee in agenda item 7(iv).

8.5 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.

8.5.1 Principal Commissioner, GST Policy Wing informed that in cases where the Appellate Authority/Appellate Tribunal/Court held that the notice under sub-section (1) of Section 74 of CGST Act, 2017 was not sustainable for the reason that the charges of fraud or wilful misstatement or suppression of facts to evade tax had not been established against the person to whom the notice was issued and directed the proper officer to determine the tax payable by such person deeming the notice to be issued under sub-section (1) of Section 73 of CGST Act, 2017,



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field formations were seeking clarification regarding the time limit within which the proper officer was 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 the time limit for issuance of order as per sub-section (10) of Section 73 was already over. Doubts had 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.

8.5.2 The Law Committee deliberated on the issue and recommended issuance of a circular for clarifying the doubts. The draft Circular had been placed as annexure to the detailed agenda note.

8.5.3 The Hon'ble Member from Madhya Pradesh stated that they agreed with the Circular. He further informed that as per existing provisions of the Act, there were different time limits to issue notices under Sections 73 and 74 respectively and that many cases were being unearthed due to advanced techniques of Data Analytics and various GST related portals and accordingly to protect the revenue interest of the state, tax administration was issuing many notices under Section 73. Keeping those circumstances into consideration, the time limit for issuing notices under Section 73 needed to be increased from present time limit of 3 years to 5 years, as had been prescribed for Section 74.

The Council agreed with the recommendation of the Law Committee made in agenda item 7(v), along with the proposed Circular.

8.6 Agenda Item 7 (vi): Amendment in the CGST Rules, 2017

8.6.1 Principal Commissioner, GST Policy Wing informed that in the Officers' meeting, there was a general agreement on proposed amendments in respect of various Rules except on the proposal regarding deletion of clause (d) of sub-rule (14) of Rule 138 of CGST Rules. He further informed that States of Tamil Nadu, Punjab, Rajasthan, Maharashtra, Delhi, Kerala and Chhattisgarh had expressed reservation on the proposal to delete clause (d) of sub-rule (14) of Rule 138 of CGST Rules and therefore, it was recommended that the agenda in respect of deletion of clause (d) of sub-rule (14) of Rule 138 of CGST Rules, 2017 might not be considered for approval.

He also informed that *pari materia* changes would also be required in the respective SGST Rules. He then proceeded to discuss various proposals in the agenda in detail.



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I. Amendment in sub-rule (3) of Rule 12

8.6.2 Principal Commissioner, GST Policy Wing informed that references had been received from trade that there was no option available 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 was also no option presently for a TDS registrant to apply for cancellation of TDS registration.

8.6.3 The Law Committee deliberated on the issue and 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 Council agreed with the recommendation of the Law Committee.

II. Amendment in sub-rule (1) of Rule 37

8.6.4 Principal Commissioner, GST Policy Wing informed that the second proviso to Section 16 (2) of the CGST Act, 2017 provides for 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.

8.6.5 He mentioned that such recipients had to follow the procedure prescribed in Rule 37(1) of the CGST Rules, 2017. However, the said Rule had been amended with effect from 01.10.2022 *vide* Notification No. 19/2022 - CT dated 28.09.2022 and the amended Rule 37(1) required the said recipient to pay an amount equal to the input tax credit availed in respect of such supply. That gave an impression that the whole of ITC pertaining to such supply was to be reversed even though a part of the payment could have been made by the recipient to the supplier. That appeared to be an inadvertent departure from the principle of proportionate reversal under the original rule. To rectify the anomaly, the Law Committee recommended that sub-rule (1) of Rule 37 be amended retrospectively with effect from 01.10.2022 to provide for reversal of an amount of input tax credit proportionate to the amount not paid by the recipient to the supplier vis a vis the invoice value.

The Council agreed with the recommendation of the Law Committee.

III. Insertion of Rule 37A

8.6.6 Principal Commissioner, GST Policy Wing informed that sub-section (2) of Section 41 of the CGST Act, 2017, as substituted by Notification No. 18/2022-CT, provides for reversal

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of input tax credit availed by recipient of such supplies where tax payable has not been paid by supplier and re-availment of the said ITC after payment of tax by the said supplier. The Law Committee had deliberated the manner in which such ITC could be reversed and re-availed and after considering the various practical issues in the implementation of the said provision and for ease of doing business, the Law Committee recommended insertion of a new Rule 37A in CGST Rules, 2017 detailing out the mechanism for such reversal of credit and re-availment thereof. Principal Commissioner, GST Policy Wing stated that while there was agreement on this agenda in Officers' Committee meeting, a suggestion was made by State of Bihar that GSTN may provide a functionality for making the data pertaining to Rule 37A available to the tax officers and the same was agreed to.

The Council approved the recommendation made by the Law Committee.

IV. Amendment in Rule 46

8.6.7 Principal Commissioner, GST Policy Wing informed that in case of supply of services to unregistered persons through online platforms, in particular, recipients' addresses were not properly captured, which affected flow of revenue to the appropriate destination states.

8.6.8 Law Committee had deliberated on that issue and recommended insertion of a proviso to clause (f) of Rule 46 of CGST Rules, 2017 to ensure mandatory recording of address of unregistered recipients of service along with the PIN code when the said services were provided through online platform by a registered person even if the value of taxable supply was less than fifty thousand rupees.

8.6.9 The Hon'ble Member from Telangana welcomed the amendment to the tax invoice rules under Rule 46, but he stated that they had some concerns on the said issue especially in relation to Telecom sector. He added that in case of telecom services, the addresses of consumers were not provided by telecom operators to their distributors such as PhonePe, Paytm, BillDesk etc. He further stated that when the consumers purchased data from the said distributors, those distributors were not allowed to collect the address and the operators did not provide those details to distributors due to TRAI Rules. The Hon'ble Member stated that the TRAI Rules neither allowed the collection of details of addresses nor did that allowed sharing of addresses. He added that the State of Telangana received about Rs. 600 crore on such business transactions and therefore, requested intervention of the Council to address the issue. The Hon'ble Member further cited the example of BillDesk, which was a payment gateway and distributor for telecom, who had declared the Place of supply as their State for last 5 years (July, 2017 – April, 2022) and he stated that after much persuasion the telecom operators had shared the State of consumer



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and thereafter, BillDesk started paying IGST from May, 2022 onwards. He submitted that the State was then receiving Rs. 8 crore per month from the tax payer. Therefore, he emphasized that there might be cases of similarly placed taxpayers in the State. The Hon'ble Member requested GSTN and Law committee to take note of that issue and to come up with some rectification/clarification.

8.6.10 The Secretary clarified that the present proposal in the agenda item was to take care of such cases and that after the amendment proposed in that agenda item, the name, address and other details of recipient i.e. user would be required to be provided by the supplier of services on the tax invoice if the services were rendered through online platform.

The Council agreed with the recommendation of the Law Committee.

V. Amendment in Rule 46A

8.6.11 Principal Commissioner, GST Policy Wing mentioned that Rule 46 of the CGST/SGST Rules, 2017 prescribes the particulars that a tax invoice issued by a registered person should contain and Rule 49 of the said Rules prescribes the particulars that are to be included in a bill of supply issued by a supplier. Rule 54 of the said Rules further prescribes the particulars in respect of tax invoices issued in special cases. Rule 46A of the CGST/SGST Rules 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".

8.6.12 The said issue was deliberated by the Law committee, and it was felt that Rule 46A needed to be amended accordingly to make that obligatory on the part of a registered person, who was 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 a single "invoice-cum-bill of supply". The proposed amendment to Rule 46A is detailed in the agenda note.

The Council agreed with the recommendation of the Law Committee.



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VI. Insertion of proviso in sub-rule (8) of Rule 87

8.6.13 Principal Commissioner, GST Policy Wing informed that in cases where bank fails to communicate the CIN details of taxes paid through e-payment mode to GST System for updating the Electronic Cash Ledger (ECL), the ECL of such taxpayers are updated next day on the basis of RBI e-Scroll file containing the successful payment made against the CINs as shared by banks with RBI. However, there is presently no provision in the CGST Rules, 2017 providing for such updation of ECL based on e-Scroll of RBI. In this regard, CAG has highlighted the need for having a specific provision in law for updation of ECL on the basis of e-Scroll of RBI.

8.6.14 The issue was deliberated by the Law committee and in order to regularize the process of updating ECL of the taxpayer on the basis of e-Scroll data received from the RBI in the cases where payment has been received successfully but bank fails to share the signed CIN with GST System, the Law Committee had recommended for amendment of Rule 87 of CGST Rules by inserting a new proviso to sub-rule (8) of Rule 87 of the CGST Rules, 2017. The proposed amendment to Rule 87 is detailed in the agenda note.

The Council agreed with the recommendation of the Law Committee.

VII. Amendment in Rule 108 and Rule 109

8.6.15 Principal Commissioner, GST Policy Wing further mentioned that in terms of Section 107 (1) 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 CGST Act 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.

8.6.16 Further, as per Rule 108 (3) of the CGST Rules, in respect of an appeal filed in terms of the provisions of Section 107 (1) 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. The date of filing appeal in case where certified copy is submitted within seven days of filing appeal is the date of issuance of provisional acknowledgement, otherwise it is the date of submission of the certified copy.



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8.6.17 Similarly, Rule 109 (2) 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.

8.6.18 Law Committee deliberated on the issue and observed that 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. 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. 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 from entertaining the same.

8.6.19 Law Committee accordingly 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 might be made in sub-rule (3) of Rule 108 and in Rule 109 of the CGST Rules, 2017 and Form GST APL-02. The details of the same are provided in the agenda note.

The Council agreed with the recommendation of the Law Committee.

VIII. Insertion of Rule 109C

8.6.20 Principal Commissioner, GST Policy Wing informed that while Sections 107(1) & 107(2) of CGST Act, 2017 provide for filing of appeal before first appellate authority against decision or orders of adjudicating authority by aggrieved person or authorized officer respectively. However, there was no provision in the CGST Act/Rules for withdrawal of such an appeal either by aggrieved person or authorized officers.

8.6.21 The issue was deliberated by the Law Committee and it recommended insertion of Rule 109C in CGST Rules, 2017 to provide for withdrawal of appeal before the issuance of SCN or Order under Section 107 (11), whichever is earlier. Further, Law Committee 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 Council agreed with the recommendation of the Law Committee.

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IX. Deletion of clause (d) of sub-rule (14) of Rule 138

8.6.22 The Principal Commissioner, GST Policy Wing informed the Council that in the Officers' meeting held on 16th December 2022, the officers from the States of Tamil Nadu, Punjab, Rajasthan, Maharashtra, Delhi, Kerala and Chhattisgarh had expressed reservation on the proposal to delete clause (d) of sub-rule (14) of Rule 138 of CGST Rules. Accordingly, it was proposed that the agenda might not be considered by the Council for approval.

The Council did not take up this agenda item for consideration.

X. Amendment in entry (5) of Annexure appended to sub-rule (14) of Rule 138

8.6.23 Principal Commissioner, GST Policy Wing further informed that entry nos. 4 & 5 of the Annexure appended to clause (a) of sub-rule (14) of Rule 138 of the CGST/SGST Rules, 2017 exempt the generation of e-way bill for transportation of goods falling under Chapter 71 of First Schedule to the Customs Tariff Act, 1975, including imitation jewellery. In the interest of revenue, field formations had suggested to mandate requirement of generation of e-waybill for movement of consignments of imitation jewellery, an item which was prone to tax evasion. Further, security concerns associated with transportation of gold, silver and other precious metals are not applicable to the transportation of imitation jewellery.

8.6.24 Law Committee 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.

The Council agreed with the recommendation of the Law Committee.

XI. Substitution of FORM GST REG-19

8.6.25 Principal Commissioner, GST Policy mentioned that Rule 22(3) of CGST Rules, 2017 provides for an order of cancellation of registration under FORM GST REG-19. The Form contains a list of options to choose from to bring out reason for cancellation of registration. However, it was felt that there could be more scenarios based on whether the reply to the show cause notice had been submitted or not and whether the concerned person had appeared for personal hearing or not to include more scenarios. Further, FORM GST REG-19 also provided

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for a table for "Determination of amount payable pursuant to cancellation", which may create confusion if no amount was filled in the said table by the officer.

8.6.26 The Law Committee deliberated on the issue and recommended that FORM GST REG-19 may be substituted to include a more elaborate list of options to clarify the order of cancellation and also to include certain other compliances due such as furnishing the pending returns and the final return. The Law Committee also recommended to remove the table for "Determination of amount payable pursuant to cancellation" from FORM GST REG-19.

The Council agreed with the recommendation of the Law Committee made in agenda item.

XII. Amendment in FORM GST REG-17

8.6.27 Principal Commissioner, GST Policy mentioned that under Rule 22(1) of CGST Rules, 2017, FORM GST REG-17 is regarding 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 deliberated on this issue and has recommended incorporating the proposal made by GSTN at the end of FORM GST REG-17.

The Council agreed with the recommendation of the Law Committee.

XIII. Amendment in FORM GST DRC-03

8.6.28 Principal Commissioner, GST Policy mentioned that Circular No. 174/06/2022-GST dated 06.07.2022 prescribes the manner for re-credit of amount of erroneous refund deposited by the taxpayer, in terms of provisions of sub-rule (4B) of Rule 87 of CGST Rules, 2017 in electronic credit ledger using FORM GST PMT-03A. In this regard, GSTN had been requested to make certain amendments in FORM GST DRC-03 to include more options in the drop-down regarding cause of payment as detailed in the agenda note. GSTN had also 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 as prescribed under Circular No. 174/06/2022-GST dated 06.07.2022 in terms of provisions of sub-rule (4B) of Rule 87.

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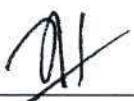
8.6.29 Accordingly, GSTN had proposed certain amendments in FORM GST DRC-03 before the Law Committee and after discussion, the Law Committee had recommended the requisite changes in FORM GST DRC-03 as detailed out in the agenda.

The Council agreed with the recommendation of the Law Committee.

8.7 Agenda Item 7(vii): Supplies by unregistered person and composition dealers through e-commerce operators

8.7.1 Principal Commissioner, GST Policy informed that the GST Council in its 47th meeting held on 28th-29th June had given in-principle approval for relaxation in the provisions for supplies by unregistered person and composition dealers making supplies through e-commerce Operators (ECOs), as detailed in the agenda. The Council had also mandated Law Committee to work out the details of the scheme.

8.7.2 The Law Committee deliberated on the requisite legal changes required to implement the recommendations of the Council. It recommended that for unregistered persons, 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 e-commerce operators, subject to certain conditions. Further, two separate notifications needed to be issued under Section 148 of the CGST Act, 2017 for providing special procedure to be followed by the electronic commerce operators, one in respect of supplies of goods through them by unregistered persons and second, in respect of supplies of goods through them by composition taxpayers. Law Committee also recommended that FORM GSTR-8 might be amended for capturing the information of supplies made by unregistered suppliers through e-commerce operators by insertion of two tables in FORM GSTR-8. In addition, it also recommended that Rule 67(2) of CGST Rules, 2017 might 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 the supplies by unregistered persons do not attract TCS. For composition taxpayers, to remove the condition restricting registered persons engaged in supplying through electronic commerce operators from opting for the Composition Levy, Law Committee recommended that clause (d) to sub-section (2) and clause (c) to sub-section (2A) of Section 10 of CGST Act, 2017 might be amended. Law Committee further recommended insertion of sub-section (1B) in Section 122 of CGST Act, 2017 providing for penal provisions in cases of violation of compliances on part of the e-commerce operators in respect of the supplies made by unregistered persons and Composition taxpayers through them. Further, Law Committee also recommended that considering the time



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required for development of requisite functionality on the portal as well as preparedness by ECOs, the implementation of scheme might be deferred to 01.10.2023.

8.7.3 The Hon'ble Member from Haryana stated that there was requirement for a validation on the portal that an unregistered supplier should not be able to get enrolment on the portal from more than one State. Principal Commissioner, GST Policy Wing clarified that GSTN would be requested to put such a validation on the portal, so as to ensure that an unregistered person does not get enrolled in two or more States.

The Council agreed with the recommendation of the Law Committee along with the draft Notifications.

8.8 Agenda Item 7(viii): Amendments in the CGST Act, 2017

A. Amendment in second proviso to Section 16 of CGST Act to align with GSTR-1/3B

8.8.1 Principal Commissioner, GST Policy Wing mentioned that in the 42nd GST Council meeting, held in October 2020, it was recommended that the GST laws be amended to make the present GSTR-1/3B return filing system as the default return filing system. Accordingly, amendments were carried out vide the Finance Act, 2022 and were notified w.e.f. 01.10.2022. In this regard, Law Committee 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 as detailed in the agenda.

The Council agreed with the recommendation of the Law Committee.

B. Amendment to Section 23 to provide overriding effect over Sections 22(1) & 24

8.8.2 Section 22 of 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. However, existing Section 23 does not have any clause overriding the registration requirement imposed vide Section 24 and Section 22(1). Therefore, it was discussed that doubts had arisen as to whether provisions of compulsory registration under Section 24 prevail over the exemption under Section 23.

8.8.3 Accordingly, the Law Committee deliberated on this issue and 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 detailed in agenda.

The Council agreed with the recommendation of the Law Committee.

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C. Amendments in CGST Act, 2017 to restrict filing of returns/statements after completion of specified time in view of data archival policy

8.8.4 Principal Commissioner, GST Policy mentioned that GST System has completed more than five years. GSTN has informed that 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. Therefore, GSTN proposed a data archival policy for the smooth functioning of the GST Portal and also to provide superior experience to the taxpayers.

8.8.5 While deliberating on the proposed data archival policy for GST portal, the Law Committee 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 be amended by inserting sub-section (5) in Section 37 and sub-section (11) in Section 39 of the CGST Act, 2017. Law committee also recommended inserting sub-section (2) in Section 44 and sub-section (15) in Section 52 of the CGST Act, 2017.

The Council agreed with the recommendation of the Law Committee.

D. Proposal for amendment of sub-section (6) of Section 54 of CGST Act, 2017

8.8.6 Sub-section (6) of Section 54 of the CGST 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. The concept of 'provisionally accepted input tax credit' was related to the GSTR-1-2-3 system of return filing which was never 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 an undertaking in relation to Sections 16(2)(c) and 42(2) of the CGST Act, 2017. Further, Section 41 of the CGST Act, 2017 provided for availing 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.

8.8.7 Accordingly, it was proposed that as the provision relating to availment of input tax credit on provisional basis has been done away with, the words "*excluding the amount of input tax credit provisionally accepted,*" in sub-section (6) of Section 54 of the CGST Act might be



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omitted. The Law Committee deliberated on this issue and recommended the proposed amendment in sub-section (6) of Section 54 of the CGST Act.

The Council agreed with the recommendation of the Law Committee.

8.9 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.

8.9.1 Principal Commissioner, GST Policy Wing mentioned that 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.

8.9.2 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 e-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 operators in their respective returns in FORM GSTR-3B. However, there is no separate table in FORM GSTR-1 to furnish the aforementioned details.

8.9.3 The issue was deliberated by the Law Committee which recommended certain changes in FORM GSTR-1 to capture details of the supplies made through e-commerce operators attracting TCS, as well as those on which e-commerce operator is required to pay tax under sub-section (5) of Section 9 of CGST Act, 2017. The changes recommended by the Law Committee in FORM GSTR-1 are enclosed as Annexure to the agenda note.

The Council agreed with the recommendation of the Law Committee in relation to FORM GSTR-1.

8.10 Agenda Item 7(x): Retrospective applicability of paras 7, 8(a) and 8(b) of Schedule III of the CGST Act, 2017

8.10.1 Principal Commissioner, GST Policy Wing further mentioned that Para 7 of Schedule III to CGST Act, 2017 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



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which is to be treated as neither supply of goods or services. Para 8(a) of Schedule III of CGST Act, 2017 provides that supply of warehoused goods to any person before clearance for home consumption will be treated neither as a supply of goods nor a supply of services. Similarly, as per Para 8(b) of Schedule III of CGST Act, High Sea Sales are to be treated neither as a supply of goods nor a supply of services. The said paras were inserted in Schedule III of CGST Act vide the Central Goods and Services Tax (Amendment) Act, 2018 and were made applicable vide Notification No. 02/2019-Central Tax dated 29.01.2019 with effect from 01.02.2019. 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. However, taxpayers were of view that amendment made in Paras 7, 8(a) & 8(b) of Schedule III to Central Goods and Services Tax Act, 2017 (CGST Act), all of which are activities to be treated as neither supply of goods or services, with effect from 01.02.2019, should be made applicable with effect from 01.07.2017. The detailed discussion is provided in the agenda.

8.10.2 Law Committee deliberated on this issue and felt that 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 Paras 7, 8(a) and 8(b) of Schedule III of CGST Act, 2017 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. The Law Committee recommended that Paras 7, 8(a) and 8(b) in Schedule III should have retrospective effect w.e.f. 01.07.2017. The Law Committee also recommended that in cases where any tax has already been paid in respect of transactions/supplies covered under Paras 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.

The Council agreed with the recommendations of the Law Committee.

8.11 Agenda Item 7 (xi):- Mechanism to deal with differences in liabilities between GSTR-1 and GSTR-3B, along with draft rules and FORM DRC-01B for implementing the same.

8.11.1 Principal Commissioner, GST Policy Wing presented the agenda item before the Council and stated that Law Committee had deliberated upon the ways to safeguard revenue by finding a mechanism for dealing with difference in liability reported in statement of outward supplies between FORM GSTR-1 and FORM GSTR-3B. Further, he informed that the Law Committee felt that the 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. After deliberation, the Law Committee recommended 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 specified extent,



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the registered person could be intimated on the portal of such difference and be directed to either pay the differential tax liability along with interest, or explain the difference and unless the taxpayer either deposits the amount specified in the said intimation or furnishes a reply explaining the reasons for any amount remaining unpaid, such a person should not be allowed to file FORM GSTR-1/ invoice furnishing facility for the subsequent tax period.

8.11.2 In this regard, Law Committee recommended insertion of a new Rule 88C in CGST Rules, 2017 for giving intimation to the taxpayer through the portal of difference in liability in FORM GSTR-1 and FORM GSTR-3B and to request payment of the differential liability or explain the difference. To begin with, it was recommended that 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 lakh may be taken for the purpose of intimation under proposed Rule 88C(1). Law Committee also recommended for insertion of FORM GST DRC-01B as required under Rule 88C(1).

8.11.3 Further, Law Committee recommended insertion of a new clause (d) in sub-rule (6) of Rule 59 of CGST Rules, 2017 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.

8.11.4 It was further informed that Law Committee would be formulating 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.

8.11.5 The Hon'ble Member from Haryana stated that the issue of FORM GST DRC-01B was also discussed in the Officers' Meeting. He thereafter stated that there is provision for blocking the filing of GSTR-1 if the differential amount involved is more than Rs. 25 Lakh and 20% and requested that the filing of GSTR-1 might be unblocked only after verification by the officer. He further stated that there may be scenarios wherein the filing of GSTR-1 for subsequent tax period could be allowed even if the taxpayer uploads a blank paper without proper details. He proposed that such cases should be verified by a GST officer as there may be a possibility that the registration can be used for claiming more Input Tax Credit in the later stages.

8.11.6 The Principal Commissioner, GST Policy Wing informed that as also explained in the agenda, a separate procedure would be worked out by the Law Committee for examination and verification of such cases by the tax officers, where the taxpayer deposits the differential tax liability only partly, with or without an explanation for such short payment, and for further action



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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.

8.11.7 The Hon'ble Chairperson stated that it would be desirable that verification by the officers should not be insisted upon at this stage for filing of GSTR-1 for the subsequent tax period and verification of the response of the taxpayer may be a separate exercise, as suggested by the Law Committee.

The Council agreed with the recommendation of the Law Committee.

8.12 Agenda Item 7(xii): Clarification on various issues in GST.

A. Clarification on taxability of No Claim Bonus offered by Insurance companies

8.12.1 Principal Commissioner, GST Policy Wing presented the agenda item before the council and stated that various representations had been received from General Insurance Council and various insurance companies seeking clarity on treatment of No Claim Bonus ('NCB') under GST. It had 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 field formations/ investigation agencies were treating NCB as a supply by the customer to the insurance company.

8.12.2 Clarity was sought as to whether NCB is a consideration paid to the customer by the insurer for agreeing to the obligation to refrain from the act of lodging insurance claim during the policy period and therefore, tax would be payable by the insurance company on the gross amount without deducting NCB from the premium amount; or alternatively, whether it should be treated as a discount by insurance company, to be deducted from the gross premium, for the purpose of calculation of value of supply made by insurer to the insured.

8.12.3 The Law Committee had recommended that it might be clarified through a Circular that NCB is not a consideration in respect of any service rendered by the insured to the insurance company, rather it is an upfront discount from the premium payable by the insured for the supply of insurance services by the insurance company to the insured; and therefore, NCB is deductible for the purpose of calculation of value of supply of insurance services under Section 15 of CGST Act, 2017.

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B. Clarification on applicability of e-invoicing with respect to an entity

8.12.4 Principal Commissioner, GST Policy Wing presented the agenda item before the Council and stated that Notification No. 13/2020-Central Tax dated 21.03.2020, as amended, provides the class of registered persons for whom e-invoicing shall be applicable under Rule 48(4) of the CGST Rules, 2017. SEZ units, government departments, local authority and those referred in sub-rules (2), (3), (4) and (4A) of Rule 54 of the CGST Rules, 2017 have been exempted from e-invoicing.

8.12.5 Representations had been received from banking companies for clarifying the matter as banks were being subject to investigation by some tax authorities on grounds that e-invoices were required to be generated by banks for movement of goods, including bullion. Tax officers are also claiming 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 goods or for the Banking Company as a whole.

8.12.6 Law Committee had recommended that it could 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, so as to provide clarity to the trade and field formations and remove ambiguity on these issues.

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

8.13 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

8.13.1 Principal Commissioner, GST Policy Wing presented the agenda item before the Council and stated that during the initial period of implementation of GST, especially during the financial years 2017-18 and 2018-19, many suppliers had failed to furnish the correct details of outward supplies in their FORM GSTR-1. Because of such discrepancies, FORM GSTR-2A of their recipients remained incomplete. However, the concerned recipients might have availed input tax credit on the said supplies in their returns in FORM GSTR-3B, as restrictions in availment of ITC up to certain specified limit beyond the ITC available to the registered persons as per FORM GSTR-2A were provided under Rule 36(4) of CGST Rules, 2017 only with effect from 9.10.2019.

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8.13.2 Such discrepancies between the amount of ITC availed in FORM GSTR-3B and the amount available in FORM GSTR-2A of the registered person were being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. and were being considered by them as representing ineligible ITC availed by the registered persons. Various representations had been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies.

8.13.3 The Law Committee had recommended that 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 exceeded 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 had actually been made by the supplier to the said registered person and the tax on such supplies had been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. 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 was 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 had actually been made by him to the said registered person and the tax on said supplies had been paid by the said supplier in his return in FORM GSTR 3B.

8.13.4 Law Committee had recommended issuance of a Circular for detailing the procedure for verification of ITC availed by the registered persons in such cases and for providing clarity to the trade and field formations.

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

8.14 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 finalized under the Insolvency and Bankruptcy Code, 2016.

8.14.1 Principal Commissioner, GST Policy Wing presented the agenda item before the Council and stated that in cases where proceedings are initiated under Insolvency and Bankruptcy Code, 2016 (IBC) against corporate debtor, claims should be filed by the tax officers in respect of government dues pending against such person before the appropriate authority under IBC. On finalization of proceedings under IBC, the amount of government dues, payable by the said

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taxpayer, could be totally extinguished or could be reduced vis-à-vis the amount claimed by the tax officer. Doubts were being raised by tax authorities regarding the modalities for implementation of the order of the adjudicating/appellant authority under IBC, after finalization of the proceedings thereof, with respect to demand for recovery against such corporate debtor under CGST Act, 2017.

8.14.2 Law Committee deliberated on the issue and was of the view that in cases where a confirmed demand for recovery had been issued by the tax authorities for which a summary had been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings had been finalized 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 should 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 were pending.

8.14.3 Law Committee had recommended issuance of a Circular clarifying that the proceedings conducted under IBC also adjudicate the Government dues pending under the CGST Act, 2017 or under existing laws against the corporate debtor, therefore, the same are covered under the term 'other proceedings' in Section 84 of CGST Act, 2017 and that in case the Government dues under the CGST Act, 2017 are extinguished or reduced in IBC proceedings, an intimation should be issued in FORM GST DRC-25 by Commissioner under Section 161 of CGST Rules, 2017 for reducing the said dues. Law Committee also recommended amendment in Rule 161 to align the same with Section 84 of the CGST Act, 2017 and also recommended that FORM GST DRC 25 be amended, to specifically include the authorities under IBC in the said form.

The Council agreed with the recommendation of the Law Committee.

8.15 Agenda Item 7(xv): Amendment in provisions related to OIDAR Services under the IGST Act, 2017.

8.15.1 Principal Commissioner, GST Policy Wing presented the Agenda item before the Council and stated OIDAR services are digitally supplied services, the nature of which renders their supply impossible in the absence of Information Technology. With the growth of digital economy, the OIDAR services are expected to grow immensely in volume and accordingly, more measures would be required to be taken in due course for improving compliance under GST for OIDAR services supplied by persons located in non-taxable territory.



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8.15.2 To ensure compliance under GST by OIDAR service providers, the Law Committee opined that amendments were required in existing provisions of law so as to reduce the scope of interpretation for deciding whether the said supply is covered under the scope of OIDAR services or not for taxation under GST.

8.15.3 Law Committee deliberated on these issues and recommended amendment in the definition of "non-taxable online recipient" under Section 2(16) of the IGST Act, 2017. Currently, for a service to be classified as OIDAR services under Section 2(17) of the IGST Act, 2017, an essential condition was that the supply of such service must be essentially automated and should involve minimal human intervention. However, there was lack of clarity on the meaning of the term "minimal human intervention" and it was opined that restricting the scope of GST on cross border supply by non-resident suppliers only to those services with minimal human intervention did not provide a level playing field and also gave rise to legal disputes. In view of this, Law Committee recommended amending the definition of OIDAR services under Section 2(17) of the IGST Act, 2017 as detailed in the agenda.

The Council agreed with the recommendation of the Law Committee.

8.16 Agenda Item 7(xvi): In Section 17 of the CGST Act, 2017 regarding ITC in respect of CSR (Corporate Social Responsibility) expenditure.

8.16.1 Principal Commissioner, GST Policy Wing presented the agenda item before the Council and stated that doubts had been raised by trade as well field formations in respect of availability of input tax credit on CSR expenditure incurred by companies in accordance with the provisions of Companies Act, 2013 due to various contradictory advance rulings. One view was that CSR expenditure is incurred to meet the obligations under section 135(5) of the Companies Act, and non-compliance on this count attracts penal action. Accordingly, input tax credit should be available in respect of inputs and input services for CSR activities in terms of Section 16(1) of CGST Act. However, another view was that CSR does not include activities undertaken in pursuance of normal course of business of the company and input tax credit should not be available to the registered person on CSR expenditure under Section 16(1) of CGST Act. Further, 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.

8.16.2 Law Committee had recommended that ITC in respect of CSR expenditure incurred by Companies under section 135 of Companies Act may not be allowed. Further, it recommended



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that to unambiguously state such position, such CSR expenditure may be included in the list of blocked credits under Section 17(5) of the CGST Act, 2017.

The Council agreed with the recommendation of the Law Committee.

8.17 Agenda Item 7(xvii): Issues related to place of supply in terms of the proviso to Section 12(8) of the IGST Act, 2017.

8.17.1 Principal Commissioner, GST Policy Wing presented the agenda item before the Council and stated that 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 Section 12(8) of the IGST Act, 2017. Further, Proviso to the section 12(8), inserted w.e.f. 01.02.2019, provides that where the transportation of goods is to a place outside India, the PoS shall be the place of destination of such goods, i.e. foreign country. Accordingly, IGST would be payable on the said supply. As the PoS is different from the location of the recipient of services in such cases, doubts are being raised in respect of the admissibility of input tax credit (ITC) to the recipient of such services.

8.17.2 Law Committee had recommended issuance of a Circular for clarifying that in such case ITC would be available to the registered person located in India, in respect of such receipt of services of transportation of goods, where place of supply is outside India in terms of proviso to Section 12(8), subject to fulfilment of other conditions of Sections 16 and 17 of CGST Act, 2017. Also, 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").

8.17.3 Law Committee had also recommended omission of the proviso to Section 12(8) of IGST Act, 2017, as no useful purpose is being served by insertion of the proviso to Section 12(8) of IGST Act, 2017 w.e.f. 01.02.2019.

The Council agreed with the recommendations of the Law Committee.

9. Agenda Item 12: GST Data sharing with Ministries and Departments

9.1 The Secretary then presented Agenda No. 12 regarding Data Sharing with Ministries and Departments and requested Additional Secretary, DoR to brief the Council regarding the agenda.



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9.2 Additional Secretary, DoR informed that the agenda was for sharing of the GST Data which masked individual taxpayer data for the benefit of the Centre and State Government Departments and Agencies. The view behind Data sharing was that a lot of services could be rendered if the GST Data i.e. both aggregated and dis-aggregated data was shared between the Centre/States' departments and agencies through API. He further informed that States had requested to share individual taxpayer data also in the officers meeting and that would be taken up later.

9.3 The Hon'ble Member from Punjab voiced his concern and sought clarification on how the GST data would be shared between different departments and agencies.

9.4 The Secretary clarified that the GST data would be mutually shared between the Centre/States' departments and agencies. The Hon'ble Member from Punjab agreed to the agenda after the clarification.

9.5 The Hon'ble Member from West Bengal enquired about the agencies with which GST data would be shared.

9.6 The Secretary clarified that the GST data would be shared among the Centre/State Departments and agencies.

9.7 The Hon'ble Member from Puducherry raised concerns about the leakage of GST Data in case the same was shared with multiple departments and agencies.

9.8 The Hon'ble Chairperson clarified that the GST data sharing would be with State and Central Government Departments and their agencies only.

9.9 The Hon'ble Member from Andhra Pradesh supported sharing of GST data base but requested for sharing of other data base from Income Tax Department, Customs and NHAI Toll Data base.

9.10 The Hon'ble Chairperson clarified that GST Council had authority to share State/Centre GST data but the data sharing of Income Tax and Customs was outside the purview of Council.

9.11 The Hon'ble Member from Delhi stated that both the Centre and State were performing survey and investigations. In situations when any investigation is going on in one state for example in Uttar Pradesh and any lead related to other states like Delhi emerges from that investigation, then this data might be shared between the States through GSTN. There should be a mechanism in GSTN that such references might be auto populated or through online mechanism.

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9.12 The Secretary took the note of the suggestions from the Hon'ble Member from Delhi and stated that there should be a system to share GST data regarding surveys and investigations between States and Centre and States.

9.13 The Secretary stated that from the deliberations, we can infer that the agenda on data sharing has the approval of the Council.

The Council approved the agenda on GST Data sharing with Ministries and Departments.

10. The Hon'ble Member from Haryana requested to take agenda on GST Tribunal. He further stated that if that agenda was delayed, the GST Tribunal would not see light for another one year.

10.1 The Hon'ble Chairperson assured that the GST Council would meet at the earliest.

10.2 The Secretary stated that the meeting could be concluded as per request of many of the Hon'ble Members. In the meeting the Council had discussed Agenda Items 1,2,3,4,5,6,7 and 12. Since, there were requests to end the meeting by 01.30 p.m., the remaining agendas would be taken up in the upcoming meetings of the Council.

10.3 The Secretary thanked the Hon'ble Chairperson, Hon'ble MoS, Hon'ble Members and all officers for attending the 48th meeting of the GST Council.



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Annexure-1

List of Hon'ble Ministers from States/Uts who attended in the 48th Meeting of the GST Council held on 17th December, 2022

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

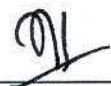
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13	Kerala	Shri K N Balagopal	Finance Minister
14	Madhya Pradesh	Shri Jagdish Devda	Minister for Finance, Commercial Tax, Planning and Statistics
15	Maharashtra	Shri Devendra Fadnavis	Deputy Chief Minister
16	Manipur	Dr. Sapam Ranjan Singh	Minister for Medical, Health & Family Welfare Department and Publicity & Information Department
17	Meghalaya	Shri James K Sangma	Taxation Minister
18	Odisha	Shri Niranjana Pujari	Finance and Parliamentary Affairs Minister
19	Punjab	Shri Harpal Singh Cheema	Finance Minister
20	Puducherry	Shri. K. Lakshminarayanan	Minister for Public Works
21	Rajasthan	Shri Shanti Kumar Dhariwal	Minister of Local Self Government, Urban Development & Housing
22	Sikkim	Shri B. S. Panth	Minister of Tourism & Civil Aviation and Commerce & Industries
23	Tamil Nadu	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resources Management
24	Telangana	Shri. T. Harish Rao	Minister for Finance, Health, Medical & Family Welfare
25	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
26	Uttarakhand	Shri Prem Chand Agarwal	Minister for Finance, Urban Development, Housing, Legislative & Parliamentary Affairs, Reorganization & Census
27	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs
28	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance



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Annexure-2**List of Officers from Centre and the States/Uts who attended in the 48th Meeting of the GST Council held on 17th December, 2022**

S.No.	Centre/States/Uts	Name of the Officer	Designation/Charge
1	Government of India	Shri Sanjay Malhotra	Revenue Secretary
2	Government of India	Shri Vivek Johri	Chairman, CBIC
3	Government of India	Ms. V Rama Mathew	Member (GST & Tax Policy),CBIC
4	Government of India	Shri Sanjay Kumar Agarwal	Member(Compliance Management),CBIC
5	Government of India	Shri Vivek Aggarwal	Additional Secretary (Revenue)
6	Government of India	Shri Pankaj Kumar Singh	Additional Secretary (GST Council Secretariat)
7	Government of India	Shri Ritvik Pandey	Joint Secretary
8	Government of India	Shri Sanjay Mangal	Principal Commissioner
9	Government of India	Ms. Limatula Yaden	Joint Secretary
10	GSTN	Shri Manish Kumar Sinha	CEO
11	GSTN	Shri Dheeraj Rastogi	Off. EVP (Support) & SVP (Services)
12	Government of India	Sh Sanjeev Shrivastava	Pr. Chief Controller of Accounts

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13	Government of India	Ms Seema Arora	Pr. Director General (Audit)
14	Government of India	Dr. Amandeep Singh	Additional Director General(Audit)
15	Government of India	Ms. Ashima Bansal	Joint Secretary
16	Government of India	Ms. B.Sumidaa Devi	Joint Secretary
17	Government of India	Shri S.S. Nakul	PS to FM
18	Government of India	Shri Deepak Kapoor	OSD to Revenue Secretary
19	Government of India	Shri D. P. Misra	OSD to Chairman, CBIC
20	Government of India	Dr Puneeta Bedi	Additional Commissioner
21	Government of India	Shri Alok Kumar	Additional Commissioner
22	Government of India	Shri Pramod Kumar	Director
23	Government of India	Shri Rakesh Dahiya	Deputy Secretary
24	Government of India	Ms. Amreeta Titus	Deputy Secretary
25	Government of India	Shri Nitesh Gupta	Deputy Commissioner
26	Government of India	Ms. Rajni Sharma	Deputy Commissioner
27	Government of India	Shri Amit Samdariya	Deputy Commissioner



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28	Government of India	Ms. Neha Yadav	Deputy Commissioner
29	Government of India	Shri Rahul Kumar	Under Secretary
30	Government of India	Shri Rajeev Ranjan	Under Secretary
31	Government of India	Shri Gaurav Shukla	Under Secretary
32	Government of India	Ms. Smita Roy	Technical Officer
33	Government of India	Ms. Anna Sosa Thomas	Technical Officer
34	Government of India	Ms. Soumya	OSD
35	Government of India	Shri Rushikesh Kodgi	Dy. Controller of Accounts
36	GST Council Secretariat	Shri Kshitendra Verma	Director
37	GST Council Secretariat	Shri Harish Kumar	Deputy Secretary
38	GST Council Secretariat	Shri S.S.Shardool	Deputy Secretary
39	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary
40	GST Council Secretariat	Ms. Reshma R. Kurup	Under Secretary
41	GST Council Secretariat	Ms. Priya Sethi	Superintendent
42	GST Council Secretariat	Shri Dharambir	Superintendent

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43	GST Council Secretariat	Shri Niranjana Kishore	Superintendent
44	GST Council Secretariat	Shri Rakesh Joshi	Inspector
45	GST Council Secretariat	Shri Vijay Malik	Inspector
46	GST Council Secretariat	Shri Padam Singh	Inspector
47	Andhra Pradesh	Shri N. Gulzar	Secretary Finance(CT)
48	Andhra Pradesh	Shri M. Girija Shankar	Chief Commissioner(ST)
49	Andhra Pradesh	Shri K. Ravi Sankar	Commissioner(ST) Policy
50	Arunachal Pradesh	Shri Kanki Darang	Commissioner of Commercial Taxes
51	Arunachal Pradesh	Shri Tapas Dutta	Deputy Commissioner of State Taxes
52	Arunachal Pradesh	Shri Nakut Padung	Superintendent
53	Assam	Shri Samir K Sinha	Principal Secretary, Finance Department
54	Assam	Shri Jayant Narlikar	Commissioner & Secretary, Finance Department
55	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
56	Assam	Md. Shakeel Saadullah	Additional Commissioner of State Tax
57	Bihar	Dr Pratima	Commissioner cum Secretary Commercial Taxes Department

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58	Bihar	Shri Arun Kumar Mishra	Tax Expert Commercial Taxes
59	Bihar	Shri Sanjay Kumar Mawandia	Special Commissioner State Tax
60	Chhattisgarh	Shri Him Shikhar Gupta	Special Secretary, State Tax (Commercial Tax)
61	Chhattisgarh	Shri Bhim Singh	Commissioner, State Tax (Commercial Tax)
62	Chhattisgarh	Shri T.L. Dhruw	Additional Commissioner of State Tax
63	Delhi	Shri Ashish Chandra Verma	Pr. Secretary Finance and Secretary to Deputy Chief Minister
64	Delhi	Dr. S. B. Deepak	Commissioner DT & T
65	Delhi	Shri. Awanish Kumar	Special Commissioner DT & T
66	Goa	Ms. Sarita Gadgil	Additional Commissioner of State Tax
67	Goa	Shri Saba Krishna Parab	Nodal Officer GST
68	Gujarat	Shri. J.P. Gupta	Principal Secretary, Finance Department
69	Gujarat	Shri. Milind Torawane	Chief Commissioner of State Tax
70	Gujarat	Shri Dilip Thaker	Deputy Secretary(Tax)
71	Gujarat	Shri Milind Kavatkar	Joint Commissioner (Legal)
72	Haryana	Shri Anurag Rastogi	Addl. Chief Secretary to Government, Excise and Taxation Department.

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73	Haryana	Shri Ashok Kumar Meena	Excise & Taxation Commissioner-cum- Secretary to Government
74	Haryana	Shri Siddharth Jain	Additional Commissioner, GST, Excise and taxation Department
75	Himachal Pradesh	Shri Subhasish Panda	Principal Secretary (Excise & Taxation)
76	Himachal Pradesh	Shri Yunus	Commissioner of State Tax and Excise
77	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
78	Jammu and Kashmir	Dr. Rashmi Singh	Commissioner of State Taxes
79	Jammu and Kashmir	Ms. Namrita Dogra	Additional Commissioner of State Taxes
80	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner of Taxes
81	Jharkhand	Ms. Aradhana Patnaik	Secretary (Commercial Tax)
82	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner of Commercial Taxes
83	Karnataka	Shri ISN Prasad	Additional Chief Secretary , Finance Department
84	Karnataka	Ms. C. Shikha	Commissioner of Commercial Taxes
85	Karnataka	Dr. M.P. Ravi Prasad	Additional Commissioner of Commercial Taxes
86	Karnataka	Ms. C Pushpalatha	Additional Commissioner of Commercial Taxes
87	Kerala	Shri. Bishwanath Sinha	Additional Chief Secretary (Finance)



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88	Kerala	Dr. Rathan U Kelkar	Secretary (Taxes)
89	Kerala	Shri. Ajit Patil	Commissioner of State Tax
90	Kerala	Dr. S Karthikeyan	Special Commissioner
91	Kerala	Shri. Abraham Renn S	Additional Commissioner
92	Madhya Pradesh	Ms. Deepali Rastogi	Principal Secretary (Department of Commercial Taxes)
93	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner Commercial Tax
94	Maharashtra	Shri Manoj Sounik	Additional Chief Secretary (Finance)
95	Maharashtra	Ms Shaila A	Secretary (Financial Reforms)
96	Maharashtra	Shri Rajeev Mital	Commissioner of State Tax
97	Maharashtra	Shri Rajendra Adsul	Joint Commissioner of State Tax
98	Maharashtra	Ms Vishakha Borse	Joint Commissioner of State Tax, HQ-V
99	Manipur	Ms. Mercina R. Panmei	Commissioner of Taxes
100	Manipur	Shri Y. Indrakumar Singh	Assistant Commissioner of Taxes
101	Meghalaya	Ms S A Synrem	Commissioner & Secretary, Excise, Registration, Taxation and Stamp Department
102	Meghalaya	Shri. L Khongsit	Additional Commissioner of State Taxes


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103	Meghalaya	Shri. B Wahlang	Deputy Commissioner of State Taxes
104	Meghalaya	Shri. J L Kharwanlang	Assistant Commissioner of Taxes
105	Meghalaya	Shri M C Sangma	Assistant Commissioner of Taxes
106	Meghalaya	Shri. V R Challam	Assistant Commissioner of Taxes
107	Meghalaya	Shri. M K Phanbuh	Assistant Commissioner of Taxes
108	Meghalaya	Shri. Tryster Sangma	Superintendent
109	Meghalaya	Shri. Bhuto Marak	Superintendent
110	Mizoram	Shri Vanlal Chhuanga	Principal Secretary, Taxation Department
111	Mizoram	Shri R. Zosiamliana	Additional Commissioner of State Taxes
112	Mizoram	Shri Hrangthanmawia	Assistant Commissioner of Taxes
113	Nagaland	Shri. C Lima Imsong	Additional Commissioner of State Taxes
114	Nagaland	Ms. N Areni Patton	Joint Commissioner of State Tax
115	Odisha	Shri Sanjay Kumar Singh	Commissioner of Commercial Tax and GST
116	Punjab	Shri Ajoy Sharma	Secretary (Taxation)
117	Punjab	Shri Kamal Kishor Yadav	Commissioner of State Taxes

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118	Punjab	Shri Ravneet Khurana	Additional Commissioner of State Taxes (Audit)
119	Puducherry	Shri. M. Raju	Commissioner-cum-Secretary to Government - Finance
120	Puducherry	Shri. M. Raje Saker	Commissioner of State Tax
121	Rajasthan	Shri K. K. Pathak	Finance Secretary (Revenue)
122	Rajasthan	Dr. Ravi Kumar Surpur	Chief Commissioner of State Tax
123	Rajasthan	Shri Satish Kumar Upadhyay	Additional Commissioner of State Taxes
124	Rajasthan	Shri Arvind Mishra	Additional Commissioner of State Taxes
125	Sikkim	Shri Manoj Rai	Commissioner to the Commercial Taxes
126	Tamil Nadu	Shri N. Muruganandam	Additional Chief Secretary (Finance)
127	Tamil Nadu	Ms B. Jothi Nirmalasamy	Secretary to Government, Commercial Tax & Registration
128	Tamil Nadu	Shri Thiru Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes
129	Telangana	Shri Somesh Kumar	Chief Secretary/Special Chief Secretary, Revenue(CT& Excise)Department
130	Telangana	Ms Neetu Prasad	Commissioner of Commercial Taxes
131	Telangana	Shri N Sai Kishore	Additional Commissioner of State Taxes

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132	Telangana	Ms. K Rupa Soumya	Deputy Commissioner of State Taxes
133	Telangana	Ms. VDN Sravanthi	Deputy Commissioner of State Taxes
134	Tripura	Shri Brijesh Pandey	Secretary, Finance
135	Tripura	Shri Ashin Barman	Nodal Officer (GST)
136	Uttarakhand	Dr. Ahmed Iqbal	Commissioner of State Tax
137	Uttarakhand	Shri I. S. Brijwal	Additional Commissioner of State Taxes
138	Uttarakhand	Shri Anil Singh	Additional Commissioner of State Taxes
139	Uttarakhand	Shri Amit Gupta	Additional Commissioner of State Taxes
140	Uttarakhand	Dr. Sunita Pandey	Joint Commissioner of State Taxes
141	Uttarakhand	Shri Anurag Mishra	Joint Commissioner of State Taxes
142	Uttarakhand	Shri Praveen Gupta	Joint Commissioner of State Taxes
143	Uttarakhand	Shri S.S. Tiruwa	Deputy Commissioner of State Taxes
144	Uttarakhand	Shri Ranjit Singh	Assistant Commissioner of State Taxes
145	Uttar Pradesh	Shri Nitin Ramesh Gokaran	Principal Secretary, State Tax
146	Uttar Pradesh	Ms. Ministhy S	Commissioner of State Tax



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147	Uttar Pradesh	Shri Harilal Prajapati	Joint Commissioner(GST), State Tax HQ
148	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner(GST), State Tax HQ
149	West Bengal	Shri Rajib Sankar Sengupta	Senior Joint Commissioner of State Taxes
150	West Bengal	Shri Joyjit Banik	Senior Joint Commissioner of State Taxes
151	West Bengal	Shri Barun Gayen	Assistant Commissioner of State Taxes
152	West Bengal	Shri Shantanu Naha	OSD to Minister



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Annexure-3

Recommendations of Fitment Committee on Goods and Services

(Agenda item 3)

48th GST Council Meeting

17th December 2022

Goods

- Total 19 issues examined.

- ✓ recommendations for making changes in GST rates/ issuing clarifications- **9** (*Volume 1, Pages 190 to 203*)
- ✓ recommendations for making no change -**8** (*Volume 1, Pages 204 to 209*)
- ✓ Issues deferred for further examination -**2** (*Volume 1, Pages 210 to 211*)

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Services

- Total 27 issues examined.

- ✓ recommendations for making changes in GST rates/issuing clarifications -7 (*Volume 1, Pages 212 to 226*)
- ✓ recommendations for making no change -16 (*Volume 1, Pages 227 to 256*)
- ✓ Issues deferred for further examination – 4 (*Volume 1, Pages 257 to 260*)

Recommendations of the Fitment Committee in relation to Goods

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Agenda 3

1. Remove inconsistency in the GST rate on pencil sharpeners: (Volume 1, Pages 190-192)

- The 47th GST Council recommended increase in GST rate on pencil sharpeners from 12% to 18% based on recommendations of GoM on rate rationalization;
- Accordingly, entry 188 of Schedule II was omitted to give effect to the decision of the GST Council. However, pencil sharpeners inadvertently continued under entry 180 of Schedule II which prescribes rate of 12%
- To remove this inconsistency, the entry of pencil sharpeners from entry 180 of the Schedule II may be omitted.

Agenda 3(a)

2. Exempt byproducts of milling of dal/pulses like khanda, churi, chilka from GST irrespective of end use: (Volume 1, Pages 192-195)

- In its 47th GST Meeting, the Council had approved issue of clarification that by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi are used as ingredient for manufacture of cattle feed and attract GST at the rate of 5%.
- By products of milling of dal/ pulses like Khanda, Churi, Chilka have dual use- as animal feed and animal feed ingredients attracting Nil GST when used as cattle feed and attracting 5% when used for manufacture of cattle feed translating to an end use based exemption
- To obviate implementation issues, husk of pulses including Chilka and concentrates including chuni/ churi, khanda may be unconditionally exempt from GST.
- Clarification may be to regularise the matter of the intervening period on "as is" basis from the date of issuance of last circular (3.08.2022) on account of genuine doubts.



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Agenda 3(a) (contd.)

3. Issue Clarification for applicability of higher rate of compensation cess of 22% on supply of SUV: (Volume 1, Pages 195-199)

- The GST Council in its 21st Meeting held in Sept, 2017 had recommended a higher rate of compensation cess of 22% for SUV.

"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%."

- To clarify that the higher rate of compensation cess of 22% is applicable on motor vehicle fulfilling all four conditions, namely, it is popularly known as SUV, has engine capacity exceeding 1500 cc, length exceeding 4000 mm and ground clearance of 170 mm or above (entry 52B of notification no. 1/2017-CC).

4. RCM for *Mentha arvensis* :

- To include *Mentha arvensis* supplied by unregistered person to registered person under RCM as has been done for Mentha Oil.

Agenda 3(a) (contd.):

5. GST rate on Carbonated beverages of fruit drinks or carbonated beverages with fruit juice with carbon Dioxide added as Preservative/additive": (Volume 1, Pages 199)

- 45th GST Council recommended that separate entry be created for 'carbonated beverages of fruit drinks or carbonated beverages with fruit juice' attracting GST at 28% and compensation cess at 12%.
- Few suppliers are still clearing their products under fruit pulp or fruit juice based drinks attracting 12% GST though they contain carbon dioxide.
- Exclusion is proposed to be inserted in the entry no. 48 of Schedule-II of notification no. 1/2017-CTR, covering fruit pulp or fruit juice based drinks to exclude "carbonated beverages of fruit drink or carbonated beverages of fruit juice".



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Agenda 3(a) (contd.)

6. Clarification on classification and appropriate rate of GST on Rab (salawat) - whether under 1701 Or 1702: (Volume 1, Pages 199-200)

- The issue for clarification was whether Rab is classifiable under CTH 1701 or 1702
- Cane or beet sugar and chemically pure sucrose in **solid form** is classified under 1701 and attract 5% GST.
- Rab is in liquid or semi-solid form
- Molasses fall under 1703 and attract 28% GST.
- It may be clarified that Rab (salawat) falls under 1702 which currently attracts GST at the rate of 18%.

Agenda 3(a) (contd.)

7. Clarification regarding Fryums manufactured using extrusion process attract 18% GST: (Volume 1, Pages 200-201)

- The classification dispute was between entry no. 46 of the Schedule II covering goods of CTH 2106 at 12% and entry no. 16 of the Schedule III covering goods of CTH 1905 at 18%.
- Entry no. 46 of the Schedule II covering goods Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form pre-packaged and labelled
- CTH 1905 90 30 specifically includes extruded products, savoury or salted.
- It may be clarified that fryums are thus covered under 1905 90 30 which attract 18%.



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Agenda 3(a) (contd.)**8. Clarification on applicable IGST rate on items imported for petroleum operations: (Volume 1, Pages 201-202)**

- Based on GoM report, 5% concessional rate of GST for goods of all chapters imported for petroleum operations was increased from 5% to 12% (Notification no. 3/2017-ITR)
- However, certain goods including those used for petroleum operations attract 5% GST by virtue of their entry in Schedule I of notification no. 1/2017 of the ITR .
- To clarify that if any goods imported for petroleum operations fall in specified list of goods eligible for 12% GST under notification no. 3/2017-ITR but are also eligible for a lower rate under Schedule I of notification no. 1/2017-CTR or any other notification, the importer may claim the lower rate.

Agenda 3(a) (contd.)**9. Extend GST rate of 5% on ethanol supplied for blending with Motor Spirit to petroleum refineries: (Volume 1, Pages 202-203)**

- In line with the National Policy on Biofuels – 2018, to promote blending, concessional GST rate of 5% on ethyl alcohol has already been provided to Oil Marketing Companies (OMCs) like IOCL, BPCL and HPCL for blending with Motor Spirit (petrol) under Schedule I of Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.
- The concessional GST rate of 5% on ethanol may be extended to standalone petroleum refineries for blending with motor spirit (petrol).

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Agenda 3(b)
Recommendations for making no change:
(Volume 1, Pages 204-209)

The Committee has recommended no change with respect to GST rates on the following goods:

- Water Pump Sets;
- Milling Machinery for cereals, Kitchen ware, spoons;
- Gold, Silver, Diamond;
- Newsprint(for newspaper), Uncoated copier paper(for books);
- Components of battery energy storage system;
- Parts and accessories of aircraft and aircrafts engines;
- LD Slag used cement industry and
- FTTH (Fibre to the home) equipment and related services used for fixed line internet/broad band.

Agenda 3(c):
Issues deferred for further examination
(Volume 1, Pages 210-211)

The Committee has deferred following issues for further examination:

- To clarify that Khari and cream roll should get covered under "similar toasted products" which attracts 5% GST.
- To reduce GST rate on heavy feedstock, Vaccum Gas Oil (VGS), Reformates etc.



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Recommendations of the Fitment Committee in relation to Services

Agenda 3(d): Recommendations for making changes in GST rates/ issue clarification

1. Extend validity of GST exemption on Viability Gap Funding (VGF) paid to Selected Airline Operators (SAOs): (Volume 1 Page no 212)

- S. No. 16 of Notification 12/2017-CTR exempts services provided to the Central Government, by way of transport of passengers, by air, embarking from or terminating at an Regional Connectivity Scheme (RCS) airport, against consideration in the form of VGF.
- Section 15(2) sub-clause (e) specifically excludes subsidies provided by Central and State Government from taxable value.
- MoCA may be advised, 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 GST Act.

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Agenda 3(d) (contd.)**2. Omission of the Entry 23A of Notification No. 12/2017-CTR:***(Volume 1 Page no 212)*

- Entry 23A of Notification No. 12/2017-CTR exempts services, by way of providing *access to a road or a bridge, against consideration in the form of annuity.*
- Based on recommendations of the 43rd GST Council, it was clarified that entry 23A of said notification does not exempt GST on the annuity (deferred payments) paid for construction of roads.
- However, the Hon'ble Karnataka High Court has held that entry 23A of said notification covers services of construction of road where consideration is paid in the form of annuity.
- Access to road or bridge is allowed against consideration in the form of toll which is already exempt under entry at Sr. No. 23.
- Entry 23A may be omitted to prevent its misuse.

Agenda 3(d) (contd.)**3. Taxability of revenue apportioned by Indian Railways (IR) to Special Purpose Vehicles (SPVs) and O&M costs charged by Indian Railways from SPVs :***(Volume 1 Page no 213)*

- Indian Railways and the SPV are distinct persons. Supply of services by SPV to Indian Railways by way of allowing Indian Railways to 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 Indian Railways as ITC.
- Similarly services of maintenance supplied by Indian railways to SPV is a taxable supply. ITC of the same is available to SPV.
- May be clarified accordingly.


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Agenda 3(d) (contd.)**4. Applicability of GST on Air Force Officers Mess:** *(Volume 1 Page no 215)*

- All services supplied by 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
- Accommodation services provided by Air Force Mess to Air Force personnel would be exempt in terms of above entry, provided services supplied by Air Force Mess qualify to be considered as services supplied by Central Government.
- May be clarified accordingly.

Agenda 3(d) (contd.)**5. Taxability of the incentive paid by MEITY for promotion of RuPay Debit Cards and low value BHIM-UPI transactions:** *(Volume 1 Page no 216)*

- 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 incentive
- The payment of incentive is not a consideration paid by the central government for service supplied by the acquiring banks as it is paid contingent upon the banks achieving a minimum yearly growth rate in the number of transactions, to promote digital transactions through RuPay/BHIM UPI
- The entire arrangement is voluntary
- 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.
- May be clarified accordingly.


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Agenda 3(d) (contd.)**6. GST on renting of residential dwelling by the proprietor of a proprietorship firm in his personal capacity: (Volume 1 Page no 217)**

- As recommended by 47th GST Council, renting of residential dwelling to a business entity for use of its employees etc. has been made taxable and the present entry in the notification reads as under

"Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person".

- An issue has arisen whether GST would be payable on renting of a residential dwelling by the proprietor of a proprietorship firm in his personal capacity for use as his residence when the firm is a registered person.
- 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 books of account of the firm but is on personal account) the exemption should be available to him.

Agenda 3(d) (contd.)

- To avoid litigation on this matter, it is proposed that the entry at Sr. no. 12 of notification no. 12/2017-CTR be amended as
 - An explanation may be inserted that if a residential dwelling is rented to a registered person who is proprietor of a proprietorship firm and who rents it in his personal capacity for use as his own residence and such renting is on his own account and not that of the proprietorship firm, it shall be exempt from tax. The same will apply mutatis mutandis to partners of partnership firms.


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Agenda 3(d) (contd.)**7. To specify a positive list of services under Sr. No. 3 & 3A of notification No. 12/2017-CTR (Volume 1, Page no 219)**

- Vide Notification 14/2017 supply of services by Central Government, State government, UT, local authority by way of any municipal and panchayat function specified in Schedules 11 and 12 of the Constitution read with Article 243G and 243W have been declared as neither a supply of goods nor a supply of services .
- The list under Sr No 3 and 3A is in the context of input services procured by Central Government, State government, UT, local authority for performance of municipal and panchayat functions.

Agenda 3(d) (contd.)

- In the 47th GST Council meeting, the GST Council 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.
- **Currently Sr. No 3 reads as under:**
Pure services (excluding works contract) provided to Central of State Government, Local Authority by way of any activity in relation to any function entrusted to a panchayat (under Article 243G) or to a municipality (under Article 243W)


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Agenda 3(d) (contd.)

- Sr. No 3A reads as under:

"Composite supply of goods and services (goods 25% or less)"

- The positive list of services to be specified in Sr no 3 and 3A placed before the 47th GST Council is as under:
 1. *Water treatment & /or supply*
 2. *Public health activities, sanitation, conservancy and solid or liquid waste management*
 3. *Slum improvement and upgradation*
 4. *Maintenance and operation of streetlights, bus stops. Public conveniences, public parks and garden, 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 service for carrying out functions listed at Sr. No. 1 to 4 above*

Agenda 3(d) (contd.)

- Views were sought from the States of Telangana, Andhra Pradesh and Delhi, as per decision of 47th GST Council meeting.
- Based on the inputs from the states, the following positive list of services is proposed to be specified in in SI. No. 3 and 3A of notification No. 12/2017-CTR as follows :
 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;*



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Agenda 3(d) (contd.)

- 6. *Technical training and vocational education;*
- 7. *Adult and non-formal education;*
- 8. *Libraries;*
- 9. *Social Forestry and Farm Forestry;*
- 10. *Fire Services;*
- 11. *Renting of motor vehicles for carrying out functions listed at Sr. No. 1 to 10 above;*
- 12. *Supply of manpower services for carrying out functions listed at Sr. No 1 to 10 above."*

Agenda 3(d) (contd.)

- Presently the exemption is applicable on pure services and composite supply of goods and services (value of goods more than 25%) supplied to Central Government, State Government, Union Territory or a local authority. The exemption may be extended to Public Authority.
- Public authority may be defined as under :
"Public Authority means an authority or a board or any other body established and controlled by the Central or State Government to carry out the functions listed in Sl. No. 1 to 10 of the entry."


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Agenda 3(e): Recommendations for making no change

(Volume 1 page no 227 – 242)

Committee has recommended no change on the following proposals:

- To extend the validity of GST exemption on transport of goods by air from India to Outside, which was valid till 30.9.2022.
- To reduce GST rates on construction of commercial apartments from 18% with ITC to 7.5% without ITC and other proposals.
- Request for exemption on works contract services supplied to Assam Cancer Care Foundation (ACCF).
- To exempt GST on leasing/renting/transfer of right to use the Energy Storage Systems (ESS).
- Credit of GST paid on O&M services used for metro, monorail etc., may be allowed to be used against other taxable services and the remaining unutilized credit may be allowed to be refunded.

Agenda 3(e)(contd.)

- To expand the exemption available on services supplied to educational institutions.
- To align GST rate for construction of ARHCs (Affordable Rental Housing Complexes) with other PM AWAS Yojana schemes.
- To reduce GST rates on supply of goods and services consumed in the entire value chain of Petroleum operations to 5%.
- 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.
- The tax regime applicable to the travel and tourism sector may be reviewed holistically.



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Agenda 3(e)(contd.)

- Proposal for granting 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).
- To remove exemption limits on renting of premises by a religious/charitable trust.
- Formulating a Margin Scheme for Tour Operators in consultation with stakeholders.
- GST on economy class fare may be increased to 12% and on business class to 18% provided ATF is brought under ambit of GST.
- To bring parity between express and transport sector.
- To exempt GST on All India Permit fee paid for grant of authorization or permit for plying Tourist Vehicles throughout India w.e.f 01.04.2021.

Agenda 3(f):

Issues deferred for further examination (volume 1, page no 257-260)

Committee deferred following issues for further examination:

- To notify a mechanism for availment of ITC where AC bus services are supplied through e-commerce operator (ECO) or to shift the onus of discharging GST on the registered bus operators instead of ECOs.
- To clarify the nature and taxability of various supplies in relation to crypto eco-system.
- Proposal to clarify that GST is not applicable on flying training courses run by flying training institute. Fitment committee has recommended that the issue may be referred to GoM on rate rationalization for taking a comprehensive view on definition of educational institutions.
- To bring renting of residential dwellings by a registered persons to another registered persons under forward charge mechanism.



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THANK YOU

Telangana suggested addition of following services to the positive list:

- Public Distribution and the related activities including Custom Milling and transportation services
- Minor Irrigation
- Social forestry and Farm forestry
- Roads and bridges



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Agenda 3(d) (contd.):

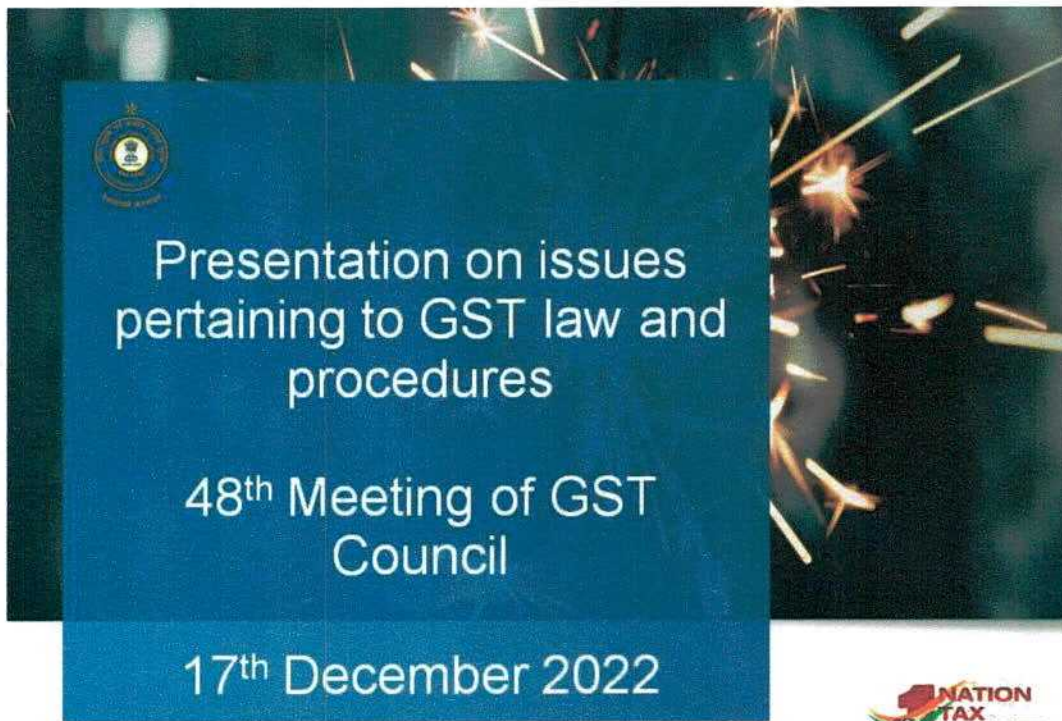
Andhra Pradesh, suggested to include the following services in addition to those suggested by Telangana:

- Man power services by Government Agencies/bodies to Government/Government agencies/government bodies & to Local bodies
- Endowment related Services like all darshan tickets , sale of prasadam etc.
- All the activities enlisted in 11th & 12th Schedule.

Delhi suggested that the exemption on services mentioned in Article 243 G & 243 W of Constitution of India should be continued.

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Annexure-4



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Ratification of Notifications and Circulars



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Agenda 2: Ratification of Notifications, Circulars etc.

[Vol 1- Pg. 147-189]

Act/Rules	Notifications/Circulars Nos.	Description/Remarks
CGST Act/ CGST Rules	Seventeen (17) Central Tax Notifications issued (No. 09/2022 to 25/2022) & Nine (09) Central Tax (rate) Notifications issued (No. 03/2022 to 11/2022)	4 amendments to CGST Rules carried out; notifications to implement various decisions of GST Council taken in 47th meeting & to implement other GIC decisions. Some of the important decisions are: i. To notify the provisions of the Finance Act, 2022. ii. To exempt taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing annual return for FY 2021-22. iii. To extend due date of furnishing FORM GST CMP-08 for the quarter ending June, 2022 till 31.07.2022. iv. To extend the waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22. v. To extend dates of specified compliances in exercise of powers under section 168A of CGST Act. vi. To implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Crore from 1 st October, 2022. vii. To empower the Competition Commission of India to handle anti-profiteering cases under CGST Act, 2017 w.e.f 01.12.2022.
UTGST Act	Two (02) Union Territory Tax Notifications issued (No. 03/2022 to 04/2022) & Nine (09) Union Territory Tax (rate) Notifications issued (No. 03/2022 to 11/2022)	Notifications to implement various decisions of GST Council taken in 47th meeting

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Agenda 2: Ratification of Notifications and Circulars

[Vol 1- Pg. 147-189]

Act/Rules	Notifications/Circulars Nos.	Description/Remarks
IGST Act	Nine (09) Integrated Tax (rate) Notifications issued (No. 03/2022 to 11/2022)	Notifications to implement various decisions of GST Council taken in its 47th meeting
Circulars	Thirteen (13) Circulars issued (No. 170/02/2022-GST dated 06.07.2022 to 182/14/2022-GST dated 10.11.202)	Circulars to implement various decisions of GST Council in its 47th meeting & to implement other GIC decisions. Some of the important issues in the circulars are: - 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 - Clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices - Clarification on issues pertaining to refund under inverted duty structure - Manner of re-credit in electronic credit ledger using FORM GST PMT-03A - Manner of filing refund of unutilized ITC on account of export of electricity - Clarifications regarding applicable GST rates & exemptions on certain services - GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law - Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting - Guidelines for filing/revising TRAN-1/TRAN-2 and verification thereof in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court.


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Agenda 2: Ratification of notifications and circulars

[Vol 1- Pg. 147-189]

- ❖ Some of these notifications and circulars have been issued based of decisions of GST Implementation Committee (GIC) taken during the period from **01.08.2022 to 13.12.2022**.
- ❖ The important decisions taken by GIC are as below :
 - Threshold for issuance of e- invoice has been reduced to Rs 10 crore with effect from 01.10.2022.
 - Issuance of 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. Filco Trade Centre Pvt. Ltd.
 - Issuance of guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 & 02.09.2022.
 - Notifying the provisions of Finance Act, 2022 and consequential amendment of CGST Rules, 2017.
 - To settle IGST amount of Rs. 22,000 crores for the Financial Year 2022-23 on ad-hoc basis.
 - Extension of the due date for filing FORM GSTR-3B for the month of September, 2022, by registered person from 20th October, 2022 to 21st October, 2022.
 - Amendment in instructions to FORM GSTR-9.
 - Issuance of clarification regarding the issues relating to refund of unutilised ITC on account of inverted rated structure.
 - To empower the Competition Commission of India to handle anti-profiteering cases under CGST Act, 2017 w.e.f. 01.12.2022 (as per decision of GST Council in 45th meeting).
 - Extension of due date of filing FORM GSTR-1 for month of November, 2022 by taxpayers in 13 districts of State of Tamil Nadu till 13th December, 2022.


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Recommendations of the Law Committee



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



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Agenda 7(ii): Refund to the unregistered persons in certain cases

[Vol 1- Pg. 291-296]

Issue:

- ❖ There are cases where **unregistered buyer** enters into contract with a builder for supply of services of **construction of flats/ building** and have paid the amount for such service, fully or partially, along with applicable tax, and the said **contract/agreement is subsequently cancelled** due to any reason.
- ❖ Similar situation may arise in cases of **long-term insurance policies** where premium is paid upfront for entire policy period, while the **policy is terminated prematurely**.
- ❖ In some cases, the **period for issuance of credit note under section 34 of CGST Act**, on account of cancellation of service, **gets expired by that time** and therefore, the supplier/ insurance companies may refund the amount to the buyer net off GST.
- ❖ **No procedure for refund to an unregistered person** for amount of tax borne by him has been prescribed presently.

Proposal❖ **LC recommended the following:**

- To make an **amendment 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 by an unregistered person in order to establish that refund is due to the said applicant.
- Insertion of **Statement 8 in FORM RFD-01** for refund by unregistered persons.
- To issue a **circular to clarify the procedure** for filing application of refund by the unregistered persons in such cases and processing of such refunds thereof.

- **This would help the unregistered persons to claim refund of tax paid in case of cancellation/ termination of agreement/contract of such services.**


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Agenda 7(xii): Issuance of clarification on various issues pertaining to GST (1/2)

[Vol 1- Pg. 378-384]

Issue 1: Treatment of No Claim Bonus offered by insurance companies under GST

- ❖ **No Claim Bonus ('NCB') under GST** 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.
- ❖ Some field formations/ investigation agencies are treating NCB as a supply by the customer to the insurance company.
- ❖ Doubts are being raised as to whether -
 - NCB is a consideration paid to the customer by the insurer for **agreeing to the obligation to refrain from the act of lodging insurance claim** during the policy period and therefore tax is payable by the insurance company on the **gross amount** without deducting NCB from the premium amount; or
 - Alternatively, whether it should be treated as a **discount by insurance company, to be deducted from the gross premium**, for the purpose of calculation of value of supply made by insurer to the insured.

Proposal:

- ❖ LC has recommended that it **may be clarified through a circular** that
 - **NCB is not a consideration in respect of any service rendered by the insured to the insurance company**, rather it is an **upfront discount** from the premium payable by the insured for the supply of insurance services by the insurance company to the insured; and therefore,
 - **NCB is deductible** for the purpose of calculation of value of supply of insurance services under section 15 of CGST Act, 2017.



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Agenda 7(xii): Issuance of clarification on various issues
pertaining to GST (2/2)

[Vol 1- Pg. 378-384]

Issue 2: Applicability of e-invoicing with respect to an entity

- ❖ Notification No. 13/2020-Central Tax dated 21.03.2020, as amended, provides the **class of registered persons to whom e-invoicing shall be applicable** under Rule 48(4) of the CGST Rules, 2017.
 - 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**.
- ❖ Representations have been received from **banking companies** for clarifying the matter as banks are being subjected to investigation by some tax authorities -
 - Tax officers are insisting that **e-invoices are required** to be generated by banks **for movement of goods, including bullion**;
 - Tax officers are claiming 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 goods** or for the Banking Company as a whole.

Proposal:

- ❖ LC has recommended to **clarify 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.
- **Issuance of circular would provide clarity to the trade and field formations and remove ambiguities on these issues.**

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Agenda 7(iii): Decriminalization of CGST Act, 2017(1/2)

[Vol 1- Pg. 297-303]

Issue:

- ❖ Sub-clauses (g), (j), (k) of section 132(1) of CSGT Act cover offences like obstructing or preventing any officer in discharge of his duties or deliberate tempering of material evidence or failing to supply the information, which are pure criminal offences and are also punishable under Indian Penal Code.
- ❖ Minimum threshold of amount of tax evaded (amount of tax evaded or the amount of input tax credit wrongly availed or utilized or refund wrongly taken) for launching prosecution for offences under GST as per section 132(1) of CGST Act is Rs One Crore. However, as per section 69 of CGST Act, arrest for offences under GST can be made only in cases involving minimum amount of tax evaded of Rs Two crore.
- ❖ It is felt that that the provisions of prosecution under GST need to be reviewed so as to align the threshold for prosecution with the threshold of arrest, and also to review some of the offences to decriminalize them.
- ❖ There is also a need to review provisions of compounding of offences under section 138 of CGST Act to make compounding provisions more attractive.

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Agenda 7(iii): Decriminalization of CGST Act, 2017(2/2)

[Vol 1- Pg. 297-303]

Proposal:**❖ LC recommended the following:**

- **Deletion of the offences mentioned in clause (g), (j) and (k) of sub-section (1) of section 132 of CGST Act and consequential amendment in clause (l) of sub-section (1) and clause (iv) of sub-section (1) of section 132 of CGST Act.**
- **The minimum threshold for launching prosecution to be increased to Rs two crore from the current Rs one crore and accordingly, the clause (iii) of sub-section (1) of Section 132 to be deleted.**
- **Consequential amendment in sub-section (3) of section 132 of CGST Act to be carried out.**
- **Range of compounding amount in section 138(2) of CGST Act to be reduced suitably to minimum of 25% of the tax amount to maximum of 100% of tax amount, to make it easier for trade to resort to compounding of offences in GST.**
- **To remove anomalies in section 138(1) of CGST Act regarding the exclusion of persons for availing the benefit of compounding provisions who have been accused of committing an offence under CGST Act which is also an offence under any other law in force.**
- **To modify the language of clause (a) and (b) of first proviso to section 138(1) to simplify the same.**
- **To exclude mastermind of issuance of fake invoices from compounding by inserting a suitable clause in section 138(1).**
- **Subsequent amendment to be carried out by Law Committee in CGST Rules inter alia providing for different amount of compounding for different type of offences.**

- **The proposal would help in decriminalizing certain offences in GST and would benefit the trade and industry to this extent**


CHAIRMAN'S
INITIALS

Agenda 7(xvii): Issues pertaining to the place of supply in terms of the proviso to sub-section (8) of section 12 of the IGST Act, 2017

[Vol 1- Pg. 406-411]

Issue:

- ❖ **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 **section 12(8)** of the IGST Act, 2017.
- ❖ **Proviso to the section 12(8)**, inserted w. e.f. 01.02.2019, provides that where the transportation of goods is to a place outside India, the **PoS shall be the place of destination of such goods**, i.e. foreign country.
 - Accordingly, IGST would be payable on the said supply.
- ❖ As the PoS is different from the location of the recipient of services in such cases, **doubts are being raised in respect of the admissibility of input tax credit (ITC) to the recipient of such services.**

Proposal

- ❖ **LC has recommended for issuance of a circular for clarifying that in such cases,**
 - **ITC would be available** to the registered person located in India, in respect of such receipt of services of transportation of goods, where place of supply is outside India in terms of proviso to section 12(8)
 - **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").
- ❖ **LC has also recommended for omission of the proviso to section 12(8) of IGST Act, 2017**, as no useful purpose is being served by the proviso to section 12(8) of IGST Act, 2017 inserted w. e.f. 01.02.2019.
- **This would provide clarity to the trade and field formations and remove ambiguities on the issue.**



CHAIRMAN'S
INITIALS

Agenda 7(xiii): Clarification for treatment of the difference in ITC availed in GSTR-3B vis a vis that available in GSTR-2A for FY 2017-18 and 2018-19

[Vol 1- Pg. 385-390]

Issue:

- ❖ 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, FORM GSTR-2A of their recipients remained incomplete.
- ❖ However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B, as restrictions in availment of ITC up to 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.
- ❖ Such discrepancies between the amount of ITC availed in FORM GSTR-3B and the amount available in FORM GSTR-2A of the registered person are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc, and are being considered by them as representing ineligible ITC availed by the registered persons.
- ❖ Various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies.

Proposal

- ❖ LC has recommended issuance of a circular for detailing the procedure for verification of ITC availed by the registered persons in such cases.
- This would provide clarity to the trade and field formations and will reduce unnecessary litigation on the issue.

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CHAIRMAN'S
INITIALS

Agenda 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 Insolvency and Bankruptcy Code, 2016 [Vol 1- Pg. 391-395]

Issue:

- ❖ In cases where **proceedings are initiated under IBC** against corporate debtor, claims may be filed by the tax officers in respect of government dues pending against such person before the appropriate authority under IBC.
- ❖ On finalization of proceedings under IBC, the amount of **government dues**, payable by the said taxpayer, may be totally **extinguished or may be reduced** vis-à-vis the amount claimed by the tax officer.
- ❖ Doubts are being raised by tax authorities regarding the **modalities for implementation of the order of the adjudicating/appellant authority under IBC, after finalization of the proceedings thereof**, with respect to demand for recovery against such corporate debtor under CGST Act, 2017.

Proposal

❖ **LC has recommended :**

- **issuance of a circular** clarifying that:
 - the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, therefore, the same are covered under the term '**other proceedings**' in Section 84 of CGST Act;
 - in case the government dues under CGST Act are extinguished or reduced in IBC proceedings, an **intimation may be issued** by Commissioner under section 161 of CGST Rules for reducing the said dues.
 - **amendment to Rule 161 of CGST Rules** to align the same with Section 84 of CGST Act and **amendment to FORM GST DRC 25** to specifically include the authorities under IBC.
- **This would provide clarity to the trade and field formations on the issue.**



CHAIRMAN'S
INITIALS

Agenda 7(x): : Retrospective applicability of para 7, 8(a) and 8(b) of Schedule III of CGST Act (1/2)

[Vol 1- Pg. 365-373]

Issue

- ❖ Para 7, para 8(a) and para 8(b) were inserted in Schedule III of the CGST Act vide CGST (Amendment) Act, 2018 and were made applicable vide Notification No. 02/2019-Central Tax dated 29.01.2019 with effect from 01.02.2019, to provide 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 - **para 7**
 - 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 - **para 8(a)**
 - 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 (usually termed a High Sea Sales) will be treated neither as supply of goods nor as supply of services - **para 8(b)**
- ❖ The said notification was not made applicable retrospectively from 01.07.2017 implying that before the said amendment of the CGST Act w.e.f. 01.02.2019, the activities specified in para 7, para 8(a) and para 8(b) of Schedule III of CGST Act were subject to GST.



CHAIRMAN'S
INITIALS

Agenda 7(x): Retrospective applicability of para 7, 8(a) and 8(b) of Schedule III of CGST Act (2/2) [Vol 1- Pg. 365-373]

- ❖ However, the taxpayers are taking the plea that the insertion of the para 7, para 8(a) and para 8(b) in Schedule III of CGST Act is only for clarifying that such transactions are neither supply of goods nor supply of services, and therefore, **may be treated similarly before 01.02.2019 also.**
- ❖ In respect of High Sea Sales (HSS), taxpayers are also relying on the Circular No. 33/2017 - Customs dated 01.08.2017 *(issued as per the recommendations of the GST Council in its 13th meeting held on 30.06.2017)* which states that IGST on HSS transactions of imported goods shall be levied and collected only at the time of importation of goods.
- ❖ Therefore, there are doubts and ambiguities regarding taxability of the transactions specified under para 7, para 8(a) and para 8(b) of Schedule III of CGST Act **during the period 01.07.2017 to 31.01.2019.**

Proposal

- ❖ **LC recommended the following:**
 - Para 7, Para 8(a) and Para 8(b) in Schedule III of CGST Act, inserted w.e.f. 01.02.2019, **should have retrospective effect w.e.f. 01.07.2017.**
 - 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.**
- **The proposal will remove doubts and ambiguities regarding taxability of such transactions during the period 01.07.2017 to 31.01.2019.**



CHAIRMAN'S
INITIALS

Agenda 7(vii): Supplies by unregistered person and composition dealers through e-commerce operators (1/2)

[Vol 1- Pg. 335-343]

Issue:

- ❖ GST Council in its 47th meeting gave in-principle approval for the following relaxations for suppliers making supplies through E-Commerce Operators (ECOs):

- Waiver of requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions, such as, aggregate turnover not exceeding the turnover specified under section 22(1) of the CGST Act and notifications issued thereunder, and the said person not making any inter-State taxable supply.
- Composition taxpayers to be allowed to make intra-State supply through ECOs subject to certain conditions.
- The details of the scheme to be worked out by the Law Committee. The scheme to be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by ECOs.

Proposal:

- ❖ LC has recommended that:

- In respect of unregistered persons supplying goods through ECOs-
 - Notification may be issued under section 23(2) of the CGST Act for exempting unregistered persons from obtaining mandatory registration for supplying goods through ECOs.
 - Notification may be issued under section 148 of the CGST Act for providing special procedure to be followed by the ECOs in respect of supplies of goods through them by unregistered persons.
 - FORM GSTR-8 may be amended for capturing the information of supplies made by unregistered suppliers through electronic commerce operators.

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CHAIRMAN'S
INITIALS

Agenda 7(vii): Supplies by unregistered person and composition dealers through e-commerce operators (2/2)

[Vol 1- Pg 335-343]

- Rule 67(2) of CGST Rules, 2017 to be amended to provide that the details of TCS furnished by ECOs in FORM GSTR-8 shall be made available only to the registered suppliers.
- **in respect of the composition taxpayers supplying through electronic commerce operators**
 - 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.**
 - 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.
- **sub-section (1B) may be inserted in section 122 of CGST Act, 2017 to penalize ECOs if they allow unregistered persons to supply goods through them without enrolment, or allow inter-State supplies by unregistered persons or composition taxpayers, or fail to report the details of supplies made by unregistered persons in FORM GSTR-8.**
- Considering the time required by GSTN to develop the relevant functionality on the portal as well as its testing by the ECOs, **the implementation of the scheme may be deferred 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.
- **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.**



CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017**(1/11)**

[Vol 1- Pg. 319-320]

Amendment of Rule 87 of CGST Rules 2017:

- ❖ On payment of taxes by taxpayers through e-payment mode, the banks generate CIN for each payment and send the same to GST System, based on which GST System updates payment in Electronic Cash Ledger (ECL) of the taxpayer.
- ❖ In a few cases, the bank fails to share CIN details with GST System, but may share the CIN details and payment of such transaction with RBI subsequently.
- ❖ RBI after reconciliation of payment with CINs received from the banks, shares such transaction details with GST System and ECL of such taxpayers are updated by GST system based on e-Scroll of RBI.
- ❖ There is, however, no provision in GST law presently providing for such updation of ECL of taxpayers in such cases based on e-Scroll of RBI.
- ❖ LC recommended insertion of a new proviso to sub-rule (8) of Rule 87 in CGST Rules, 2017 to provide for the process of updating ECL on the portal on the basis of e-Scroll data received from the RBI in cases, where banks fail to provide signed CIN to GST System.
- The amendment would facilitate updation of ECL of taxpayers based on e-scrolls of RBI, where banks fail to share CIN details with GST System, thus benefiting the taxpayers.


CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017
(2/11)

[Vol 1- Pg. 332-334]

Amendment in FORM GST DRC-03:

- ❖ 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.
- ❖ Accordingly, certain changes are required in FORM GST DRC-03, for online transmission of intimation of payment of amount of erroneous refund through FORM GST DRC-03 to the jurisdictional proper officer so as to enable him to issue FORM GST PMT-03A for re-credit of amount in electronic credit ledger of the taxpayer.
- ❖ LC recommended the proposed changes in FORM DRC-03 for capturing the details of erroneous refunds and for development of the functionality for re-credit of amount of erroneous refund in electronic credit ledger using FORM GST PMT-03A.
- The amendment would facilitate timely re-credit of amount in ECL of the taxpayer, on deposit of amount of erroneous refund through FORM DRC-03.



CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017**(3/11)**

[Vol 1- Pg. 324-325]

Insertion of Rule 109C and FORM GST APL-01/03W:

- ❖ Currently, there is no provision in CGST Act or CGST Rules to **provide for withdrawal of an appeal application filed under section 107 of CGST Act**, either by the aggrieved person or by the authorised officer.
- ❖ It was felt that an option for **withdrawal of appeal application upto a specified stage** before the issuance of Order-in-Appeal needs to be made available to the appellant.
- ❖ GSTN has developed a **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.
- ❖ **LC recommended to**
 - **insert Rule 109C** in CGST Rules, 2017 to provide for withdrawal of appeal.
 - **introduce FORM GST APL-01/03W** in CGST Rules, 2017, to enable the appellant to file application for withdrawal of appeal application.
- **This will reduce litigation at the level of appellate authorities by allowing the appellants to withdraw their appeal upto a specified stage.**

CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017**(4/11)**

[Vol 1- Pg. 320-323]

Amendment in Rule 108 and rule 109:

- ❖ Sub-rule (3) of rule 108 and sub-rule (2) of rule 109 of the CGST Rules mandate **submission of a certified copy** of the decision or order appealed against within seven days of filing the appeal in FORM GST APL-01/ FORM GST APL-03.
- ❖ On receipt of such certified copy, the appellate authority is required to issue a **final acknowledgment** in FORM GST APL-02.
- ❖ 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.
- ❖ LC observed that:
 - When the copy of the order, which is appealed against, **has been uploaded** by the adjudicating authority on the common portal, the same can be viewed by the appellate authority and therefore, there **may not be any requirement of submission of a certified copy** of such uploaded order by the appellant.
 - However, where the decision or order **has not been uploaded** on the common portal, **submission of the certified copy by the appellant may be required.**
- ❖ **LC, accordingly, recommended for amendment in sub-rule (3) of rule 108 and in rule 109 of the CGST Rules, 2017 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.**
- **This amendment will facilitate timely processing of appeals and ease the compliance burden for the appellants.**


CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017**(5/11)**

[Vol 1- Pg. 328-331]

Amendment in FORM GST REG-17 and FORM GST REG-19:**Issue 1: Proposal for changes in FORM GST REG-19**

- ❖ More scenarios need to be covered in FORM GST REG-19 (order for cancellation of registration) in order to clearly bring out 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.
- ❖ Further, "Determination of amount payable pursuant to cancellation" in FORM GST REG-19 is not required in view of the provision that cancellation of registration does not affect the liability to pay tax and other dues under CGST Act or Rules for any period prior to the date of cancellation.
- ❖ **LC recommended that FORM GST REG-19 may be substituted to provide for the above.**

Issue 2: Proposal for changes in FORM GST REG-17

- ❖ Under rule 22(1) of CGST Rules, 2017, FORM GST REG-17 is show cause notice for cancellation of registration. It is proposed that provision may be made in the said form for attaching supportive document(s) for case specific details.
- ❖ **LC recommended that FORM GST REG-17 may be amended to provide for the above.**
- **This amendment would provide bring more clarity in the said forms and reduce legal disputes in relation to the same.**

CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017**(6/11)**

[Vol 1- Pg. 313-314]

Amendment in sub-rule (3) of rule 12 of CGST Rules:

- ❖ Rule 12 of CGST Rules provides for procedure for registration and cancellation of registration of Electronic Commerce Operators (required to collect TCS under section 52) and the persons, who are required to deduct tax under section 51 of CGST Act.
- ❖ Though rule 12(3) provides for cancellation of such registration by proper officer, but there is no mechanism for the said person to apply for cancellation himself.
- ❖ LC recommended that sub-rule (3) of rule 12 of CGST rules may be amended to provide for an option to the TCS and TDS operators to apply for cancellation of their registration.
- This amendment would provide facility for cancellation of registration to TDS and TCS operators.

CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017**(7/11)**

[Vol 1- Pg. 314-316]

Amendment in rule 37 :

- ❖ **2nd proviso to section 16(2)** of the CGST Act provides for payment of amount of ITC if the payment towards the value of supply along with tax payable is not made by the recipient to the supplier **within a period of 180 days.**
- ❖ **The manner for reversal of ITC in such cases is prescribed in rule 37(1),** which was **amended with effect from 01.10.2022** vide Notification No. 19/2022 - CT dated 28.09.2022 to align with GSTR1/2B/3B return filing system.
- ❖ Before the said amendments, sub-rule (1) of rule 37 required only that amount of ITC to be added to the output tax liability which was **proportionate** to the amount of payment withheld vis-à-vis the value of supply.
- ❖ 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, **giving 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.
- ❖ **LC recommended that sub-rule (1) of rule 37 may be amended retrospectively with effect from 01.10.2022 to mandate reversal of ITC proportionate to the amount of payment withheld vis-à-vis the value of supply.**
- **This amendment would correct the anomaly and facilitate the taxpayers in compliance of the provision of 2nd proviso to section 16(2).**

9/11

CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017**(8/11)**

[Vol 1- Pg. 316-317]

Insertion of rule 37A :

- ❖ Sub-section (2) of section 41 provides for prescription of manner of reversal of ITC availed by a registered person where the supplier has not paid the tax payable on the said supply and re-availment of the said ITC where the supplier makes payment of the said tax.
- ❖ LC recommended insertion of rule 37A to the CGST Rules to provide the following mechanism for such reversal of credit and re-availment thereof-
 - Recipient may be allowed to avail credit 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)
 - Where the supplier has furnished details of a supply in his FORM GSTR-1 or using IFF for a tax period, but has not furnished the corresponding return in FORM GSTR-3B till 30th September of the next financial year, the ITC in respect of such supplies shall be reversed by the registered person in a return in FORM GSTR-3B on or before 30th November of the next financial year, failing which such amount shall be payable along with interest under section 50.
 - 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.
- This amendment would ease the process for complying with the condition for availment of ITC under section 16(2)(c) of CGST Act and thus facilitate a large number of taxpayers.


CHAIRMAN'S
INITIALS

**Agenda 7(vi): Proposal for amendments to CGST Rules, 2017
(9/11)**

[Vol 1- Pg. 326-327]

Deletion of clause (d) of sub-rule (14) of rule 138:

- ❖ 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 as per the provisions of clause (d) of sub-rule (14) of the rule 138 of the respective SGST or UTGST Rules.
- ❖ 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.
- ❖ 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.
- ❖ **LC recommended:**
 - **deletion of clause (d) of sub-rule (14) of rule 138 for uniformity in the threshold for the generation of e-way bill throughout the country.**
- **This will provide a single threshold value pan-India for generation of e-way bill for transportation of goods.**

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CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments to CGST Rules, 2017
(10/11)

[Vol 1- Pg. 327-327]

Amendment in Entry (5) of Annexure appended to Rule 138(14) :

- ❖ 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 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.
- ❖ Field formations are contending that **imitation jewellery** does not fall in the same genre as jewellery made of Gold and Silver and there is no security concern for them.
- ❖ It has, therefore, been suggested by field formations to **exclude Imitation Jewellery** from the list of goods for which generation of e-way bill is not mandatory for their transportation.
- ❖ **LC recommended:**
 - amendment in Entry (5) in Annexure appended to sub-rule (14) of rule 138 of CGST Rules, 2017 to exclude **imitation jewellery** from the list of goods for which generation of e-way bill is not mandatory.
- Requirement of issuance of e-way bill for transportation of imitation jewellery will help in curbing tax evasion of this commodity.



CHAIRMAN'S
INITIALS

Agenda 7(vi): Proposal for amendments in CGST Rules, 2017**(11/11)**

[Vol 1- Pg. 317-319]

Amendment to rule 46:

- ❖ Clause (f) of rule 46 provides that in case of supply by a registered person to an unregistered recipient with value of taxable supply being less than Rs 50,000/-, tax invoice 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 requests that such details be recorded on the tax invoice.
- ❖ Sub-section (2) of section 12 of the IGST Act provides 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.
- ❖ LC recommended insertion of proviso in clause (f) of rule 46 to provide for mandatory recording of address of unregistered recipients of services, along with PIN code, when the said services are provided through the online platform by a registered person, even if value of taxable supply is less than Rs 50,000/-.

Amendment to rule 46A:

- ❖ Rule 46A of the CGST/SGST Rules 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.
- ❖ LC recommended insertion of proviso in rule 46A to prescribe including the relevant particulars as prescribed in rule 46 or rule 49 or rule 54, as applicable, in such single "invoice-cum-bill of supply".
- The amendment would facilitate flow of revenue to the appropriate consuming State in respect of such supplies.


CHAIRMAN'S
INITIALS

Agenda 7(v): Clarifying the manner of re-determination of demand in terms of sub-section (2) of section 75

[Vol 1- Pg. 308-312]

Issue:

- ❖ Section 75(2) of CGST Act, 2017 provides that 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**, 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/ wilful-misstatement/ suppression of facts etc. **have not been established.**
- ❖ 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 73(1), specially in cases where time limit for issuance of order as per 73(10) has already been over; and
 - the **methodology for computation** of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of section 73.

Proposal:

- ❖ **LC has recommended for issuance of a circular in FAQ form for clarifying the same.**
- **Issuance of circular would provide clarity and remove ambiguities on the issue.**



CHAIRMAN'S
INITIALS

**Law Committee
Recommendations
relating to
Compliance and
Administrative measures
under GST**



CHAIRMAN'S
INITIALS

**Agenda 7(iv): Amendment in section 56 of the CGST Act, 2017
and rule 94 of the CGST Rules, 2017**

[Vol 1- Pg. 304-307]

Issue:

- ❖ Section 56 of the CGST Act provides for payment of interest @ 6% p.a. to the applicant for period of delay if the sanctioned refund amount is not paid to the applicant within 60 days from the date of receipt of complete application of refund.
- ❖ There are cases where the payment of refund to the applicant gets delayed due to the reasons attributable to the applicant.
- ❖ There is a need to exclude this amount of delay, attributable to the applicant, from the period for payment of interest on delayed refunds.
- ❖ CAG has also made a recommendation in the matter in its report No. 5 of 2022, as 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."

Proposal

- ❖ **LC recommended the following:**
 - To make an amendment in section 56 of the CGST Act to provide for prescribing the manner of computation of period of delay for calculation of interest payable on delayed refund in CGST Rules.
 - To make an amendment in rule 94 of the CGST Rules to provide for exclusion of period of delay attributable to taxpayer for computation of time period of delay for payment of interest on delayed refunds.
- This will ensure that interest is not required to be paid on delayed refunds if the delay is due to the reasons attributable to the applicant.



CHAIRMAN'S
INITIALS

Agenda 7(i): Biometric-based Aadhaar authentication for new registration and other Enhancements in GST Registration (1/3)

[Vol 1- Pg. 286-290]

Issue 1: Biometric-based Aadhaar authentication and physical verification for new registration

- ❖ Sub-rule (4A) was inserted in rule 8 of the CGST Rules, 2017 to provide for biometric-based Aadhaar authentication. However, the said provision has not yet been notified.
- ❖ The Group of Ministers on GST System Reforms approved the proposal to improve the registration process by using mandatory biometric authentication for high-risk applicants for registration under GST.
- ❖ The pilot for the same is proposed to be conducted by the State of Gujarat.

Proposal:

- ❖ LC has recommended that –
 - sub-rule (4A) of rule 8 may be substituted to mandate biometric-based Aadhaar authentication for high-risk applicants who opt for authentication of Aadhaar number.
 - sub-rule (4B) may be inserted in rule 8 to provide for exemption from biometric-based Aadhaar authentication in states / UTs where the pilot is not being undertaken.
 - sub-rule (5) of rule 8 may be amended to provide that acknowledgement shall be issued to the applicant only after completion of biometric-based Aadhaar authentication.
 - rule 9 may be amended 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.
 - For conducting pilot in the state of Gujarat:
 - amendments in rule 8(4A), 8(5) and rule 9 may be made at present only in Gujarat SGST Rules and in CGST Rules but not in SGST / UTGST Rules of other states / UTs at present.
 - rule 8(4B) may be introduced in CGST Rules only. Subsequently, a notification may be issued by the Centre under Rule 8(4B) for specifying all states/ UTs, except Gujarat, where provisions of rule 8(4A) will not apply.

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CHAIRMAN'S
INITIALS

Agenda 7(i): Biometric-based Aadhaar authentication for new registration and other Enhancements in GST Registration (2/3)

[Vol 1- Pg 286-290]

Issue 2: Incorporation of details of electricity bill and property registration in FORM GST REG-01

- ❖ The Group of Ministers on GST System Reforms 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 and Urban Administration Department.

Proposal:

❖ L.C. has recommended that –

- Details of electricity consumer account number (CA Number) and Property registration may be sought under State Specific Information at S. No. 24 of FORM GST REG-01.
- Details of Electricity CA Number may be notified under S. No. 24 by the State of Maharashtra.
- Details of Electricity CA Number and Property registration may be notified under S. No. 24 by the State of Madhya Pradesh.



CHAIRMAN'S
INITIALS

Agenda 7(i): Biometric-based Aadhaar authentication for new registration and other Enhancements in GST Registration (3/3)

[Vol 1- Pg 286-290]

Issue 3: Enhancement in GST Registration to restrict misuse of PAN

- ❖ Presently, at the time of registration, 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.
- ❖ No intimation is sent to the PAN holder when a GST registration is applied, leading to cases where PAN of a person is misused for obtaining GST registration without his knowledge by unscrupulous elements.

Proposal:

- ❖ LC has recommended that –
 - PAN-linked mobile number and email address (fetched from CBDT database) may be captured and recorded in FORM GST REG-01.
 - 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.
 - Sub-rule (1) of rule 8 and clause (a) to sub-rule (2) of Rule 8 may be amended to provide for OTP-based verification of PAN-linked mobile number and email address and verification of authorised signatory's self-declared mobile number and email address may be done away with.
 - Part-A of FORM GST REG-01 may be amended accordingly.
- This proposal would streamline the process of registration and help in protecting the interest of honest taxpayers.



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Agenda 7(viii): Proposal for amendments in the CGST Act(1/3)

[Vol 1- Pg. 344-345]

Issue 1: Amendment in second proviso to section 16 of CGST Act to align with GSTR-1/3B

- ❖ As per recommendations of GST Council, GSTR-1/3B return filing system has been made as the default return filing system and amendments have been carried out in CGST Act to this effect. However, 2nd and 3rd provisos to section 16(2) of CGST Act also require amendment to align with the GSTR-1/3B system.

Proposal

- ❖ **LC recommended that 2nd and 3rd provisos to section 16(2) of CGST Act may be amended to align with GSTR-1/3B return filing system.**

Issue 2: Amendment to section 23 of CGST Act to provide overriding effect over sections 22(1) & 24

- ❖ Section 22 of CGST Act provides for persons liable for registration and section 24 provides for compulsory registration in certain cases.
- ❖ Section 23 provides for persons not liable for registration and exemption of specified categories of persons from obtaining registration.
- ❖ Existing section 23 does not have any clause **overriding** the registration requirement imposed vide section 24 and section 22(1), **creating doubts whether section 23 prevails over section 24 and 22(1) or not.**

Proposal:

- ❖ **LC has recommended that to avoid any conflict within the said provisions and to provide more clarity, section 23 of CGST Act may be amended retrospectively w.e.f. 01.07.2017 to provide section 23 an overriding effect over sections 22(1) & 24 of CGST Act.**


CHAIRMAN'S
INITIALS

Agenda 7(viii): Proposal for amendments in the CGST Act(2/3)

[Vol 1- Pg. 345-346]

Issue 3: Amendments in CGST Act, 2017 to restrict filing of returns / statements after completion of specified time in view of data archival policy

- ❖ Huge data size is putting an excessive load on the server of GST system and compromising performance. Keeping massive data available online slows down the GST system applications and impacts return filing, especially during peak filing days.
- ❖ Keeping data in big data format for either taxpayers or tax officers involves considerable cost in terms of infrastructure requirements.
- ❖ Considering this, GSTN has proposed a **data archival policy** for the smooth functioning of the GST Portal and also to provide superior experience to the taxpayers.

Proposal:

- ❖ **LC has recommended that section 37, 39, 44 and 52 of CGST Act may be amended to provide maximum time limit of three years beyond the due date of filing for filing of the relevant returns / statements under the said sections of CGST Act.**

CHAIRMAN'S
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Agenda 7(viii): Proposal for amendments in the CGST Act(3/3)

[Vol 1- Pg. 346-347]

Issue 4: Amendment of sub-section (6) of Section 54 of CGST/SGST Act, 2017

- ❖ 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**.
- ❖ **Section 41** of the CGST/SGST Act, 2017, which provided for availment 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** through Finance Act, 2022 w.e.f. 01.10.2022 **by doing away with the provision of availing of input tax credit on a provisional basis**.

Proposal:

- ❖ **LC recommended** to omit the words "excluding the amount of input tax credit provisionally accepted," in sub-section (6) of section 54 of the CGST Act.

- **These amendments will help in aligning various provisions of CGST Act.**

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Agenda 7(ix): Amendment in the tables of GSTR-1 for reporting ECO Supplies attracting TCS under section 52 of CGST Act and those made under section 9(5) of CGST Act

[Vol 1- Pg. 347-364]

Issue:

- ❖ Supplies made by a registered person through e-commerce operators (ECOs) attracting TCS under section 52 of CGST Act are to be reported in various tables of **FORM GSTR-1** i.e. 4C, 5B, 7A(2), 7B(2), 10A(1) & 10B(1). However, these tables have not been made functional on GST Portal.
- ❖ Amendment has been made in **FORM GSTR-3B** to provide that the taxable supplies made by the registered person through ECO, on which ECO is required to pay tax under sub-section (5) of section 9 of CGST Act, are required to be reported by both the registered person as well as ECO in their respective returns in **FORM GSTR-3B**.
 - However, there is no separate table in **FORM GSTR-1** to furnish details of the aforementioned details.

Proposal:

- ❖ **LC has recommended certain changes in FORM GSTR-1 to provide for reporting of supplies made through ECO by the supplier in respect of section 52 and section 9(5) supplies as well as by ECO in respect of section 9(5) supplies.**
- **This proposal would ensure correct reporting and matching of supplies made through ECOs under section 52 of CGST Act as well under section 9(5) of CGST Act.**



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Agenda 7(xi): Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return (1/2)

[Vol 1- Pg. 374-377]

Issue:

- ❖ Law Committee 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 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 specified extent, the registered person may be 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 the taxpayer 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 file FORM GSTR-1/ invoice furnishing facility for the subsequent tax period.



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Agenda 7(xi): Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return (2/2)

[Vol 1- Pg. 374-377]

Proposal:

❖ LC has recommended-

- Insertion of new rule 88C in CGST Rules for intimation to the taxpayer by the portal the difference between liability in FORM GSTR-1 and FORM GSTR-3B and to request payment of the differential liability or explain the difference.
 - Insertion of a new clause (d) in sub-rule (6) of rule 59 of CGST Rules 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.
 - FORM GST DRC-01B may be inserted as required under rule 88C(1).
 - 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).
 - 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.
- This proposal will help in reducing GSTR 1-3B gap by facilitating taxpayer to either pay the differential amount or explain the reasons for the same, without intervention of tax officers.

Agenda 7(xvi): Amendment of section 17 of CGST Act regarding ITC in respect of CSR (Corporate Social Responsibility) expenditure

Issue:

[Vol 1- Pg. 402-405]

- ❖ Doubts have been raised by trade as well field formations in respect of **availability of input tax credit on CSR expenditure** incurred by companies in accordance with the provisions of Companies Act, 2013 **due to various contradictory advance rulings.**
- ❖ **One view** is that CSR expenditure is incurred to meet the obligations under section 135(5) of the Companies Act, and non-compliance on this count attracts penal action. Accordingly, **input tax credit should be available** in respect of inputs and input services for CSR activities in terms of section 16(1) of CGST Act.
- ❖ However, **another view** is that CSR does not include activities undertaken in pursuance of normal course of business of the company and **input tax credit may not be available** to the registered person on CSR expenditure under section 16(1) of CGST 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.**

Proposal

- ❖ **LC has recommended that:**
 - **Input tax credit in respect of CSR expenditure incurred by Companies under section 135 of Companies Act may not be allowed.** To unambiguously state such position, **such CSR expenditure may be included in the list of blocked credit under section 17(5) of CGST Act.**
- **This would provide make the position of law regarding treatment of CSR expenditure for availment of ITC amply clear, thereby avoiding unnecessary litigation.**



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Agenda 7(xv): Amendment in provisions related to OIDAR Services under IGST Act

[Vol 1- Pg. 396-401]

Issue:

- ❖ **OIDAR services** are 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, steps may be required to be taken in due course regarding OIDAR services supplied by persons located in non-taxable territory by taking suitable measures such as, information returns by payment gateways/ AD banks or imposition of TCS liability of such payment gateways/ AD banks.
- ❖ **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.

Proposal

❖ **LC has recommended amendment in:**

- Definition of **non-taxable online recipient** in section 2(16) of IGST Act to remove the condition that service recipient uses the OIDAR services **for any purpose other than commerce, industry or any other business or profession.**
- Definition of **online information and database access or retrieval services** in section 2(17) of IGST Act to **remove the condition** that the supply of such service must be essentially automated and **should involve minimal human intervention.**

➤ **This would provide clarity to the trade and field formations on the issue and will reduce litigations.**



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Annexure-5



Agenda Item: 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



CONTENTS



- ☐ Background
- ☐ Issue
- ☐ Constitution of Committee
- ☐ Proceedings of Committee
- ☐ Recommendation of Committee
- ☐ Views of States



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Background



- 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, CBIC is designated as Chief Accounting Authority (CAA) for the purpose of accounting & reporting of Central Goods & Services Tax (GST).
 - The Business Logic and Workflow Designs for the authorized banks are duly documented by CAA in the form of detailed document called BARM (Banking Authorization Reference Model)
 - ✓ It stipulates 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 20:00 hrs of the day. The same is to be uploaded to RBI on T + 1 day.
 - A SOP (Standard Operating Procedure) was issued by the Office of the CGA vide O.M. No. 5-11/12/1 (31)/AC22/2015/RBS/332-424 dated 09.03.2016, to monitor the delays in remittances by the agency banks to the Government Account with RBI and to levy the penal interest on Agency Banks,-
 - ✓ It specifies that 'penal interest for delayed remittance beyond the prescribed time limit will be levied at the rate of Bank Rate +2%.
 - ✓ claims of delayed penal interest involving an amount of Rs.500/- or below per transaction to be ignored.



Issue



- 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 December, 2017
- Demand letters for penal interest against 23 banks to the tune of Rs.7.62 crores were issued to the concerned banks in Feb/March, 2018 by the office of Pr. CCA, CBIC.
- Most of the banks represented for waiver of penal interest due to the reason of technical problems, EOD related issues, validation failure at RBI, GSTN, CBS problems etc.

Clarification Issued



- Before issuing final instruction on levy of penal interest, clarification was issued as to which type of holidays should be accepted for waiver of penal interest from agency banks on delayed remittances on account of reporting of GST collections.
- ✓ In this regard, Office Memorandum No. S-11012/1(6)/Misc./RBD/GBA/2017-18/98-180 dated 30/01/2019 issued by CGA may be referred



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Constitution of Committee



- 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 Bhubaneshwar.

- ✓ The meeting was chaired by CGA.
- ✓ constituted a committee vide OM No. S-11012/3/PI/CBIC/GBA/194-200 dated 08.02.2019 comprising the following members to examine the requests of the banks and to decide on the issue of waiver of penal interest

Annexure - 'A' 1

(S)

Office of the
Controller General of Accounts
Ministry of Finance
Department of Expenditure
Mahatma Nityatra Bhawan
E Block, W-4, New Delhi
TeleFax : 011-26649265
Email: cga@cbic.gov.in

No. S-11012/3/PI/CBIC/GBA/194-200 Dated: 08 February 2019

Office Memorandum

Subject: Constitution of the Committee for examining the matter of levy of penal interest during the initial period of GST Collection

An incident in the 18th 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 the Pr. CCA, CBIC, on the grounds of technical pendancy held by the banks during the initial period of GST collection i.e. from 1st July 2017 to 31st December 2017.

Sr.	Members	Designation
1.	Principal Chief Controller of Accounts	Chairman
2.	Central Board of Indirect Taxes and Customs	Member
3.	Joint Controller General of Accounts (GBA), Unit for CCA, New Delhi	Member
4.	Commissioner, Pr. Wdg, CBIC, Department of Revenue, Government and Bank Accounts, Reserve	Member
5.	Chief General Manager (Government Business), New Delhi, CBIC	Member
6.	General Manager (Government Business), Central Board of Indirect Taxes and Customs	Member
7.	General Manager (Government Business), Bank of India	Member

3. The Committee will submit the report to the CGA within three months from the date of issue of this order.

4. This issues with the approval of Competent Authority.

(Signature)

Joint Controller General of Accounts (GBA)

To

1. Pr. CCA, CBIC, New Delhi
2. A. CCA (GBA), Unit for CCA, New Delhi
3. Commissioner, Pr. Wdg, CBIC, Department of Revenue, New Delhi
4. General Manager, CBIC, BIC, Mumbai
5. Chief General Manager (Govt. Business), State Bank of India, New Delhi
6. General Manager (Govt. Business), Punjab National Bank, New Delhi
7. General Manager (Govt. Business), Bank of Baroda, New Delhi

Proceedings of Committee



- The Committee had held three meetings as under:

- ✓ 1st Meeting was held on 12th March, 2019
- ✓ 2nd Meeting was held on 10th April, 2019
- ✓ 3rd Meeting was held on 11th June, 2019

Recommendations of Committee:



➤ Challenges faced by the banks:-

- ✓ That remittance of funds could not be made timely as the IT system and the integration process was not robust initially.
- ✓ Failures of many receipt transactions from Banks at GSTN portal resulted into various course corrections on the basis of analysis of errors.
- ✓ 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

➤ Observations of the Committee:-

- ✓ That about 80% of total delayed transactions are having one to three days of delay and the pattern is seen in all the six month of transactions, across all 25 banks.
- ✓ Many transactions failures were because of unforeseen errors and IT glitches and while these transactions were successful at bank's end after debiting the taxpayers 'account' , however, were not reported on real time to GSTN to credit the taxpayer's electronic cash ledger.



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Recommendations of Committee:



➤ Final Recommendation of the Committee:-

- ✓ 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 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 was 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.



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Comments received from States



Sl. No.	Name of the States	Remark/Comments given by the States
1.	Rajasthan	Did not agree with report of Committee They want Bank Rate+2% Penal Interest for the period 01.07.2017 to 31.12.2017 on delay in payment beyond T+1 Day
2.	Meghalaya	Agreed with recommendation of the committee
3.	Nagaland	Agreed with recommendation of the committee
4.	Tamil Nadu	Agreed with recommendation of the committee
5.	Himachal Pradesh	They are in agreement with the proposal of CBIC for levy of penal interest on Banks for delay in the payment by T+1 days
6.	Odisha	Agreed with recommendation of the committee
7.	Chhattisgarh	Agreed with recommendation of the committee
8.	Manipur	Agreed with recommendation of the committee
9.	West Bengal	The report of the committee may be placed before the GST Council for deliberation
10.	Assam	Agreed with recommendation of the committee

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Comments received from States



Sl. No.	Name of the States	Remark/Comments given by the States
11.	Goa	Agreed with the recommendations of the committee.
12.	Punjab	No relaxation may be given 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)
13.	Uttar Pradesh	The State of Uttar Pradesh approved the recommendations of the committee. However, they opined 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 may be) shall be transferred to the respective states.
14.	Gujarat	Suggestions have been given on the recommendations of the Committee.

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THANK YOU!!



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