

Confidential



Agenda for 47th GST Council Meeting

28-29 June 2022

Volume – 1





**Council Secretariat
New Delhi**

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
18th June, 2022

OFFICE MEMORANDUM

Subject: Notice for the 47th Meeting of the GST Council scheduled to be convened on 28th & 29th June, 2022- Reg.

The undersigned is directed to refer to the subject stated above and to convey that the 47th Meeting of the GST Council will be held on **28th & 29th June, 2022** in **Chandigarh**. This Notice is in supersession of earlier Notice dated 17th June, 2022 on the above mentioned subject. The schedule of the Meeting is as follows:

- **Tuesday, 28th June, 2022:** 11:00 Hours onwards
 - **Wednesday, 29th June, 2022:** 11:00 Hours onwards
2. In addition, an **Officers Meeting** will be held on 27th June 2022 as per the following schedule:
- **Monday, 27th June 2022:** 11:00 Hours onwards
3. The exact venue, agenda items and other details for the 47th Meeting of the GST Council will be communicated in due course of time.
4. Keeping in view the Covid-19 related protocols, it is requested that participation from each State may be limited to 2 officers in addition to the Hon'ble Member of the GST council.
5. Kindly convey the invitation to Hon'ble Member to attend the 47th Meeting of the GST Council.

Sd/-

(Tarun Bajaj)

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

Tel:011 23092653

Copy to:

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

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Discussion on Agenda Items

Agenda Item 1: Confirmation of the Minutes of the GST Council Meetings

Agenda Item 1(i): Confirmation of the Minutes of the 45th GST Council Meeting 17th

September 2021

The 45th meeting of the GST Council (hereinafter referred to as 'the Council') was held on 17th September 2021 at Lucknow under the Chairpersonship of Hon'ble Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon'ble Members/Ministers of the Council who attended the meeting was at **Annexure-I**. A list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting was at **Annexure-II**.

2. The following agenda items were listed for the discussion in the 45th Meeting of the Council:

1. Confirmation of Minutes of GST Council Meetings
 - i. 43rd GST Council Meeting held on 28th May 2021
 - ii. 44th GST Council Meeting held on 12th June 2021
2. Ratification of the Notifications, Circulars and orders issued by the GST Council and decisions of GST Implementation Committee for the information of the Council
3. Issues recommended by the Law Committee for the consideration of the GST Council
 - i. Aadhaar authentication of existing taxpayers under GST
 - ii. Agenda Note for issuance of clarification relating to export of services-condition (v) of the Section 2 (6) of the IGST Act 2017
 - iii. Clarification in respect of certain GST related issues
 - iv. Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal
 - v. Mechanism to collect late fee imposed under section 47 of the CGST Act for delayed filing of FORM GSTR-1
 - vi. Review of requirement of filing FORM GST ITC-04
 - vii. Agenda Note for amendment in CGST Rules for refund to be disbursed in bank account linked with same PAN and Aadhaar on which registration has been obtained under
 - viii. Applicability of interest on ineligible Input Tax Credit (ITC) wrongly availed and/or utilized, in terms of section 50 of Central Goods and Services Tax Act, 2017 (CGST Act)
 - ix. Proposal for clarification in respect of refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act-
 - x. Transfer of CGST /IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states)
 - xi. Additional measures to tackle the menace of fake invoices: Amendment to rule 36(4) of the CGST Rules, 2017

- xii. Additional measures to tackle the menace of fake invoices: Amendment to rule 59(6) of the CGST Rules, 2017
 - xiii. Agenda Note for amendment in Section 54 of the CGST Act, 2017
 - xiv. Clarification on doubts related to scope on “intermediary”
 - xv. Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route
4. Nominations from State Governments on Board of GSTN.
 5. Performance Report of the NAA (National Anti-profiteering Authority) for the 1st quarter (April to June, 2021) for the information of the Council.
 6. Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information.
 7. Report of Group of Ministers (GoM) on levy of Covid Cess on Pharma and Power in Sikkim.
 8. Closure of Group of Ministers (GoM) on concessions/ exemption from GST to COVID relief material
 9. Agenda Note on the basis of the Interim Report of the Group of Ministers (GoM) on capacity-based taxation and special composition scheme for certain sect
 10. Transposition of GST rate notifications consequent to changes in tariff item codes in the First Schedule to the Customs Tariff Act, 1975.
 11. GST rate on job works services in relation to manufacture of alcoholic liquor for human consumption.
 12. Agenda Note based on the order of the Hon’ble Kerala High Court in the W.P. (Civil) No. 12481 of 2021 for placing representation by Kerala Pradesh Gandhi Darshanavedhi, Thiruvananthapuram regarding inclusion of petrol and Diesel under GST.
 13. Concessions to specified drugs used in Covid-19 treatment till 31st December, 2021
 14. Issues recommended by the Fitment Committee for the consideration of the GST Council
 15. Recommendations of the 15th IT Grievance Redressal Committee for approval/decision of the GST Council
 16. Agenda Note for GST Council on National Anti-Profiteering Authority
 17. Review of Revenue Position under Goods and Services Tax
 18. Compensation- Scenario Post June-2022 and Options

Preliminary discussion

3. The Hon’ble Chairperson invited the Union Revenue Secretary and ex-officio Secretary to the GST Council to begin the proceedings. The Secretary welcomed all participants to the 45th meeting of the GST Council and stated that this physical meeting is being held after the 38th meeting held a year and a half ago.

3.1. The Secretary, GST Council at the outset placed on record his gratitude and sincere appreciation on behalf of the Council for the valuable contribution made to the Council by the outgoing Hon'ble MoS (Finance) Sh. Anurag Singh Thakur and welcomed the new Hon'ble MoS (Finance) Sh. Pankaj Chaudhary to the Council. He also welcomed Sh. Lakshminarayanan, the Hon'ble Minister for Public Works, Puducherry, Sh. Badal Patralekh, the Hon'ble Minister for Agriculture, Animal Husbandry and Co-operative Department, Jharkhand; and Ms. Chandrima Bhattacharya, the Hon'ble Minister of State for Urban Development and Municipal Affairs Department, West Bengal, who were attending the GST Council meeting for the first time.

3.2. He informed the Council that on the previous day (16th September 2021), he met the Officers from all the States and his colleagues from the Centre and had an excellent discussion and deliberations on various agenda items. They were able to reach a consensus on most issues. On the items, where there were still differences, those would be placed before the Council for a decision. He sought the permission of the Chairperson to take up individual agenda items for consideration of the Council.

Agenda Item 1: Confirmation of the Minutes of the 43rd and 44th GST Council Meeting

4. The first agenda item pertained to confirmation of the minutes of the 43rd GST Council meeting held on 28th May, 2021 and the 44th GST Council meeting held on 12th June, 2021. He further stated that few comments had been received from some States, which were basically editorial changes and had been carried out. The Secretary proposed that the Council may confirm the Minutes of the 43rd and 44th GST Council meetings with the changes suggested above. The Council decided to adopt the Minutes of the 43rd and 44th meeting of the GST Council with the changes as proposed.

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

5. The Secretary stated that the second agenda item pertained to ratification of the notifications, circulars, and orders issued by the GST Council and the decisions of the GST Implementation Committee (GIC) for the information of the Council. He stated that the GIC decisions are also implemented through notifications, circulars, and orders. The Council took note of the decisions of the GST Implementation Committee (GIC) and ratified the same. Further, the notifications, circulars and orders issued by the States which were *pari materia* with above notifications, circulars and orders were also deemed to have been ratified.

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

6. The Secretary to the Council 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 September, 2021 and there was agreement in the Officers' meeting on most of the issues of this agenda, except for a couple of issues on which the decision of the GST Council was required. Thereafter, Principal Commissioner, GST (Policy Wing) made a detailed presentation (attached at **Annexure-III**) giving overview of the recommendations made by the Law Committee.

Agenda Item 3(i): Aadhaar authentication of existing taxpayers under GST

7. The Principal Commissioner GSTPW informed that the provision for Aadhaar authentication for new registration has already been implemented. As regards Aadhaar authentication for existing registrations, the Law Committee recommended that the requirement to get the GST registration Aadhaar authenticated may be made mandatory on such occasions where there is a potential threat to revenue or the taxpayer is availing a beneficial provision under the GST law. Law Committee further recommended that to start with, Aadhaar authentication may be made mandatory for being eligible for refund and revocation of cancellation of registration and recommended amendment in CGST Rules, 2017 to this effect. The Council unanimously agreed to the proposal. It was also decided that the amendments to the rules, as proposed in the agenda note, would be notified when requisite IT readiness is made on the portal.

Agenda Item 3(ii): Issuance of clarification relating to export of services- condition (v) of the Section 2 (6) of the IGST Act 2017

7.1 The Principal Commissioner, GSTPW informed that in order to clarify the issues arising due to different interpretations by field formations on export of services, it has been recommended by the Law Committee to clarify through a circular that a person incorporated in India under the Companies Act, 2013 and a foreign company, i.e. a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be considered merely establishments of distinct persons under Explanation 1 of Section 8 of IGST Act 2017. Accordingly, the supply between such persons would not be barred by the condition (v) of the sub-section (6) of the Section 2 of the IGST Act 2017 for being considered as export of services. The Council unanimously agreed to the proposal.

Agenda Item 3(iii): Clarification in respect of certain GST related issues

7.2 The Principal Commissioner GSTPW mentioned that there are different practices about three (3) GST related issues and the Law Committee has recommended that these issues may be clarified by issuance of a Circular. He informed that the first issue is regarding the time limit for availing input tax credit in respect of a debit note as per Section 16(4) of CGST Act, 2017, as amended with effect from 01.01.2021. Law Committee recommended that with effect from 01.01.2021, in case of debit notes, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of Section 16(4) of CGST Act. He also added that the second issue is regarding need to carry the physical copy of tax invoice in cases where e-invoice is issued. Law Committee recommended that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules (i.e. e-invoices) and production of the QR code having an embedded IRN electronically would suffice for verification by the proper officer. The third issue is regarding availability of refund of accumulated input tax credit (ITC) under Section 54(3) of CGST Act, 2017, in cases where the goods are subjected to Nil export duty or where export duty of the goods is fully exempted. Law Committee recommended that only those goods which are actually subjected to export duty i.e. on which some export duty has to be paid at the time of export, will be covered under the restriction imposed vide second proviso to Section 54(3) of CGST Act from availment of refund of accumulated ITC. The Council agreed with the recommendation of the Law Committee, along with the proposed circular.

Agenda Item 3(iv): Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal

7.3 Section 146 of CGST Act, 2017 provides that the Common GST Electronic Portal may be notified for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed. Vide notification No. 4/2017 dated 19.06.2017 read with notification No. 9/2018 dated 23.01.2018, GST portal was notified for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, and electronic way bill only. Subsequently, vide notification No. 69/2019 dated 13.12.2019, GST portal has been notified for the purpose of preparation of the e-invoice. However, various other functions and purposes such as composition levy, input tax credit, refund, transitional provisions, etc. do not have a common portal notified yet. In order to prevent any legal challenges with respect to various online functionalities provided on GST portal, the Law Committee recommended that www.gst.gov.in may be designated, with retrospective effect, as the Common Goods and Services Tax Electronic Portal, for all functions and purposes under CGST Act 2017, other than e-way bill and e-invoicing. This may be done by retrospectively amending notification number 9/2018-CT dated 23.01.2018 and issuance of a retrospective notification w.e.f. 22.06.2017, as detailed in the agenda note. The Council unanimously agreed to the proposal.

Agenda Item 3(v): Mechanism to collect late fee imposed under Section 47 of the CGST Act for delayed filing of FORM GSTR-1

7.4 The Principal Commissioner, GSTPW mentioned that at present, the late fee for late filing of GSTR-3B was collected on the portal while filing the subsequent GSTR-3B but no such the late fee for delayed filing of GSTR-1 is being collected on the portal. The Law Committee recommended that the late fee for GSTR-1 should be auto-populated on the portal in next open return in FORM GSTR-3B and that the same may be implemented on portal for prospective tax periods (from July, 2021 tax period onwards). Law Committee also recommended amendment in Section 47 of CGST Act to delete reference to Section 38 of CGST Act, as detailed in the agenda note. There was agreement in the Council in respect of this proposal.

Agenda Item 3(vi): Review of requirement of filing FORM GST ITC-04

7.5 The Principal Commissioner, GSTPW added that the requirement of filing FORM ITC-04 on quarterly basis, by the registered persons, who send the goods for job work basis, was deliberated by the Law Committee. The Law Committee has recommended that rule 45(3) of CGST Rules 2017 may be amended to change frequency of filing FORM ITC-04 such that the taxpayers, whose annual aggregate turnover in preceding financial year is above Rs. 5 crores, shall furnish FORM ITC-04 once in six months and taxpayers, whose annual aggregate turnover in preceding financial year is up to Rs. 5 crores, shall furnish FORM ITC-04 annually. The Council unanimously agreed to the same and decided that it may be made effective with effect from 01.10.2021.

Agenda Item 3(vii): Amendment in CGST Rules for refund to be disbursed in bank account linked with PAN and Aadhaar on which registration has been obtained.

7.6 The Principal Commissioner, GSTPW informed that the agenda item 3(vii) was regarding an earlier decision of the GST Council, as per which in-principle approval was given by the GST Council for disbursing refunds to only those bank accounts which are linked with both PAN and Aadhaar, on which GST registration has been obtained. The issue was further deliberated by the Law Committee and it was discussed that since Aadhaar is issued only for natural persons (and not legal/juristic persons),

the requirement of both PAN and Aadhaar would be applicable only for proprietorship concerns. However, in case of other firms, the bank account should be required to be linked only to the PAN of the concerned legal entity. Law Committee also recommended amendment in CGST Rules, 2017 accordingly. During the officers' meeting, Tamil Nadu suggested slight modification in the proposal and recommended to link PAN with Aadhaar in case of proprietorship firm. The recommendation of the Law Committee, as amended as per suggestion given by Tamil Nadu, was agreed upon by the Council. It was also decided that the said amendments will be notified when necessary IT readiness on portal is made.

Agenda Item 3(viii): Applicability of interest on ineligible Input Tax Credit (ITC) wrongly availed and/or utilized, in terms of Section 50 of Central Goods and Services Tax Act, 2017 (CGST Act)

7.7 The Principal Commissioner GSTPW took the agenda further. He mentioned that as per recommendation of the GST Council, Section 50(1) of CGST Act 2017 has been amended retrospectively with effect from 01.07.2017 to provide for requirement to pay interest on delayed payment of tax on net cash basis. However, doubts remain regarding whether interest is applicable only on ITC which has been wrongly 'availed' (and not utilized) or is applicable on the ITC wrongly 'availed and utilized', and representations have been received seeking clarification regarding applicability of interest on reversal of ineligible ITC in such cases. He also informed that the GST Council in its 43rd Meeting recommended to amend sub section (3) of section 50 of CGST Act to provide for payment of interest on ineligible ITC 'availed and utilized'. The Law Committee has recommended to make this amendment in sub-section (3) of Section 50 of CGST Act retrospectively with effect from 01.07.2017, to remove any ambiguity on this issue, which also goes with the spirit of the decision of the GST Council for levying interest on net cash basis. Law Committee also recommended to modify the wording of sub-section (3) slightly to provide for calculation of interest in the manner as prescribed in Rules, as detailed in the agenda note. It was also recommended by the Law Committee that notification issued to notify rate of interest under Section 50 may be amended retrospectively w.e.f. 01.07.2017 to specify rate of interest as 18% for ITC availed and utilized, till the time amended Section 50(3) is notified. The Council agreed with the said recommendations of the Law Committee.

Agenda Item 3(ix): Clarification in respect of refund of tax wrongfully paid as specified in Section 77(1) of the CGST/SGST Act and Section 19(1) of the IGST Act

7.8 The Principal Commissioner GSTPW mentioned that Section 77 of CGST Act 2017, read with Section 19 of IGST Act, provides for refund of tax wrongfully paid considering the supply as intra-state or inter-state supply, which is subsequently held as inter-state or intra-state respectively. He mentioned that there are doubts regarding time limit for claiming refund under the said provisions, as well as regarding interpretation of the term "subsequently held". The Law Committee recommended for insertion of sub-rule (1A) in rule 89 of CGST Rules 2017 for prescribing the procedure and time limit in respect of such refunds. The Law Committee also recommended for issuance of a circular to clarify the term "subsequently held" and time limit for filing such refund claims for past as well as prospective periods, to remove any ambiguity on the issue, as detailed in agenda note. There was unanimous agreement on the same in the Council.

Agenda Item 3(x): Transfer of CGST /IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states)

7.9 The Principal Commissioner, GSTPW mentioned that this issue relates to those cases where a person with same PAN has multiple registrations in different States. Presently, such distinct persons are

unable to transfer their balance in electronic cash ledger from one State to the another, on their own. There are no revenue implications involved since such person can get refund of the excess balance in electronic cash ledger in respect of registration in one State and deposit the same in respect of registration in another State. To remove this procedural requirement/ compliance and to ease the liquidity position of such taxpayers, it was recommended by Law Committee that unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons, subject to the condition that such transfer will not be allowed if DRC-07 liability exists for the said registered person. It was discussed that since the CGST and IGST funds go to the Consolidated Fund of India, the revenues of the States are not directly impacted. The recommendation of the Law Committee, as per agenda note, was agreed to by the Council. It was also suggested that Law Committee may be delegated to draft the amendment in relevant sections which may be finalized in consultation with the Union Ministry of Law & Justice.

Agenda Item 3(xi): Additional measures to tackle the menace of fake invoices: Amendment to rule 36(4) of the CGST Rules, 2017

7.10. The Principal Commissioner GSTPW mentioned that vide Section 109 of the Finance Act, 2021, clause (aa) to the sub-section (2) of Section 16 of the CGST Act, 2017 was inserted, so as to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note. He added that this provision of Finance Act, 2021 would be brought into effect in due course as per recommendations of the Council, as and when the States pass their respective Finance Acts in their State Legislatures. When this provision is brought into force, there will be requirement to amend rule 36(4) of CGST Rules, 2017, since at present it allows for availment of ITC up to 105% of what has been provided in GSTR-1. The Law Committee has accordingly recommended to restrict availment of ITC on invoices/debit notes to that available in **GSTR-2B** of tax payer which is made available to them on the portal. The proposed amendment in CGST Rules would come into force as and when the clause(aa) to the sub-section (2) of Section 16 of the CGST Act, 2017 is notified. The said proposal was agreed to unanimously by the Council.

Agenda Item 3(xii): Additional measures to tackle the menace of fake invoices: Amendment to rule 59(6) of the CGST Rules, 2017

7.11. The Principal Commissioner, GSTPW mentioned that with effect from 1st January 2021, a new sub-rule (6) was inserted in rule 59 of CGST Rules which provides that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months. This has also been implemented on the portal from the beginning of September, 2021. He added that the law amendments providing for sequential filing of FORM GSTR-1, and requirement of mandatory filing of FORM GSTR-1 before filing of FORM GSTR-3B, have already been recommended by the Council in its 43rd meeting. Accordingly, in order to further strengthen the provisions against fake invoicing, Law Committee has recommended that the rule 59(6) of the CGST Rules may be amended to provide that a registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month/ tax period. This will not only help in reducing the amount of credit passed on without filing of return and payment of tax thereon, but will also streamline the process of return filing in GST. It was also recommended by the Law Committee to make the said amendment with effect from 01.01.2022. This proposal was unanimously agreed to by the Council.

Agenda Item 3(xiii): Amendment in Section 54 of the CGST Act, 2017.

7.12. The Principal Commissioner, GSTPW informed that certain anomalies/ discrepancies in provisions of Section 54 of CGST Act, 2017 have come to light which need to be corrected and the Law Committee, accordingly, has recommended to make certain amendments in Section 54 of CGST Act 2017, to address these anomalies. It is proposed to amend sub-section (2) of Section 54 of the CGST Act, 2017 so as to provide that time period of two years for filing refund under Section 55, in line with time period for other refunds under Section 54. Further, it is also proposed to amend sub-section (10) of Section 54 of the CGST Act, 2017 by deleting the words “under sub-section (3)”. It was also proposed to insert clause (ba) in Explanation (2) of Section 54 of CGST Act to specify relevant date for the zero rated supplies made to SEZ with or without payment of duty. The Council unanimously agreed on the said proposal.

Agenda Item 3(xiv): Clarification on doubts related to scope on “intermediary”

7.13. The Principal Commissioner, GSTPW informed that the issue of scope of “intermediary service” was earlier discussed in the 37th and 38th meeting of the GST Council. He added that that circular number 107/26/2019-GST dated 18.07.2019 (clarification on doubts related to supply of Information Technology enabled Services) was rescinded vide Circular No. 127/46/2019-GST dated 04.12.2019, based on the approval given by GIC in its 34th meeting held on 02.10.2019. The same was placed for information before GST Council in its 38th meeting held on 18.12.2019. He further mentioned that a large number of representations and references, including Parliament Questions, have been received citing difficulty being faced by trade and industry due to diverse practices being followed in interpretation of scope of “intermediary services”, leading to disputes, including rejection of refund claims and/or issuance of demand notices. The issue was again examined by Law Committee which recommended to issue a circular to clarify the scope of the ‘intermediary services’ as per the present provisions of the IGST Act so as to remove the doubts regarding this important issue of ‘intermediary’ as proposed in the agenda. The Council unanimously agreed to it.

Agenda Item 3(xv): Notifying supplies and class of registered person eligible for refund under IGST route.

7.14. The Principal Commissioner GSTPW drew the attention of the Council towards Section 123 of the Finance Act, 202, vide which Section 16 of IGST Act was proposed to be amended, based on the approval given by of the GST Council in 39th meeting. It was proposed that export under LUT would be made the default route and refund of ITC on payment of IGST would be restricted to only a notified class of taxpayers and/ or notified supplies of goods or services. The said provision is yet to be notified. The Law Committee recommended that all services may be notified, as class of supplies for the purpose of refund of IGST, as the refund of IGST paid on export of services is processed by the jurisdictional GST officer. Besides, the Law Committee also recommended to notify certain class of taxpayers, like persons who have been granted Authorized Economic Operator (AEO) certification under SAFE Framework of WCO; persons who have been granted status holder certification of 2 star or above by DGFT under Foreign Trade Policy; and Government Departments, Public Sector Undertakings, Local Authorities & Statutory Bodies.

7.15. He mentioned that this issue was discussed in detail in the Officers’ meeting. A view emerged in the Officers’ meeting that when the proposal to amend Section 16 of IGST Act 2017 to restrict IGST route was approved by Council in the 39th Meeting in March, 2020, a number of cases of fraudulent refunds through IGST route were noticed due to fraudulent availment of ITC. However, since then, a

number of measures have been taken, either through REAP project of GSTN (linking of GSTR-1 and GSTR-2B with GSTR-3B through auto-population), or through policy interventions to discipline return filing system and also to restrict availment of ineligible ITC (like rule 36(4), rule 59(6) etc.). Besides, a number of measures to tackle the menace of fake dealers/ fake invoices and the issue of wrong availment of ITC, have also been proposed in the current meeting of the Council. It was also discussed that as per recommendation of the Law Committee, the IGST route will be restricted to about 10% or less of the present number of exporters using IGST refund route, which may cause disruption in exports for a large number of exporters. Accordingly, it was felt that there may be a need to re-examine whether restriction of IGST route to such large extent needs to be undertaken at this stage, when the country needs a push to export. It may be desirable to wait for the time being to see the effect of the measures being undertaken and to identify those tax payers, in respect of whom IGST refund route may be restricted without affecting the exports.

7.16. The Secretary to the Council stated that when the decision was taken 18 months ago, things were very different. In case this provision is implemented at present, less than 10,000 out of 70,000-80,000 exporters, who are presently using IGST refund route, would have the availability of this seamless route for refund by payment of IGST. In the current scenario, when India is trying to increase its exports to \$ 400 billion, as per discussions in Officers' meeting, it was suggested that the Council may not go ahead with this provision at present since it would increase the burden on the exporters and also it is not certain whether the jurisdictional officers have the capacity to handle the large number of refund cases, if IGST refund route is restricted as per present recommendation of the Law Committee. He also added that if refunds are delayed because of the said amendment, it may not go well with a very important segment of the economy. Based on the discussions in the Officers' Meeting, he suggested that the proposal made in this agenda, along with notification of Section 123 of the Finance Act, 2021, vide which Section 16 of IGST Act was proposed to be amended, may be kept in abeyance for the time being and may be relooked at an opportune moment.

7.17. The Hon'ble Member from Delhi stated that 10,000 exporters would be taking the benefit of the IGST route for refunds and the question was about the remaining 60,000 odd exporters. He enquired if there was any rough assessment regarding the break-up of quantum of amount of refund taken by the above-mentioned exporter groups. He stated that it is a catch-22 situation where, it is visible that there may be some misuse of provisions and if the quantum of refund in question is found to be significant, then stringent anti-evasion measures have to be undertaken, otherwise it may not be prudent to burden the government machinery for the sake of low quantum of revenue. Principal Commissioner, GSTPW stated that the total refund amount through IGST route is slightly more than the Rs.1 lakh crores in three years. The Hon'ble Member from Delhi felt that it was quite a huge amount and stated that 50,000 to 60,000 exporters from all States may not be such a huge number and the combined machinery of the Central and State governments can handle the same. The Secretary clarified that the figure quoted by Principal Commissioner, GST Policy Wing was the total refund figure through IGST route and not the amount of refund claimed by misusing the provisions. Hon'ble Member of Delhi noted this and felt that in that case, the amount is not that alarming. The Secretary suggested that as a number of measures have been taken/ are being taken to curtail availment of ITC/ menace of fake invoices, the Council may wait for one or two meetings and understand the effects of implementation of these measures, since the burden of compliance due to proposed restriction of IGST refund route is huge. It may be prudent to wait for the time being, before bringing such major change into operation. The Hon'ble Member from Delhi agreed to this.

7.18. The Secretary to the Council also mentioned that in the 42nd Council meeting, the states were requested to get the amendments proposed through Finance Act 2021, passed through their State

Assemblies by 01.10.2021. As per recommendations of the Council, Section 110 and 111 of the Finance Act, 2021 have been notified by the Centre vide notification No. 29/2021-CT dated 30.07.2021 and Section 112 of the Finance Act, 2021 has been notified vide notification No. 16/2021-CT dated 01.06.2021. He added that there is a need for the Council to decide a date from which various other sections of the Finance Act will be notified. He suggested that 01.01.2022 may be fixed as the date with effect from which all other sections of Finance Act, 2021 (other than Section 123) will be notified. The Council agreed to this.

7.19. On the issues recommended by the Law Committee for the consideration of the GST Council, the Council took the following decisions:

- i. For the Agendas 3(i) to 3(xiv), the proposals as detailed in Agenda Note were approved. Agenda note 3(vii) approved with slight amendment as discussed in para 7.6 above.
- ii. For Agenda 3(xv), the Council decided to defer the same.
- iii. 01.01.2022 may be fixed as the date for notification of provisions of Sections 108, 109, and 113 to 122 of the Finance Act, 2021.

Agenda Item 4: Nominations from State Governments on Board of GSTN

8. The Secretary invited Joint Secretary (DoR) to present the agenda. JS, DoR stated that the Council was aware about the three representatives of States on the GSTN Board and officers from State are nominated by the Council on rotation basis from time to time. While officers from different States have been on the Board, there is no definite policy for nominating officers from State to the Board. Officers are also not nominated for any fix tenure on the Board and once nominated; an officer has normally been replaced only after he is transferred out from the post to another post that is not connected with GST administration. Therefore, it was proposed to have a wider representation on the Board of GSTN. For this purpose, the States have been divided into three groups (based on the census code and then alphabetically arranged). It is proposed that officers from State in each of the three groups may be nominated on the Board in alphabetical order for a period of one year. Currently, there are officers from Uttar Pradesh in Group-I and Maharashtra in Group-III on the Board, both already for a period of more than a year but no officer from State in Group-II. It was, therefore, proposed that officers from Uttarakhand, Arunachal Pradesh and Puducherry may be nominated on the Board with effect from 1.10.2021 for a period of one year till 31.09.2021 and then, we may follow the alphabetical order in each group. In the Officers' Meeting the previous day, State of Punjab suggested that in the first round of circulation as per alphabetical order, the States which were previously represented may be skipped.

8.1. The Hon'ble Member from Rajasthan suggested that in line with the suggestion from State of Punjab, the rotation in the Groups of States may happen in alphabetic order excluding those States which were previously represented. The Secretary stated that the aim behind this exercise was to ensure that every State gets represented since till now there was no proper method for nomination. The suggestions from States of Rajasthan and Punjab would be incorporated. Since the nomination was for a year, each State would be nominated again after a gap of 9 to 10 years.

Agenda 5: Performance report of the NAA (National Anti-Profitteering Authority) for the 1st quarter (April to June, 2021) for the information of the Council.

9. The Secretary presented the agenda for information of the Council which took note of the performance of the National Anti-Profitteering Authority for the 1st quarter (April to June, 2021) as tabled in terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017.

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

10. The Secretary introduced the Agenda Item and stated that in the 26th GST Council meeting held on 10th March, 2018, it was decided that all ad hoc exemption orders issued with the approval of Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19th August, 2014, as was the case prior to the implementation of GST, shall be placed before the GST Council for information.

10.1. The details of the ad hoc exemption order issued are as follows:

Order No.	Date	Remarks
AEO No. 06 of 2021	03 rd June 2021	Request from Shri Yogesh Gupta for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 07 of 2021	09 th June 2021	Request from Shri Sourabh Shinde for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 08 of 2021	12 th July 2021	Request from Shri Nagumantri VSL Raman for exemption from import duties on import of lifesaving drug Zolgensma, for personal use. (Order copy enclosed).
AEO No. 09 of 2021	14 th July 2021	Request from Shri Satheesh Kumar for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).
AEO No. 10 of 2021	03 rd August 2021	Request from Shri Rafeeq for seeking exemption from payment of import duty for import of lifesaving drug Zolgensma, for personal use. (Order copy enclosed).
AEO No. 11 of 2021	29 th August 2021	Request from Shri Nazar P.K., for exemption from import duties on import of life saving drug Zolgensma for personal use. (Order copy enclosed).

10.2. The GST Council took note of Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962.

Agenda Item 7: Report of Group of Ministers (GoM) on levy of Covid Cess on Pharma and Power in Sikkim

11. The Secretary introduced the agenda item and invited Ms. Shikha, Commissioner, Commercial Taxes (CCT), Karnataka to brief the Council on the report of the GoM. CCT, Karnataka stated that this

GoM was constituted on the request of the State of Sikkim to levy a cess of 1% on of the turnover of pharmaceutical sector (excluding the unorganised sector) and Rs. 0.1 per unit of power generated. Based on a judgement of Supreme Court and also on the previous precedent in case of Kerala which demanded for a similar levy of cess due to floods, the GoM decided that State of Sikkim may levy a cess of 1% on of the turnover of pharmaceutical sector (excluding the unorganised sector) restricted to only intra-State supplies. This is because of the reason that GST is a destination based taxation regime, cess cannot be levied by Sikkim on inter-State supplies. Regarding the second demand to levy cess on power generation, it was decided that since the subject matter does not fall within the purview of GST, this call may be taken by the State of Sikkim. Regarding the third issue of request by Sikkim for a special package of assistance by Government of India, it was noted by the GoM.

11.1. The Hon'ble Member from Delhi stated that he was a member of the GoM and clearly electricity was outside the purview. The majority view of the GoM was since GST worked on the principle of destination based tax regime on consumption, the proposal cannot be taken forward. Also, there was a view taken by the GoM that treating the request of Sikkim as a special case, the Central Government may be requested for a package or a special grant or assistance.

11.2. The Hon'ble Chairperson welcomed other Hon'ble members of the GoM to present their views before she invited the view from State of Sikkim.

11.3. The Hon'ble Member from Kerala stated that there were three recommendations made by the GoM. The members supported the arguments/demands of Sikkim. He added that levying cess on inter-State supplies would not help since the quantum of cess that can be raised by this is small. Levying cess on power generation might help to some extent. The unanimous recommendation by all members of the GoM was for some kind of help from Centre since they requested for only Rs 200-300 crores.

11.4. The Hon'ble Member from Goa stated that it was a genuine demand from a small State which finds it very difficult to meet the ends. Sikkim sought a special package of assistance by Government of India to help them tide over the financial stress caused due to the Covid pandemic and rightly so. Everyone had faced this problem. His humble submission was that for small States, like Sikkim, Goa, Arunachal Pradesh, Manipur and other North Eastern States, slightly different treatment has to be given. In the past, tax holidays used to be given which is not the norm in the present day. He added that having passed through the Covid norms, they faced so much difficulty and in the light of a presentation on Compensation which would come to an end and options available after it would also be made in the current meeting, the Council should have a look at the plight of the smaller States. He further stated that they will not have enough money to even pay the salaries to their government employees.

11.5 The Chairperson stated that she appreciated the concerns of Goa and the fact that they were raising the concerns of the smaller States but the current agenda pertains to looking at recommendations of a GoM which was formed on the request of Sikkim. She invited if any other Hon'ble Member who was a part of GoM wanted to voice their opinions. She stated that she would listen to the issues raised by Goa but wanted to focus on the current agenda. She noted that the Convener of the GoM was not present and the officer from Karnataka have already given details about the report. In case, there is no other member of GoM who desired to voice their opinion, she would invite the State of Sikkim to respond to the report.

11.6. The Hon'ble Member from Sikkim offered his utmost gratitude to the Hon'ble Chairperson, all Hon'ble Members of the GoM and all officers concerned for taking pains to deliberate upon the submission placed by State of Sikkim for levying Covid Cess. They humbly accepted the three

recommendations of the GoM. Although the plight of economic slowdown caused by restriction imposed to control the pandemic was suffered universally, they live in a fragile topography having tiny market & economy where the impact of the disaster had proven very fatal. They are bounded by international borders on three sides that confines the scope of making efforts for economic revival. So they look upon the Central Government during this difficult time, with much hope and aspiration. The people of Sikkim and State Government have firm belief in the benevolence of the Central Government, he stated.

11.7. The Secretary stated that they had received a separate request from State of Sikkim as mentioned by Dy.CM, Delhi and Hon'ble Member from Goa which is being considered separately since the subject matter fell within the ambit of the Central Government and not the GST Council. A decision in that regard would be taken and they were appreciative of the sentiments of the GST Council and also the issues raised by State of Sikkim.

11.8. The Hon'ble Member from Manipur stated that while he fully supported the request of Sikkim, he would like to bring to the notice of the Council that there are five North Eastern States, namely Arunachal Pradesh, Manipur, Mizoram, Nagaland and Sikkim whose revenue gap was negative which meant that they were not entitled to receive compensation. This was one issue which he desired to raise earlier as well. The problem was that even though their revenue gap was negative, they were small States. They also faced the same problems as Sikkim due to COVID-19. He placed on record that out of these five States, Manipur, Mizoram, and Nagaland do not get any excise revenue since there was prohibition in these States. However, liquor is not banned in Sikkim. Despite that, they had financial problems. Therefore, these three States with prohibition have bigger financial problems since they do not get any revenue from sale of liquor. At the same time, out these three States, the revenue deficit grants, as per the XV Finance Commission, Manipur gets the least per capita. Manipur gets Rs 8,838, Nagaland gets Rs 23,027 and Mizoram gets Rs 16,317. He definitely supported the recommendations of the GoM including the recommendation of the special package by the Government of India to help Sikkim. He requested that a similar consideration may be given for a special package of assistance by Government of India so that they can meet their requirements and solve their problems. He stated that he would write a special request letter on behalf of State of Manipur on this issue.

11.9. The Secretary stated that this was not the subject matter related to GST but since the Hon'ble Member from Manipur had raised the issue, he assured that Government of India would take such special circumstances into consideration.

Agenda Item 8: Closure of Group of Ministers (GoM) on concessions/ exemption from GST to COVID relief material.

12. The Secretary introduced this agenda item and stated that in pursuance of the decision of the GST Council at its 43rd meeting on 28th May, 2021, a Group of Ministers (GoM) was constituted to examine the issue of GST concessions/ exemption to COVID relief material vide OM dated 19th May, 2021 issued by Department of Revenue (DoR) vide F. No. S-31011/12/2021-DIR(NC)-DOR. The GoM submitted its report in the 44th GST Council Meeting held on 12.06.2021, consequently the GoM has completed its mandate. Hence, agenda for closure of the GoM was placed before the GST Council. The Hon'ble member from Delhi enquired whether GoM would be closed down automatically after finalization of the report and submission of the report before the GST Council. The Secretary clarified that agenda for closure was brought before the Council for information as a matter of due procedure. The Council took the decision to discontinue the GoM on concessions/ exemption from GST to COVID relief material.

Agenda Item 9: Agenda Note on the basis of the Interim Report of the Group of Ministers (GoM) on capacity-based taxation and special composition scheme for certain sectors

13. The Secretary invited the Hon'ble Member from Odisha, the convenor of GoM, on capacity-based taxation and special composition scheme for certain sectors to present the agenda before the Council. Hon'ble Member stated that at the outset he was thankful to the GST Council and in particular, Hon'ble Chairperson for giving him the opportunity to act as the convener of the GoM. This GoM was set up vide OM S-31011/12/2021-DIR(NC)-DOR dated 24th May 2021 based on the decision taken in the 42nd GST Council Meeting to discuss and analyse the issues pertaining to the Capacity based taxation on Pan Masala, Reverse Charge Mechanism in mentha oil, special composition scheme on brick kilns, stone crushers, etc. He was thankful to the esteemed members of GoM who extended their full cooperation and that they took active part in deliberation while giving their valuable suggestions. He appreciated the effort made by JS, TRU as well as commissioners of member States for providing valuable inputs and assistance to GoM.

13.1 He stated that GoM was given three months' time to give its recommendations. Two meetings of GoM and one Officers' Meeting were held in the interim period. First meeting of GoM was held on 6th July 2021 where it was decided that a committee consisting of CCTs of member States and JS, TRU should go into the details and examine the issues while taking all the relevant factors into account like law, data and other relevant information and present possible options before the GoM so that it can deliberate further and take informed decisions. The officers met on 17th August 2021 and submitted their inputs to the GoM. The 2nd meeting of the GoM was held on 31st August 2021. He then had presented the interim report of the GoM. The recommendation of GoM were summarised as:

- (i) On brick kiln: Special Composition Scheme w.e.f. 1st April, 2022 for brick kiln wherein the threshold limit was recommended at 10 lakhs rupees and the GST rates of 5%/6% without ITC and 12% with ITC. Threshold exemption limit in the sector may be reduced to Rs. 10 lakhs in order to increase the tax base, keeping in view the fact that majority of the firms in the sector are small and unorganized.
- (ii) On Mentha Oil: Reverse Charge Mechanism on the first stage for mentha oil, as a measure to improve compliance. Further, IGST refund route may be closed for mentha, and only refund by ITC route may be allowed with a predetermined ceiling on refund of ITC (in terms of per kg of Mentha exports, to be determined in an objective manner), as and when an amendment in the Section 16 of the IGST Act comes into effect and the modalities for implementation of such changes may be worked out by the State of Uttar Pradesh.
- (iii) The GoM has at length discussed the feasibility of Capacity based levy on pan masala and tobacco products and it was felt by the GoM that there exists a need for a deeper data analysis in this respect, through comparative state wise and product wise revenue figures in the pre and post GST regime in order to draw a clearer picture on revenue implications of such a move. In pursuance to this, such figures have been sought from all the States and UTs. Accordingly, considering the sensitivity of the matter and the quantum of revenue involved, the Group of Ministers has requested for an extension of three months for submitting its report on the issue of Capacity Based levy on Pan Masala and Tobacco products.

13.2 The Hon'ble Deputy Chief Minister from Delhi had stated that he was grateful to the Convener to the GoM for personally taking keen interest and to JS, TRU for preparing the documents with facts

and figures to enable informed decisions. He stated that discussion has already been held on the issue. The issue of RCM on Mentha oil was very clear and special composition scheme for brick kilns was a good idea. More time was required to discuss at length of the issue of RCM on Pan Masala by the GoM for more deliberation.

13.3. The Secretary to the Council briefed the Council that a discussion had already taken place in Officers Meeting held on the previous day. He informed that no recommendation was there about Pan Masala and GoM sought three months' extension. On Brick Kilns a suggestion came regarding introduction of a Special Composition Scheme with GST rate of 6% without ITC & 12% with ITC and a threshold limit of Rs 10 lakhs. He further informed that this threshold limit of Rs 10 lakhs was a new category. However, there exists a category in services where threshold limit is Rs 20 lakhs with 6% GST rate. He sought suggestions from the Council on this as the Officers' view was that the threshold limit should be Rs. 20 lakhs.

13.4. The Hon'ble Member from Rajasthan had observed that 6% and 12% was higher rate and needed more deliberations as cost of construction in bricks, mining and stone crushing was very high. The time given to GoM should be extended further for more deliberations and the opinions from States should be invited since the issues vary from State to State. The threshold limit of Rs. 10 lakhs, was also too low. In his opinion, it should continue to be Rs 40 lakh. These decisions affect the brick kiln industry and employment of people. while higher rates may be applied on pan masala etc., the proposals regarding brick kiln, stone crushing and mining should be relooked at.

13.5. The Hon'ble Member from Uttar Pradesh expressed his gratitude for constitution of the GoM on the request from State of Uttar Pradesh. He also expressed gratitude towards Hon'ble Member from Odisha for going into the minute details to sort things out. He supported the proposal. During the VAT regime, their revenue was Rs 700 crores which reduced to Rs 170-180 crores in the GST regime. This was the sole reason behind his request for this GoM. He supported these recommendations since this would stop tax evasion. As far as the proposal regarding levying GST at 5%/6% without ITC was concerned, he requested the Council to take a decision in this regard. He emphatically supported the proposal for levying GST at 12% with ITC since it would reduce tax evasion and their revenue would rise up to Rs. 300 to Rs. 350 crores. Therefore, he requested the Council to pass the recommendations by consensus. On the issue of Pan Masala, the GoM requested for further three months of extension and with the due permission of the Hon'ble Chairperson this may be agreed upon. On the third issue of Mentha Oil, the State Govt. used to give refund (of nearly Rs 100 crores) but was not getting tax revenues, so he supported the recommendation of RCM.

13.6. The Hon'ble Member from West Bengal conveyed special regards from Hon'ble Finance Minister of West Bengal to the Hon'ble Chairperson since he could not attend the meeting while she appreciated the efforts of GoM in coming to a conclusion and giving suggestions before the Council equally, it has to be seen that the small tax payers are benefitted. She considered the recommendation of the GoM on Bricks Kilns as harsh and supports the view of Rajasthan to defer the decision on the brick kilns issue. Different thresholds for different categories can create confusion later on. The effective tax rate after utilization of ITC was around 1.5% to 2% but the GoM recommended 5% without ITC and 12% with ITC which will have serious impact on the sector. However, she supported other recommendations.

13.7. The Hon'ble Member from Kerala stated that State of Kerala was part of the GoM and supported the interim report of GoM. In the GST regime, they have seen reduction in revenue from stone crushing

industry and therefore they raised the issue. They would submit some proposals to the GoM on stone crushing industry later and they would support the interim report of the GoM as it is.

13.8. The Hon'ble Member from Tripura agreed with Hon'ble Member from UP for bringing the threshold for brick kilns to Rs 10 lakhs with a GST rate of 5%/6% without ITC and 12% with ITC. He felt that it would give more revenues for smaller State. He supported the recommendation of GoM as it would help in checking the tax evasion.

13.9. The Hon'ble Member from Manipur supported the recommendation of GoM as it would help in checking the tax evasion since there are numerous small brick kiln units which indulge in evasion. He further said that construction material business was very profitable. He supported the recommendation and emphasized on keeping the threshold limit to Rs 10 lakhs.

13.10. The Hon'ble Member from Assam fully agreed with the recommendation of GoM on special composition scheme in brick kiln sector with a GST rate of 6% without ITC and 12% with ITC. It will help the sector immensely and will foster tax compliance. The GoM had meticulously gone through both the items and she felt that GoM on capacity based taxation may also examine the feasibility of having a special composition scheme for works contract executed in Govt. departments. Such composition scheme was in existence in VAT regime.

13.11. The Chief Commissioner of State Tax from Gujarat submitted that in the VAT regime they had lower threshold ranging from Rs 5 lakhs to 15 lakhs in different States. The Council took the judicious decision to first have threshold limit of Rs 20 lakhs and later raise it to Rs 40 lakhs. Due to the threshold limit, the governments were losing revenue. Perhaps, there was no study undertaken on how much revenue was lost on particular goods or service. Creating a new threshold for a particular category would set the regime back. First, there would be a new category created and there might be other goods or services where this categorization might be required. So, when a comprehensive study is undertaken and the Council thinks that the threshold limit needs to be brought down, then it can be examined as to threshold limits of which goods or services could be brought down. Else, it would be unfair that a commodity like brick which is used by everyone was subjected to extra tax burden. They agreed to the other recommendations.

13.12. The Hon'ble Member from Goa stated that the Hon'ble Member from Odisha as the convener of the GoM had done a good job. If avenues for revenue are foregone by not accepting interim report of GoM, then the opportunity for States to get additional revenue would be lost. On the one hand, it was said that compensation was going to come to an end and newer avenues have to be looked at and on the other hand, the members were cutting off the suggested new avenues. This would not augur well. In the past, the Council always decided in the better interests of the country and the same spirit should continue instead of myopic view with state specific issues. He requested everyone that the recommendations of the GoM may be agreed upon and taken to their logical conclusion.

13.13. The Hon'ble Member from Bihar supported for passing the GoM recommendation as it would stop tax evasion and help in revenue mobilization.

13.14. The Hon'ble Member from Punjab had stated that he had no problem with the decision of GST Council. However, he cautioned that GST was a tax on the supply of goods and services unlike the Central Excise which was on production. He has felt that the Council was stepping into territory of unconstitutionality by introducing the capacity based taxation on Pan Masala. He further added that Hon'ble Supreme Court had banned Gutka, Jarda etc. so the Council should not facilitate the production. He suggested that this may be taken up with the learned Attorney General or the Law Ministry to the

extent that it may be ultra vires to the Constitution. Hon'ble Member from Odisha clarified that Pan Masala was not banned by Supreme Court but the ban was on Pan Masala mixed with tobacco. Therefore, the report was not ultra vires to the Constitution. Further it was the interim report and the final report on pan masala has not been submitted yet.

13.15. The Hon'ble Member from Arunachal Pradesh told that Pan Masala production boosts rural economy and North East States are increasing the cultivation of supari and arecanut. The GoM was yet to make recommendations on pan masala. The other recommendations are logical and he supported them.

13.16. The Official from Haryana stated that there were two types of apprehensions about tax burden and the threshold limit of Rs 10 lakhs as far as brick kilns were concerned. The same composition scheme existed on brick in VAT regime in Haryana and the current revenues from brick kilns under GST was far less as compared to the VAT regime. He was sure about Haryana that if the same dispensation was entered into, the tax burden would not be more than the previous regime. State of Haryana was part of the GoM and the GoM has taken a conscious decision since the value of goods in brick kiln industry was less and reduction in threshold limit was required. Whether other goods or services also required such a scheme may be debated upon by the Council.

13.17. The Hon'ble Member from Uttar Pradesh stated that the GoM has unanimously submitted the recommendations. The legal issue regarding pan masala and gutka was clarified by Hon'ble Member from Odisha. The common man would not be burdened by these recommendations. Hence he requested that these recommendations may be agreed upon.

13.18. The Hon'ble Member from Rajasthan observed that the GDP growth of the country was under pressure. On the one hand, there was a lot of pressure from the construction industry for concessions to boost the sector and on the other, the tax rate was being increased (5%/6% without ITC and 12% with ITC). He could not understand as to how evasion would be curbed by increasing the tax rate or by reducing the threshold from Rs 40 lakhs to Rs 10 lakhs since the mechanism for curbing evasion were different like increasing the transparency of the IT system etc. Due to the Covid pandemic, the real estate sector was under pressure and there was also the issue of reduction in revenue of the States due to discontinuance of compensation. He agreed that this step would increase some revenue but they have to look from the point of view of employment and GDP growth as well.

13.19. The Revenue Secretary stated that brick kilns are present in every State. His experience goes hand in hand with the inputs from the combined experience in the Council which was that bricks are removed from the kiln at such values which would tally to be just below the prescribed turnover. As there is huge evasion in this sector, the GoM had lengthy discussions on how to extract valuable revenue from this vital sector. Some members also stated that a small portion of revenues were collected presently as compared to the previous years. He agreed that while concessions may be given to the deserving, it was also important that a message is sent that strict measures would be undertaken where there is evasion. He suggested that the Council might go ahead with 6% without ITC and 12% with ITC while increasing the threshold from Rs 10 lakhs to Rs 20 lakhs. The effects may be studied and the Council can decide on the issue.

13.20. The Secretary submitted to the Council for conclusion of the discussion that there was lot of evasion in this sector and proposed that with 6% or 12% GST rates, the Rs 20 lakhs threshold limit may be considered. He added that threshold of Rs 20 lakhs was applicable to services at present. The Council

may come back on the issue in later meetings. He requested that since the recommendation of GoM was unanimous, the Council may also decide on this issue unanimously.

13.21. The Hon'ble Member from Uttar Pradesh also requested that Council may consider the proposal with increase the threshold from Rs 10 lakhs to Rs 20 lakhs.

13.22. The Hon'ble Member from Delhi also requested to approve the proposal with Rs. 20 lakhs threshold limit which was practical.

13.23. The Hon'ble Member from Rajasthan stated that he had no issue with the rates but the threshold must be increased further from Rs 20 lakhs. This would help many people. He further added that GoM should consult more states and should seek suggestions from the other states who were not members of GoM so that broad and fruitful discussion can happen.

13.24. The Hon'ble Member from Delhi stated that the GoM had deliberated a lot on various data points to arrive at the Rs 10 lakh threshold limit. He agreed that there was a huge evasion in this sector. Personally, he would want the threshold limit to be at Rs 10 lakh. But considering the fact that there was already a threshold limit of Rs 20 lakhs in services, a threshold limit of Rs 20 lakhs may be agreed upon.

13.25. The Hon'ble Member from Madhya Pradesh stated that the proposal of increasing the threshold limit from Rs 10 lakhs to Rs 20 lakhs by the Secretary should be approved unanimously.

13.26. The Hon'ble Member from Odisha stated that it was the era of bricks made from industrial waste. Factories manufacturing these are becoming more common. Bricks made from clay have gone down and the industrial waste bricks are used everywhere. The brick kilns in Bihar, Haryana, Madhya Pradesh and Uttar Pradesh are very small, scattered and unorganized. Therefore, the GoM proposed the threshold limit of Rs 10 lakhs. He believed that the brick kiln industry might vanish soon and therefore the Council has to take this decision carefully.

13.27. The Hon'ble Member from Rajasthan stated that the argument that bricks from clay are vanishing may not be correct. At least one crores bricks are made from each kiln in a year. There may be places which had banned clay brick kilns and consequently bricks from ash and other waste products are produced.

13.28. The Secretary proposed that GoM Recommendation may be accepted with revised threshold of Rs 20 lakh. This would come into effect from 1.4.2022, as recommended by the GoM. On Mentha oil there was general agreement to the recommendation of the GoM. Accordingly, Council may agree to recommendation of GoM on mentha oil

13.29. The GST Council approved the recommendation of the GoM on bricks with a threshold limit of Rs 20 lakhs and GST rate of 6% without ITC and 12% with ITC (to come into effect from 1.4.2022).

13.30. Also, the GST Council approved the recommendation of the GoM on the Mentha oil at the first stage. Further, IGST refund route would be closed for mentha oil as and when Section 16 of the IGST Act comes into effect.

13.31. The GST Council also accepted the extension of the tenure of GoM for three months for deliberations relating to capacity based taxation on Pan Masala.

Agenda Item 10: Transposition of GST rate notifications consequent to changes in tariff item codes in the First Schedule to the Customs Tariff Act, 1975

14. The Secretary introduced the agenda item and stated that GST rates for different items are notified by specifying the HSN (Harmonised System Nomenclature) code. The GST rate notifications utilize the HSN codes listed in the Customs Tariff. The Customs Tariff codes are internationally aligned up to certain (6-digit) level and are periodically updated (every 5 years) in consultation with the World Customs Organization. These changes are effected through changes in the First Schedule to the Customs Tariff Act, 1975. The latest changes have been enacted through Section 104 (iii) of the Finance Act, 2021, which states that the First Schedule to the Customs Tariff Act, 1975 shall, with effect from 1st January, 2022, be amended in the manner specified in the Fourth Schedule (of the Finance Act, 2021). Thus, the proposed changes to Customs Tariff as part of the periodic update to the Harmonised System of Nomenclature (HSN) have been enacted and will take effect from 1st January, 2022. Therefore, some of the tariff codes listed in GST rate notifications may also accordingly need to be changed to align them with the changes in Customs Tariff. Few entries in GST rate notifications, largely from amongst those where HSN code is specified at 8-digit level, are likely to be affected. With effect from 01.01.2022, tariff items 9405 50 10 to 9405 50 59 (including 9405 50 31) will be omitted in the Customs Tariff and replaced by other tariff item entries. As per these changes, the applicable tariff item for the above notification entry in new Customs Tariff will be 9405 50 00, which needs to be updated in the said CGST notification. This was a technical exercise and for the present cycle of changes, needs to be completed before 1st January, 2022. The agenda was placed before the GST Council for approval.

14.1. The Hon'ble Member from Delhi stated that since the HSN codes change internationally every five years or so, he thought that it was not necessary for this to come up before the Council for approval. This may be granted auto-approval and need not be put before the GST Council in future. JS, TRU responded that Hon'ble Member from Delhi was correct and this was just a technical change that which was brought for information and to prevent any possible confusion as to why the entry was changed in the notifications.

14.2. The Council approved the agenda on transposition of GST rate notifications consequent to changes in tariff item codes in the First Schedule to the Customs Tariff Act, 1975.

Agenda Item No 11: GST rate on job work services in relation to manufacture of alcoholic liquor for human consumption

15. The Secretary introduced Agenda Item 11. He stated that contract manufactures, manufacture liquor for brand owners on job work basis. The Agenda concerns the issue whether manufacture of liquor on job work basis is eligible for concessional GST rate of 5% prescribed for job work in relation to food and food products. He further stated that there was in principle agreement during the Officers meeting that GST on job work is not a tax on liquor, and that this did not infringe on the taxation rights of the States. The impact of this change may be minuscule, as this is not a tax on liquor or any of its components but on the job work involved in its manufacture.

15.1 The Official from Maharashtra stated that with an increase in tax on alcoholic liquor, the room for States to impose taxes on liquor shrinks and Maharashtra was opposed to the extent of taxation, and not the principle of taxation, as it harms their ability to raise resources. The Secretary stated that charging 5% rate on manufacture of alcoholic liquor on job work basis does not send a good signal considering standard rate of tax is 18%.

15.2. The Hon'ble Member from Punjab stated that the issue was one of principle and not of the magnitude of impact. Barring GST, the Constitution does not allow for concurrent taxation, and this particular tax was a transgression on the domain of the States. He also stated that he was aware of the Delhi High Court Judgment, and as the case is in the Supreme Court the Council should not take a call on an issue which was sub-judice. He then stated that one of objectives of GST was to abolish multiple levies, and by going for multiple levies again the rules of GST would be breached. The Secretary clarified that no rules of GST were being flouted, and the issue at hand was whether 5% or 18% rate of taxation should be imposed on Job Work. The Official from Punjab stated that when the negative list of services was drafted in 2012, all states were opposed to imposition of service tax on job work on alcohol, and thus it was placed in the negative list. The Central government recognised that there cannot be service tax on job work in relation to manufacture of alcohol. However, in 2015, Centre introduced service tax on such job work. The 'aspect theory' propounded by the Supreme Court justified parallel levies on the basis of the levies being made on different aspects. He added that Delhi High Court rationalised levy of service tax on job work in relation to manufacture of alcohol, and now the matter is before the Supreme Court to decide if job work amounted to manufacture and whether a tax was being imposed in the domain of the States. He then stated that as states will continue to impose excise on the same job work for liquor, there will be a situation where two levies will be getting imposed on job work. This kind of double levy has never been imposed.

15.3. The Hon'ble Member from Kerala stated that such a tax is an intrusion on the rights of the States. He stated that in the last meeting of GST council, there was an agenda item on alcohol for human consumption, and that the Council had unanimously decided that the issue should not be approved. He stated that similarly, it would not be proper to include the levy of GST on job work for liquor as the issue was not just about percentage of tax but imposition of the tax itself was an intrusion on the powers of the States.

15.4. The Hon'ble Member from Odisha stated that this was a unique case and is not the case as has been explained by the state of Punjab that some employers are outsourcing the employees. The decision has to be taken as to whether alcohol is food or not and, it has to be taxed accordingly.

15.5. The Hon'ble Chairperson requested the members to consider the arguments made by the Hon'ble Member from Odisha. She stated that there was value addition which was going untaxed which neither benefitted the Centre nor the States.

15.6. The Hon'ble Member from Odisha stated that in this case, an individual sets up a bottling plant and gives it on lease to a large liquor company. The amount which was paid by the company to the individual who has set up the bottling plant was the amount for service which was not being added to the cost of liquor and stated that there was no case of double taxation here. He then stated that as service was being given by bottling plant to company, it was not a case of outsourcing as well.

15.7. The Official from Tamil Nadu stated that the issue was one of principle and if a service was rendered, and there is a plant which manufactures liquor, and a tax is tagged on job work/service, then the tax levied builds into the basic price since there is no ITC available for payment of state excise imposed on it. The final sale price of liquor reflects this add-on tax. He added that this impinges on the taxation space of the State government. He suggested that this tax should be left as it is, and that if there was any differential capacity of the State to tax, then the State government could use the differential capacity to levy excise.

15.8. The Secretary stated that the contention of the Official from Tamil Nadu is that nothing should be taxed where GST is not there. Thus, this shall apply to petroleum, electricity, etc. which may not be an acceptable principle.

15.9. The Official from Maharashtra stated that he agreed with the principle of inclusion of Job work under GST, but stated that tax should not be raised to 18%. As fiscal space of the States was limited, an increase in the rate limits their space to raise resources. He requested that the rate should be kept at 5%, and referred to the analogy of the transport sector, where the GST rate was kept at 5% considering that petrol and diesel were under VAT and ITC could not be passed on. Based on this analogy, the tax on job work for liquor should also be kept at 5%. The officer from Maharashtra mentioned that the Hon'ble Member from Maharashtra could not attend this Council meeting due to some unavoidable preoccupations and submitted that the Hon'ble Member has given his written comments on some agendas and requested that these comments may be included in the minutes and circulated in the meeting for information of the Council. The Chairperson gave her consent and the written comments of Hon'ble Member from Maharashtra were circulated. View of the State of Maharashtra on this agenda was that, "This issue was discussed in the 39th GST Council meeting in which Maharashtra and Tamil Nadu opined that 5% tax rate should be for job work services to the manufacturing of liquor for human consumption. Since, liquor is not taxed under GST, Input Tax Credit is not available to the liquor manufacturers, which leads to increase in production cost. Therefore, Maharashtra is of the opinion the Services by way of job work in relation to manufacture of alcoholic liquor for human consumption should be taxed at 5%".

15.10. Hon'ble Member from Uttar Pradesh stated that as liquor was not a food product, it should attract 18% rate.

15.11. The Hon'ble Member from Delhi also stated that the rate should be 18%. He stated that no new tax was being imposed, and that the value of job work was small and hence the tax amount was minuscule as compared to the final cost of liquor.

15.12. The Hon'ble Member from West Bengal stated that the tax should remain at 5%. She stated increase in tax would infringe the rights of the States. She then stated that the entire issue is being examined by the Supreme Court and thus a decision on this issue could wait.

15.13. The Secretary stated that West Bengal was already charging 18% on the job work by treating liquor as a non- food product, and that the Centre was proposing to adopt the practice from West Bengal and Odisha and extending it to all the States. The Secretary clarified that the issue was not sub-judice, but rather the Supreme Court had referred the matter to the Council to decide if it was a food item or not.

15.14. The Hon'ble Member from Bihar stated that if liquor is considered as food then there would be need to redefine food items. He stated that he could not understand how alcohol could be food item.

15.15. The Hon'ble Chairperson asked the Council to focus on the issue under discussion and stated that this matter was not before the Court, and that the Council was to take a decision on the issue.

15.16. The Official from Tamil Nadu stated that they would want Job work to continue to be taxed at 5%, and if needed, a special rate could be notified.

15.17. JS, TRU clarified that the issue was whether liquor should be treated as food item or not, and that the understanding was that it should not be treated as a food item. Once such a decision is taken, it will go outside the 5% category.

15.18. The Secretary stated that the Council should decide the issue in principle, and not see if some small benefit accrues to someone. He then stated that the issue was whether liquor was a food item or not, and the Council should also keep in view the optics of the decision. He then stated that the Council should accept that alcoholic liquor is not a food item, and the job work in relation to manufacture of the same should be taxed at the standard rate. The Council eventually agreed to the view that alcoholic liquor would not fall under that category of food item and job work in relation to it would attract GST at the rate of 18%.

Agenda 12- Agenda note based on the order of the Hon'ble Kerala High Court in the W.P. (Civil) No. 12481 of 2021 for placing representation by Kerala Pradesh Gandhi Darshanavedhi, Thiruvananthapuram regarding inclusion of Petrol and Diesel under GST-

16. The Secretary stated that this agenda is arising out of an order of Hon'ble Kerala High Court in the W.P. (Civil) No. 12481 of 2021 for placing a representation by Kerala Pradesh Gandhi Darshanavedhi, Thiruvananthapuram regarding inclusion of Petrol and Diesel under GST. He stated that this agenda is being placed before the Council along with the said representation as per directions of the Hon'ble Court for taking a decision.

16.1. The Hon'ble Chairperson stated that there have been media reports on this matter and the Council has to deliberate on the issue as a common body. She clarified that this agenda is being presented before the Council for discussion because of order of the Hon'ble High Court of Kerala.

16.2. As per circulated written comments of the Hon'ble Member from Maharashtra, with reference to this agenda, view of the State of Maharashtra is that, "Under GST, State's ability to raise additional financial resources is limited. However, in cooperative federalism, State's require additional resources and finances for taking up developmental activities and to accelerate growth of the State's economy. As petrol, diesel and other petroleum products have major contribution to the State Exchequer, hence these Petroleum products be continued out of GST as per existing tax structure."

16.3. The Hon'ble Member from Delhi stated that even earlier he had requested before the Council and written letters to Hon'ble Members that a considered view on the issue of inclusion of petroleum products under GST is required to be taken. He believed that petroleum products should be brought under GST for which, a bold decision will be required to be taken. He presented a calculation based on the current ratio of VAT/Central excise tax component in retail value of one litre of Petrol in Delhi and stated that if Petrol is brought under the ambit of GST, then GST at the rate of 125% will have to be imposed keeping the price at current level and this GST rate slab is currently not there. Further, to prevent arbitrage of tax by purchase from one state instead of another and to implement truly the one nation and one tax concept, a new tax slab will have to be created which may require amendment in the Act or any other way as may be suggested by the Law Committee. However, this will have to be done sooner or later in the interest of the consumers.

16.4. The Hon'ble Member from Rajasthan stated that on Diesel and Petrol, the Basic Excise duty is Rs. 1.80 per litre which is shared by both the Centre and the State. Special Excise Duty is Rs. 8 Per Litre and Additional Excise Duty by the name of Road and Infrastructure Cess is Rs. 18 per litre where States do not get any share. So, while States have a share in Basic Excise Duty, it is kept on lower side and where States do not get share in Special Excise Duty and Cess, they are being kept on higher side.

He stated that share of Central Government taxes on per litre Petrol and Diesel is much more as compared to the share of State government taxes. He further stated that even though this agenda is being discussed as per Hon'ble Court's direction and has not been brought up by either Centre or States, it is not the right time to consider it. Even if this is to be considered, first it should be ascertained that if these items are brought under the ambit of GST, what will be the burden on the revenue exchequer of states and hundred percent reimbursement to states should be given similar to Compensation scheme.

16.5. The Hon'ble Member from Kerala stated that as per Court's orders, the decision of the Council is to be informed to the Hon'ble High Court within six weeks of the order. So, as a policy decision, the reply is to be furnished to the Hon'ble Court. The Secretary stated that the matter requires larger deliberations and has heavy repercussions on the exchequer which will be difficult during the Covid pandemic times.

16.6. The Council, taking into account the discussions, was of the view that this is not the right time to bring Petrol and Diesel within the ambit of GST.

Agenda No. 13 - Concessions to Specified drugs used in COVID-19 treatment till 31st December, 2021

17. The Secretary stated that in the 44th Meeting of the GST Council held on 12th June, 2021, the GST rate reduction was recommended till 30th September, 2021 on certain items used in COVID-19 treatment along with the four medicines namely Amphotericin B, Tocilizumab, Remdesivir and anti-coagulants like Heparin. He informed that extensive consultations have been held with the Ministry of Health and Family Welfare and Department of Pharmaceuticals. Ministry has recommended for extending the tax reduction benefits on these four medicines till 31st December, 2021. Besides that, it has also been recommended to reduce GST from 12% to 5% on seven other drugs till 31st December, 2021 [as mentioned in para 4 (b) of the agenda]. He submitted that if Council agrees, concession to these seven drugs till 31st December, 2021. The Ministry of Health and Family Welfare and Department of Pharmaceuticals have informed that there are also efforts to develop these drugs within the country.

17.1. The Hon'ble Member from Bihar stated that proposed tax reductions on specified medicines/drugs may be extended till March, 2022 as States are gearing up for any possible third wave of COVID. Secondly, States have received COVID-19 emergency response packages which is for the duration till March, 2022. Accordingly, he requested that in order to boost the health sector and make proper preparations to combat any COVID-19 surge, the concessions on these medicines may be extended till March, 2022.

17.2. The Revenue Secretary stated that in 43rd meeting of the Council, it was decided that a review will be done before September and if recommended by the Health Ministry, the tax concession will be extended. Accordingly, he proposed for extending the concession on above specified medicines including the new seven medicines till December, 2021, and to review the position again in December, 2021.

17.3. The Hon'ble Member from Bihar further stated that it is requested that not only on these medicines but tax reduction announced earlier on other COVID-19 related items and equipment like ambulance, oxygen concentrator and hand sanitizer etc. should also be extended to effectively combat the situation if any third wave of COVID happens.

17.4. The Revenue Secretary stated that when tax reduction on COVID related items was announced in the previous meeting, demand of these items was very high in the market. Now, most of the items

like Oxygen Concentrators etc. are being made in the country itself. He stated that in case any such need is felt to further extend the current position of tax rates on Covid related items, we may take the delegation from the Council that the same can be done with approval of Hon'ble FM/ Fitment Committee, however, at present the domestic industry should be encouraged.

17.5. Hon'ble Chairperson observed that the tax reduction on these medicines can be made till 31st December, 2021 and the position can be reviewed before next meeting and a decision can be taken accordingly as to whether any further extension is required beyond 31st December, 2021.

17.6. The Secretary clarified that the tax reduction till 31st December, 2021 will be applicable only on specified medicines as mentioned in the agenda and not on instruments/equipment as second wave of COVID is under control except for some cases in Kerala. Position would be reviewed in December, 2021.

17.7. The Council approved the proposal.

Agenda item 14: Issue recommended by the Fitment Committee for the consideration of the GST Council.

18. The Secretary introduced the Agenda Item 14 to the Council and asked the Joint Secretary, TRU (Co-Convener of the Fitment Committee) to present the agenda before the Council. JS (TRU) elaborated on various Annexure contained in the agenda, i.e., items where change in rate in goods has been suggested by the Fitment Committee, goods in respect of which no change has been suggested and goods in respect of which Committee felt that further discussion required, hence deferred. Similarly, annexures w.r.t services were also explained in detail by JS (TRU).

18.1. The Hon'ble Member from Madhya Pradesh referred to the issue of removing inverted duty structure from Copper Concentrates and other Ore concentrates and opined that increasing the GST rate from 5 % to 12% may be appropriate. However, if the rates are revised to 18%, then it shall lead to increase in prices. He also stated that it would be more appropriate to keep both the corrugated boxes and non-corrugated boxes at a uniform rate of 12% rather than the proposed higher uniform rate of 18%. Regarding polyurethane scrap, the rate of 5 % should be maintained and to check tax evasion, the enforcement mechanism should be strengthened. Regarding pens, he suggested that a uniform rate of 12% should be kept on all types of pens, parts and components of writing instruments rather than the proposed higher rate of 18%. He suggested that goods falling under chapter 49 such as plan and designs, cheque forms, printed cards, etc. and the printing services pertaining to them should be taxed at uniform rate of 12%. The GST rate on Biodegradable bags and their inputs should be kept at 5 %. Regarding the e-commerce operators pertaining to supply of food items, he stated that it would be appropriate to cover only unregistered food suppliers. Further, the issue of eligibility of ITC on such transactions needs to be deliberated upon.

18.2. The Hon'ble Member from Punjab stated that the GST Council is in a position to change the destiny of India. He stated that the Council should benchmark itself, not to the past, but to the future and there was a need to take a holistic view of the GST rates, the number of slabs and the number of exemptions. He proposed that the Council should hold in the next six months, a special meeting on fitment issues, as there were 91 proposals on goods alone, of which 49 were rejected, and 10 deferred. He then stated that of the 32 which were taken up, some of them were of clarificatory nature. He stated that by giving exemptions, people would clamour for more and more exemptions. He stated that the import of scrap is of such magnitude that potential revenue from this source could not be foregone and suggested that a meeting with the Industry could be held, and that scrap could be moved under the RCM

mechanism. This would lead to eradication of huge amount of bogus billing. He stated that the pros and cons could be weighed, and in the next meeting, a decision could be taken.

18.3. The Hon'ble Chairperson stated that this issue could be taken up at the next meeting after due consultation.

18.4. The Secretary referred to the issue of Zolgensma and Viltepso medicines for personal use, which are used for muscular atrophy and stated that these medicines were being exempted. There were a few more medicines used for the same disease. He stated that this medicine was for Rs 16 Cr., and there is two crores duty on it. He then stated that the proposal was that these medicines should be made exempt, and then requested the Council to delegate the power to provide similar relief for any other medicine which is used to exclusively treat this disease.

18.5. The Hon'ble Chairperson stated that medicines for a life threatening and rare illnesses, like muscular atrophy, and for those where the cost of one dose is in crores of rupees, tax on the same also runs into lakhs, arranging funds becomes impossible for patients. She stated that the Government of India were in consultation with the pharmaceutical sector, for a list of those medicines where such requests to waive tax would keep coming once in a while. She stated that in all such cases, giving exemption on a case to case basis may lead to jeopardy to a patient's life if there is some delay in signing the exemption. She then stated that the Council should take a broader list of such medicines and give exemption.

18.6. The Revenue Secretary referred to the proposal to increase GST rate on Copper and other metal concentrates to 18% from 5%. He stated that the rate on all essential commodities should be kept at 5%, and that for most other items, the rate should be kept at 18%, which is the standard rate under GST, and that the Council should strive to bring the rate on most items to 18%. He stated that very little revenue is realized at 12% rate. He stated that Madhya Pradesh has requested that ores rate should be at 12%. He further stated that this item was discussed in the Officers meeting, and that this is pass through, and it would be advisable if the rate on Ore and its concentrates is also made 18% considering that the metals are also at 18%. This would resolve the issue of inversion in GST rates on ores.

18.7. The Secretary referred to item at S.No. 8 [Annexure-I to the Agenda i.e. coconut oil. He stated that coconut oil is available at 5%, and that the proposal is to take it to 18% for small bottles. He then stated that a particular company was labelling their oil as pure coconut oil, and selling it in small bottles, and that this oil was not being used for cooking, but rather was being used for cosmetic purposes. He stated that as all cosmetics are at 18%, so the coconut oil used for hair oil should be at 18%. He then stated that if the rate is increased to 18%, the consumption of coconut oil would not fall. He stated that the question was whether the size of bottles which should be charged at 18% rate should be one litre or less.

18.8. Hon'ble Member from Kerala stated that in Kerala the major edible oil is coconut oil, and that production wise, the majority of farmers are engaged in Coconut farming. He stated that Member from Tamil Nadu raised the same issue in the letter he circulated. He stated that if coconut oil is being singled out, this would affect the farmers as well the price. He stated that the majority of farmers and MSMEs also produce coconut oil. He stated that maximum oil is coming from Kerala. He stated that the industry will be affected. He stated that a lot of other edible oils are used for cosmetic purposes, like Olive oil and Mustard oil and that if coconut oil is singled out, it would affect the State economy.

18.9. The Hon'ble Chairperson stated that while purchasing coconut oil for edible purposes, one would not buy a small bottle, but rather would buy in larger quantities, at least 250 ml. The evasion or

avoidance happens when smaller bottle sold for cosmetics purposes is classified as pure oil and hence chargeable GST @ 5%. She stated that mustard oil is not being sold in smaller sachets for cosmetic purposes, and only Olive oil and Coconut oil come under the category of oils which can be used for both cosmetic and edible purposes. She stated that she wanted to highlight that it is not that coconut was being singled out but rather that coconut oil is so versatile that it can be used for both purposes. She then stated that she wanted to apply this logic, and see if a middle ground can be found.

18.10. The Hon'ble Member from Kerala stated that Kerala has a public sector enterprise in Kerala, called Kera, which makes 250 gm sachets for edible purposes, and that Kera was the main producer of Coconut oil.

18.11. The Hon'ble Member from Rajasthan agreed with the Hon'ble Member from Kerala, and that the threshold for determining whether oil is for edible purposes or cosmetic purposes should be kept at 200-300 ml., instead of 1 Litre. He stated that every type of oil can be used for any purpose. He stated that even mustard oil is used as hair oil in rural areas. He stated that even Olive oil is used for multiple uses. He then stated that the major profession in the southern region is based on Coconut oil, so the 1 Kg limit should be reduced to 250-300 ml.

18.12. The Hon'ble Member from West Bengal stated that the onus should be given to the manufacturers to label the product as edible or non-edible. Hon'ble Chairperson stated that from her personal experience that there may be brands which do not label oil for particular purpose, as the manufacturer would not know for what purpose the consumer will use the oil and that the issue is complex. Hon'ble Member from West Bengal stated that even sachets can be used for cooking, and questioned that if segregation is made only in respect of packaging, whether it would lead to any benefit. Hon'ble Member from Rajasthan stated that the packaging costs of smaller packages would be prohibitively high, and it would reduce the margin of the manufacturer. Hon'ble Member from Goa stated that for the first time the coconut sector is looking up, and just because one company managed to package the product so well that it can be used as a hair oil, it should not be singled out. He then stated that sustained campaigns of multinationals tried to put forth to people that coconut oil is not good for hair at all, and that it could be harmful. Those multinationals are using coconut oil to make their products now. He added that because of one single industry, the entire coconut plantation farmers should not be made to suffer and that this would be a retrograde step.

18.13. Hon'ble Member from Puducherry stated that if lower quantity items are charged at 18%, the common man will get affected. He stated that moreover, non-branded items are also sent to the market, and it would lead to a lot of misclassifications. He stated that lakhs of people buy coconut oil in the lowest volume, and by charging them more, the poor section of people shall get affected. He stated those who are poor are purchasing the lower quantity items, and are purchasing more often. So every time, they will have to pay GST at 18%.

18.14 Secretary stated that if one goes and buys 100 and 200 ml coconut oil without packaging, then that person will only be charged 5%, so the poor man would not be affected, and only bottled ones will be affected. He stated that the quantity threshold may be reduced to 500 ml. He further stated that people would not buy 500 ml in a bottle for edible purposes, and will only buy it for cosmetic purposes. He further stated that the production of coconut or the sale of coconut will not go down, as the demand for the oil is there, and that it was only the manufacturers who were using it to have a lower tax. Hon'ble Member from West Bengal asked if such a classification would lead to litigation as there was a difference being created between edible oils, and that it had to be examined if there was an intelligible difference.

18.15. The Hon'ble Member from Kerala stated that some more time could be taken, and a study could be done, as this was an agrarian issue. He stated that Kerala had decided to exempt all plantation taxes, as the sector was facing a financial crisis. He further stated that taxes were being exempted, and many other freebies were being given to farmers, and charging a higher rate would be affecting farmers. Hon'ble Member from Delhi stated that proposal is not to levy a new tax. He stated that the Council may decide that oil which is being used for cosmetic purposes should be allowed to be charged at 18%. He stated that 18% should be charged below a 500ml limit.

18.16. The Hon'ble Chairperson stated there was some complexity to this issue. She stated that the Deputy Chief Minister of Delhi was absolutely right as one is able to differentiate between what is edible and what is cosmetic. In the case of Coconut oil, this differentiation is not clear, and she proposed that the Council should go by the suggestion of the Hon'ble Member Kerala and study the issue further, and that it should not be taken up this time.

18.17. The Secretary referred to Item at serial number 20, Paper sacks and corrugated boxes. He stated that the Hon'ble Member from Madhya Pradesh had stated that the rate be retained at 12%, as 18% would increase the rate of the user manufacturer. He further stated that in the officers meeting Odisha had strongly supported that the rate should be 18%. He further stated that this was a packaging material which is an intermediate good, and it would not raise the cost as mostly it would pass through, and in cases it is not, it would give certain revenue. He stated that the standard rate should be 18% and if Hon'ble Member from Madhya Pradesh agree to 18%, and no other Hon'ble Member had an issue, then Council may agree to this proposal.

18.18. The Secretary referred to item at Serial Number 32, i.e., Spiced water. He stated that all States in the officers meeting were of the opinion that this should be kept at 28%, otherwise, it may also become another avenue for misuse by classifying many products as spice water, as the definition was not clear. He then stated that the fitment committee had not given a decision on this issue and a decision was being asked for from the Council.

18.19. The Secretary referred to item at Serial Number 2 [Annexure-II] on Scrap. He stated that Hon'ble Member from Punjab had already opined that it should be reduced to 5%. He stated that the value of import is of Rs. 40,000-45,000 crores, and if it is reduced to 5%, then this revenue would be lost. He then stated that engagement with the Industry could be done, first at the official level, and then at the political level.

18.20. The Secretary referred to item at Serial Number 23, Biodegradable garbage bags. He then asked JS, TRU to explain this issue. JS, TRU stated that these bags currently attract 12%, but Madhya Pradesh was of the view that this be reduced to 5%. The fitment committee was of the view that the rate on this item should not be reduced as it would create the problem of inverted duty structure. The inputs, polymer etc. are all at 18%. He stated that a suggestion was given at the Officers meeting, and has been reiterated by the Hon'ble Member that biodegradable bags can remain where they are, but input can be reduced, so that input cost comes down. This would only shift inverted rate structure to previous stages in supply chain. He stated that it was agreed at the Officers meeting these bags should be incentivized through means other than the GST route, as this was harmful.

18.21. The Secretary referred to item at Serial Number 44 on Polished Napa Stones. The official from Andhra Pradesh stated that Hon'ble Member from Andhra Pradesh had given a representation that as per the HSN code, limestone and other calcareous materials were provided under Heading 2515120 and Marble and Travertine were provided under 25151210, except 2515. He then stated limestone is very

cheap material, and a slab is priced at rupees 9 per sqft. He then stated that even after slight polishing, mirroring cannot be done on it. He then stated that the rates applicable are not of 18%, and are 5% only, and this requires examination. JS TRU clarified that this issue was discussed in fitment, and could further be taken up by the Fitment committee if additional inputs/information is provided by the State.

18.22. JS, TRU referred to item at Serial No 7 and S. No. 25 in Annexure-IV. He stated that these were related to services provided to government, governmental authorities, government entities, panchayats and other local authorities. He stated that Officers were agreeable to the recommendations of fitment in the Officers meeting on exclusion of governmental authorities and Government entities from these exemptions as well as pruning the concerned exemption with regard to the scope of these entries. This proposal entails significant changes. As regards scope of entries, he stated that these exemptions have become wide and are inviting multiple litigations on their interpretations and scope. The exemption on pure services/composite supplies provided to any of these bodies in relation to functions entrusted to these bodies by the Constitution, was being claimed by various organizations to which these exemptions are not intended, including various hospitals, institutes and other authorities and all kind of input service to these bodies are being claimed as exempted under these entries even if there is no direct nexus to discharge of constitutional function. Accordingly, Fitment Committee has made two suggestions, one to exclude the Governmental entities and Governmental Authorities from the ambit of exemption, and two, the services which need to be exempted, when provided to Central Government, State Government and local authorities under these exemptions, must be specially enlisted. He further stated that a list has been provided in the Agenda note. He stated that the recommended changes are proposed to be implemented from 1st January 2022, so that refinement can be done in the specific list of exemption being proposed, and that this would be a positive list approach, instead of having a very wide and generic entry.

18.23. The Hon'ble Member from Delhi stated, as regards list of exempted services being proposed, that this was a complicated issue, and there could be further elaboration of it. He asked if a municipal corporation hires an agency for cleaning, which is an enlisted service, then will such a service be exempt. He then gave the example of education, and asked if the education department is hiring a service for this function, in two cases, one in primary education, which is a local body function, and then secondary education, which is a State government function, will such a service be exempt or not. JS-TRU clarified that these will be exempt under different categories, and stated that education itself is exempt. He stated if the municipal bodies were hiring some services for cleaning or for sanitation, then such services will be exempt. He stated that the issue was however that the notification is being interpreted even to avail exemption to computer maintenance, manpower supply for security services, etc. and that exemptions on inputs services is being claimed even if provided to say educational institutes, ports or such other bodies (which is not the intention). He stated that the list says that sanitation related services, education related services, even transport related services for local authorities would also be exempt, but exemption entry does not include broader services such as manpower, or computer maintenance or security services.

18.24. The Hon'ble Member from Rajasthan stated that local bodies give a contract for the cleaning of the entire city, for example, a 200 crores contract for the cleaning of the entire city. He asked if such a contract would be liable to GST. JS, TRU stated that the implementation of the provision would be from 1st January, 2022 before which the issues involved as regards scope of exemption, as recommended by Fitment Committee, may be sorted out, and further stated that sub-contracting would be exempted, but individual services such as financial services or security would not be.

18.25. The Hon'ble Member from Rajasthan stated that local bodies are given contracts on turn-key basis, which includes all works including waste collection to waste plants to STP. He then opined that the provisions should be clarified, otherwise it would lead to a lot of confusion.

18.26. The Secretary referred to the list of services sought to be exempted under the provisions, listed at S.No. 25, Annexure 4.

18.27. The Hon'ble Member from Rajasthan stated that the scope of the activities enumerated is so large, that it would need to be clarified, otherwise a lot of people would fall outside the revenue and taxation limits. He further stated that the scope of activities would need to be defined. He then gave the example of healthcare and sanitation which has a very wide scope and would need clarification.

18.28. The Officer from Tamil Nadu stated that similar to the point that Hon'ble Member from Rajasthan was making, clarity on these issues, such as in case of healthcare, where manpower is outsourced under healthcare. Then under municipal services, sanitation is specified, solid waste management is specified, but sewerage is not specified, so these sources could be outsourced. He then opined that the list needed to be fine-tuned before it could be put up.

18.29. The Officer from Gujarat stated there are five government entities, Union government, state government, local government, Government authorities and Governmental entities. The present entries cover input services needed for performing service in relation to Schedule 11 and 12 of the Constitution, that are local body functions, by these entities. The entry is very wide and open to wide interpretation and appears to imply that every service taken by the said bodies appears to be exempted. Thus, the services which are exempted need to be specified.

18.30. The Hon'ble Member from Delhi stated that he also agreed with Tamil Nadu that the terms used were very wide, and there was some ambiguity. As an example, he said while installing a sewage treatment plant, a security guard may be needed. In such a case, would the security guard services would be taxed and the other things would not be taxed. He further opined that more clarity is needed.

18.31. The Secretary suggested that the list of services to be included in this exemption may be circulated to each state, and opinions may be sought from each state on the list. That list would then be examined by the fitment committee, and it would be put before the next council meeting. Other changes in these entries, as suggested by Fitment Committee be agreed to.

18.32. The Secretary referred to item at S.No. 28 of Annexure-IV regarding taxation on facilities provided to the members and ex-members of the Legislative Secretariat and Assembly. He stated that it was proposed that services being provided to MLAs and ex-MLAs by assemblies may be exempted. He stated that the same proposal in respect of MPs when it was tabled in Council was not agreed to. He further stated that it would not send a good message if the current request was agreed to. Accordingly, it was decided not to exempt these facilities.

18.33. The Secretary referred to item at S. No 7, Annexure-V, concerning the request made by Himachal Pradesh to reduce tax on ropeway from 18% to 5%. He stated that they contend that ropeway is not merely not for entertainment and tourism, but is also a means of travel. He stated that when it was discussed in the Officers meeting, most states felt that it was used for tourism, and even in Himachal, it is used majorly for tourism. He then stated that as ITC would be admissible in this case, it was recommended that it be kept at 18%. Officer from Himachal Pradesh stated that ropeways are now not only used for tourism or luxury purposes, but are now increasingly becoming a reliable, and safe means of transport. Ropeways can be used for urban transport and to decongest cities. In holiday season, there

are massive traffic jams, and in the mountains, roads cannot be widened beyond a point, and ropeways are a way out. He stated that previous attempts to popularize ropeways did not attract much investment, and one reason was that capital costs were very high. He stated that if GST on the ropeway project as well as on the related services is reduced to 5%, it would attract investment, and would provide viable transport solution to remote locations, and decongest cities. He further stated that a presentation could be made before the fitment committee so that they could reconsider it in the next meeting.

18.34. The Hon'ble Member from Uttar Pradesh stated that in places where there is a necessity, like the mountains, GST can be reduced to 5%, in other places, where it is used for tourism, it can be kept at 18%. He stated that tax slabs could be created on the basis of ticket price, with a 5% slab on ticket prices below 100 rupees, and 18% above that. Secretary requested the officer from Himachal Pradesh to send their suggestion to the fitment committee, and that it could be considered in the next Council meeting.

18.35. The Hon'ble Member from Telangana referred to item at S.No. 10 of Annexure-II, concerning withdrawing RCM on raw cotton. He stated that Telangana is one of the largest cotton growing state. He stated that withdrawing RCM would not reduce revenue, but it will help the farmers. He stated that nowadays in India, there is an excess production of wheat and paddy. He further stated that paddy growing states such as Telangana were suffering due to excess production of paddy. He stated that we needed to encourage cotton growing farmers, and that RCM is delaying realization of money by farmers. He stated that due to RCM, as input cost increases, ginners are giving money to farmers later, and this was not encouraging cotton farmers. He then stated that there would be no financial loss by removing RCM, but the farmer will realise price when he sells his crop, and it would help the farmers. Secretary stated that if the RCM is abolished, then the tax would need to be collected from the farmer, and it would be difficult to collect. Hon'ble Member from Telangana stated that the ginner would pay GST only when he sells the rolls. Revenue Secretary stated that the sale is taking place from the farmer to the ginner, and that the ginner was being asked to pay the tax, and when the ginner will sell it to the next party, he would receive the input tax credit. He stated that this issue could be deliberated by Telangana, and if it is still felt that something needed to be done, then a paper may be sent to the Fitment committee on the issue. The officer from Maharashtra stated that Maharashtra is the second largest producer of cotton and was of the opinion that the present system should continue. Revenue Secretary stated that Gujarat and Maharashtra, which are cotton growing states feel that the present system is fine, and requested the Hon'ble Member to ask officers to engage with their counter parts from other States which are cotton producing, and then a conclusion could be reached.

18.36. The Hon'ble Member from Delhi referred to item at S. No 9 of Annexure-I, Goods supplied at Indo-Bangladesh Border Haats. He enquired about the intent or source of demand of such an exemption. He then questioned what advantage would be gained from removing IGST on these border Haats, as they are small markets and are so small that they are already outside the purview. Member, GST clarified that these Haats are set up in no-man's-land between countries, and that this is traditional trade, with most items being traditional items. Licenses are given to traders, and the haats are held on certain days of the week. He then stated that as these are imports, there is no threshold IGST exemption for these.

18.37. The Hon'ble Member from Delhi referred to item at S.No. 6 and S. No 24 in Annexure-IV, concerning E-Commerce Operators such as Swiggy and Ola/Uber. He stated that these were major issues for the Metropolitan cities. He requested if there could be a little more clarity on the issue, and a small presentation could be made to help understand what is the current situation, and what is proposed and how it will benefit.

18.38. JS, TRU explained that if some restaurant is delivering through Swiggy or Zomato, then, in the current situation, the tax is being paid by the restaurant and not by Swiggy or Zomato, even though they collect it from the Customer, and pay it to the restaurant. They are acting as intermediary and they don't deposit GST to Government on restaurant services supplied through them. During examination of issue, on which Haryana has contributed significantly, it was seen that even though GST was being collected by Zomato, and reimbursed by them to the Restaurant, Restaurants in turn were not depositing the GST so collected by them, and in Haryana, the evasion was to the tune of hundreds of crores. When recovery was attempted after the discovery of the issue, it was found that the restaurant did not exist anymore at the premises. In relation to this, the proposal is that for supplies made through ECOs, that is when Swiggy or Zomato collect the tax, then they will pay the tax themselves to the Government, instead of the Restaurant. As there is no ITC allowed to restaurants, there is no ITC implication for the restaurants in the proposal, and the transactions would also get accounted for and would help in plugging the leakage.

18.39. The Hon'ble Member from Delhi asked if a person from Delhi orders from a Delhi- based restaurant, and Swiggy is operating from Noida or Gurgaon, then what will be considered as the destination. JS, TRU clarified that in the proposed change there would not be much difference on the principle by which GST revenue accrues to respective states. GST will accrue to a state where the restaurant is located in terms of existing place of supply. As such Swiggy and Zomato have state wise registrations. The Hon'ble Member from Delhi further asked that if the tax is being paid by the restaurant, then it is being paid from a fixed/known destination, and ECO is an unknown destination. Would the Government system be able to capture the order being placed in Noida or Gurgaon, irrespective of location of the restaurant and delivery and will tax be generated in Noida or Gurgaon. He asked if the taxation system would segregate each and every supply on the basis of destination. JS (Revenue). DoR clarified that GST will be assigned as per place of supply which would be captured, just like as done in case of Amazon supplies

18.40. The Secretary stated this is not a new tax as was being reported in the media; it is just ECOs collecting taxes and paying them to the Government. Tax will accrue to the respective state as it accrues today. JS, TRU stated that this proposal is proposed to be implemented from 1st January 2022, and the few issues which exist, or are raised will be clarified.

18.41. The Hon'ble Member from Delhi also stated that the whether the question related to Ola/Uber is similar to Swiggy/Zomato and if the same could be similarly explained as well. The JS, TRU stated that in respect of Ola/Uber there already exists such a provision and they (Ola/Uber) already pay taxes on services supplied through them. He stated that Ola and Uber engage small drivers, and the drivers are the service providers, but the tax is currently paid by Ola/Uber only. He also stated that now it is being proposed that the same mechanism be extended to all types of passenger transport, as per the proposal placed before the Council for its approval. He gave the example of Red Bus, which provides bus ticket booking service. He stated that the mechanism employed for Ola/Uber will now be extended to these other entities, like red Bus, as well.

18.42. The JS, TRU stated that in respect of Ola/Uber there already exists such a provision and they (Ola/Uber) already pay taxes on services supplied through them. He stated that Ola and Uber engage small drivers, and the drivers are the service providers, but the tax is currently paid by Ola/Uber only. He also stated that now it is being proposed that the same mechanism be extended to all types of passenger transport, as per the proposal placed before the Council for its approval. He gave the example of Red Bus, which provides bus ticket booking service. He stated that the mechanism employed for Ola/Uber will now be extended to these other entities, like red Bus, as well.

18.43. The Hon'ble Member from Goa stated that this was a move in the right direction. He further stated that in cases where no tax was being paid, the quality of food and its monitoring, even though it is not a concern of the GST Council, is sometimes an issue. Taxing Swiggy and Zomato will ensure that there is a record as well, about where the food is coming from and where it is going.

18.44. The Secretary asked the permission of the Chair to close this agenda item and consider according approval. The Council approved the proposals of the Fitment Committee contained in the agenda, modified to the extent as required in terms of the above discussions held in this regard.

Agenda 15: Recommendations of the 15th IT Grievance Redressal Committee for approval/decision of the GST Council

19. The 15th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 12th August, 2021 at 11.00 a.m. to resolve grievances of the taxpayers arising out of technical problems faced by them on GSTN portal in relation to GST compliance filings along with cases of non-technical nature. The Minutes of the 15th ITGRC are attached as **Annexure-A** in which there are 06(six) Annexures.

19.1. The agenda for the 15th ITGRC meeting covered the following issues-

- a. Eleven cases of TRAN-1/TRAN-2 filing pertaining to Court cases (**Annexure -2 of the 15th ITGRC Minutes**).
- b. Four cases of TRAN-1/TRAN-2 filing forwarded by nodal officers in terms of the decision taken in 43rd meeting of the GST Council to take up these cases which had been received from nodal officers prior to 31/08/2020 (**Annexure -2 of the 15th ITGRC Minutes**).
- c. Four cases of non-technical nature as per extended scope of the ITGRC, approved during the 32nd Meeting of the GST Council; and arising out of court cases (**Annexure -5 of the 15th ITGRC Minutes**).
- d. Approval of Standard Operating Procedure (SOP) for correcting Technical issues requiring data fixes through backend utilities (**Annexure -3 of the 15th ITGRC Minutes**).
- e. Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches (**Annexure -4 of the 15th ITGRC Minutes**).
- f. Additional Agenda containing suggested resolution procedure for Refund case of M/s Atibir Industries in WP (T) No. 4061/2019 (**Annexure -6 of the 15th ITGRC Minutes**).

19.2. **Recommendations of ITGRC in TRAN-1/TRAN-2 Cases forwarded by the nodal officers and court cases:** GSTN post technical analysis categorized the TRAN-1/TRAN 2 cases under following categories:

- (A) category A1- Cases where the taxpayer received the error 'Processed with error.' In these cases, as per GST system logs the taxpayer had attempted to submit first time/fresh Tran-1 or revise TRAN-1 but could not file because of technical errors and
- (B) categories B1/B2/B3/B4/B6/B7 -where evidence of technical glitches were not found post technical analysis

19.3. The Committee has recommended that:

- a. out of four cases forwarded by the nodal officers; one case falling under category A1 merited acceptance for opening the Portal for filing TRAN-1 and remaining 03 cases falling under category B1 & B7 are liable to be rejected as no technical glitch was noticed by GSTN in these cases post technical analysis.
- b. out of 11 court cases; 2 court cases of TRAN-1 falling under category A1 were recommended for opening the Portal for filing TRAN-1 while 08 cases of TRAN-1 & 01 case of TRAN-2 falling under categories B1/B2/B3/B4/B6 were recommended for rejection.

19.4. Recommendations of ITGRC in cases forwarded by the Nodal Officers in the category of non-technical nature in terms of extended scope of ITGRC as per the 32nd GST Council meeting and as per the High Court order

The ITGRC recommended the 03 cases of M/s Ram Auto, Madurai, M/s. Precision Gasification Service Pvt. Ltd and M/s Carl Stahl Craftsman Enterprises Pvt Ltd. that were covered under the prescribed parameters in terms of the extended scope of ITGRC by 32nd GST Council Meeting be allowed for opening the Portal for filing TRAN-1 and rejected the case of M/s Precision Rubber Industries as it was not covered within the prescribed parameters.

19.5. ITGRC recommendation/decision on agenda for approval of Standard Operating Procedure (SOP) for correcting technical issues requiring data fixes through backend utilities.

19.6. In the agenda, GSTN has submitted that due to the complex set of validations and process requirements through multiple interactions in GST System’s application, the processing errors either due to unhandled exceptional scenarios or any software glitches sometimes occur. In order to remediate such issues, the processed incorrect data require fixing, collecting correct data besides solving the software/platform issues being faced by respective stakeholders.

19.7. In order to perform the data fixes, the GSTN suggested that it would perform data analysis, and confirm if the data indeed contained discrepancy. Upon confirmation of the defect, complete list of similar cases would be extracted from the system that are suspected to require data fix, and an approval note with root cause analysis would be prepared and placed before a competent authority, who would approve for the data fix including the manner in which it is to be applied.

19.8. Accordingly, the GSTN had prepared a generic list of typologies of errors that could come and the approving authority for allowing the correcting the errors by GSTN would be as follows:

Sr. No	Technical issue Category	Modules affected	Type of error and knowledge of correct data	Approving Authority
1	Technical issue with no financial implications	Such as Registration, Back office, Front Office etc.	Correct data known	Internal (SVP, GSTN)

2	Technical issue with no financial implications,	Such as Registration, Back office, Front Office etc.	Correct data not known	Internal (EVP GSTN) for resetting/ reopening the forms.
3	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data known	GSTN to correct data after Internal Approval by EVP/CEO. The tax administration to be provided with MIS.
4	Technical issue affecting locally with financial implications	Such as Returns, cash ledger/ ITC ledger/ Refund etc.	Correct data not known with certainty	GSTN to correct data after Internal Approval by EVP/CEO. GSTN to enable the reset button so that the taxpayer can correct the form and file again. Post facto the approval of ITGRC to be taken and tax administration to be provided with MIS.
5	Technical issue affecting globally with financial implications	Such as cash ledger/ ITC ledger/ Refund etc.	Correct data not Certainly known	GSTN to enable the appropriate data fix after Approval of the ITGRC – Tax payer can reset the form and file again. The tax administration to be provided with MIS.
6	Taxpayers Claiming technical issue to be Defect	NA	No Action required– Clarification provided to the taxpayer	Not Applicable

19.9. The process to be adopted for correction by GSTN would be as follows:

- I. For most of the issues, as depicted in the above table, GSTN would be allowed to fix issues from backend with the approval of the ‘Competent Authority’ as may be approved/ nominated.
- II. For all the issues, a list with impacted GSTIN’s, CINs etc. would be prepared and shared with the competent authority as per Col. 5 above.
- III. The steps involved in the process would be:

- a. The data discrepancy will be first analyzed and confirmation will be sought from MSP
- b. Upon confirmation, a utility will be written by MSP to extract all similar cases from GST System data stores.
- c. A root cause analysis will be sought and fix would be implemented by MSP in consultation with GSTN to prevent further damage to data consistency.
- d. Scripts (SQL or Java depending upon type of defect) will be prepared for data fix and would be tested in multiple cycles by MSP and GSTN.
- e. Approval note will then be prepared and presented to competent authority for approval to go ahead.
- f. Once approval is provided, audit entries will be created for each mutation affecting the data state.
- g. Scripts will be executed and post execution state of data will also be stored for reference later.
- h. List of all such changes will be presented and explained to GST policy wing & ITGRC and periodic internal audit will also be undertaken.

19.10. The SoP, as above at para 19.8 and 19.9 was agreed by the ITGRC members and recommended for the approval by the GST Council.

19.11. ITGRC recommendation on Reversal of interest paid on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches.

The following was discussed by ITGRC regarding this agenda during the meeting:

- a. There is merit in waiver of interest being the cases analogous to the cases of waiver of fine and penalty.
- b. There was a technical glitch in filing GSTR-8 Returns in all these cases but there was no glitch in payment of TCS amount into cash ledger.
- c. The ITGRC recommended the waiver of interest only from the date on which deposit was made till the actual filing of the GSTR-8 statement wherever it could not happen because of technical glitch. However, in case there was delay in deposit of TCS from the due date of filing of Return, the ITGRC is not recommending waiver of interest.
- d. ITGRC further observed that, there is no mandate for the ITGRC to consider cases of waiver/refund of interest due to technical glitch as the Circular no. 39/13/2018-GST dated 3rd April, 2018 mandates the ITGRC to recommend the cases of waiver of fine and penalty only.
- e. Since there was no legal provision either in the GST laws for waiver or refund of interest, therefore, the decision needs to be taken by the GST Council to issue an appropriate notification under Section 148 of the CGST Act.

19.12. With regards to additional agenda of ITGRC containing suggested resolution procedure for Refund case of M/s Atibir Industries in WP (T) No. 4061/2019, as the same was returned by the ITGRC to GSTN for resolution through the tax administration, not being an IT issue.

19.13. Discussion and Decision of the Council:

The recommendations of the 15th meeting of the ITGRC were placed before the 45th meeting of the GST Council, after considering and due deliberations, agreed with the recommendations of ITGRC and decided as follows:

- a. The GST Council approved the TRAN-1/TRAN-2 cases as recommended by ITGRC in para 2.1 above.
- b. The GST Council approved the cases of non-technical nature recommended by ITGRC in para 3 above.
- c. The GST Council approved the SOP to be adopted by the GSTN for correcting technical issues requiring data fixes through backend utilities, as per para 4.1 and 4.2 above.
- d. GST Council also approved, with reference to para 5 above that:
 - i. Waiver of interest shall be only from the date on which deposit was made till the actual filing of the GSTR-8 statement wherever it could not happen because of technical glitch. However, in case there was delay in deposit of TCS from the due date of filing of Return, the waiver of interest shall not be granted.
 - ii. Since there was no legal provision either in the GST laws for waiver or refund of interest, therefore, the GST Council approved issue of an appropriate notification under Section 148 of the CGST Act.

Agenda Item 16: Agenda note for the GST Council on National Anti-profiteering Authority

20. The Secretary asked JS (DoR) to present the agenda pertaining to National Anti-Profiteering Authority.

20.1 JS(DoR) stated that NAA was constituted by the GST Council under Section 171A of CGST Act, 2017. Originally this authority was constituted for two years and its tenure was subsequently extended by two years which is now ending in November, 2021. The issue before the Council is whether to extend this tenure further or whether the Competition Commission of India Constituted under the Competition Act, 2002 can be empowered under Section 171 of CGST Act, 2017. Section 171 of the CGST Act states that the Council may constitute an anti -profiteering authority or empower an existing authority constituted under any law. Accordingly, the Council may take a call.

20.2. The Secretary stated that when NAA was formed, GST was new and rates were being decided, and there was a feeling that NAA is required to keep a watch whether tax reduction benefits are being passed on. A decision can be taken whether the work can be left to the Competition Commission of India and let the NAA tenure end in November, 2021.

20.3. The Hon'ble Member from Punjab stated that pricing decision should be dictated by market rather than the tax administration. However, since the market is not mature enough and GST rollout was also far from perfect, Punjab had favoured the setting up of NAA. He stated that his own feeling is that this is not the opportune time to close the NAA as due to pandemic, the NAA have not been able

to dispose of the cases and there is large pendency of cases. Also, as discussed a holistic view on GST rate rationalisation would be taken and hence, the tenure of this authority should be extended for another year. He further stated that he feels that it needs to be considered as to whether the Competition Commission of India would have the expertise or the domain knowledge required to handle anti profiteering cases. He suggested that the pendency of cases with NAA must be brought down to nil. Thus, one year extended tenure can be given to the NAA.

20.4. The Hon'ble member from Kerala stated that the anti-profiteering authority has investigated some cases in Kerala also and there are some more cases that are pending. When the GST was introduced, it was expected that prices would reduce because of the one country-one taxation concept and there was drastic reduction of taxes. Hence, some agency is required to look into issues of price reduction. He further stated that the passing this work to Competition Commission of India may not help as they do not have the mandate for such work. Nevertheless, an agency to examine the anti-profiteering issues is required.

20.5. The Hon'ble Member from Goa stated that he feels that the Anti-Profiteering Authority should be strengthened. He further stated that giving anti-profiteering work to the Competition Commission of India is not going to help in anyway. However, with unfolding of GST and subsequent experiences of substantial tax revenue leakage, it is opined that there should be an efficient mechanism to check anti-profiteering. Further, there is need to have a strengthened anti-profiteering authority, with all members in place and its tenure should be extended by one or may be two years to enable its proper functioning

20.6. The Hon'ble Member from Delhi stated that creation of Anti-Profiteering authority was more relevant in the initial phases of GST as important decisions on GST rates were taken and many taxes were subsumed. Even now, Fitment Committee continues to rationalize the tax rates as and when required. In such scenario, the requirement of anti-profiteering Authority shall never cease to exist. He suggested that Council may take a call on giving extension to tenure of NAA, but there is a need to consider that the constitution of anti-profiteering Authority was stopgap arrangement and it cannot continue forever.

20.7. The Secretary stated that as suggested by the Hon'ble Members, the tenure of NAA can be extended by one year up to 31.11.2022 after which it will close down and meanwhile it can be taken up with the CCI for taking up the work of NAA. He sought authority from the Council to take up the issue with CCI. The Council agreed with this arrangement.

Agenda 17 Review of Revenue Position under Goods and Services Tax &

Agenda 18. Compensation- Scenario Post June-2022 and Options

21. The Secretary stated that the item numbers 17 and 18 of the agenda may be taken up together and added that the revenue position which had improved considerably even in the present circumstances as also the scenario for the compensation will be presented. He further stated that as interest and principal would be paid from the cess itself, the cess that would be collected after 1st July, 2022 up to March 2026 would be used to pay back the loan. Further, he requested that the Council needs to take certain steps for revenue augmentation so that States are better prepared beyond July '22.

21.1. JS, DoR stated that in the current presentation (attached as **Annexure-4**), GST revenue from the inception had seen an increasing trend, even if with monthly ups and downs. The revenue in the current financial year is expected to be better than initially estimated. He drew attention of the Council to the legal framework and highlighted that the law does not provide for payment of compensation from

the Consolidated Fund of India. This has been discussed in the Council at various occasions as well as in the Parliament. He explained that after the compensation requirement till March 2020 having been fully met, to meet the shortfall in compensation fund and the immediate need of resources, borrowing was done by the Government of India and passed on to the States as a back-to-back assistance after detailed consultations with States.

21.2. Accordingly, Rs. 1.1 lakh crores were borrowed during 2020-21 to meet the gap partially and using the same formula now, Rs 1.59 lakh crores was estimated to be borrowed during 2021-22, out of which Rs 75,000 crores has already been borrowed and passed on to the states and there are still areas of more than Rs 80,000 crores pertaining to compensation for 2020-21. In 2021-22, the situation was far better and the total GST collection during the year is expected to be Rs 13.5 lakh crores. In the current year, when Rs 1.59 lakh crores is borrowed, the compensation gap will be more than covered.

21.3. To give an idea of till when the liability of the compensation requirement would be carried with protected revenue from April 2020 to June 2022 of around Rs 18.9 lakh crores, the cess collection till March 2026 shall be required to meet the liability of servicing of the debt incurred and the arrears of compensation. Against total resource which is available with the states of around Rs 8.5 lakh crores of revenue in this particular year, in the next year there will be a fall by Rs 1 lakh crores, which was a drop of 12%. Therefore, there was a need to garner additional resources prevent steep fall in resources so that the budgets of Centre and States do not get adversely impacted.

21.4. It was explained by JS, DoR that if the steep drop has to be avoided, the estimate of revenue from CGST and SGST combined would have to be about Rs 1.4 lakh crores a month or about Rs 2.5 lakh crores additional from next year onward. The need for revenue argumentation is imminent and immediate measures were required for revenue augmentation and various suggestions towards this objective have been compiled, discussed and placed before the Council in multiple meetings. Some changes are about the policy measures, some about changing the law and procedures and some are regarding administrative measures.

21.5. First broad category of suggestions was under the category of GST rate calibrations. He drew the attention of the Council to the fact that ever since the introduction of GST; the effective rate has progressively come down. He detailed that the revenue collection from different slabs i.e. from 3% was about 1%, from 5% slab was about 13.6% and from 12% was about 7%. The 18% slab provided the maximum revenue of 61.6% and 28% which had very few items provided 17% GST revenue. Considering that 5% rate gives 13.6% revenue, it was clearly evident that the base under 5% tax was quite significant and, if say 5% rate was increased by percentage point i.e. 5% is increased to 6%, it would yield about Rs 50,000 crores additional revenue per year.

The rate related changes that could be considered can be classified into following:

- The inverted duty structure should be taken up for immediate correction. Council had agreed to correct the GST rates on items such as renewable energy equipment, railway parts, pen parts, ores etc. in this Council meeting. Earlier, Council had recommended rate calibration in Mobile to correct inversion, which was implemented with effect from 1.4.2020. The proposals to correct inversion in textiles and footwear are already there with the Council since 39th meeting. It had earlier been discussed in the 43rd meeting that recommendations have been received from the Ministry of Textiles that there was a need for correcting inverted rate structure in textiles if the potential of sector has to be realized in India, growth has to be achieved and the industry has to be enabled to

become a big player in the international market. This had been discussed in detail by the Council and there was broad agreement in the sense that there is a need for correcting inverted rate structure. However, Council had felt at that point in time that because of the COVID impact, perhaps that was not the right time to look into those items. So, these were being placed before the Council to take a view on these items. Therefore, Council may take a view regarding the time from which these proposals could be implemented.

- Then upward revision of 5% rate items which have a considerable base. Initially, when GST was rolled out, it was felt that the lower rate slab should be 6%, but it was reduced to 5%.
- The third suggestion was that GST rate of certain items should be in a higher rate slab (other than for correction of inversion), for example, various kinds of scrap, paper items, walnuts and cashews. Also, a re-look at GST slabs of 12 % and 18 % needs to be done so that the items were recalibrated.
- The fourth was related to review of exemptions. There are several exemptions in goods and services, which require pruning.

Some more suggestions like reverting some items that have been brought down from 28% slab to 18% slab back to 28% slab, increase of rates on gold and precious stones and increase of cess where the rates are specific.

21.6. The issues of inverted duty structure in textile sector, dyeing services and footwear have been before the Council for some time. The Council had earlier decided that duty inversion had to be corrected but the time was not appropriate due to Covid pandemic So, these items were being placed before the Council for decision on the matter.

21.7. The Secretary clarified that no cess would be available for distribution to states till 2026. This was the estimate based on growth assumption and cess availability every year. The above changes may be brought into effect from 1st January, 2022. Since the resources available would take a hit in July 2022, he requested the Hon'ble Members of the Council to guide on the way ahead.

21.8. The Hon'ble Member from Punjab stated that Punjab would be facing financial stress and the current situation has arisen since GST rate on some number of items was reduced from 28% to 18%, there were threshold exemptions, specific rates of cesses, a large number of exemptions in textiles, taking out certain sectors from the ITC chain like residential construction and restaurants, etc. The average rate of taxation was reduced by 20 to 25% as compared to pre-GST rate. His considered suggestion to the Council was that the Hon'ble Chairperson could constitute GoMs. One GoM to look into tariff, exemption and thresholds. The second GoM had to be on GST design and to plug leakages in the law as there were leakages in the law which they need to plug. The GoM could look into possibilities for strengthening the IT capabilities as they were losing a large amount of revenue as IT was not up to the expectations. He suggested that Council might allow some states to have SGST rates which were higher than others and cess rates needed to be reviewed for inflation. His plea was that compensation should be extended by three years, the amount of compensation could be capped at amount payable for the financial year 2021-22 and that center must take over 50% or 70% of the money which was borrowed during COVID to meet part of the compensation. This would enable the compensation cess collection to be used for continued compensation. He was willing to produce a paper for the Council and the Council could debate that paper or have a look at how to augment tax revenues.

He felt that the figures presented were very conservative, as Punjab itself was facing a loss of Rs. 17,000 crores and, therefore, estimate for the country of Rs 1 lakh crores is overly conservative. In first month of GST, revenue collection was about Rs. 91,000 to 92,000 crores. However, even after 4 years, revenue stood at Rs 1,11,000 crores. Even if it was considered that organic growth was 5% and there was 5% inflation, the revenues should have been close to Rs 1,31,000 crores. He concluded by reiterating that they would be willing to produce a paper for discussion by the GST Council.

21.9. The Hon'ble member from Jharkhand stated that around 39% of the population in the State was below poverty line and 27% population belongs to the tribal community. The buying capacity of the population was low, leading to lower GST revenue as the current GST regime favors the consumption model. Jharkhand is a mineral rich state with coal as their major source of revenue, generating a revenue of Rs 460 crores from coal cess every month. He also added that even though most of the coal was produced in their state, they were not able to produce electricity and were not able to pay electricity bills raised by Damodar Valley Corporation (DVC) which were amounting to Rs 5,200 cr. Even then their money was deducted directly from the consolidated fund. The royalties of Rs 12,725 cr. were due to them but the same were not considered for adjustment. He urged that the Council needs to look at his pleas by adopting a sympathetic approach as coal was their main revenue source. He said that compared to pre-GST, their loss in the GST regime was of Rs 3,700 crores and they were expecting that once the compensation period expires, their losses would run to the tune of Rs 5,000 crores per annum which will make it difficult for them to run their State. He requested that the GST rate on coal may be increased from 5% to 12% and a GoM/Committee may be formed to discuss it. He stated that the GDP growth rate had reduced, and this needed to be studied. He said that there needed to be thorough deliberations on revenue augmentation. He said that the council could look into the suggestions forwarded by Punjab for extension of the compensation period or the suggestion of raising the tax slabs. He also requested the Hon'ble FM to help his State in getting the royalty of Rs 12,725 crores released. One could witness both prosperity and poverty in Jharkhand and they did not have requisite infrastructure yet. To conclude, he invited the Secretary along with the officials of the Council to visit his state and thanked the UP government for organizing the GST Council meeting.

21.10. The Hon'ble member from Uttarakhand stated that the state of Uttarakhand also faced financial difficulties when they transitioned into GST. The State Government of Uttarakhand had ushered in an industrial package with the aim to increase tax receipts. He stated that Uttarakhand was not a consumer State and State had expenditure related to subsidies to people for land and electricity and social responsibilities like pensions, welfare schemes, etc. and they needed more funds for Infrastructure development. If they did not finance infrastructure, migration from borders districts would only increase which would be harmful to not only Uttarakhand but to other States as well. He took the example of ropeway stating that it was not only a mode of transportation for humans but was also used by farmers for transporting their produce and a loan was taken from NABARD for funding ropeways in the State. In 2015-16, their tax revenues under VAT were Rs 4,961cr and in 2020-21, it was Rs 4,462 cr. That means that the revenue position was same as in 2015-16 and thus the state needs the compensation amount which may be extended by five more years to 2027.

21.11. The Hon'ble Member from Rajasthan stated that he understood that the major issue was of resource mobilization and ultimately the distribution of resources could only be based on GST revenue collection and a GoM could be constituted for rationalization of rates keeping in view specific issues of States. The state of Rajasthan is also facing financial distress. Had there been no GST, States would have tackled this financial crisis on their own by managing taxes such as entertainment tax, VAT etc. Further, he opined that the situation would only be normalized if GST collection reaches Rs 1,30,000-1,50,000 lakh crores per annum. He said that due to the topography of the State, Rajasthan has always

faced issues of migration and present revenue crunch is hampering the welfare policies. He further stated that arrears of Rs 5,600 crores were due to the State of Rajasthan and the Center's share in schemes had gradually reduced from 90% to approximately 50%. He further stated that the slab rates certainly needed to be increased and requested that the government should consider changing the nature of the compensation from loan to grant.

21.12. The Hon'ble Member from Delhi said that revenue augmentation required rate rationalization and computerization. He stated that while revenue rationalization was relevant, but digitally enhanced measures like Business Intelligence and Fraud Analytics (BIFA) to check evasion were also essential. Further he suggested that there should be a centralized intelligence body for effective implementation of BIFA that would help in tracking the revenue leakages by establishing communications and provide inputs to States. He said that Delhi had used BIFA for successfully tracking revenue leakages.

21.13. The Hon'ble Member from Kerala requested for the extension of the compensation for another five years stating that the financial situation was very bleak and had been aggravated by COVID pandemic. The Central Government and the State Governments needed to collectively address this issue and in the initial one or two years, Kerala had a GST compensation gap of only Rs 3,000-4,000 crores. Naturally, there was an increase in gap in last two years due to the pandemic. He further stated that, the State's average growth was 14-16% for the last 11 years. Kerala Sales Tax rate was 14% and Central tax was also 14%, so in total tax rate was 28%. However, under GST, the tax rate was 16% approx., which meant that the State would get only 8%. Due to various compulsions and other issues, the actual average rate of taxation came to be about 11% so that the State was getting only 5.5% whereas before GST they were getting 14%. Naturally, the Centre's share also got reduced. Hence, revenue augmentation had to be looked into and suggested that rate rationalization and system upgradation would improve the revenues. He further stated that other issues such as issues pertaining to Finance Commission still existed. Earlier in 1970s or 80s they were getting revenue from the divisible pool at 3.92%, however when it came to 14th Finance Commission it was reduced to 2.45% which was further reduced to 1.92 % approx. by 15th Finance Commission. While in 2018-19, the state received Rs 17,500 crores per year from the divisible pool, it received only Rs. 10,000 crores in 2019-20. If the compensation was not continued and some special grant were not given to Kerala, then they stand to lose Rs 32,000 cr. compared to the present year.

21.14. The Hon'ble Member from West Bengal stated that it took a little time to stabilize the entire GST system. She further added that there had been five years' permission for compensation by the constitutional amendment but now another five years' extension of compensation was necessary and an amendment, as required, should be done. She emphasized that five years' extension was necessary for strengthening the revenue of States. It is more essential due to Covid and the consequential loss of revenue for two years. There have been very good suggestions put forth in presentation and a GoM could be constituted to consider the issues.

21.15. The Hon'ble Member from Puducherry extended his sincere thanks to the Hon'ble Chairperson for releasing back-to-back financial loan of Rs 517 crores to the Puducherry for the FY 2021-22 and Rs 121 crores as GST compensation for FY 2020-21. He hoped that the balance compensation for the current year would be released in a timely manner. They require at least Rs 300 crores per month to settle salary & pension bills and their commitment for the welfare of the people. If the compensation comes to an end by June 2022, they would not be able to fulfill their commitments. The Hon'ble Chief Minister had written a letter requesting the Government of India to extend the compensation for another five years. Puducherry had a large consumption base. If Puducherry had continued with the VAT regime, then considering a growth of 7% and their collections from VAT, their revenue would have

been around Rs 1,500 crores. However, presently, Puducherry collects GST revenue which is less than Rs 900 crores per year. The presentation by the Government of India indicated a ray of hope that revenue collection would increase but augmenting revenue through measures such as rationalization of tax structure, removing the anomaly of inverted duty structure and revisiting the exemption list, might still not address the structural issues faced by their government. He stated that Puducherry was not getting any benefit from Finance Commission. Hence, he requested that the GST compensation period may be extended beyond 2022 for another five years as the State was not in a position of self-sustenance.

21.16. The Hon'ble Member from Goa said that at the time of GST roll out, revenue was growing at 14% and revenue was only expected to go up. However, because of certain factors, revenue had not grown the way it was conceived in the GST Council. Now, rate rationalization has to be done. First of all, the Members tended to be State specific. If a lower rate benefitted a State, the State Member ensured that the rate was fixed much lower than the revenue neutral rate. So, large revenue was lost while conceiving the GST regime itself. It was only in the recent meetings they were very cautious because the State's revenues were not increasing. However, in couple of earlier meetings, the rates were slashed and its effect can be seen at present. If the Centre had good funds in its kitty, then the States would be looked after well. He requested to consider the revenue neutral rates. He stated that by raising the 5% slab by 1%, additional revenue of around Rs 50,000 crores could be garnered per year. While rationalizing the rates, instead of having so many rates it may be prudent to look into how many items were being taxed at 28% and on which items cess was levied etc. Then, they could have a relook at the items being taxed at 18% and other rates. By proper rationalization and with least amount of burden on the stakeholders, it was possible to collect revenue of more than Rs 1.5 lakh crores per month. The GoM in consultation with Fitment and Law Committees could come out with a rational solution which can bring everyone out of the woods and match the revenue of Rs 1.41 lakh crores which was collected in April, 2021. The compensation to the States had to continue beyond July, 2022. Without proper revenue, they would not be able to pay the expenditure bills and fulfil their commitments to people. He urged everyone to think for the country as a whole, rationalize the rates and also keep all stakeholders on board.

21.17. The Hon'ble Member from Bihar stated that the suggestions of the fitment committee and all the decisions taken in past pertaining to corrections in irregularities and glitches in input and output tax should be implemented. He further stated that all the decisions with respect to revenue augmentation should be implemented.

21.18. The Secretary informed the Council that a presentation detailing various improvements to the IT system and the various IT tools like BIFA was given during the officers meeting. He suggested that since many Members have raised the IT issues, GSTN could make a similar presentation even in the Council to make the Council aware of the developments. He highlighted that while initially there were portal related hiccups, the system is working smoothly now. Hon'ble Member from Goa agreed that recently the portal has been working exceptionally well and stressed on the need for invoice matching. On the compensation issue, the Secretary explained that while the levy of cess has been extended, extension of compensation period is a completely different issue and wondered from where the resources for the same would come since the cess collections till March, 2026 are already committed. He also asked JS, DoR to explain the IGST apportionment and CEO, GSTN to explain the BIFA tool since the respective matters were raised by some Members.

21.19. JS, DoR explained that the principles of IGST apportionment are laid down in the IGST Act and happen on account of the information given by taxpayers in their returns. He stated that it is their endeavor to ensure that the IGST balance is close to zero. With respect to compensation, he explained

that the cess available after end of two-month period is being fully released in the ratio of the compensation requirement. On both counts, the entire amounts are being fully released on regular basis.

21.20. The CEO, GSTN stated that earlier 70% returns used to get filed by the end of month but now 80% returns get filed and three or four months down the line, 90% returns get filed, implying an improvement of ten percentage points. Additionally, clear improvement can be seen in GSTR 1 filing from 37% to 39% earlier to 70% now. GSTN has done technological improvements in terms of improving concurrency and removing the redundancy, which has led to improved taxpayer experience. Earlier, for every 10,000 returns filed, 67 tickets were raised. Now, for every 10,000 of returns, the number of tickets had come down to 3.5 - 3.7. He said that as far as BIFA was concerned over a period of time they have given a lot of functionalities/tools to the States. Some States were using the tools very efficiently and they were using it far beyond what they had conceived. So, what was required was perhaps a discussion between the officers and learning/sharing of best practices. One important input he wanted to give to the Council was GSTN had given a dashboard which was called the Early Warning System, where at the beginning of the month, the risky transactions and taxpayers in the particular jurisdiction are highlighted. He also informed that NIC has produced a very good application in terms of visualization of live vehicle movement getting tracked through RFID data and some of the States like Karnataka, Gujarat etc. were able to even track live trucks and conclude which truck was moving with suspicious cargo and needs to be intercepted instead of waiting for some informer or waiting for some particular officer to generate action point. He stated that GSTN was communicating various action points and requested for feedback about action taken on them to enable him to further improve the system. He explained that recently they have started blocking GSTR-1 if two GSTR-3Bs were not filed, which means on the supply side nobody can now pass on credit without paying taxes beyond two months. Similar controls on the ITC side are also needed where a taxpayer today can take credit even beyond the 105% provided in law because it was an editable field and sought guidance of the Council. He submitted to the Council that overall, they were on a healthy path and while there was room in terms of policy work and rate structuring, there was also room for improving revenue collection through various tools.

21.21. The Hon'ble Member from UP stated that from the presentation it was clear that compensation would not be extended beyond July' 22. He said that the interest of the common man should be first and foremost objective. He further stated that the Council needed to analyze the items which were major revenue sources for States, pre-GST; where the demand cum supply had not changed and compare it with the collections post-GST implementation and try to figure out a way to resolve the difference. He said that that the proposal of forming GoM could be helpful in review of the rates, etc. He said that the laws were of welfare nature and they can certainly amend if the situations demand so through deliberation. It had to be considered as to whether cess can be levied on capacity of production and if not, then the alternative also had to be evolved. He further stated that Uttar Pradesh supported the proposal that tax slabs should be revisited and if 5% slab is made 6%, it might not have a huge impact on the tax payers. Many items were moved to lower tax slabs in the past which needs to be reviewed. The enforcement should be in such a way that leakages/evasions would be minimized. The enforcement should be technology based. For example, E-way bills could be reduced from Rs 50,000 to Rs 25,000 and it could be restricted to 100 kms. per day. This could be further restricted to 20 kms. per hour. The present E-way bill needed a proper review for minimizing revenue leakages. If it could be confirmed by usage of technology that the goods were delivered at the place they were supposed to be delivered, then leakages could be further arrested. Since, only 9 months are left, the entire mechanism had to be created. He stated that in the current situation the Council should meet bi-monthly as it would help in taking timely and important decisions. He stated that Uttar Pradesh had enhanced its revenue. In 2018-

19, UP did not claim any compensation since their revenue collections were so good that they did not have to claim compensation. However, due to pandemic, like every other State, they also got affected. They stood with the decisions of the Centre and would also try to improve the enforcement mechanism and work towards revenue augmentation.

21.22. The Hon'ble Member from Odisha stated that the Finance Commission had been assigned the responsibility of recommending the quantum of transfer of taxes collected by Center every five years in the best tradition of cooperative federalism. Net proceeds of taxes were obtained by excluding cess and surcharges. However, in gross tax revenue, the percentage share of cess and surcharge which were additional revenue mobilization measure of Central government, had been increasing over the years. As a result, the total divisible pool had gone down. Due to constraints in generating new resources, it was their request that Center should bring in mechanism to include these cesses and surcharges to divisible pool so that States could also take the benefit of additional revenue mobilization. This was all the more important as the five years' window of getting GST compensation which was protecting states' revenue growth, was closing soon and the States shall face substantial fall in revenue from the coming year.

21.23. The Hon'ble Member from Telangana stated that on the issue of the IGST ad hoc settlement, after the observation of CAG, the Hon'ble Union Chairperson formed a cabinet sub-committee, and the issue had been resolved for the year 2017-18. But the same issue was pending for the year 2018-19. He requested the Hon'ble Chairperson to resolve the issue as State of Telangana was supposed to get around Rs 210 crores in ad-hoc IGST settlement. CAG had already identified in the year 2018-19 that an amount of Rs. 13,944 cr. had been transferred to the Consolidated Fund of India and the State of Telangana was supposed to get Rs 210 crores. The method was already finalized and the same may be expedited. JS, DoR explained that there was a very small amount for 2018-19. It had happened because there was a difference between the accounts. When compared to the amount apportioned by the end of the year, the actual IGST collected was slightly in excess of around Rs 6,000 cr.

21.24. The Hon'ble Chairperson stated that she would discuss the matter and sort out the said issue of IGST settlement at the earliest.

21.25. The Hon'ble Member from Assam said that the question of GST compensation arose because of shrinking of taxable base of the States on permanent basis in view of subsuming of certain taxes. The SGST rates on the commodities being lower than the existing VAT rates further made a dent in the State's revenue. The States like Assam would face a huge deficit if compensation is not extended and it would not be even able to meet its revenue expenditure. The need for GST compensation to Assam had increased due to distress caused by the pandemic and it would require about Rs 250 crores per month towards GST compensation. She firmly believed that GST compensation for the states needed to be continued for another five years as the revenue of States had not stabilized and so the present situation called for some policy intervention on priority basis and alternatively some measures must be taken to augment States' revenue.

21.26. Hon'ble Chairperson congratulated and thanked the Member from Uttar Pradesh and the State administration for the outstanding arrangements for this physical meeting of the Council which is being held after a considerable time. She enlisted the main objectives behind the introduction of GST and acknowledged that GST Council is the first federal institution of its kind. Where Centre and States deliberate together and seek solutions. She expressed that the sincere efforts by the States contributed to the monthly GST collections touching the new high of Rs. 1.39 lakh crores in April, 2021.

21.27. She recalled how Council discussed correction of inverted duty structure and deferred the final decision but agreed to correct inversion in mobile phones. She explained the fitment exercise undertaken by the Council and how the Council decided for reduction in rates on various items, which has led to reduction in the effective GST rate and could have also led to further inversion in rate structure. She also explained, in detail, how she addressed issues related to un-apportioned IGST and transfer of compensation cess to the compensation fund.

21.28. She stated that the Council has been posed with unprecedented challenges during its initial years itself but it has deftly faced the challenges with optimism. She agreed that two GoMs should be constituted to look into rates and various systemic issues raised by various Members. She suggested that the two GoMs could submit their report in two months, which could be circulated amongst States well in advance before being discussed in the Council. She drew the attention of the Council to the recommendations of the 14th and 15th Finance Commissions to bring home the point that financial problems of Centre and States are equally important, although acknowledging that these issues were outside the purview of the Council.

21.29. The Secretary stated that based on the suggestions given by the Hon'ble Members, the Hon'ble Chairperson had announced that two GoMs would be constituted. While the GoMs would look into the other suggestions, rate rationalization for textiles & dyeing services and footwear were taken up in the earlier Council Meetings multiple times and they were agreed upon and if the Council agrees, decisions on these two categories can be implemented from 1st January, 2022. Commissioner, Gujarat stated that they would prefer further discussion on this issue as their Minister could not attend the meeting. Hon'ble Chairperson recalled that even Hon'ble Member from Tamil Nadu had expressed that they would like to be part of the discussions on correction of inverted duty in textile sectors. Secretary explained that the Council had earlier agreed with the principle but decided that the time was not right then for its implementation. After deliberations, the Council decided to approve implementation of the recommendations of the Fitment Committee with respect to textile and footwear sectors with effect from 01.01.2022.

21.30. The Secretary summarized that regarding review of composition coverage and rates, some decisions were taken by the Council in the present meeting. Regarding plugging revenue leakages, the specific suggestions would be placed before the GoM. The suggestions in the Officers' Meeting on the previous day were also collated and would be presented to the GoM for consideration. He also stated that all the decisions regarding rate changes taken by the GST Council in the current meeting, unless otherwise specified in the agenda note, would be implemented from 1st October, 2021.

21.31. The Secretary to the Council mentioned that the 45th meeting of the GST Council was physically held almost after 2 years and it was a great success. The Officers' Meeting on the previous day was also a fruitful one. His experience was that the physical meetings outside Delhi proved to be highly fruitful since everyone was totally focused and available and that he was looking forward to such meetings.

22. The Meeting ended with a vote of thanks to the Chair.

Annexure-1

List of Hon'ble Ministers who attended 45th Meeting of GST Council on 17th Sept 2021			
S. No.	Centre/State	Name of Hon'ble Minister	Charge
1	Govt. of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Govt. of India	Shri Pankaj Chaudhary	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning and Legislative Affairs
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Assam	Smt. Ajanta Neog	Minister for Finance
6	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
7	Delhi	Shri Manish Sisodia	Deputy Chief Minister
8	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
9	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Lieutenant Governor
10	Jharkhand	Shri Badal Patralekh	Minister for Agriculture, Animal Husbandry & Co-operative Department
11	Kerala	Shri K.N. Balagopal	Minister for Finance
12	Madhya Pradesh	Shri Jagdish Devda	Minister for Commercial Tax, Finance, Planning & Statistics
13	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister
14	Odisha	Shri Niranjan Pujari	Minister, Finance & Excise
15	Puducherry	Shri K. Lakshminarayanan	Minister for Public Works
16	Punjab	Shri Manpreet Singh Badal	Finance Minister
17	Rajasthan	Shri Subhash Garg	Minister for Technical Education

			Dept. (Independent Charge), Sanskrit Education Dept. (Independent Charge), Medical & Health Dept., Ayurved and Indian Medical Dept., Medical & Health Services (ESI) Dept., Information & Public Relation Dept.
18	Sikkim	Shri B.S. Panth	Minister for Industries, tourism & Civil Aviation
19	Telangana	Shri T. Harish Rao	Minister for Finance
20	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
21	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister for Finance, Parliamentary Affairs, Medical Education
22	Uttarakhand	Shri Subodh Uniyal	Minister for Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
23	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Urban Development & Municipal Affairs Department(I/C) and Health and Family Welfare Department

Annexure-II

List of officials who attended 45th GST Council meeting on 17th Sept, 2021			
Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4	Govt. of India	Shri Vivek Johri	Member (Tax Policy), CBIC
5	Govt. of India	Shri D.P. Nagendra Kumar	Member (GST, Central Excise, Service Tax and Legal), CBIC
6	Govt. of India	Shri Balesh Kumar	Member (Investigation), CBIC
7	GST Council Sectt.	Dr. C.S. Mohapatra	Additional Secretary
8	Govt. of India	Shri Rajesh Malhotra	DG (Media & Comm.), PIB
9	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
10	Govt of India	Shri Sanjay Mangal	Principal Commissioner (GST PW), CBIC
11	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU
12	GSTN	Shri Manish Kumar Sinha	CEO
13	GSTN	Shri Dheeraj Rastogi	EVP (Support) & SVP (Services)
14	GSTN	Shri Vashishtha Chaudhary	SVP (Services)
15	GST Council Sectt.	Smt. Ashima Bansal	Joint Secretary
16	Govt. of India	Shri S.S.Nakul	PS to Finance Minister
17	Govt. of India	Shri Kumar Ravikant Singh	PS to MoS (Finance)
18	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
19	Govt. of India	Shri N. Gandhi Kumar	Director (State Tax), DoR

20	Govt. of India	Shri Amaresh Kumar	Additional Commissioner, GST PW, CBIC
21	Govt. of India	Shri Pramod Kumar	Director, TRU
22	Govt. of India	Shri Syed Wasif Haider	OSD, TRU
23	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
24	Govt of India	Shri Divyalok	Technical Officer, TRU
25	Govt of India	Ms. Rajni Sharma	Deputy Commissioner, GST PW, CBIC
26	Govt of India	Ms. Neha Yadav	Deputy Commissioner, GST PW, CBIC
27	Govt of India	Shri Jitendra	Sr. AO, PCCS, CGST New Delhi
28	GST Council Sectt.	Shri Kshitendra Verma	Director
29	GST Council Sectt.	Shri Harish Kumar	Deputy Secretary
30	GST Council Sectt.	Shri Krishna Koundinya	Under Secretary
31	GST Council Sectt.	Shri Naveen Agrawal	Under Secretary
32	GST Council Sectt.	Shri Karan Choudhary	Under Secretary
33	GST Council Sectt.	Shri Joginder Singh Mor	Under Secretary
34	GST Council Sectt.	Shri Adesh Nayak	Superintendent
35	GST Council Sectt.	Shari Manoj Kumar	Superintendent
36	GST Council Sectt.	Shri Rakesh Joshi	Inspector
37	GST Council Sectt.	Shri Vijay Malik	Inspector
38	Andhra Pradesh	Dr. Rajath Bhargava	Special Chief Secretary, Revenue Department
39	Andhra Pradesh	Shri Ravi Shankar Narayan Sudagani	Chief Commissioner of State Tax
40	Andhra Pradesh	Dr. K. Ravishankar	Commissioner State Tax GST

41	Andhra Pradesh	Shri L.Chandra Obul Reddy	OSD to FM
42	Arunachal Pradesh	Shri Kanki Darang	Commissioner (Tax & Excise)
43	Arunachal Pradesh	Shri Nakut Padung	Superintendent (GST)
44	Arunachal Pradesh	Shri Ajay Saring	PRO to Deputy Chief Minister
45	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
46	Bihar	Shri Ravish Kishore	PS to Deputy Chief Minister
47	Bihar	Shri Arun Kumar Mishra	Special Secretary, Commercial Taxes
48	Chandigarh	Shri Mandip Singh Brar	Deputy Commissioner -Cum-Excise and Taxation
49	Chandigarh	Shri Sorabh Kumar Arora	Assistant Excise and taxation Commissioner
50	Chhattisgarh	Shri Gaurav Dwivedi	Principal Secretary, Commercial Tax
51	Chhattisgarh	Shri Khemraj Jharia	Additional Commissioner of State Tax, Chhattisgarh
52	Delhi	Shri Sandeep Kumar	Secretary (Finance)
53	Delhi	Shri Arvind Chandran	Secretary to Deputy CM
54	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner (ST)
55	Goa	Shri Hemant Kumar	Commissioner, State Tax
56	Goa	Shri Vijay Nair	OSD to Minister
57	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
58	Gujarat	Shri Riddhesh P. Raval	Deputy Commissioner, State Tax
59	Haryana	Shri Anurag Rastogi	Additional Chief Secretary, Excise & Taxation
60	Haryana	Shri Shekhar Vidhyarthi	Excise & Taxation Commissioner
61	Haryana	Shri Siddharth Jain	Additional Excise & Taxation Commissioner

62	Himachal Pradesh	Shri J.C. Sharma	Additional Chief Secretary (State Taxes & Excise)
63	Himachal Pradesh	Shri Yunus	Commissioner of State Tax and Excise
64	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
65	Jammu and Kashmir	Shri Showkat Aijaz Bhat	Commissioner, State Taxes
66	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
67	Jharkhand	Smt. Aradhana Patnaik	Secretary, Commercial Tax
68	Jharkhand	Ms. Akanksha Ranjan	Commissioner, Commercial Tax
69	Jharkhand	Shri Suryakant Shukla	Economic and Political Advisor to Minister
70	Jharkhand	Shri R.P. Singh	PS to Agriculture Minister of Jharkhand
71	Karnataka	Smt. C. Shikha	Commissioner of Commercial Taxes
72	Karnataka	Shri M.P. Ravi Prasad	Additional Commissioner of Commercial Taxes
73	Kerala	Dr. Sharmila Mary Joseph	Secretary, Taxes
74	Kerala	Dr. Rathan Kelkar	Commissioner of State Taxes
75	Kerala	Shri Abraham Renn	Addl. Commissioner, State Taxes
76	Madhya Pradesh	Shri Raghwendra Kumar Singh	Commissioner, Commercial Taxes
77	Madhya Pradesh	Shri R.P. Shrivastva	Joint Commissioner
78	Maharashtra	Shri Manoj Saunik	Additional Chief Secretary, Finance
79	Maharashtra	Shri Rajiv Mittal	Commissioner of State Tax
80	Maharashtra	Shri Rajendra Adsul	Joint Commissioner of State Tax
81	Manipur	Shri Ng. Roben Singh	Commissioner of Taxes
82	Manipur	Shri Yumnam Indrakumar Singh	Assistant Commissioner of Taxes

83	Meghalaya	Shri Arunkumar Khembavi	Commissioner of Taxes
84	Meghalaya	Shri K. War	Joint Commissioner of Taxes
85	Mizoram	Shri Kailiana Ralte	Commissioner of State Tax
86	Mizoram	Shri R. Zosiamliana	Additional Commissioner, State Tax
87	Nagaland	Shri Y Mhathung Murry	Special Commissioner of State Taxes
88	Odisha	Shri Sushil Kumar Lohani	Commissioner, Commercial Taxes & GST
89	Odisha	Shri Nihar Ranjan Nayak	Joint Commissioner, CT & GST
90	Puducherry	Shri L. Kumar	Commissioner of State Tax
91	Puducherry	Shri. K. Sridhar	Deputy Commissioner (ST)
92	Punjab	Shri V.K Garg	Financial Advisor
93	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
94	Punjab	Shri Ravneet S. Khurana	Additional Commissioner, State Taxes
95	Rajasthan	Shri T. Ravikanth	Secretary, Finance(Revenue)
96	Rajasthan	Shri Ravi Jain	Chief Commissioner, State Tax
97	Sikkim	Shri Manoj Rai	Additional Commissioner
98	Sikkim	Bikash Diyali	Deputy Director (GST), CTD
99	Tamil Nadu	Shri S. Krishnan	Additional Chief Secretary, Finance
100	Tamil Nadu	Shri M. A. Siddique	Principal Secretary/Commissioner, Commercial taxes
101	Telangana	Shri R Krishna Rao	Principal Secretary Finance
102	Telangana	Smt. Neetu Prasad	Commissioner, State Taxes
103	Telangana	Shri N. Sai Kishore	Additional Commissioner (State Taxes)
104	Tripura	Shri Brijesh Pandey	Secretary, Finance

105	Tripura	Dr. Vishal Kumar	Chief Commissioner of State Tax
106	Uttarakhand	Smt. Sowjanya	Secretary, Finance
107	Uttarakhand	Dr. Ahmed Iqbal	Commissioner, State Tax
108	Uttarakhand	Dr. Sunita Pandey	Joint Comm/Nodal Officer, State Tax
109	Uttarakhand	Shri S.S. Tiruwa	Deputy Commissioner, State Tax
110	Uttar Pradesh	Shri Sanjiv Mittal	Additional Chief Secretary, State Tax
111	Uttar Pradesh	Smt. Ministhy S	Commissioner, Commercial Tax
112	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, State Tax
113	West Bengal	Shri Manoj Pant	Principal Secretary, Finance
114	West Bengal	Shri Khalid Aizaz Anwar	Commissioner, State Tax



Ratification of Notifications and Circulars

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

[Vol 1- Pg. 142-159]

Act/Rules	Notification/Circular/Order Nos.	Description/Remarks
CGST Act/ CGST Rules	Nineteen (19) Central Tax Notifications issued (No. 16/2021 to 34/2021) & five (5) Central Tax (Rate) Notifications issued (No. 01/2021 to 05/2021)	3 amendments to CGST Rules carried out, notifications for implementation of various decisions of GST Council/ GIC and COVID relief measures, etc., for providing relief by lowering of interest rate for a specified time for specified tax periods; notifying change in CGST rate of goods and services; notifying the provisions of the Finance Act, 2021; rationalising late fees; notifying extension of timelines in certain situations, etc.
UTGST Act	One (1) Union Territory Tax Notification No. 02/2021 issued and five (5) Union Territory Tax (rate) Notifications issued (No. 01/2021 to 05/2021)	Notifications for providing relief by lowering of interest rate for a specified time for specified tax periods; notifying change in UTGST rate of goods and services; giving effect to the recommendations made by GST Council in its 43rd meeting; and providing the concessional rate of UTGST on Covid-19 relief supplies.
IGST Act	Two (2) Integrated Tax Notifications issued (No. 02/2021 and No. 03/2021) and five (5) Integrated Tax (rate) Notifications issued (No. 01/2021 to 05/2021)	Notifications for providing relief by lowering of interest rate for a specified time for specified tax periods; changing the place of supply for B2B MRO services in case of Shipping industry to the location of the recipient; notifying change in IGST rate of goods and services; giving effect to the recommendations made by 43rd meeting of GST Council; and providing the concessional rate of IGST on Covid-19 relief supplies.
Circulars	Ten (10) circulars issued (Circular No. 149/05/2021-GST dated 17.06.2021 to Circular No. 158/14/2021-GST dated 06.09.2021)	Circulars to implement recommendations of the 43 rd GST Council meeting; clarification on applicability of Dynamic Quick Response (QR) Code on B2C invoices; clarification on extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021; and clarification in respect of extension of timelines for filing application of revocation of cancellation of registration.

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

[Vol 1- Pg. 142-159]

- ❖ Some of these notifications and circulars have been issued **based of decisions of GST Implementation Committee (GIC)** taken during the period from **29.05.2021 to 06.09.2021**.
- ❖ The important decisions **taken by GIC** are as below :
 - * Issuance of Circular for clarifications on Dynamic Quick Response (QR) Code in B2C invoice.
 - * Waiver of penalty payable under section 125 of the CGST Act for non-compliance of the provisions regarding Dynamic QR Code between the period from 01.12.2020 to 30.09.2021.
 - * Issuance of a circular for clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.
 - * Extension of timelines for filing of application for revocation of cancellation of registration to **30.09.2021**, under section 168A of the CGST Act, where the due date of filing of application for revocation of cancellation of registration falls **between 01.03.2020 to 31.08.2021**, in cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.
 - * Extension of the last date to avail benefit of the late fee **amnesty scheme from 31.08.2021 to 30.11.2021**.
 - * Issuance of a circular or clarification regarding extension of timelines for filing of application for revocation of cancellation of registration.
 - * **Amendment in CGST Rules:**
 - * Extended the option to furnish GSTR-3B, IFF and GSTR-1 using EVC (e-verification code) from 31.08.2021 to 31.10.2021 for companies.
 - * Rule 26(1) amended w.e.f. 01.11.2021 to remove the mandatory requirement of authentication through DSC for companies.
 - * Amendment in Rule 138E with effect from 01.05.2021 to provide that the restriction on generation of e-way bills shall not apply during the period from 01.05.2021 till 18.08.2021.

**Recommendations of the
Law Committee**

**Summary of discussions on
Agenda 3 in Officers' Meeting held on
16th September 2021**

Agenda No	Issue/Proposal	Status during Officers Meeting
3(i) [Vol 1- Pg. 160-165]	<p><u>Aadhaar authentication of existing taxpayers under GST:</u></p> <ul style="list-style-type: none"> The requirement to get the GST registration Aadhaar authenticated may be made mandatory on such occasions where there is potential threat to revenue or the taxpayer is availing a beneficial provision under GST law. To start with, Aadhaar authentication may be made mandatory for being eligible for <u>refund and revocation of cancellation of registration.</u> 	Agreed
3(ii) [Vol 1- Pg. 166-171]	<p><u>Agenda Note for issuance of clarification relating to export of services- condition (v) of the Section 2 (6) of the IGST Act 2017 (establishment of distinct person):</u></p> <p>It is proposed to clarify through Circular that:</p> <ul style="list-style-type: none"> A person incorporated in India under the Companies Act, 2013 and a foreign company, i.e. a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be considered merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017. Supply between such persons would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(iii) [Vol 1- Pg. 172-182]	<p><u>Clarification in respect of certain GST related issues through Circular:</u></p> <ul style="list-style-type: none"> W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of CGST Act. There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules (i.e. e-invoices) and production of the QR code having an embedded IRN electronically would suffice for verification by the proper officer. Only those goods which are actually subjected to export duty i.e. on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) of CGST Act from availment of refund of accumulated ITC 	Agreed
3(iv) [Vol 1- Pg. 183-186]	<p><u>Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal:</u></p> <ul style="list-style-type: none"> www.gst.gov.in may be designated, with retrospective effect, as the Common Goods and Services Tax Electronic Portal, for all functions and purposes under CGST Act 2017, other than e-way bill and e-invoicing. This may be done by retrospectively amending notification number 9/2018-CT dated 23.01.2018 and issuance of a retrospective notification w.e.f. 22.06.2017. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(v) [Vol 1- Pg. 187-188]	<p><u>Mechanism to collect late fee imposed under section 47 of the CGST Act for delayed filing of FORM GSTR-1:</u></p> <ul style="list-style-type: none"> Late fee for GSTR-1 should be auto-populated in next open return in FORM GSTR-3B on the portal. The same is to be implemented on portal for prospective tax periods (from July, 2021 tax period onwards). Amendment in section 47 to delete reference to section 38 	Agreed
3(vi) [Vol 1- Pg. 189-193]	<p><u>Review of requirement of filing FORM ITC-04:</u> Amendment in rule 45(3) of CGST Rules 2017 so as to allow:</p> <ul style="list-style-type: none"> Taxpayers, whose annual aggregate turnover in preceding financial year is above Rs. 5 crores, shall furnish FORM ITC-04 once in six months. Taxpayers, whose annual aggregate turnover in preceding financial year is up to Rs. 5 crores, shall furnish FORM ITC-04 annually. 	Agreed
3(vii) [Vol 1- Pg. 194-196]	<p><u>Amendment in CGST Rules for refund to be disbursed in bank account linked with same PAN and Aadhaar on which registration has been obtained under GST</u></p>	Tamil Nadu suggested to link Bank Account with PAN in case for proprietorship. This was agreed upon

Agenda No	Issue/Proposal	Status during Officers Meeting
3(viii) [Vol 1- Pg. 197-199]	<p><u>Applicability of interest on ineligible Input Tax Credit (ITC) wrongly availed and/or utilized, in terms of section 50 of Central Goods and Services Tax Act, 2017 (CGST Act):</u></p> <ul style="list-style-type: none"> Amendment in Section 50 (3) of CGST Act, as recommended by the Council in 43rd meeting, providing for payment of interest on ineligible ITC availed and utilized, may be made retrospectively, w.e.f. 01.07.2017. The notification issued to notify rate of interest under section 50 may be amended retrospectively (w.e.f. 01.07.2017) to specify rate of interest as 18% for ITC availed and utilized, till the time amended section 50(3) is notified. 	Agreed
3(ix) [Vol 1- Pg. 200-208]	<p><u>Proposal for clarification in respect of refund of tax wrongfully paid as specified in section 77(1) of the CGST/SGST Act and section 19(1) of the IGST Act:</u></p> <ol style="list-style-type: none"> Insertion of sub-rule (1A) to rule 89 in CGST Rules 2017 for prescribing the procedure and time limit in respect of such refunds. <ul style="list-style-type: none"> Such refund claims can be filed before the expiry of two years from the date of payment of tax under the correct head. For past cases, two years period to commence from the date of insertion of sub-rule (1A) to rule 89 Issuance of a circular to clarify the term "subsequently held" and time limit for filing such refund claims for past as well as prospective periods. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(x) [Vol 1- Pg: 209-211]	<p><u>Transfer of CGST / IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states):</u></p> <ul style="list-style-type: none"> Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons, subject to the condition that such transfer will not be allowed if DRC-07 liability exists for the said registered person. 	Agreed.
3(xi) [Vol 1- Pg: 212-213]	<p><u>Additional measures to tackle the misuse of ITC: Amendment to rule 36(4) of the CGST Rules, 2017:</u></p> <ul style="list-style-type: none"> Rule 36(4) of CGST Rules may be amended to restrict availment of ITC to that available in GSTR-2B. This amendment will be notified once section 109 of Finance Act, 2021 is notified. 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(xii) [Vol 1- Pg: 214]	<p><u>Additional measures to tackle the menace of fake invoices: Amendment to rule 59(6) of the CGST Rules, 2017:</u></p> <ul style="list-style-type: none"> Rule 59(6) of CGST Rules may be amended so that a registered person shall not be allowed to furnish the details of outward supplies of goods/services in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding month / tax period. 	Agreed
3(xiii) [Vol 1- Pg: 215-217]	<p><u>Amendment in Section 54 of the CGST Act, 2017 to remove anomalies</u></p>	Agreed
3(xiv) [Vol 1- Pg: 218-223]	<p><u>Clarification on doubts related to scope on "intermediary":</u></p> <ul style="list-style-type: none"> Issue a circular to clarify scope of the 'intermediary services' as per the present provisions of the IGST Act 	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
<p>3(xv) [Vol 1- Pg. 224-228]</p>	<p><u>Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route :</u></p> <ul style="list-style-type: none"> ▪ Section 123 of Finance Act may be considered to be notified at the earliest. ▪ Class of supplies: All services may be notified, as the refund of IGST paid on export of services is filed after receipt of remittances and is processed by the jurisdictional GST officer. ▪ Class of persons: The following categories of persons, may be notified: <ul style="list-style-type: none"> ❖ Persons who have been granted Authorised Economic Operator (AEO) certification under SAFE Framework of WCO. ❖ Persons who have been granted status holder certification of 2 star or above by DGFT under Foreign Trade Policy. ❖ Government Departments, Public Sector Undertakings, Local Authorities and Statutory Bodies. 	<ul style="list-style-type: none"> • A view emerged during the discussions that when proposal to amend section 16 of IGST Act to restrict IGST route was approved by Council in 39th Meeting (March 2020), a number of cases of fraudulent refunds through IGST route were noticed due to fraudulent availment of ITC. • However, since then, a number of measures have been taken, either through REAP project of GSTN, or through policy interventions to discipline return filing system and also to restrict availment of ineligible ITC. • Accordingly, it was felt that there may be a need to re-examine whether restriction of IGST route to such large extent needs to be undertaken at this stage, when the country needs a push to export, and such proposed measure to restrict IGST route to only 10% of the present exporters using IGST route, may cause disruption in exports for a large number of exporters.

Agenda 3(xv): Notifying the provisions of section 123 of the Finance Act, 2021 relating to **amending section 16 of the IGST Act** and to **notify the class of supplies and class of persons** who can export on payment of IGST (1/2) [Vol 1- Pg. 224-228]

Issue:

- ❖ Vide section 123 of Finance Act, 2021, sub-section (3) of section 16 of the IGST Act has been proposed to be amended to:
 - make the export under LUT as the default route.
 - restrict the export/zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services
- ❖ The said amendment was proposed to prevent the misuse of the IGST route, as proper officer of customs do not have access to the GST portal and therefore, may not be in a position to verify availment of ITC and therefore, to verify the refund claim properly.
- ❖ It was decided that IGST refund route may be kept open only for some specified class of supplies or class of exporters in respect of which the probability of misuse of the scheme are minimal.
- ❖ It is proposed to notify class of supplies or class of exporters, in a manner so that the provisions of the amended section 16 of the IGST Act, 2017 can be easily implemented on the portal, with least physical interface.

Agenda 3(xv): Notifying the provisions of section 123 of the Finance Act, 2021 relating to **amending section 16 of the IGST Act** and to notify the **class of supplies and class of persons** who can export on payment of IGST (2/2) [Vol 1- Pg. 224-228]

Proposal

- ❖ Section 123 of Finance Act, 2021 may be considered to be notified at the earliest, keeping IT preparedness in consideration (preferably by 01.01.2022).
- ❖ **Class of supplies:** All services may be notified as class of supplies under clause (ii) of sub-section (4) of amended Section 16 of IGST Act, 2017.
 - Refund of IGST paid on export of services is filed after receipt of remittances and is processed by the jurisdictional GST officer.
- ❖ **Class of persons:** The following categories of persons, may be notified under clause (i) of sub-section (4) of amended section 16 of IGST Act, 2017:
 - ❖ Persons who have been granted **Authorised Economic Operator (AEO) certification** under SAFE Framework of WCO.
 - ❖ Persons who have been granted **status holder certification of 2 star or above by DGFT under Foreign Trade Policy.**
 - ❖ **Government Departments, Public Sector Undertakings, Local Authorities and Statutory Bodies.**
 - Above categories of persons have either an established track record or they have been physically or financially verified.
- ✓ The proposal has been deliberated and recommended by the Law Committee.
- ✓ **Council may also like to fix a date from which other sections of Finance Act, 2021 will come into effect.**
- **The proposal will help in preventing the misuse of IGST refund route and can be implemented easily on GST portal with least physical interface.**

Law Committee Recommendations for Trade facilitation and Reducing litigation

Agenda 3(vi): Review of requirement of furnishing FORM ITC-04

[Vol 1- Pg. 189-193]

Issue:

- ❖ Taxpayers are required to file **FORM GST ITC-04** return, on **quarterly** basis, containing **details of all goods sent to job worker and received from job worker**.
- ❖ For movement of goods for job work, supplier is required to prepare a delivery challan and may also be required to generate e-way bill.
- ❖ **Representations have been received that**
 - **FORM GST ITC-04** is duplication of compliance, since e-way bill is also prepared; and
 - Taxpayers, specially small taxpayers, find compliance of filing return in **FORM GST ITC-04** on quarterly basis very difficult.

Proposal:

- ❖ LC has recommended amendment in rule 45(3) of CGST Rules 2017 so as to allow:
 - Taxpayers, whose annual aggregate turnover in preceding financial year is **above Rs. 5 crores**, shall furnish **FORM ITC-04** **once in six months**.
 - Taxpayers, whose annual aggregate turnover in preceding financial year is **up to Rs. 5 crores**, shall furnish **FORM ITC-04** **annually**.
- **The proposal will benefit all those taxpayers who are required to send goods for job work.**

Agenda 3(ii): Clarification relating to export of services- condition (v) of the Section 2 (6) of the IGST Act 2017 (establishment of distinct person)

[Vol 1- Pg. 166-171]

Issue:

- ❖ Export of services has been defined under sub-section (6) of section 2 of IGST Act, 2017.
- ❖ One of the conditions mentioned at clause (v) of Section 2(6) of the IGST Act, 2017 is that the supplier and recipient of the service shall not be **mere establishment of distinct person** as per explanation 1 in Section 8.
- ❖ However, due to ambiguity in interpreting the term "**establishment of distinct person**" in Explanation 1 under section 8 of the IGST Act 2017, refund claims of the exporter of services are being rejected and demands are being issued by the field formations.

Proposal

- ❖ It is proposed to clarify through Circular that:
 - ❖ A person incorporated in India under the Companies Act, 2013 and a foreign company, i.e. a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be considered merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017.
 - ❖ Supply between such persons would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services.
- ✓ The proposal has been deliberated and recommended by the Law Committee.
- **The proposal will help in removing ambiguity and reducing litigations relating to interpretation of export of services, thus benefiting large number of taxpayers.**

Agenda 3(iii): Clarification on various issues of GST by way of issuance of circular (1/3) [Vol 1- Pg. 172-182]

Issue:

❖ **Entitlement of ITC in respect of debit note** in terms of section 16(4) of CGST Act, 2017:

- Vide amendment in Section 16(4) of the CGST Act with effect from 01.01.2021, the date of issuance of debit note has been delinked from the date of issuing underlying invoice for the purposes of availing ITC.
- However, **doubts** have been raised as to whether it is the **date of issuance of underlying invoice or the date of issuance of debit note**, which determines the relevant "financial year" for the purpose of determining the due date in terms of section 16(4).

Proposal:

- ❖ Law Committee recommended to issue clarification on the above issue:
 - W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (and not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4).

Agenda 3(iii): Clarification on various issues of GST by way of issuance of circular (2/3) [Vol 1- Pg. 172-182]

Issue:

❖ **Dispensing off the requirement to carry invoice in physical printed form** in terms of rule 138A (1) of the CGST Rules, 2017 in cases **where e-invoice has been generated:**

- Doubts have been raised in context of those taxpayers, who generate e-invoices, as to whether producing QR Code of invoice for verification during the physical movement of goods would be sufficient or there is an additional need to carry the physical copy of the invoice.

Proposal:

- ❖ Law Committee recommended to issue clarification on the above issue:
 - There is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under rule 48(4) of the CGST Rules (i.e. in cases of e-invoices) and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically would suffice for verification by the proper officer.

Agenda 3(iii): Clarification on various issues of GST by way of issuance of circular (3/3) [Vol 1- Pg. 172-182]

Issue:

- ❖ **Doubts** have been raised as to whether the first proviso to section 54(3) of CGST/SGST Act, **prohibiting refund of unutilized ITC is applicable in cases of exports of goods which are subject to export duty at NIL rate.**

Proposal:

- ❖ Law Committee recommended to issue clarification on the above issue:
 - Only those goods which are actually subjected to export duty i.e. on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC.
 - The goods which are not subject to any export duty and mere NIL rate specified in schedule or any customs notification would be out of restriction provided under section 54.
- **The issuance of Circular as per the proposal will help in removing ambiguity and reducing litigation, thus benefiting taxpayers at large.**

Agenda 3(ix): Clarification in respect of refund under section 77 of CGST Act read with section 19 of IGST Act where an intra-state supply is subsequently held as inter-state supply and vice-versa (1/2) [Vol 1- Pg. 200-208]

Issue:

- ❖ Section 77 of CGST Act provides for refund of amount, paid as CGST and SGST in respect of supplies made considering intra-state supply, which are subsequently held as inter-state and on which inter-state tax is subsequently paid by the taxpayer, in the manner as prescribed.
- ❖ Similar provision is there in section 19 of IGST Act
- ❖ No specific rule has still been made in the CGST Rules in respect of section 77 of CGST Act/ section 19 of IGST Act.
- ❖ **Doubts** have been raised regarding:
 - The interpretation of the term "**subsequently held**" in the section 77 of CGST Act/ section 19 of IGST Act, and whether refund is available only if supply made by a taxpayer as inter-state or intra-state, is subsequently held by tax officers as intra-state and inter-state respectively or also available when it is subsequently found by taxpayer himself.
 - **The relevant date and time limit**, if any, for claiming refund.

Agenda 3(ix): Clarification in respect of refund under section 77 of CGST Act read with section 19 of IGST Act where an intra-state supply is subsequently held as inter-state supply and vice-versa (2/2) [Vol.1- Pg. 200-208]

Proposal:

- ❖ Law Committee has recommended
 - **Insertion of sub-rule (1A) to rule 89** in CGST Rules 2017 for prescribing:
 - Procedure for filing such refund claims under section 77 of CGST Act/ Section 19 of IGST Act;
 - Such refund claims can be filed before the expiry of two years from the date of payment of tax under the correct head.
 - For past cases, two years period to commence from the date of insertion of sub-rule (1A) to rule 89
 - **Issuance of a circular** to clarify that:
 - The term “**subsequently held**” covers both the cases where the inter-state or intra-state supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-state or inter-state respectively or where it is subsequently found/ held by the tax officer in any proceeding.
 - To clarify time limit for filing such refund claims for past as well as prospective periods.
- The proposal will help in removal of ambiguity and legal disputes on the issue, thus benefiting taxpayers at large.

Agenda 3(viii): Clarification on interest on ineligible ITC under section 50 [Vol.1- Pg. 197-199]

Issue:

- ❖ As per recommendation of the Council, Section 50 of CGST Act has been amended retrospectively with effect from 01.07.2017 to provide for requirement to pay interest on delayed payment of tax on net cash basis.
- ❖ Representations have been received seeking clarification regarding interest applicable on reversal of ineligible ITC.
- ❖ Doubts have been raised as to whether interest is to be paid by a taxpayer on “**ineligible ITC availed and utilized**” or on “**ineligible ITC availed**”.

Proposal:

- ❖ Law Committee has taken a view that considering the spirit of recommendation of the council to charge interest on net cash basis, interest in such cases should be charged on ineligible ITC **availed and utilized** at 18%.
- ❖ Law Committee has also recommended that to provide clarity in the matter:
 - Amendment in Section 50 (3), as recommended by the Council in 43rd meeting, providing for payment of interest on ineligible ITC availed and utilized, may be made retrospectively, w.e.f. 01.07.2017. Sub-section (3) also needs to be slightly modified to provide for calculation of interest in the manner as prescribed in Rules.
 - The notification issued to notify rate of interest under section 50 may be amended retrospectively (w.e.f. 01.07.2017) to specify rate of interest as 18% for ITC availed and utilized, till the time amended section 50(3) is notified.
- The proposal will help in removal of ambiguity and legal disputes on the issue, thus benefiting taxpayers at large.

Agenda 3(xiv): Clarification on issue of “intermediary” under
IGST Act (1/2)

[Vol 1- Pg. 218-223]

Issue:

- ❖ Under section 13(8) of IGST Act, place of supply of “intermediary” service is the place of location of service provider.
- ❖ Therefore, any supply of “intermediary” service by a taxpayer in India to any person outside the country, is not considered as zero rated supply and accordingly, refund is not admissible under provisions of section 16 of IGST Act, despite receipt of payment in foreign exchange.
- ❖ A large number of representations and references, including Parliament Questions and PMO references, have been received citing **difficulty being faced by trade and industry** due to **diverse practices** being followed in interpretation of **scope of “intermediary services”**, leading to disputes, including rejection of refund claims and/or issuance of demand notices.
- ❖ The issue was earlier considered by the Council in the 37th and 38th meeting, and it was decided the issue will be examined in detail.
- ❖ Circular No. 107/26/2019-GST dated 18.07.2019 (clarification on doubts related to supply of Information Technology enabled Services) was rescinded vide Circular No. 127/46/2019-GST dated 04.12.2019 after the approval given by GIC in its 34th meeting held on 02.10.2019. The same was placed for information before GST Council in its 38th meeting held on 18.12.2019.

Agenda 3(xiv): Clarification on issue of “intermediary” under
IGST Act (2/2)

[Vol 1- Pg. 218-223]

- ❖ Wide consultations have been made with trade and industry to understand the problem and the issue has also been extensively deliberated.
- ❖ While as long term solution to the issue, the need for amendment, if any, in law may be explored, as **an imminent solution**, to **address the difficulty being faced** due to diverse practices in interpretation of scope of “intermediary services”, a **clarificatory circular** may be issued, clarifying the guiding principals on “intermediary”, along with some illustrations.

Proposal

- ❖ Law Committee has recommended to issue a circular to clarify scope of the ‘intermediary services’ as per the present provisions of the IGST Act.
- The proposal will help in removing ambiguity and reducing litigations relating to interpretation of scope of “intermediary”, thus benefiting large number of taxpayers.

Agenda 3(x): Transfer of CGST / IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states) (1/2) [Vol 1- Pg. 209-211]

Issue:

- ❖ Presently transfer of electronic cash balance between distinct entities is not permissible.
- ❖ Companies with pan-India presence face the challenge of capital blockage where excess cash ledger balance remains unutilized in one state while there is insufficient cash balance in another state.
- ❖ GST law already allows refund of unutilized balance in electronic cash ledger. However, there is a delay in processing and sanctioning of refund.
- ❖ The introduction of **FORM GST PMT-09** has already enabled taxpayers to transfer any amount of tax, interest, penalty etc, that is available in electronic cash ledger, to the appropriate tax / cess head under IGST, CGST and SGST / UTGST.

Proposal:

- ❖ Law Committee has recommended that:
 - Unutilized balance in CGST and IGST cash ledger may be allowed to be transferred between distinct persons, subject to the condition that such transfer will not be allowed if **DRC-07** liability exists for the said registered person.
- ❖ However, Member from State of Punjab gave the following note:

"Disagree. This is step towards centralized registration and shifting from State wise registration enshrined in section 22 of GST Act, 2017. This can be implemented only if section 22 of GST Act, 2017 is amended. Further, in case, transfer of cash balance between distinct persons is allowed, demand for transfer of credit balance will also arise in future."

Agenda 3(x): Transfer of CGST / IGST cash ledger balance between 'distinct persons' (entities having same PAN but registered in different states) (2/2) [Vol 1- Pg. 209-211]

Comments on Punjab's remark

- ❖ Refund of un-utilized balance in un-utilized cash ledger, per say, is **not refund of tax**.
- ❖ Need for refund provision for such unutilized cash balance arises only because of the accounting treatment of deposits in cash ledger, which is deemed as debit in Consolidate Funds of Centre or States.
- ❖ Initial design of GSTR-3 allowed the taxpayer to take the refund of balance of cash ledger **through return only, without intervention of proper officer**. However, because of non-implementation of GSTR-3 return mechanism, the refund of unutilized cash balance was provided through process of RFD-01 claim route and sanction by proper officer.
- ❖ The proposal is to allow taxpayer to transfer cash balance from one distinct person to other (similar to PMT-09 route already provided), without need for sanction of refund by proper officer, which **will help in reducing procedural compliances and improving liquidity of the taxpayers**.
- ❖ The **proposal is, in no way, linked to section 22 or to centralized registration**.
- ❖ There is **no proposal to allow transfer of unutilized credit balance between distinct persons**, as refund of unutilized credit balance is presently also not allowed to any taxpayer, other than in cases of zero-rated supplies and inverted duty structure.
- ✓ In-principal approval of Council is sought for the recommendation made by the Law Committee. Council may delegate Law Committee to draft amendments in relevant provisions of Act/ Rules and finalize the same in consultation with Ministry of Law & Justice.
- The proposal will help in improving liquidity of all those taxpayers who have got multiple registrations in different states, without affecting revenue of either Centre of the states.

Law Committee Recommendations relating to Compliance and Administrative measures under GST

Agenda 3(i): Aadhar based authentication for existing taxpayers

[Vol.1- Pg.160-165]

Issue:

- ❖ Sub-section (6A) to section 25 of the CGST Act provides for authentication of Aadhaar for existing taxpayers :
 - Every registered person to undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed.
 - There is a proviso for exceptional handling in cases where Aadhaar Number is not assigned to the person.
 - In case of failure to undergo Aadhaar authentication/ furnishing proof of possession of Aadhaar, registration allotted to such person shall be deemed to be invalid.
- ❖ Aadhaar authentication has already been implemented for **new registrations**.
- ❖ Aadhaar authentication for **existing taxpayers** under the provisions of sub-section (6A) of section 25, need to be initiated in **phased manner**, in order to **curb misuse of ITC and refund facility**.

Proposal:

- ❖ The requirement to get the GST registration Aadhaar authenticated may be made mandatory on such occasions where there is potential threat to revenue or the taxpayer is availing a beneficial provision under GST law.
- ❖ Law Committee has recommended that to start with, Aadhaar authentication may be made mandatory for being eligible for **refund and revocation of cancellation of registration**.
- ❖ Law Committee has recommended amendment in various rules accordingly.
- ❖ The amendments to be notified when requisite IT readiness is made on the portal.
- The proposal is an enforcement measure for preventing fake registrations and to prevent fraudulent availment of ITC and refunds.

Agenda 3(vii): Amendment in CGST Rules for refund to be disbursed in bank account linked with same PAN and Aadhaar on which registration has been obtained under GST [Vol 1- Pg.194-196]

Issue:

- ❖ In 42nd meeting of GST Council held on 05.10.2020, it was decided that the refund may be disbursed in bank account linked with same PAN and Aadhaar on which the registration has been obtained.
- ❖ It would help in creating trail of money and if any refund has been obtained fraudulently, it would be easier to catch the intended beneficiary.

Proposal

- ❖ Law Committee has recommended:
 - ❖ **Rule 10A of CGST Rules** may be amended so that any **new taxpayer would be able to furnish details of those bank accounts** only which are opened with the **same PAN**, on which GST registration has been obtained and the **said bank account/ PAN must also be linked with the Aadhaar of the proprietor** (in case of proprietorship concern).
 - ❖ **Insertion of rule 96C** so that **refund will be disbursed only in the bank account** obtained on the **same PAN** on which registration has been taken under GST and that the **said bank account/ PAN should also be linked to the Aadhaar, in case of proprietorship concern.**
 - ❖ The amendments to be notified when necessary IT readiness on portal is made.
- **The proposal will further supplement efforts to prevent fake registrations and fraudulent availment of ITC and refunds.**

Agenda 3(xii): Not allowing furnishing of FORM GSTR-1, if previous month FORM GSTR-3B is not filed [Vol 1- Pg.214]

Issue:

- ❖ Rule 59(6) of CGST Rules, 2017 (introduced with effect from 01.01.2021) provides that a registered person shall not be allowed to furnish the details of outward supplies of goods/services in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months.
- ❖ The said rule has been enforced on portal this month.
- ❖ The present provision allows for passing on of ITC without ensuring the due tax payment in **FORM GSTR-3B** for 2 months.
- ❖ The provision needs further tightening to prevent revenue leakage by passing on fake credit without payment of tax.

Proposal

- ❖ It is proposed that rule 59(6) may be amended so that:
 - a registered person shall not be allowed to furnish the details of outward supplies of goods/services in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding month / tax period.
- ❖ Law Committee has recommended to make this amendment applicable **with effect from 01.01.2022**.
- **The proposal is an enforcement measure to prevent passing of fake ITC by unscrupulous elements without payment of tax.**

Agenda 3(xi): Amendment to rule 36(4) to restrict availment of ITC on invoices/debit notes to that available in GSTR-2B (1/2)

[Vol 1- Pg. 212-213]

Issue:

- ❖ Vide section 109 of Finance Act, 2021, section 16 of CGST Act was amended by inserting clause (aa) in sub-section (2) to restrict the availment of input tax credit (ITC) to the credit available based on the details of invoices furnished by the suppliers in their GSTR-1 and communicated to the recipient.
- ❖ Presently as per rule 36(4) of CGST Rules, 2017, a registered person can avail input tax credit (ITC) upto 1.05 times of the credit available based on the details of invoices furnished by the suppliers in GSTR-1 i.e. the credit available as per **GSTR-2A** on the date of filing of return.
- ❖ GSTN has started auto-populating ITC in GSTR-3B based on ITC available as per GSTR-2B of the taxpayer.
- ❖ Once amendment in section 16 of the CGST Act is notified, there is a need to amend rule 36(4) to link availment of credit on invoices/debit notes to that available in **GSTR-2B** of the taxpayer.

Proposal

- ❖ Law Committee has recommended to amend Rule 36(4) to restrict availment of ITC on invoices/debit notes to that available in **GSTR-2B**.
- ❖ This amendment will be notified once section 109 of Finance Act, 2021 is notified.
- **The proposal will help in streamlining process of availment of ITC and auto-population of ITC in GSTR-3B of the taxpayer.**

Agenda 3(xi): Amendment to rule 36(4) to restrict availment of ITC on invoices/debit notes to that available in GSTR-2B (2/2)

[Vol 1- Pg. 212-213]

- ❖ Law Committee initially recommended the following formulation of rule 36(4):

*"(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by their suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the invoice furnishing facility, and the details of which have not been communicated to the said registered person under sub-rule (7) of rule 60 in **FORM GSTR-2B**."*
- ❖ Subsequently, an alternative formulation of rule 36(4) was also suggested by the Law Committee which is reproduced below:

"(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,—

*(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility; and*

*(b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule(7) of rule 60."*
- ❖ Formulation of rule 36(4) may be finalised in consultation with the Ministry of Law and Justice.

Agenda 3(iv): Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal

[Vol 1- Pg. 183-186]

Issue:

- ❖ Section 146 of CGST Act provides that Common GST Electronic Portal may be **notified** for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and **for carrying out such other functions and for such purposes as may be prescribed.**
- ❖ Vide notification No. 4/2017 dated 19.06.2017 r/w notification No. 9/2018 dated 23.01.2018, GST portal was notified for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, and electronic way bill only. Subsequently, vide notification No. 69/2019 dated 13.12.2019, GST portal has been notified for the purpose of preparation of the e-invoice.
- ❖ However, **various other functions and purposes** such as Composition levy, Input Tax Credit, Refund, Transitional provisions, etc **do not have a common portal notified yet.**

Proposal

- ❖ **Law Committee has recommended:**
 - www.gst.gov.in may be designated, **with retrospective effect**, as the Common Goods and Services Tax Electronic Portal, **for all functions and purposes under CGST Act 2017**, other than e-way bill and e-invoicing.
 - This may be done by retrospectively amending notification number 9/2018-CT dated 23.01.2018 and issuance of a retrospective notification w.e.f. 22.06.2017.
- **The proposal will prevent any legal challenges with respect to various online functionalities provided on [GST portal](http://www.gst.gov.in).**

Agenda 3(xiii): Amendment in Section 54 of the CGST Act, 2017 (1/2)

[Vol 1- Pg. 215-217]

Issue: Amendment in sub-section (2):

- ❖ There is an anomaly in time period, within which refund claim of tax paid on inward supplies under Section 55 of the CGST Act, 2017, can be filed.
 - As per Sub-section (2) of section 54, a time limit of 6 months from the end of quarter has been prescribed for claiming refund, whereas time limit for filing refund claims otherwise in section 54(1) is 2 years from relevant date.
 - The said time limit for filing refund under section 55 has been made 18 months as per Notification No. 20/2018-Central Tax dated 28.03.2018.

Proposal

- ❖ To amend sub-section (2) of Section 54 of the CGST Act, 2017 so as to provide that a time period of two years for filing refund under section 55.
- The proposal will help in aligning provisions of the section 54(2) with the provisions of section 54(1).

Issue: Amendment in sub-section (10):

- ❖ Sub-section (10) of Section 54 of the CGST Act, 2017 provides for withholding payment of refunds/deduction of amount from refund under sub-section (3) i.e. **the refund of unutilised ITC.**
- ❖ However, as per Section 79(1)(a) of CGST Act, recovery of any amount due from a person can be made **from any type of refund which is due to him.**

Proposal

- ❖ To amend sub-section (10) of Section 54 of the CGST Act, 2017 by deleting the words "under sub-section (3)".
- The proposal will help in aligning the provisions of the Section 54 with that of the provisions relating to recovery specified under the Act.

Agenda 3(xiii): Amendment in Section 54 of the CGST Act, 2017 (2/2)

[Vol 1- Pg. 215-217]

Issue: Amendment in Explanation (2) under section 54 -Relevant date for filing refund claim of accumulated ITC in respect of zero-rated supplies made to SEZ without payment of duty:

- ❖ As per the definition of “relevant date” in Explanation (2) under section 54 of CGST Act, no relevant date is defined presently for the refund claim of unutilized ITC in respect of the supplies made to SEZ without payment of tax.
- ❖ The said anomaly has arisen due to amendment made vide CGST Amendment Act, 2018 w.e.f 01.02.2019 to link relevant date in respect of refund claim for unutilized ITC with the GSTR-3B return for the period for which refund claim arises, but in the said amendment only clause (ii) of sub-section (3) of section 54 was mentioned, i.e. refund on account of inverted duty structure only.
- ❖ Due to this, refund of unutilised ITC on account of supplies made to SEZ without payment of tax can technically be filed any time, without any restriction of time limit.

Proposal

- ❖ To insert clause (ba) in Explanation (2) under Section 54 of the CGST Act, 2017 for specifying relevant date for refund in respect of zero rated supplies made to SEZ with or without payment of duty.
- ❖ The proposal will remove the anomaly and help in bringing parity w.r.t. time period allowed for filing refund claims in cases pertaining to supplies made to SEZ.
- ✓ The proposal to amend section 54 of CGST Act accordingly has been deliberated and recommended by the Law Committee.

Agenda 3(v): Mechanism of collection of late fee of **GSTR-1** in next open **GSTR-3B**

[Vol 1- Pg. 187-188]

Issue:

- ❖ Sub-section (1) of section 47 of the CGST Act provides for levy of late fee for failure to file returns by the due date.
- ❖ Vide Notification No. 20/2021-CT dated 01.06.2021, the upper cap of late fee payable for delay in furnishing of **FORM GSTR-1** was rationalised.
- ❖ The system is now evolving towards sequential filing of **FORM GSTR-1** and mandatory filing of **FORM GSTR-1** before furnishing return in **FORM GSTR-3B**.
- ❖ There is no mechanism presently to compute and collect the late fee for delayed filing of **FORM GSTR-1 on the portal**, and payment of late fee for GSTR-1 is only on self assessment basis.

Proposal

- ❖ Law Committee has recommended:
 - Late fee for **GSTR-1** should be auto-populated in next open **GSTR-3B on the portal**.
 - The same to be implemented on portal for prospective tax periods (from July, 2021 tax period onwards).
 - Amendment in section 47 to delete reference to section 38.
- The proposal will streamline process of collection of late fee on delayed filing of **GSTR-1** and will nudge the taxpayers in timely filing of **GSTR-1**.

THANK YOU

GST- Roadmap beyond July, 2022

The 45th Meeting of the GST Council September 17th,
2021 Lucknow

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Contents..

- Context of discussions
- GST Revenue trends
- Compensation cess collections vs and revenue requirement projections
- Discussions so far on revenue augmentation in GoMs and various Committee
 - CoO on revenue augmentation MFitment Committee | Law Committee | Audit Committee
 - CCT/State's suggestion on revenue augmentation
 - Suggestions/recommendation from stakeholders/line ministries
- Analysis of major intervention options recommended by GoMs/Committees
- Decision points
- Conclusions

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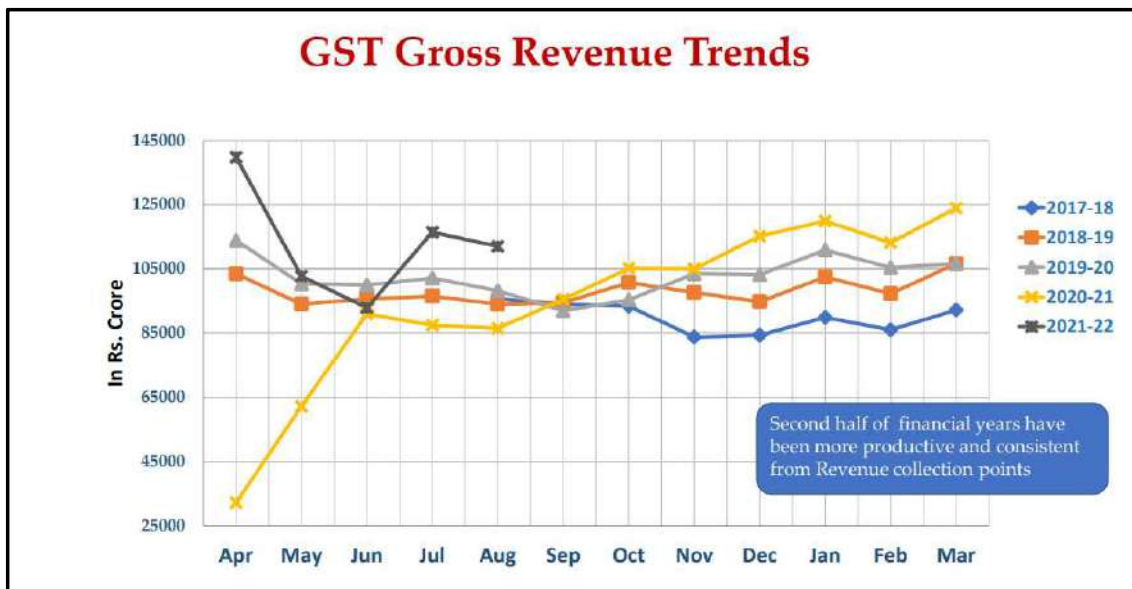
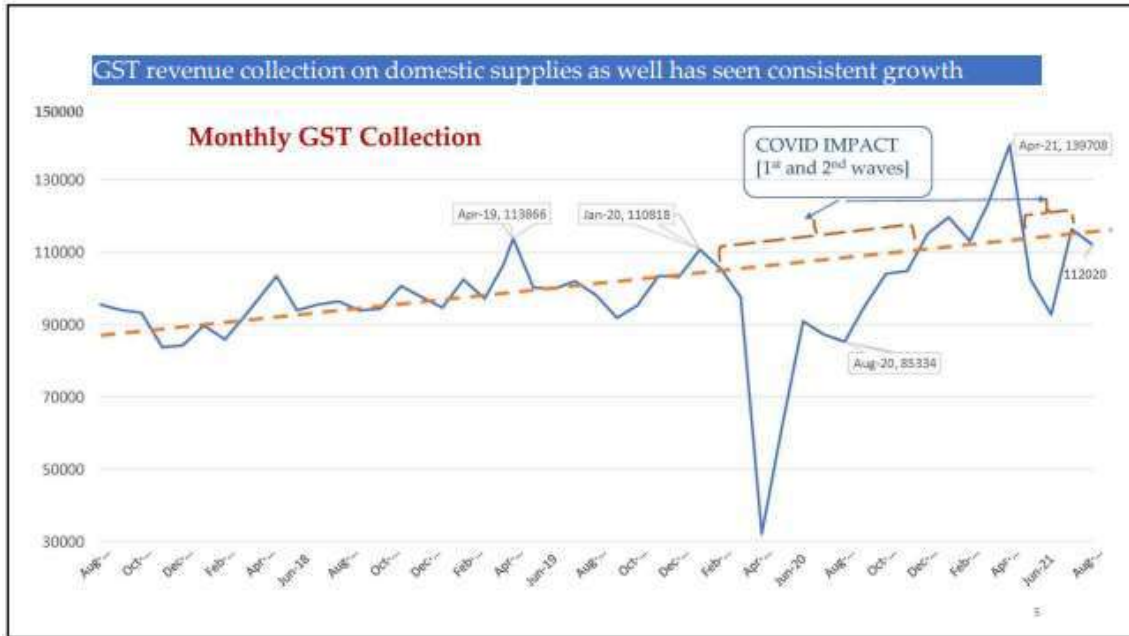
Context

- Assured revenue compensation to States in case of shortfall in revenue collection on account of implementation of GST
- Guaranteed for a period of five year [July 17 to Jun 22]
- Compensation cess levied for the purposes of generation of resources for compensation
- Today's discussion- compensation cess scenarios and to explore ways & means of generating adequate revenue post June 2022

3

GST Revenue trends

4



Compensation cess collection vs revenue requirement projections..

7

The Legal Framework [1/2]

- Section 18 of the Constitutional (101st Amendment) Act states that Parliament shall, by law, provide for compensation for 5 years.
- Accordingly, GST Compensation Act has been legislated, which provides for
 - o Formula for calculating compensation to protect 14% growth over base year revenue of 2015-16
 - o Levy of cess for the purpose of paying compensation
 - o Cess revenue to be credited to a Compensation Fund
 - o All Compensation to be paid out of the Fund

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The Legal Framework [2/2]

- The law does not envisage/ provide for payment of compensation from the Consolidated Fund of India
- This issue was discussed in 7th, 8th and 10th GST Council meetings and then again in the 42nd and 43rd GST Council meetings
- The issue was discussed in the Parliament and has also been analysed by Ld Attorney General of India
- Possible options, as discussed in the 41st and 42nd meeting, in in case of shortfall
 - o Find resources to meet the shortfall
 - o Postpone the payment of compensation
 - o Borrow currently to meet the gap, to be repaid from future cess collections

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Compensation Scenario

- The cess collections were sufficient to meet the compensation requirement till 2019-20
- With the onset of the pandemic
 - while the protected revenue continued to grow at 14%,
 - the SGST revenues reduced, creating a gap, but
 - Cess collections for bridging the gap also fell
- Government of India borrowed ? 1.1 lakh crore in 2020-21 and would be borrowing ? 1.59 lakh crore in 2021-22 to be repaid from future cess collections.
- Arrears to the extent of ? 82,000 cr of 2020-21 still remaining to be paid after June 2022.

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Compensation scenario [2021-22]

- Average monthly collection till August has been ₹ 1,11,750 crore
- Assuming average monthly GST collection of
 - ₹ 1,11,500 crore per month till February 2022 and ○ ₹ 1,23,200 crore in March 2022, the total GST collection is anticipated to be ₹ 13.5 lakh crore
- For the compensation period Feb 2021 to Jan 2022, this translates to
 - SGST revenue ₹ 6.25 lakh crore
 - Compensation cess available ₹ 1 lakh crore
 - Back to back assistance ₹ 1.59 lakh crore
- The total resource available would be ₹ 8.84 lakh crore against protected revenue of ₹ 8.55 lakh crore, implying that around ₹ 30,000 crore will cover arrears of previous year.

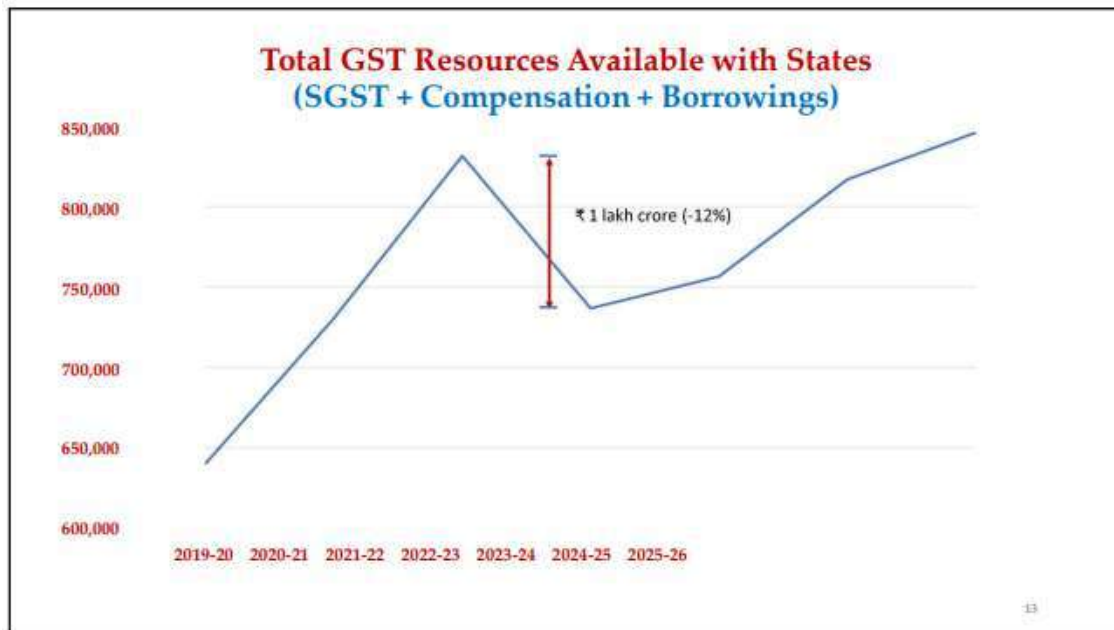
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Compensation scenario [Apr 2020- Mar 2026]

1.	Protected Revenue for 2020 Apr -2022 June	18,88,123
2.	SGST Revenue during 2020 Apr-2022 June	12,16,352
3.	Compensation Requirement [1-2]	6,71,771
4.	Compensation already released	70,000
5.	Compensation yet to be paid till 2022 June [3-4]	6,01,771
6.	Borrowings [₹ 1.1 lakh crore + ₹ 1.59 lakh crore]	2,69,208
7.	Compensation to be paid from cess [5-6]	3,32,563
8.	Debt Servicing Requirement	3,22,498
9.	Total Requirement [7+8]	6,55,061
10.	Cess available from 2021-26	6,60,883

* ^ 12,000 crore of compensation cess has to be recovered from eight States, which will also be available for release to States

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Conclusions from analysis so far

- State to experience a drop in resources from July 2022 onwards
- Even though levy of cess gets extended, the collection thereof shall be used entirely for debt servicing and payment of arrears till FY 25-26.
- The scope of enhancing revenue from cess is minimal because of base saturation.
- For states to remain on current trajectory (GST rev) post Jun 22, the monthly GST requirement would be about **Rs 1.40 lakh cr** a month (CGST + SGST).
- Even with optimistic growth, the Addl GST revenue collection requirements through augmentation measures would be ~ **Rs 2.25 -2.5 lakh cr** a year.
- Hence, immediate measures needed **for revenue augmentation.**
- **What are the options?**

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Discussions so far on Revenue augmentation in GoMs and various Committees.....

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Discussions so far [Institutional Mechanism]

- Revenue Augmentation measures have been discussed in Council & its various forums/Committees , sub-Committees on many occasions
- Major Forums are
 - o Group of Ministers [on Revenue Analysis; Capacity based levy; Movement of Gold etc]
 - o Committee of Officers [Revenue Augmentation, Fitment Committee, Committee on Audit, Law Committee, Special Committees]
 - o Suggestions from SGST Authorities, Line Ministries, CBIC etc
- The composition of these forums - very diverse and broad based with participation of many states.

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Committees concerning Revenue Augmentation

Revenue Augmentation Committee

- Maharashtra
 - Tamil Nadu
 - Uttar Pradesh
 - West Bengal
 - Punjab Odhisa
 - M.P.
 - Haryana
 - Rajasthan
- Joint Secy [DoR]
 - Joint Secy [TRU]
 - Pr Commissioner [GST]
 - Joint Secy [GSTC Sectt]
 - ADGs[ARM, System]
 - EVP, GSTN

Fitment Committee

- Gujarat
 - Tamil Nadu
 - Karnataka
 - Maharashtra
 - West Bengal
 - Rajasthan
 - U.P.
 - Bihar
 - Haryana
- Joint Secy (TRU)
 - Joint Secy [DoR]
 - Pr Commr [GST]
 - Joint Secy [GSTC]

Committee on Audit

- Rajasthan
 - Maharashtra
 - West Bengal
 - Delhi
 - Gujarat
 - Karnataka
 - Bihar
 - Uttarakhand
 - Tamil Nadu
 - Uttar Pradesh
 - Punjab
- ADG[Audit]
 - Pr Commissioner [GST]
 - ADG [DGGI]
 - ADG [ARM]
 - ADG [NACIN]
 - Commissioner [CGST-1]

Law Committee

■ Maharashtra	
■ Gujarat	■ Pr Commissioner [GST]
■ West Bengal	■ Joint Secy [DoR]
■ Punjab	■ Joint Secy [GSTC Sectt]
■ Rajasthan	■ Joint Secy [TRU]
■ Odisha	■ ADGs[DGGST/ARM]
■ U.P.	■ Commissioners [CGST-3]
■ M.P.	
■ Karnataka	
■ Bihar	

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Broad categories of recommendation by GoMs/Committees

Policy measures

- Correction of inverted duty structure
- GST rate slab rationalisation
- Re-fitment of commodities in rate slabs
- Review of exemptions
- Base expansion
- Exploring RSP based levy having high value addition post manufacturing
- Expanding scope of TDS
- Making ECOs liable to pay tax
- Sector specific policy measures

Change in Law & procedure

- Strengthening registration provision
- Improving return filing behaviour
- Improving voluntary compliance
- Curbing misuse of ITC
- Special composition scheme

Administrative measures (C-efficiency)

- Data analytics for better enforcement
- Capacity building for audit and coordinated audits
- Return scrutiny mechanism
- Sector/commodity specific interventions

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Analysis of major intervention options recommended by GoMs/Committee

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1

GST RATE CALIBRATION

[as recommended by the revenue Augmentation Committee]

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Evolution of GST rates structure

- Rates initially worked out on RNR . However, lower rate prescribed on a a number of items
- Items with 31% + RNR placed in 28% slab. Some were put in 18% [e.g. tooth paste, mineral water, soap]
- Significant post GST reductions

	Rt reduced [goods]
09.09.2017	36
06.10.2017	26
10.11.2017	243
18.01.2018	24
21.7.2018	55
22.12.2018	16
20.9.2019	12
Plus	[about 80 services]

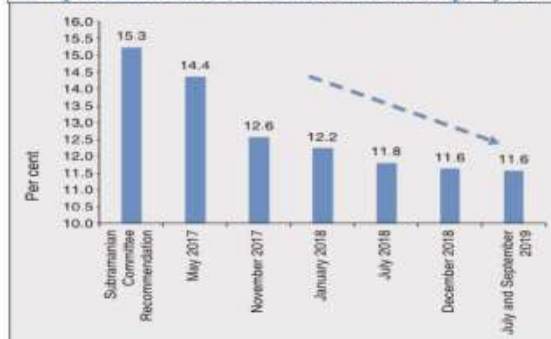
Other concessions

Threshold raised to Rs 40 lakh in goods

Composition:

- limit raised to Rs 1.5 Cr ;
- rate reduced to 1% for manufactures'
- extended to services

Implications has been about Rs 1 lac cr per year



Weighted Average (Effective) GST rate [RBI Report]

21

RNR Committee's observation on lower rate

- The lower rate should be closure to the RNR rate
- This would ensure
 - o The standard rate could be kept reasonable
 - o Lesser temptation to push the commodities to lower rate

Rate-wise share in GST collection 19-20 (Excluding cess)

GST rate	Cash (% share)
3%	1
5%	13.6
12 ⁰ %	6.7
18%	61.6
28%	16.6

- Significant base in 5% slab
- Upward revision by 1% point would yield more than Rs 50,000 cr

22

Major items @ 5% slab

- Fertilizer
- Cotton, cotton yarn
- Branded cereals
- Edible oil, Spices
- Sugar
- Dom LPG
- Oil cake/rice bran
- Specified Handicrafts
- News print
- Assistive devices for disabled
- **Fabrics**
- **Garments (upto Rs1000)**
- **Footwear (upto Rs1000)**
- **Ores**
- **Renewable energy equipment**
- **E-waste**
- **Scrap**
- **Certain machinery**
- Goods transport
- E-vehicles
- Restaurants
- Catering
- Constrn of houses
- Tour operators
- Car renting
- Specified Pharma
- Ships/aircraft
- **Coal**
- **Misc eatables**
- **Walnut, cashew**
- **Bricks/stones**
- **Economy Air AC**
- **Rail travel Job work**

Major items @ 12% slab

Mobile

Manmade Yarns
 Apparel(>Rs1000)
 Carpets Paintings
 Handicrafts Pickle,
 jam, jellies Water (20
 Ltr pack) Specified bio
 pesticides **Paper and
 articles Fruit Juices Tooth
 powder, Candles, hand
 bags Services to Govt/
 Govt entity/authority**

- Bicycle
- General pharma
- Agri machinery
- Drip irrigation *State*
- *Lotteries*
- Cinema (upto Rs 100)
- Accommodation (Rs1000 to 7500)
- Ghee/butter
- Tractors
- Railway wagons
- Toys
- Air travel(Business)
- Wooden articles
- Utensils & misc metal articles

Exemptions- Major items

■ Education & related	■ Cereals/pulses	■ Printed books, news paper
■ Health	■ Fruits	■ Kajal kum-kum, sindoor
■ Accomo < Rs 1000	■ Vegetables/plants	■ Sanitary napkins
■ Salt	■ Animals/fishes	■ Hearing aids
	■ Bread	■ Milk/curd
■ Public transport	■ Jaggery/khandsari	■ Khadi yarn/khadi fabrics (KVIC)
■ House lease/rent	■ Animal feeds	■ Raw silk, wool, jute
■ Service to Govt	■ Honey	■ Organic manure
■ Service by or to RBI, & regulatory bodies	■ Paneer	■ Manual agri implements
		■ Misc items like rakhi

Exemptions need to be rationalised on some of the items under exemptions such as animal feeds, wool, lease of houses to corporates, certain educational and health services

24

Inverted rate structure [broad categories]

- Manufactured goods in lower rate slabs (5% // 12%) suffer inverted rate structure
- Inverted rate str has led to
 - o demand for refund of ITC on services and capital goods.
 - o litigation and distortions
 - o Incentive to imports
- Refund ~ Rs 30000 cr a yr
- RMG Fabrics, footwear before GSTC

Items (Immediate correction)	Items (May continue)
Renewable equipmt	Utensil
Yarn	Bicycles
Fabrics	LED light
RMG and Madeups	Medical equip
Pens	Tractor
Ores	Aggarbatti Electric
Railway parts	vehicle Other Misc
Dyeing etc	items
Milling machines	
Water pumps	

Items [May continue]

Summary of recommendations by various Committees

1A

Correction of inverted rate structure for certain items, e.g., Textiles, footwear, renewables equipment, railway parts, pen parts, ores, dyeing services. Refund on account of inverted structure is about Rs 30,000 Cr. There would be additional gains in correction of inversion.

1B

Upward revision of 5% slab: The estimated revenue gain per % increase in this slab rate would be more than Rs 50,000 Cr

1C

Fitment certain items at higher rate slab, (for other than correction of inversion), e.g., scraps, paper and wooded articles, walnut, cashew etc

1D

Review of exemptions: Details as stated in slide No. 24

26

Discussions in yesterday's officers meeting

- In view of the estimated shortfall in revenues for states, there is an immediate need for revenue augmentation. Weighted average rate is 20% below the RNR of 15.3%
- The 5% rate slab may move up and so also 12% slab .
- Also there was a suggestion to review the rates on items that have been brought down from 28% to 18%.
- Inverted rate structure needs immediate corrections.
- Cess rates for items like coal (at Rs 400 /ton, it has not been revised in last four years) may be considered for increase.
- GST rate on gold/precious metals may be considered for increase to 5%.
- Exemptions must be taken up for pruning, including those relating to health, education and energy.
- Sectoral analysis be done to assess potential vs collection gap.
- This exercise must be undertaken in a time bound manner

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Decision points: Rate Rationalisation

- Correction of inverted rate structure
 - Textiles sector and dyeing services
 - F₁₀FW_{ears} These have been deliberated. Council to take final vies
 - Railway parts, Pens, Renewable energy equipment, Ores [Fitment agenda this time]
 - Time lines and direction in respect of other items having inverted rate
- Review of rate slab
 - Review of exemptions
 - Upward revision of 5% slab [Rev implication per 1% increase- more than Rs 50,000 cr]
 - Fitment of certain items at higher rate slab (other than correction of inversion)
- Council may recommend time and manner of effecting change it recommends in this meeting
- Council may assign certain task to Fitment Committee or to any other Committee.

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4

2

Review of composition coverage and rates

[Spl committee of officers and Fitment Committee]

29

Recommendation by Fitment/Spl Committee of officers

- 2A Special composition scheme for items like bricks [6% without ITC] with normal rate increase to 12% [GoM is now looking into this issue]
- 2B Exclusion of high value add and evasion prone items [goods and services] , e.g., ice cream is excluded. Certain other items like cosmetics, item at 2A above etc may be considered for exclusion, or there may be a positive list approach for inclusion in composition scheme.
- 2C Upward revision of composition rate for manufacturer
Though the revenue gains may be moderate it would help in structural correction.

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Decision points : Composition Scheme

- GoM on capacity based levy has recommended special composition scheme [w.e.f. 1.4.2022]- The proposal is to prescribe a GST rate of 6% on bricks [without ITC] and 12% [with ITC], reduce threshold exemption to Rs 10 lakh
- May like to provide direction for review of composition scheme, including,
 - o Exclusions of certain goods from composition scheme
 - o Inclusion of certain goods in special composition scheme
 - o Reviewing composition rate for manufacturers

[Total tax paid under composition scheme in 2020-21 is Rs 2,500 cr]

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3

Plugging leakage

[GoM on capacity based levy, the Law Committee and Revenue Augmentation Committee]

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Measures recommended by Revenue Augmentation Committee, Law Committee & also a GoM is looking into few issues

3A

Measures for increasing compliance may be taken in respect of items like pan masala, gutkha/chewing tobacco [As GoM may recommend]

3B

Expand coverage of TDS and TDS rates

3C

MRP/RSP based assessment of GST [with suitable abatement]
Items like pharma, footwear etc may be covered in the first instance

3D

Compliance measures for supplies through e-commerce- Making ECO liable to pay GST

33

Discussions in yesterday's officers meeting

- In pre-GST regime, both Centre and States used to apply MRP based regime on items having high value addition. This need consideration in GST.
- Expand the scope of TDS. There is still huge gap in GSTR 7 and GSTR 3B numbers. TDS rate may be considered for increase.
- A committee may specifically look into and identify supplies on which E-Commerce Operator may be made liable to pay GST.

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Decision points: Plugging leakage

- GoM is looking into the issues of plugging leakage in items like pan masala/gutkha/chewing tobacco. GoM seeks extension by another three months. Hon'ble Convener to GoM may like to brief the Council.
- Making ECO liable to pay GST on services provided through it.
 - o Restaurant services provided through ECO
 - o Transport of passenger, through any motor vehicle, through ECO
- Council may assign to Law/Fitment/ any other Committee the task of:
 - o Identification of supplies for expanding the coverage of TDS to either Fitment/Law Committee or any other Group as it deems fit.
 - o Examining feasibility of RSP based levy on certain goods

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4

Compliance measures

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Compliance Measures

- 4A Enforcement of rule for allowing ITC only upto amount in return 2B and min 1% cash payment rule through the system
- 4B Integration of Aadhar with refund module
- 4C Aadhar authentication of existing taxpayers [for refund/registration revocation]
- 4D IGST refund on exports be given only on select category of cases
[Annual refund outgo in 2019-20 was about Rs 1,32,000 cr. Measures at 4B, 4C and 4D would help in plugging leakage]

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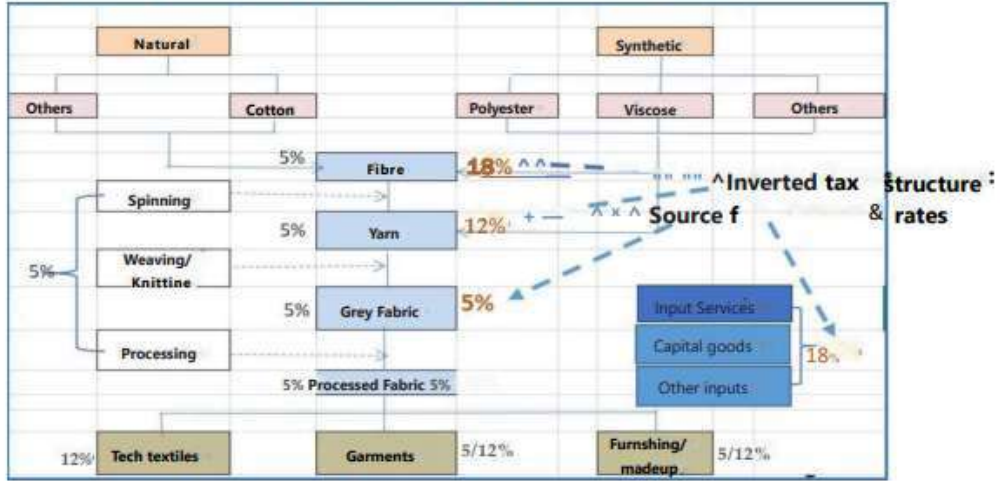
Conclusions..

- Need for revenue augmentation measure is evident
- Of these, tax policy measures viz. correction of inverted rate structure, rate slab rationalisation, review of exemption, rationalisation of composition schemes have-
 - much larger revenue potential
 - certainty of outcome
 - ease of implementation
- Administrative measures for plugging leakages, strengthening audit etc-
 - need longer time to implement
 - their outcome depend on administrative capacity
 - have moderate revenue potential
- Council may consider and decide
 - (a) Which specific measure to adopt with immediate effect
 - (b) Time frame within which others may be implemented
 - (c) Further examination requirement for any of the proposed measures- Manner and time frame
 - (d) Any other measures for adoption

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39

Inverted rates on Manmade Textiles segment



Proposed Rate Structure

	Item	Present rate	Proposed GST Rate
1.	Cotton and natural fibres/yarn (except raw jute, silk, and wool)	5%	5%
2.	Manmade Fibres [with no refund of accumulated ITC]	18%	12%
3.	Manmade Fibre Yarns	12%	12%
4.	Fabrics [Technical and spl fabrics are at 12%]	5%	12%
5.	Garments and made-up	5%/12%	12%
6.	Dyeing Services	5%	12%

Footwears:

Refund on account of inversion~ Rs 2000 cr a year

GST rate structure on footwears

5%	If RSP upto Rs 5,00 [upto 25.7.2018] If RSP upto Rs 1,000 [upto 31.12.2018] If sale price upto Rs 1000 [w.e.f. 1.1.2019]
18%	Footwears other than the above

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Inverted Rate in Footwear

Items	GST Rate	Share in Value	Inversion
Chemicals: Adhesives, [PU, polychloroprene, PVA, Acrylics, IsoCyanate], Solvents [MEK], Colours and Pigments, Catalysts	18%	15%	
SOLE: Natural/Synthetic Rubber, Precipitated Silica, Elasto Polymer	18%	30%	Overall Inversion of upto 6%
UPPER: Leather, Industrial Textile, Rubber, Plastic	5%/12%/18%	35%	

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Proposed Rate Structure on footwears

- Fitment Committee felt that dual rate structure be avoided if possible. Ad valorem rate ensured that goods having lower prices suffer lower quantum of tax. Hence, uniform rate of 18% is a better option.
- However, if uniform rate is not found feasible, a 12% rate may be considered for footwears having price upto Rs 1,000 per pair

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Other cases on corrections of inverted rate structure [recommendation made by Fitment]

		Present rate	Proposed rate
1	Specified railway items, wagons, parts etc	12%	18%
2	Pens [other than fountain pens, which are already at 18%]	12%	18%
3	Renewable equipment for solar, wind, biogas etc [Includes cell, panel, inverter, generator, solar generating power plant]	5%	12% or 18%
4	Metal ores and concentrates [iron, copper, aluminium, chromium etc]	5%	18%

45

Other significant items having inversion

Item
Tractors
Specified Railways parts
Wooden craft
Water pumps
Aggarbati
Agri machines
Utensil
Ink
Medical equipment
Pharma
Bicycles
LED



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Agenda Item 1(ii): Confirmation of the Minutes of the 46th Meeting of GST Council dated 31st December 2021

The 46th Meeting of the GST Council (hereinafter referred to as 'Council') was held on 31st December, 2021 at New Delhi under the Chairpersonship of Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as 'Chairperson'). A list of the Hon'ble Members/Ministers of the Council who attended the meeting is at **Annexure-1**. A list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting, is at **Annexure-2**.

2. The Chairperson invited the Revenue Secretary and the ex-officio Secretary to the Council (hereinafter referred to as 'Secretary') to begin the proceedings. The Secretary welcomed the Hon'ble Deputy CMs and Hon'ble Ministers to the 46th meeting of the Council. He welcomed the Union Finance minister, Ministers/Members from the States, officers of the State Government and Central Government to the 46th meeting of the Council at Delhi and emphasized the significance of the meeting as it had been called under the emergency clause under proviso to sub-clause (2) of clause 3 of the Procedure and Conduct of Business Regulations of the GST Council in which 48 hours of notice had been given.

3. At the outset, the Secretary placed on record the gratitude and sincere appreciation for the valuable contribution made to the Council by Shri. Nitinbhai Patel, former Member from the State of Gujarat. On behalf of the Chairperson and all the Members of Council, he welcomed Shri. Kanubhai Desai, the new Member from the State of Gujarat, who attended the meeting of the Council for the first time. He also introduced and welcomed Shri Vivek Johri, the newly appointed Chairman, CBIC.

4. He informed that a letter had been received from the Minister of Gujarat requesting that the proposed GST rate revision of textiles from 5% to 12 % w.e.f 1.1.2022 may be deferred. As this power lies with the GST Council, a meeting of the Council had to be convened. The said letter from Gujarat was received on 29.12.2021 and the notice for the emergency meeting was issued the same day for the Council meeting. He reiterated the discussions from the 39th meeting of the Council elucidating the reasons for inverted rate correction in textiles in pursuance of which the decision for rate revision in textiles was taken in the 45th meeting of the Council.

5 He informed the Council that in pre-GST regime, fabrics suffered a much higher incidence of tax. In the pre-GST regime, while cotton fabric had about 9% tax incidence, the MMF fabrics had about 13.6% tax incidence as compared to the existing 5% rate of GST. The Council had prescribed the restriction of not allowing refund of accumulated ITC. After the rollout of GST, the textile industry represented that the rate structure resulted in acute inversion in textile sector particularly at fabric stage. It was also argued that the restriction of not allowing refund of accumulated ITC on fabrics favored large composite mills while standalone Power Loom suffered. Accordingly, in stages, further relief was extended to textile sector. To begin with, GST rate on man-made yarn was reduced to 12 percent. Thereafter, refund of accumulated ITC was allowed on fabrics with prospective effect from 01.08.2018 and tax rate on job work services was also brought down to 5%. However, yarn continued to suffer significant inversion as value addition from fiber to yarn was not significant. Hence, standalone spinning units suffered. Fabric continued to have inversion on account of higher tax rate on yarn, input services and capital goods. The adverse impact of inverted rate structure had bearing on ready-made garments segment on account of accumulated ITC on services and capital goods. Also, the cost associated with inversion in fabric became a cost that was transferred by fabric manufacturers to the ready-made garments. On readymade garments, the pre-GST incidence was about 13.2% as compared to 5% rate in GST. Lower rate of 5% and job work had led to hardships to dyeing units as inputs like chemicals and dyes attracted GST at the rate of 18% and effluent treatment attracted GST at the rate of 12%. Job

workers had been seeking correction in inverted duty structure even if it required increasing the rate of tax on dyeing services.

6. The Ministry of Textiles had recommended for correcting inverted rate structure so as to unshackle it from the burden of taxes and to substantially increase employment opportunities in the textile industry. The differential rates and slow refunds of accumulated Input Tax Credit had affected the competitiveness of the industry and had proven to be a deterrent for investment in this sector. The Ministry of Textiles was of the view that for tax uniformity across the value chain, Man-Made Fibres (MMF) and yarns needed to be brought under a uniform tax slab to take care of inversion in the tax structure. This would benefit the spinning and power-loom sectors, which in turn, would create huge job opportunities. An inter-ministerial group consisting of Ministry of Textiles, Ministry of Commerce and NITI Aayog had also made similar observations. The inter-ministerial group had observed that with implied limitation on growing cotton, man-made fibre base needed to grow at least five times in the next five years. The inversion in tax structure of textile sector had led to a refund of about Rs 4000 crores which was anticipated to grow considerably in future.

7. The Fitment Committee had deliberated in detail on this issue and the impact of any calibration of GST rates and fabrics or garments on the end consumers. It was observed that the Council had recommended a lower rate of 5% on all fabrics, and lower segment garments on account of acceptability of GST rate and essential consumption nature of the item. However, the experience since the rollout of GST had been that inverted rate structure had led to significant adverse impact as stated above. It had not really benefitted the consumer by way of reduction in prices of fabrics or garments. Inversion of tax rate meant that cost on account of accumulated ITC on services and capital goods and resource cost for seeking refund of accumulated ITC on inputs got embedded in the cost of fabric and garments. This could be 4% to 5% considering services and capital goods would at least constitute of 20% to 25% of the input cost.

8. Further, removal of inversion would give a boost to the garment sector and with increasing production, the customer also would benefit. Therefore, increase in tax rates could, at the most, have a marginal effect on garments. Besides, as argued by Ministry of Textiles, there existed a strong economic justification that revised rate structure would help the sector grow at a faster pace. In this background, the Fitment Committee discussed the possible solutions to address the issue of inversion in the textile value chain. While doing so, it was kept in mind that input chemicals, capital goods and input services other than job work and inputs like buttons, dyes etc. were at 18 percent and hence low rate of 5% on MMF fabrics and garments would not help the sector. It was felt that at the garments or fabrics stage, it was not feasible to differentiate between the natural fibre and MMFs. In any case, blended fabric was quite common. Therefore, Fitment Committee was of the view that the output tax rate on fabrics and garments should be prescribed at a uniform level of 12%. It was also discussed that as per the recommendations made by the Ministry of Textiles and Inter-Ministerial Group (IMG), the GST rate on fibres should be lowered to 12% to bring them at par with yarn to avoid inverted rate structure at yarn stage. As the value addition at the fibre stage was significant and the import parity price for fibre was about hundred rupees per kg, the fibre manufacturer would not suffer adversely on account of inversion.

9. The Secretary stated that the objective of above discussion was to show that the Council and the Fitment Committee had duly deliberated on the issues that arose in the textile sector in the past and had made the recommendations after due consideration. With the permission of the chair, he requested the Hon'ble Member from Gujarat to introduce the issue.

10. Hon'ble Member from Gujarat stated that Covid had impacted GST revenues, adversely affecting the State's financial situation. Also, the GST compensation amount would not be available to

the States after June, 2022. The GST compensation had helped States to manage their financial situation much better despite strained finances due to Covid. During the last Council meeting at Lucknow, a few important decisions were taken keeping in view the twin issues of GST compensation and low GST collection. Two Group of Ministers (GoMs) were set up for rationalization of rates and restructuring of GST framework, suggesting procedural reforms, improving tax administration and preventing tax evasion. He requested to ensure that the recommendations of the GoM be submitted at the earliest and the decisions should be taken based on their recommendations to lay a clear roadmap for GST in forthcoming days.

11. One of the decisions in the Lucknow meeting was regarding rate rationalization and removal of inverted duty structure in textile sector. In the meeting, it was submitted then by Gujarat that since Textile sector plays a vital role in economy of the State and therefore, any decision in this regard must be implemented in consultation with it. The State had received the representations from trade and industry regarding the notification issued for the purpose of bringing the change in the rate of GST in textile sector. These changes would impact the sector significantly, particularly the manufacturing of MMF at Surat and cotton fabric industry which was spread all over the State. The MSME sector and the labor market could also be affected adversely, especially when the sector was yet to recover from Covid pandemic. Keeping in view of the overall situation, he requested the Council to put on hold, the decision on textile sector and consider the views of all the different stakeholders before arriving at a final decision.

12. The Secretary thanked the Hon'ble Member from Gujarat for also bringing attention of the members to the compensation cess along with textile sector issue. He emphasized that the compensation amount would stop from 30th June 2022.

13. Hon'ble Member from Tamil Nadu thanked the Chairperson for arranging the Council meeting at a short notice. He stated that not only were they effected by Covid situation but were already in relatively declining growth rate and all the data suggested that MSME and individuals had been more effected than large corporates and relatively affluent individuals. The Union Government had projected and spelt out many schemes to support this sector. In that context, he made the distinction that while there were strategic and global implications for man-made fibres, the relative difference between man-made and natural fibre was quite stark. Man-made fibres were largely capital intensive and technology intensive and run by corporates. Natural fibres were largely processed using manual labor and are labour intensive and had a direct impact on farm prices for the raw materials. Given the economic situation, from the Tamil Nadu perspective, the rate hike would be a huge hike, at a wrong time. Before GST was implemented, there was complete exemption for natural fibre and readymade garments were at 5% under the VAT regime. The textile industry in Tamil Nadu is one of the largest employers, especially after farming. Manufacturers' associations, farmers' associations and other associations from almost every district in Tamil Nadu including Madurai had represented against the hike. He requested that the increase in tax rate be held in abeyance for greater discussion as suggested by Hon'ble Member from Gujarat. If there was an urgent need to implement changes, then a threshold value level like Rs 3000 or Rs 5000 or more be kept, above which, levy of GST at the rate of 12 % be charged and below this, a levy of GST at the rate of 5 % should be considered, as an alternative.

14. Hon'ble Member from West Bengal stated that they had opposed this decision in the 45th meeting of the Council and favoured the GST rate of five percent. On 18th of November, 2021, the Central Government had already issued a notification and the changes were scheduled to be effective from 1.1.2022. The volume of the overall textile market was about Rs 5.4 lakh crore and 80 to 85 percent of it comprises natural fibre and the rest comprises man-made fibre. Inverted tax structure existed in the

man-made fibre sector with inputs being taxed at the rate of 18 percent, but it was only 15 to 20 percent of the total volume of the industry. The textile industry was very crucial for employment generation in the country which currently employed around 4 crore people. 85% of the end retail market was taxed at rate of 5% which comprises sari, readymade garments or others having value less than Rs 1000. The total revenue yield from this sector was around Rs 20,000 crore. Estimates show that revenue gained from the upward revision from 5% to 12% would be considerable but the overall impact would be devastating. It was estimated that this would result in a drop in the volume of demand by 3%. The industry ran on a slender margin of around 1 to 3 percent for small and medium scale players in spinning, weaving and garment sector. Evidently, it would be impossible for them to absorb this shock of seven percent increase in tax rate. Estimates show that this would create a situation where one lakh small units would close rendering 15 lakh people jobless. Many units in this sector came to the fold of formal economy after the introduction of GST. If not altered, this move of hiking tax rate by 7% would push many out of the formal sector and promote parallel economy. Therefore, the decision for this rate revision needs to be relooked in its entirety. In addition to this, she requested that though it was not in the agenda, the footwear rate revision along with the works contract which had been hiked from 12% to 18% also needed to be looked into.

15. Hon'ble Member from Puducherry stated that the Union Territory of Puducherry agreed in principle that the inverted duty structure should be corrected. However, the proposed increase in tax rates on textile with effect from 01.01.2022 would affect the textile sector especially MSME units. Further, it would lead to additional burden on the common people. Hence, the Council may consider postponing this decision after deliberations. He also requested that the decision to not extend the GST compensation to the States beyond June, 2022 may also be reconsidered otherwise Puducherry would face severe financial stress and ongoing welfare and developmental schemes may get affected. He suggested to continue with the compensation for a further period of five years.

16. Hon'ble Member from Goa stated that the decision to increase tax rate on textiles from 5% to 12% was only to correct the inverted duty structure. This issue should be linked to the bigger issue of rate rationalization. The decision to increase the GST rate on textiles required detailed study based on data. The impact of increase in GST rate on employment would also have to be factored in. He fully agreed with the proposal from State of Gujarat to defer this decision to increase GST rate till a thorough study on this matter was done.

17. Hon'ble Member from Andhra Pradesh reiterated their position to defer the decision of increase in GST rate on textiles. He stated that a deeper study of the industry had to be made as various farm produce go into making textiles. Detailed study on the share of apparel vs fabric, the share of different yarns, natural or manmade, that went into the fabric and the estimate of future refunds was required. Such a study could be made by the GoM. State of Andhra Pradesh had 3 lakh people employed in the weaving industry and was more into natural yarn and its related industries. A deeper study on these aspects would enable sound decision making.

18. Hon'ble Member from Rajasthan thanked the Chairperson for calling the emergency meeting of the Council for the purpose. He stated that the deferment of the earlier decision of the Council was not a long term solution as the external environment would not change especially in the light of Omicron variant of COVID. Hon'ble Chief Minister of Rajasthan had also written that in the light of COVID situation, changes in the GST rates should not be made. He proposed that rate changes should not be done, not only on textiles but also on footwear. However, keeping in view the situation of the States, there should be a long term policy. He stated that the stand of State of Rajasthan was that there should be a decision to not change the GST rates for two to three years pursuing a long term policy. Just as

textile was basic need for the common man, footwear was also a basic necessity and therefore the decision to increase GST rate on footwear should also be deferred. He also requested that GST Compensation which would end in June, 2022 should be extended till, at least, upto 2027.

19. The Secretary brought to the notice of the Council that this issue was discussed in the 38th, 39th, 40th, 43rd and 45th meeting of the Council. The Fitment Committee also deliberated on this issue in great detail. He quoted the reference from Ministry of Textiles and NITI Aayog to emphasize that revenue consideration was not the basis of the decision to do away with the inverted duty structure in textiles. It was because enough investment was not being made in the textile sector since ITC on input services and capital goods could not be refunded and it got embedded in the cost of the goods. The inverted duty structure gets corrected at around tax rate of 9% to 9.5%. So, finally, 4% to 4.5% would be embedded in the cost. Ministry of Textiles, NITI Aayog and part of the industry had suggested that unless the inverted duty structure was corrected, India cannot compete at international level in textiles. Further, while internationally it was seen that man-made fibre (MMF) was taking precedence over natural fibres, in India, the position was reverse.

20. Hon'ble Member from Kerala stated that they supported the proposal to defer the decision but a detailed study was imperative. He also requested the deferment of increase in GST rate on footwear. He added that the earlier decision to increase the GST rate on works contract from 12% to 18 % in relation to government entities should also be reversed. He also stated that it was the view of many Hon'ble Members that the GST Compensation should be extended.

21. Hon'ble Member from Odisha stated that he had submitted earlier to the Council that there were two aspects of textiles sector, the power loom and the handloom. There should be two tax slabs and the GST rate on handloom should be less than 5%. His constituency was globally famous for manufacture of silk sarees. Odisha is famous for Sambalpuri silk saree. The handloom sector as a whole embodied the traditional wisdom and cultural wealth of India and had a role in Atmanirbhar Bharat. The handloom and craft sector was under severe stress as average household income of handloom industry was only Rs 3,042 per month. The pandemic had exacerbated the situation and weavers had lost their livelihood. The cost of cotton yarn had also increased by nearly 30% to 40% this year. Thus, handloom sector should be taxed at a lower rate.

22. Hon'ble Member from Uttar Pradesh thanked the Hon'ble Chairperson for convening the meeting to discuss the sensitive issue of textiles and also appreciated Gujarat for raising the issue. At the commencement of the GST regime, the GST rate on textile was 5%, on threads and chemicals it was 12% and ITC refund was blocked. Later in July, 2018, it was decided to give the refund of ITC on inverted duty structure. He requested that the GST rate on textile be 5% and refunds of ITC prior to July, 2018 may be blocked since refunds were a liability.

23. Hon'ble Member from Bihar stated that when it was decided to increase the GST rate on textiles in the previous meeting, there were negative reactions from the textile industry and public in general. He supported the proposal of the State of Gujarat to defer the rate revision as it was in favour of the common man. Interventions should be made for boosting the sector, encouraging investments and creating a niche for India at an international level. The Hon'ble Member from Bihar further stated that India was the global leader in the textile sector and the Council should strive to put in place a mechanism which attracts investment and fuels growth in the textile sector so that the country can reclaim its past glory as the world leader and textile hub of the world.

24. Hon'ble Member from Tamil Nadu stated that several observations were made on the percentages of various inputs, their costs and their likely impact. He requested that if such studies were

available, they may be circulated to the Members. If such studies were not available, they need to be commissioned. He hoped that the GoM constituted by the Hon'ble Chairperson would look into all of this.

25. Hon'ble Member from Madhya Pradesh submitted that post decision to increase the GST rate on textile in the 45th Meeting of the Council; the State had received several representations from trade to reconsider the decision. He further submitted that textile was a very important sector in the State and this decision may financially hit the sector which was recovering from impact of COVID pandemic. He stated that Madhya Pradesh had more than 20000 registered businesses in textile sector generating approximately Rs. 150 crore of GST revenue and employing millions of people. He requested that in this scenario, the Council should reconsider the decision to increase the GST on textiles from 5% to 12 %.

26. Hon'ble Member from Tripura stated that he supported the representation made by Gujarat and the issue required more consultation with the stakeholders. He agreed with Odisha that there should be distinction between power loom and handloom textiles while deciding tax rates.

27. Hon'ble Member from Delhi was appreciative of calling the Council meeting at a short notice on the basis of a request from a Member for discussing an issue of urgent nature. He stated that there was a need to rationalize the tax in the sector to correct the inverted duty structure and for this a detailed presentation could be made by Ministry of Textiles on cons of increasing the GST on textiles from 5% to 12 % as pros had already been discussed in the earlier Council meetings. He stated that he had always advocated lower taxes as it resulted in higher compliance. He stated that impact of increase in tax rates on textile sector in terms of job, investment and economic condition required further deliberations and study. The decision could be deferred or rolled back and study could be undertaken to analyse the complexities in the textile sector other than tax alone in scenario of the tax rate hike.

28. Hon'ble Member from Rajasthan submitted that alternatives like new tax slabs need to be explored. He suggested formation of a Committee to study the GST taxation system from long term perspective after dividing the economy in to various sectors and then identifying the basic sectors where there should be no increase in tax rates. This would help in framing long term policies on issues like investment and encouraging new enterprises.

29. The Secretary stated that both Delhi and Rajasthan had raised very relevant points and that facts and data available with Fitment Committee should be circulated among the Members of the Council to help them in making informed decisions.

30. Hon'ble Member from Delhi stated that the presentation in the 39th GSTC meeting was in the perspective of taxation in textile sector but as Finance Minister of a State, he reiterated the need to look at rate revision from a wholistic perspective encompassing issues like employment, etc.

31. The Hon'ble Chairperson stated that the issue of inversion had been discussed in multiple meetings of the Council and Council has devotedly spent considerable time deliberating upon the matter. She further stated that on this issue, not only from Gujarat but several other representations had also been received in December, 2021 after the decision to increase the GST on textiles was taken in September, 2021 to implement the increase w.e.f 1.1.2022. She stated that in the Council meeting, a presentation may be made by the Fitment Committee on this issue for better understanding of all including the possibility of differentiating between the power loom and the handloom, and man-made and natural fibre. She further referred to the observation made by the Hon'ble Member from Uttar Pradesh that no refund of ITC was given prior to 2018 in case of 5% GST and stated that this aspect had been discussed in the Council earlier. The Council may like to discuss at some time whether there was

some merit in going back to the situation which prevailed prior to 2018. She further stated that Council had discussed the issue of inversion in various meetings and it was unanimously decided to defer the decision due to the prevailing COVID situation. The decision to correct inversion was taken in September. Further, there was a GoM on Rate Rationalization and the items on which inversion correction is required to be done by the Council were also within the purview of this GoM. She further insisted that a call on the agenda should be taken as new rate on textiles were scheduled to be effective from 1.1.2022.

32. In response to the comments made by the Hon'ble Member from Delhi, the Secretary submitted that Niti Aayog and Ministry of Textiles were involved in the discussions including issues of investment and employment which were briefed to the Fitment Committee. However, in future even if there was a need to call any experts on the matter to give their suggestions or to make presentations on the impact on the textile sector on aspects other than taxation, it could be done. He further stated that the long term policy as suggested by the Hon'ble Member from Rajasthan may be considered by the Committee on tax rationalization. He further cautioned that inverted duty structure led to refunds and the problem got compounded due to fake invoices while revenue augmentation efforts were taken with the help of technology, and many other policy decisions were taken to stop tax evasion.

33. Hon'ble Member from Haryana stated that he supported the proposal and also requested to reconsider the case of rate revision in footwear also on similar lines.

34. Hon'ble Member from Himachal Pradesh was of the view that inverted duty structure needed to be rectified to attract investment. Textile sector was gravitating towards man-made fibre. He stated that the consensus in the Council was to defer the decision to hike the GST rate on textiles from 5% to 12% and he agreed with it. Also, the refund of ITC should be blocked. He also requested to extend the time of compensation cess till the year 2027.

35. Hon'ble Member from Sikkim supported the consensus in the Council to defer the decision on rate revision on textiles.

36. The officers of Arunachal Pradesh, Assam, Chhattisgarh and Jharkhand supported the proposal to defer the decision.

37. The officer from Karnataka conveyed the message of Hon'ble Chief Minister that he supported the consensus but with ITC restrictions, as proposed by the State of Uttar Pradesh.

38. The officer from Maharashtra pointed out that as the member of Fitment Committee; they had made significant deliberations while making the recommendation and therefore, some kind of analysis as to why the decision was being deferred, should be presented. Further, in the current year due to various pressures, it was very difficult to estimate resources for the coming year's budget due to following reasons (a) Advisory from the Central Government to reduce VAT on fuels (petrol & diesel) (b) Advisory from Central Government to reduce VAT on ATF (c) Lack of clarity on the decision regarding GST rate on textiles (d) Pending proposals with the GoM on Rate Rationalization. He stated that the next time the Council decided to hike GST rate, there would be similar demands for rollback. He further conveyed the opinion of Hon'ble Member from Maharashtra that the Covid -19 pandemic had affected the livelihood of millions of people and strained the economy. He had suggested that at this juncture, decision to increase tax rates on textiles be deferred and further decision may be taken after a proper review. He had further added that as the revenue protection is not extended to States beyond 30/06/2022, it is going to adversely affect the State's finances thus the State's revenues should be protected as per the current arrangement at 14% increment every year beyond June, 2022.

39. In response to a query of Hon'ble Member from Rajasthan about the members in the Fitment Committee, Hon'ble Chairperson mentioned about the same and the list of States was provided. He enquired whether the point of view of the States was put forth during the meetings by the members of Fitment Committee, to which the Secretary stated that the nominated officers are expected to take clearance from the political executive before placing the views.

40. Hon'ble Member from Tamil Nadu stated that even the political executives also face the dilemma between revenue augmentation vs the interests of the industry. Further, he stated that the Convener for GoM on Casinos, Race Courses and Online Gaming was Shri. Nitinbhai Patel, then Hon'ble Member from Gujarat. Due to changes in the Gujarat cabinet, a new convener need to be named and requested that the functioning of the GoM and all other Committees may be better integrated.

41. Hon'ble Member from Odisha stated that inverted duty structure is only in 15% part of the Sector i.e. power loom and that 85% i.e. Handloom should not suffer due to the rest of the 15% of textile sector.

42. The officer from Uttarakhand conveyed the opinion of Hon'ble Member from Uttarakhand that the inverted duty structure had led to distortion in the textile sector which needed to be corrected. However, he had suggested that keeping in view the representations received from trade and Ministry of Textiles, it would be appropriate that the decision to increase the tax rate on Textiles may be deferred for a certain period.

43. The officers from Nagaland, Telangana, Punjab and J&K agreed with the emerging consensus and Telangana suggested that the decision should be for a longer term rather than two or three months.

44. The Secretary observed that there was general consensus to defer the hike in GST rate on textile from 5% to 12% but UP, Himachal Pradesh and Karnataka mentioned about blocking the refund of ITC also.

45. Hon'ble Member from Gujarat stated that blocking of refund would not be a prudent decision as it would discourage investment in a big way and also lead to tax evasion.

46. Hon'ble Member from Haryana stated that rather than blocking the refund of ITC, GoM should finalize the deliberations within a deadline and present it to the Council so that a decision could be taken.

47. Hon'ble Member from UP requested that the State exchequer should not face the burden of refunds and to go back to pre-2018 status where refund was not available especially in the light of discontinuance of GST Compensation from July, 2022.

48. Hon'ble Chairperson clarified that the rate was at a level whereby the output tax was higher than the input tax. The larger interest of the Council was to go ahead with the inversion correction and the Council was not looking for additional revenue in this case. If there was a perspective that if refunds were stopped, then no investments would come in the sector just the same holds true with inversion scenario also. She mentioned that there are Performance Linked Incentive (PLI) schemes of the Government but there was hesitation to invest in the textile sector due to inversion of duty.

49. Hon'ble Member from Tamil Nadu stated that presently there was no blockage on refunds and GST on textiles was at 5%. The same policy should be continued till the Council took a comprehensive and informed decision.

50. The Secretary stated there was consensus in the house to defer the tax revision in the textile sector. He also assured the Council that the GoM on Rate Rationalization would discuss this issue

threadbare and all the points raised by the Hon'ble Members would be discussed in the GoM. If required, NITI Aayog would make a presentation to the GoM. He informed that this GoM was not only looking into textiles but also looking at a larger and broader framework of GST which was important in the context of GST Compensation. He urged the GoM to submit the report by February, 2022 so that the GST Council Secretariat could evaluate and process the report and thereafter, the Council could take a considered decision on all these matters. He stated that the GoM would be assisted by the Fitment Committee and both taken together, there was a broad-based representation from many States. The Fitment Committee itself had also taken views of other States. He stated that the Council decided to defer the decision of increasing the GST rate on the textiles from 5% to 12% till larger deliberations were carried out.

51. The Chairperson stated that the GoM on Rate Rationalization constituted under the convenership of Hon'ble Chief Minister of Karnataka, comprised Members from Bihar, Goa, Kerala, Rajasthan, UP and West Bengal. She reiterated that this GoM would discuss the issue of textiles as well and should submit its report on rate rationalization inclusive of the textile issue by late February, 2022 or in the first week of March, 2022 to the Council.

52. The Meeting ended with thanks to the Chair.

Annexure-1

List of Hon'ble Ministers who attended the 46th Meeting of the GST Council on 31.12.2021			
S. No	Centre/State	Name of Hon'ble Minister	Charge
1	Govt. of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning and Legislative Affairs and Commercial Taxes
3	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
4	Delhi	Shri Manish Sisodia	Deputy Chief Minister
5	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
6	Gujarat	Shri Kanubhai Desai	Finance Minister
7	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
8	Himachal Pradesh	Shri Bikram Singh	Minister for Industries & Transport
9	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Hon'ble Lieutenant Governor
10	Kerala	Shri K.N. Balagopal	Finance Minister
11	Madhya Pradesh	Shri Jagdish Devda	Minister for Commercial Tax, Finance, Planning & Statistics
12	Odisha	Shri Niranjana Pujari	Minister, Finance & Excise
13	Puducherry	Shri K. Lakshminarayanan	Minister for Public Works
14	Rajasthan	Shri Subhash Garg	Minister of Technical Education Dept., Ayurveda and Indian Medical Dept., Public Grievances & Redressal, Minority Affairs, Waqf, Colonisation, Agriculture Command Area, Development & Water Utilisation
15	Sikkim	Shri B.S. Panth	Minister for Commerce & Industries, Tourism & Civil Aviation
16	Tamil Nadu	Dr. Palanivel Thiaga Rajan	Minister for Finance and Human Resource Management

17	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
18	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs, Medical Education
19	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance

List of Officials who attended the 46th Meeting of the GST Council on 31.12.2021			
Sl No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary
2	Govt. of India	Shri Vivek Johri	Chairman, CBIC
3	Govt. of India	Shri D.P. Nagendra Kumar	Member (GST), CBIC
4	GST Council Sectt.	Dr. C.S. Mohapatra	Additional Secretary, GST Council
5	Govt. of India	Shri Vivek Aggarwal	Additional Secretary, DoR
6	Govt. of India	Shri Rajesh Malhotra	DG (Media & Comm.), PIB
7	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
8	Govt of India	Shri Sanjay Mangal	Principal Commissioner (GST PW), CBIC
9	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU
10	GSTN	Shri Manish Kumar Sinha	CEO
11	GSTN	Shri Dheeraj Rastogi	EVP (Support) & SVP (Services)
12	GST Council Sectt.	Ms Ashima Bansal	Joint Secretary
13	Govt. of India	Shri S. S. Nakul	PS to Minster of Finance and Corporate Affairs
14	Govt. of India	Sernya Bhutia	First PA to FM
15	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
16	Govt. of India	Shri N. Gandhi Kumar	Director (State Tax), DoR
17	Govt. of India	Shri Amaresh Kumar	Additional Commissioner, GST PW, CBIC
18	Govt. of India	Shri Pramod Kumar	Director, TRU
19	Govt. of India	Shri Syed Wasif Haider	OSD, TRU
20	Govt. of India	Shri D. P. Misra	OSD to Chairman, CBIC
21	Govt. of India	Rakesh Dahiya	Joint Commissioner
22	Govt. of India	Gaurav Singh	Deputy Secretary, TRU

23	Govt of India	Shri Dibyalok	Technical Officer, TRU
24	Govt of India	Shri Amit Samdariya	Deputy Commissioner, GST PW, CBIC
25	GST Council Sectt.	Shri Kshitendra Verma	Director
26	GST Council Sectt.	Shri Harish Kumar	Deputy Secretary
27	GST Council Sectt.	Shri Krishna Koundinya	Under Secretary
28	GST Council Sectt.	Shri Naveen Agrawal	Under Secretary
29	GST Council Sectt.	Shri Joginder Singh Mor	Under Secretary
30	GST Council Sectt.	Shri Adesh Nayak	Superintendent
31	GST Council Sectt.	Shri Naveen Kumar	Superintendent
32	GST Council Sectt.	Shri Irfan Jakir	Superintendent
33	GST Council Sectt.	Shri Sachin Goel	Superintendent
34	GST Council Sectt.	Shri Manoj Kumar	Superintendent
35	GST Council Sectt.	Shri Dharambir	Superintendent
36	GST Council Sectt.	Shri Rakesh Joshi	Inspector
37	GST Council Sectt.	Shri Pankaj Bhardwaj	Inspector
38	GST Council Sectt.	Shri Vijay Malik	Inspector
39	GST Council Sectt.	Shri Rohit Sharma	Inspector
40	Andhra Pradesh	Shri Mukhesh Kumar Meena	Secretary (CT) Finance
41	Andhra Pradesh	Shri J V M Sarma	Joint Commissioner State Taxes
42	Andhra Pradesh	Shri Chandra Obul Reddy	OSD to Finance Minister
43	Arunachal Pradesh	Shri Sangeet Dubey	Deputy Resident Commissioner
44	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax
45	Bihar	Shri Arun Kumar Mishra	Special Secretary, Commercial Taxes
46	Chandigarh	Shri Vinay Partap Singh	Excise & Taxation Commissioner
47	Chandigarh	Shri Randhir Singh	Assistant Excise & Taxation Commissioner

48	Chhattisgarh	Shri Toran Lal Dhruw	Additional Commissioner of State Tax
49	Chhattisgarh	Shri Tarun Kumar Kiran	Deputy Commissioner of State Tax
50	Delhi	Shri Ankur Garg	Commissioner, State Tax
51	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner (Policy), State Tax
52	Gujarat	Shri J. P. Gupta	Principal Secretary, Finance Department
53	Gujarat	Shri Milind Torawane	Secretary(Economic Affairs, Finance Department) & Chief Commissioner of State Tax
54	Haryana	Shri Anurag Rastogi	Additional Chief Secretary, Excise & Taxation
55	Haryana	Shri Sameer Yadav	DETC, Gurgaon
56	Himachal Pradesh	Shri Yunus	Commissioner of State Tax and Excise
57	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
58	Himachal Pradesh	Shri Rajesh Bhardwaj	Special Private secretary to honble industries minister HP
59	Jammu and Kashmir	Shri Showkat Aijaz Bhat	Commissioner, State Taxes
60	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
61	Jharkhand	Shri Ramchandra Prasad Barnwal	Additional Commissioner, State Tax
62	Jharkhand	Shri Brajesh Kumar	State Tax Officer, CT
63	Karnataka	Smt. C. Shikha	Commissioner of Commercial Taxes
64	Karnataka	Smt. C. Pushpalatha	Additional Commissioner of Commercial Taxes (Policy & Law)
65	Kerala	Shri Rajesh Kumar Singh	Additional Chief Secretary (Finance & Taxes Department)
66	Kerala	Shri Abraham Renn S.	Additional Commissioner of State Tax

67	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, Commercial Taxes
68	Madhya Pradesh	Shri S. N. Maravi	Director, Commercial Taxes
69	Madhya Pradesh	Shri Manoj Kumar Choubey	Deputy Commissioner, Commercial Taxes
70	Maharashtra	Shri Rajiv Mittal	Commissioner of State Tax
71	Mizoram	Shri Vanlalzuala	Deputy Resident Commissioner
72	Nagaland	Shri C Lima Imsong	Joint Commissioner of State Taxes
73	Odisha	Shri Pramod Kumar Mohanty	Special Commissioner, Commercial Taxes & GST
74	Odisha	Shri Nihar Ranjan Nayak	Additional Commissioner, CT & GST (Policy)
75	Puducherry	Shri. B. Balamurthy	Asst.CTO
76	Punjab	Shri V.K Garg	Advisor (Financial Resources)
77	Punjab	Shri A.Venu Prashad	Additional Chief Secretary(Taxation)
78	Rajasthan	Shri T. Ravikanth	Secretary, Finance(Revenue)
79	Rajasthan	Shri Ravi Jain	Chief Commissioner, State Tax
80	Sikkim	Shri J.D.Bhutia	Commissioner cum Secretary Commercial Taxes
81	Tamil Nadu	Shri K Phannidra Reddy	Additional Chief Secretary/Commissioner, CTD
82	Tamil Nadu	Shri N. Muruganandam	Additional Chief Secretary, Finance
83	Telangana	Shri K. Rama Krishna Rao	Special Chief Secretary for Finance
84	Telangana	Gaurav Uppal	Resident Commissioner
85	Telangana	Smt Neetu Prasad	Commissioner of Commercial Taxes
86	Telangana	Smt K. Roopa Sowmya	Deputy Commissioner(ST)
87	Tripura	Shri Akinchan Sarkar	Additional Secretary, Finance (OSD of the Hon'ble Deputy Chief Minister,
88	Uttarakhand	Dr Ahmed Iqbal	Commissioner, State Tax

89	Uttar Pradesh	Shri Sanjiv Mittal	Additional Chief Secretary, State Tax
90	Uttar Pradesh	Smt. Ministhy S.	Commissioner, Commercial Tax
91	Uttar Pradesh	Sanjay Kumar Pathak	Dy Secy, State Tax
92	Uttar Pradesh	Amit Pandey	PS to FM
93	West Bengal	Shri Khalid Aizaz Anwar	Commissioner, Commercial Taxes
94	West Bengal	T. K. Pathak	Jt Secy & Priv. Secy to Minister

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

In the 22nd meeting of the GST Council held at New Delhi on 6th October, 2017, it was decided that the Notifications, Circulars and Orders, which are being issued by the Central Government with the approval of the competent authority, shall be forwarded to the GST Council Secretariat, through email, for information and deemed ratification by the GST Council. Accordingly, till the 45th meeting held on 17.09.2021, the GST Council had ratified all the Notifications, Circulars, and Orders issued up to 08.09.2021.

2. In this respect, the following Notifications, Circulars and Orders issued after 08.09.2021 under the GST laws by the Central Government, as available on www.cbic.gov.in, are placed before the Council for information and ratification: -

Act/Rules	Type	Notification / Circular / Order Nos.	Description/Subject
Notifications under CGST Act / CGST Rules	Central Tax	1. Notification No. 35/2021-Central Tax dated 24.09.2021	Seeks to make amendments (Eighth Amendment, 2021) to the CGST Rules, 2017.
		2. Notification No. 36/2021-Central Tax dated 24.09.2021	Seeks to amend Notification No. 03/2021 dated 23.02.2021.
		3. Notification No. 37/2021-Central Tax dated 01.12.2021	Seeks to make amendments (Ninth Amendment, 2021) to the CGST Rules, 2017.
		4. Notification No. 38/2021-Central Tax dated 21.12.2021	Seeks to bring sub-rule (2) and sub-rule (3), clause (i) of sub-rule (6) and sub-rule (7) of rule 2 of the CGST (Eighth Amendment) Rules, 2021 into force w.e.f. 01.01.2022.
		5. Notification No. 39/2021-Central Tax dated 21.12.2021	Seeks to notify 01.01.2022 as the date on which provisions of section 108, 109 and 113 to 122 of the Finance Act, 2021 shall come into force.
		6. Notification No. 40/2021-Central Tax dated 29.12.2021	Seeks to make amendments (Tenth Amendment, 2021) to the CGST Rules, 2017
		7. Notification No. 01/2022-Central Tax dated 24.02.2022	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 20 Cr from 01 st April 2022

		8. Notification No. 03/2022-Central Tax dated 31.03.2022	Seeks to amend notification no. 10/2019-Central Tax to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting
		9. Notification No. 04/2022-Central Tax dated 31.03.2022	Seeks to amend notification no. 14/2019-Central Tax to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting
		10. Notification No. 05/2022-Central Tax dated 17.05.2022	Seeks to extend the due date of filing FORM GSTR-3B for the month of April, 2022
		11. Notification No. 06/2022-Central Tax dated 17.05.2022	Seeks to extend the due date of payment of tax, in FORM GST PMT-06, for the month of April, 2022 by taxpayers who are under QRMP scheme
		12. Notification No. 07/2022-Central Tax dated 26.05.2022	Seeks to waive off late fee under section 47 for the period from 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22
		13. Notification No. 08/2022-Central Tax dated 07.06.2022	Seeks to provide waiver of interest for specified electronic commerce operators for specified tax periods
	Central Tax (Rate)	1. Notification No. 06/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 45th meeting held on 17.09.2021
		2. Notification No. 07/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.

		3. Notification No. 08/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 1/2017- Central Tax (Rate)
		4. Notification No. 09/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 2/2017- Central Tax (Rate)
		5. Notification No. 10/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 4/2017- Central Tax (Rate)
		6. Notification No. 11/2021-Central Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 39/2017- Central Tax (Rate)
		7. Notification No. 12/2021-Central Tax (Rate), dated 30.09.2021	Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021
		8. Notification No. 13/2021-Central Tax (Rate), dated 27.10.2021	Seeks to amend Notification No 1/2017- Central Tax (Rate) dated 28.06.2017
		9. Notification No. 14/2021-Central Tax (Rate), dated 18.11.2021	Seeks to further amend notification No. 01/2021-Central Tax (Rate) dated 28-06-2021
		10. Notification No. 15/2021-Central Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 11/2017- Central Tax (Rate) dated 28.06.2017
		11. Notification No. 16/2021-Central Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 12/2017- Central Tax (Rate) dated 28.06.2017

		12. Notification No. 17/2021-Central Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 17/2017- Central Tax (Rate) dated 28.06.2017
		13. Notification No. 18/2021-Central Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 1/2017- Central Tax (Rate) dated 28.06.2017
		14. Notification No. 19/2021-Central Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 2/2017- Central Tax (Rate) dated 28.06.2017
		15. Notification No. 20/2021-Central Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 21/2018- Central Tax (Rate) dated 26.07.2018
		16. Notification No. 21/2021-Central Tax (Rate), dated 31.12.2021	Seeks to supersede notification 14/2021- CT(R) dated 18.11.2021 and amend Notification No 1/2017- CT (Rate) dated 28.06.2017
		17. Notification No. 22/2021-Central Tax (Rate), dated 31.12.2021	Seeks to supersede notification 15/2021- CT(R) dated 18.11.2021 and amend Notification No 11/2017- CT (Rate) dated 28.06.2017
		18. Notification No. 01/2022-Central Tax (Rate), dated 31.03.2022	Seeks to amend notification No. 1/2017-Central Tax (Rate)
		19. Notification No. 02/2022-Central Tax (Rate), dated 31.03.2022	Seeks to provide for a concessional rate on intra state supply of bricks conditional to not availing the ITC, as recommended by 45 GSTC
Notifications under UTGST Act / UTGST Rules	Union Territory Tax	1. Notification No. 01/2022-Union Territory Tax, dated 31.03.2022	Seeks to amend notification no. 02/2019-Union Territory Tax to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting

		2. Notification No. 02/2022-Union Territory Tax, dated 31.03.2022	Seeks to amend notification no. 02/2017-Union Territory Tax to implement special composition scheme for Brick Kilns, as recommended by GSTC in 45 th meeting
	Union Territory Tax (Rate)	1. Notification No. 06/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 45th meeting held on 17.09.2021.
		2. Notification No. 07/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 12/2017- Union Territory Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.
		3. Notification No. 08/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 1/2017- Union territory Tax (Rate)
		4. Notification No. 09/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 2/2017- Integrated Tax (Rate)
		5. Notification No. 10/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 4/2017- Integrated Tax (Rate)
		6. Notification No. 11/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to amend notification No. 40/2017- Integrated Tax (Rate)
		7. Notification No. 12/2021-Union Territory tax (rate), dated 30.09.2021	Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021
		8. Notification No. 13/2021-Union Territory tax (rate),	Seeks to amend Notification No 1/2017- Union territory Tax (Rate) dated 28.06.2017.

		dated 27.10.2021	
		9. Notification No. 14/2021-Union Territory tax (rate), dated 18.11.2021	Seeks to further amend notification No. 01/2021-Union Territory Tax (Rate) dated 28-06-2021.
		10. Notification No. 15/2021-Union Territory tax (rate), dated 18.11.2021	Seeks to amend Notification No 11/2017- Union territory Tax (Rate) dated 28.06.2017.
		11. Notification No. 16/2021-Union Territory tax (rate), dated 18.11.2021	Seeks to amend Notification No 12/2017- Union territory Tax (Rate) dated 28.06.2017.
		12. Notification No. 17/2021-Union Territory tax (rate), dated 18.11.2021	Seeks to amend Notification No 17/2017- Union territory Tax (Rate) dated 28.06.2017
		13. Notification No. 18/2021-Union Territory tax (rate), dated 28.12.2021	Seeks to amend Notification No 1/2017- Union territory Tax (Rate) dated 28.06.2017
		14. Notification No. 19/2021-Union Territory tax (rate), dated 28.12.2021	Seeks to amend Notification No 2/2017- Union territory Tax (Rate) dated 28.06.2017
		15. Notification No. 20/2021-Union Territory tax (rate), dated 28.12.2021	Seeks to amend Notification No 21/2018- Union territory Tax (Rate) dated 26.07.2018
		16. Notification No. 21/2021-Union Territory tax (rate), dated 31.12.2021	Seeks to supersede notification 14/2021- UTT(R) and amend Notification No 1/2017- Union territory Tax (Rate) dated 28.06.2017

		17. Notification No. 22/2021-Union Territory tax (rate), dated 31.12.2021	Seeks to supersede notification 15/2021- UTT(R) and amend Notification No 11/2017- Union territory Tax (Rate) dated 28.06.2017.
		18. Notification No. 01/2022-Union Territory tax (rate), dated 31.03.2022	Seeks to amend notification No. 1/2017-Union Territory Tax (Rate)
		19. Notification No. 02/2022-Union Territory tax (rate), dated 31.03.2022	Seeks to provide for a concessional rate on intra state supply of bricks conditional to not availing the ITC, as recommended by GSTC in 45 th meeting
Notifications under IGST Act / IGST Rules	Integrated Tax (Rate)	1. Notification No. 06/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 08/2017- Integrated Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 45th meeting held on 17.09.2021.
		2. Notification No. 07/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 09/2017- Integrated Tax (Rate) so as to implement recommendations made by GST Council in its 45th meeting held on 17.09.2021.
		3. Notification No. 08/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 1/2017- Integrated Tax (Rate)
		4. Notification No. 09/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 2/2017- Integrated Tax (Rate)
		5. Notification No. 10/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 4/2017- Integrated Tax (Rate)

		6. Notification No. 11/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to amend notification No. 40/2017- Integrated Tax (Rate)
		7. Notification No. 12/2021-Integrated Tax (Rate), dated 30.09.2021	Seeks to exempt CGST on specified medicines used in COVID-19, up to 31st December, 2021
		8. Notification No. 13/2021-Integrated Tax (Rate), dated 27.10.2021	Seeks to amend Notification No 1/2017- Integrated Tax (Rate) dated 28.06.2017.
		9. Notification No. 14/2021-Integrated Tax (Rate), dated 18.11.2021	Seeks to further amend notification No. 01/2021-Integrated Tax (Rate) dated 28-06-2021.
		10. Notification No. 15/2021-Integrated Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 8/2017- Integrated Tax (Rate) dated 28.06.2017.
		11. Notification No. 16/2021-Integrated Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 9/2017- Integrated Tax (Rate) dated 28.06.2017.
		12. Notification No. 17/2021-Integrated Tax (Rate), dated 18.11.2021	Seeks to amend Notification No 14/2017- Integrated Tax (Rate) dated 28.06.2017.
		13. Notification No. 18/2021-Integrated Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 1/2017- Integrated Tax (Rate) dated 28.06.2017
		14. Notification No. 19/2021-Integrated Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 2/2017- Integrated Tax (Rate) dated 28.06.2017

		15. Notification No. 20/2021-Integrated Tax (Rate), dated 28.12.2021	Seeks to amend Notification No 22/2018- Integrated Tax (Rate) dated 26.07.2018
		16. Notification No. 21/2021-Integrated Tax (Rate), dated 31.12.2021	Seeks to supersede notification 14/2021- IT(R) dated 18.11.2021 and amend Notification No 1/2017-Integrated Tax (Rate) dated 28.06.2017
		17. Notification No. 22/2021-Integrated Tax (Rate), dated 31.12.2021	Seeks to supersede notification 15/2021- IT(R) dated 18.11.2021 and amend Notification No 8/2017-Integrated Tax (Rate) dated 28.06.2017
		18. Notification No. 01/2022-Integrated Tax (Rate), dated 31.03.2021	Seeks to amend notification No. 1/2017-Integrated Tax (Rate)
		19. Notification No. 02/2022-Integrated Tax (Rate), dated 31.03.2021	Seeks to provide for a concessional rate on interstate supply of bricks conditional to not availing the ITC, as recommended by GSTC in 45 th meeting
Circulars under CGST Act		1. Circular No. 159/15/2021-GST dated 20.09.2021	Clarification on doubts related to scope of “Intermediary”
		2. Circular No. 160/16/2021-GST dated 20.09.2021 along with corrigendum	Clarification in respect of certain GST related issues
		3. Circular No. 161/17/2021-GST dated 20.09.2021	Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act 2017
		4. Circular No. 162/18/2021-GST dated 25.09.2021	Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act.
		5. Circular No. 163/19/2021-GST dated 06.10.2021	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council

		in its 45th meeting held on 17th September, 2021 at Lucknow-reg.
	6. Circular No. 164/20/2021-GST dated 06.10.2021	Clarifications regarding applicable GST rates & exemptions on certain services.
	7. Circular No. 165/21/2021-GST dated 17.11.2021	Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of notification 14/2020- Central Tax dated 21st March, 2020
	8. Circular No. 166/22/2021-GST dated 17.11.2021	Circular on Clarification on refund related issues
	9. Circular No. 167/23/2021-GST dated 17.12.2021	GST on service supplied by restaurants through e-commerce operators-reg.
	10. Circular No. 168/24/2021-GST dated 30.12.2021	Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli

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

4. It is further informed that out of the Notifications and Circulars as detailed in para 2 above, certain Notifications and Circulars have been issued to implement the decisions of the GST Implementation Committee (GIC) taken during the period since the 45th meeting of the Council. The details of such decisions and relevant Notifications and Circulars issued to implement such decisions of the GIC are enclosed as **Annexure** to this Agenda Note.

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

I. The GST Implementation Committee (GIC) took certain decisions between 45th GST Council Meeting and 18.06.2022. Due to the urgency involved, most of the decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions taken are given below:

1. Decisions in the 41st Meeting of the GIC held on 25th October, 2021

1.1. *Agenda 1: Suspension of registration under sub-rule (2A) of rule 21A of the CGST Rules, 2017*

a. In the agenda note, it was mentioned that Vide Notification No. 94/2020-Central Tax dated 22.12.2020 sub-rule (2A) had been inserted in Rule 21A of the Central Goods and Services Tax Rules, 2017 (CGST Rules, 2017). The said clause is reproduced as under:

“(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

- a. *the details of outward supplies furnished in **FORM GSTR-1**; or*
- b. *the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1**,*

*or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in **FORM GST REG-31**, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.”*

b. It was highlighted that in terms of above rule, centralized suspension of registration through portal had been carried out on two previous occasions.

c. It was further proposed that **to bring in greater discipline amongst the taxpayers, registration of the taxpayers, who have not filed returns for 6 or more months, might be placed under suspension, centrally through the portal, on 1st of every month, on regular basis, irrespective of the turnover.** It was also proposed to have a system of automatic revocation of suspension provisionally, once all the pending returns are filed on the portal by the taxpayer.

d. It was stated that as per provisions of Section 29 of CGST Act 2017, the registration of a registered person, who does not file 6 or more monthly returns, or two or more quarterly returns, could be cancelled/ placed under suspension. Besides, the registration of the registered person could be suspended centrally through the common portal, as per provisions of Rule 21A(2A) of CGST Rules 2017, based on the criteria as recommended by the Council. Till now, such centralized suspension has been done on two occasions, with specific recommendation on both the occasions. **There may be a**

requirement of such centralized suspension through the portal, in such cases of default in return filing of returns for 6 or more months, on regular basis.

e. Since such centralized suspension of registration for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29, irrespective of turnover, may involve a large number of registrants, and may create operational difficulty in handling such large number of cases of cancellation by tax officers, the proposal of GSTN regarding a system of automatic revocation of suspension provisionally, once all the pending returns are filed on the portal by the taxpayer, merits consideration. Presently, such type of automatic unblocking of e-way bill and automatic unblocking of GSTR-1 on portal, without intervention of tax officers, is being done on filing of the defaulting returns by the taxpayers. **The said proposal of GSTN for automatic revocation of suspension has been deliberated by the Law Committee in its meeting dated 08.10.2021 and it was recommended to make relevant amendment in rule 21A(4) of the CGST Rules, such that, on filing of the pending returns, automatic revocation of suspension can be done by GST portal.**

f. An agenda for amendment in CGST Rules for **automatic revocation of suspension through the portal and procedure thereof, would be brought before GIC/ GST Council in the due course, in consultation with GSTN.** In the meantime, till such a functionality is developed by GSTN and the proposed rule is approved by GST Council and is notified, **GIC may like to recommend**, on a general basis, that the registration of the taxpayers, who have not filed 6 or more GSTR-3Bs for 6 or more months, above a specified threshold turnover, as may be recommended by the GIC, may be suspended on common portal as per Rule 21A(2A) of CGST Rules, on 1st of each of the months, on regular basis, without need of specific recommendation of GIC on each occasion separately.

g. **Decision:** The GIC approved the proposal that the registrations of the taxpayers, who have not filed GSTR 3B returns for 6 or more months, which is liable for cancellation under section 29 of CGST Act, may be suspended centrally through the GST portal on 1st of every month, under sub-rule (2A) of Rule 21A of CGST Rules, 2017, based on their turnover as below:

(A) Taxpayers where six or more monthly GSTR-3Bs have not been furnished and their turnover/ estimated turnover (AATO) in preceding financial year is more than Rs. 50 lakhs.

(B) Taxpayers where quarterly GSTR-3Bs have not been furnished for two or more quarters and their turnover/ estimated turnover (AATO) in preceding financial year is more than Rs.50 lakhs. Further, in case GSTN is able to generate the AATO for current year also, the decision may be read as “AATO in preceding FY or current Financial Year”.

h. **Implementation status :** The decision of GIC has been implemented and in first week of the month, the suspension activity of such taxpayers is done whose turnover/ estimated turnover (AATO) in preceding financial year is more than ₹ 50 lakh on the same PAN. The details of suspension activities are shared by GSTN with all States/ CBIC as and when this exercise is done.

1.2 Agenda 2 : Issuance of clarification on certain refund related issues

In the agenda note, it was stated that various representations had been received from the field formations and trade/industry seeking clarification on some of the issues relating to GST refunds which needs to be clarified to ensure uniformity in the implementation of the provisions of law and rules across the field formations. The issues are stated as under:

a. Refund under the category "Excess balance in Cash Ledger"

In this, it was stated that representations had been received from the trade/industry wherein they have raised concern regarding rejection of their refund claim pertaining to excess balance in electronic cash ledger on grounds of being time barred or excess cash balance being accumulated on account of credit of TDS/ TCS amount or non -submission of declarations and accordingly, request had been made for issuance of clarification regarding refunds pertaining to excess balance in electronic cash ledger in order to ensure the uniformity in the implementation of the provision of the rule across field formations.

b. Issue of time bar

i. Sub-section (1) of section 54 of the CGST Act, 2017 provides that an application for refund can be filed before the expiry of two years from the relevant date. Many refund claims pertaining to refund of excess balance in electronic cash ledger are being rejected on the ground of refund claim being time barred in terms of provision of sub-section (1) of section 54. The issue was also referred by the State of Gujarat during the Law Committee meeting held on 08.09.2021 wherein they informed that in some cases, field officers are rejecting refund of balance in the electronics cash ledger, by claiming that the refund claims are time barred, and therefore, clarification is required in respect of the same.

ii. Here, it would be pertinent to submit that the claim for refund of excess balance in electronic cash ledger, in accordance with the provisions of sub-section (6) of section 49, is to be made in accordance with the proviso to the sub-section (1) of section 54. Sub-section (6) of section 49 of CGST Act inter alia provides that the balance in the electronic cash ledger, after payment of tax, interest, penalty, fee or any other amount payable under the CGST Act or CGST Rules, may be refunded in accordance with the provisions of section 54. Sub-section (1) of section 54 originally envisaged that refund of any balance in electronic cash ledger, in accordance with the provisions of sub-section (6) of section 49, would operate through the return filing mechanism. The scheme of refund in such cases was intended to be granted to the registered person automatically through filing of the return, without intervention of the tax office, and without need of filing a separate claim for refund. It is, therefore, evident that the scheme of refund in such cases did not provide for any check about time limit, within which the return can be filed, including the time limit specified as per sub-section (1) of section 54.

iii. It was also mentioned that even explanation (2) under section 54, where "relevant date" had been defined, does not cover any situation covering such refund claims of excess cash balance. Clause (h) of explanation 2 under section 54 mentions date of payment of tax, as relevant date. However, the amount deposited in electronic cash ledger is in nature of deposit only and had not yet assumed nature of "tax". Only after debit of an amount from electronic cash ledger, it assumes nature of tax/ interest/ fee/ penalty, etc. Accordingly, refund of excess cash balance in electronic cash ledger is not covered in definition of "relevant date", and it is clear that no time limit had been prescribed in section 54 in respect of refund claims on such amount of excess cash balance.

iv. However, as GSTR-3 return mechanism which provided for such refund of excess cash balance could not be implemented, such refunds of excess cash balance in electronic cash ledger are being claimed through normal refund route of filing refund applications in FORM RFD-01/ 01A. Due to this departure, the proper officers for sanction of refund are under the impression that all provisions, which are applicable to a normal refund claim, shall be invariably applicable in such cases of refund also. Therefore, if approved, a clarification might be issued clarifying that the condition of filing of refund claim before the expiry of two years from the relevant date, is not applicable in cases of refund of excess balance in electronic cash ledger, **as the amount available in electronic cash ledger is not akin to tax but it is in nature of deposit.** The issue was also discussed in LC wherein it was decided that

though there does not appear to be any ambiguity that no time limit is applicable in respect of such refund claims. However, the same may be clarified through a circular.

c. Submission of Certification/Declaration under Rule 89(2)(l) or 89(2)(m)

i. The question of passing on the burden of tax to the customer would only arise in cases where the refund of tax paid was claimed. As stated above, the amount available in electronic cash ledger was not akin to tax but it was in nature mere deposit, which was lying with the government, and therefore, the question of passing on the burden of tax in such cases to any other person does not arise. Therefore, any demand for furnishing of certification/declaration under Rule 89(2)(l) or 89(2)(m) is unjustifiable.

ii. The proposal before the committee was that a clarification may be issued stating that furnishing of certification/declaration under Rule 89(2)(l) or 89(2)(m) is not required in cases of excess balance in electronic cash ledger and no such refund claims shall be rejected on the grounds of non-furnishing of such certification/declaration.

d. Refund of TDS/TCS deposited in the electronic cash ledger

i. Representations had been received that the tax officers, in some cases, are holding/ rejecting refund claims of the taxpayers for excess cash balance in electronic cash ledger, on the ground that the said amount of excess cash balance includes the amount of TDS/ TCS credited to electronic cash ledger, and that the said amount of TDS/ TCS is required to be utilized only for discharging their tax liability and cannot be refunded to the taxpayer as excess cash balance.

ii. In this regard, it is submitted that the intention behind bringing the provisions of TDS/TCS in the GST Law was to keep a track of the supplies being made by the suppliers to Government Department/ PSUs/ Statutory Bodies, etc and through E-commerce operator, and to ensure that such supplies are declared by the suppliers correctly in their outward supplies. The intention of the TDS/TCS provisions is not to collect tax on such supplies but to ensure that supplies made through E-commerce operator or to Government Departments etc. are duly reported. However, the tax liability of the supplies made by such registered persons, can be discharged by the concerned registered persons, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per their choice, and availability of balance in the said ledgers.

iii. In view of the above, the view being taken by some of the field formations that the amount of TDS/ TCS credited to their electronic cash ledger, can only be utilized for payment of tax liability by the registered persons, and no refund of such amount can be claimed as excess cash balance in electronic cash ledger, after discharge of the due tax liability, was without any basis. Therefore, refund of TDS/TCS deposited in electronic cash ledger should not be rejected merely on the ground that such TDS/ TCS amount needs to be utilised only for tax payment. Accordingly, if approved, a clarification may be issued stating that refund of TDS/TCS deposited in electronic cash ledger may be dealt in a manner similar to other refunds of excess balance in cash ledger.

e. Relevant date in cases of refund by recipient of deemed export.

i. While discussing the agenda regarding amendment in Section 54 of the CGST Act, 2017 with respect to insertion of provision relating to relevant date for zero-rated supplies made to SEZ Developer/Unit on 08.09.2021, a reference was made by State of Gujarat wherein they had raised doubts whether relevant date for the refund of tax paid on supplies regarded as deemed export is to be determined as

per clause (b) of Explanation (2) under Section 54 of CGST Act, 2017 in those cases also where the refund claim is filed by the recipient.

ii. Clause (b) of Explanation (2) under Section 54 of the CGST Act, 2017, provides for relevant date for refund on account of supply of goods regarded as deemed export, which is reproduced below:

“(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;”

On perusal of the above, it can be seen that the aforesaid provision does not refer to supplier or recipient but it only states that in case of supply of goods regarded as deemed export, the relevant date would be the date on which return relating to such supplies is furnished.

iii. Further, reference was drawn to third proviso to sub-rule (1) of rule 89 which provides that the refund on account of supply of goods regarded as deemed exports might be filed by either the recipient or the supplier. The relevant rule is reproduced below:

“Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

- a. *the recipient of deemed export supplies; or*
- b. *the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund”*

iv. In view of the above, it was stated that Clause (b) of Explanation (2) under Section 54 would cover filing of refund by both supplier and recipient. It was also said that the issue was also discussed in LC wherein it was decided that there is no doubt with respect to applicability of clause (b) of the Explanation (2) of Section 54 in case of refund by recipient of deemed export supply and the same may be clarified through a circular.

v. It was mentioned that doubt had been raised that even if clause (b) of Explanation (2) under Section 54 covers filing of refund by both supplier and recipient, whether the date of filing return in clause (b) would be the date on which return is filed by supplier or the date of filing of return by the recipient. In this regard, it would be imperative to mention that in case of refund on account of supplies regarded as deemed export, the refund of tax paid was available i.e. the refund in case of deemed export supply would be available only after the tax on such deemed export supply has been paid to the Government. Therefore, before refunding the tax paid on deemed export supply, it has to be ascertained/ensured that tax on such supplies had actually paid and as the tax on any supply was to be paid by the supplier, thus, relevant date, even when the refund on account of deemed export supplies was filed by recipient, would be the date of filing of return by the supplier. Further, it was the supplier who is required to report the supplies in his return and not the recipient. Therefore, the relevant date would be the date of filing of return by the supplier.

vi. The proposal before GIC was that it may be clarified that cases of refund by recipient of deemed export would also be covered under clause (b) of explanation (2) of section 54 and the relevant date in such cases would be date of filing of return by the supplier of the goods regarded as deemed export.

f. Lastly, it was stated that an agenda note along with the draft circular for clarifying the aforesaid refund related issues was placed before the Law Committee in its meeting held on 08.10.2021 wherein the Law Committee approved the same.

g. **Decision:** The GIC approved all the proposals pertaining to issuance of clarification on refunds under the category “excess balance in cash ledger” and the issue of relevant date in cases of refund claim by recipient of deemed export.

h. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Circular No. 166/22/2021-GST dated 17.11.2021.

1.3 Agenda 3 : Notifying changes in FORM GST DRC-03

a. In the agenda note it was stated that Law Committee, in its meeting held on 09.09.2020, had recommended changes in various DRC forms and in FORM GST ASMT-16, pertaining to insertion of ‘Fee’ column in these Forms. Based on the recommendations of the 42nd meeting of the GST Council, these changes were notified vide Notification No. 79/2020-GST dated 15.10.2020 in the relevant forms. However, with respect to FORM GST DRC-03, it was decided in the said Law Committee meeting that GSTN would prepare revised format of FORM GST DRC-03 by changing the labels at relevant places. It was further stated that GSTN had now submitted the revised format of FORM GST DRC-03. Further, GSTN had also informed that since DRC-03 with late fee modification is UAT signed off and likely to be rolled out in production, the new format might be notified as soon as possible. The proposal before GIC was to approve the new format of FORM GST DRC-03.

b. **Decision:** The GIC approved the proposal for notifying changes in the FORM GST DRC-03 as proposed, with the modification that the word ‘enforcement’ to be replaced with the word ‘inspection’.

c. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 37/2021-Central Tax dated 01.12.2021.

1.4 Agenda 4 : Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices and compliance of Notification No.14/2020 – Central Tax dated 21st March, 2020

a. In the agenda note attention was invited to the Notification No. 14/2020- Central Tax dated 21st March 2020, as amended by notification no 71/2020- Central Tax dated 30th September 2020 as per which an invoice issued by a registered person, whose aggregate turnover in any of the previous financial year exceeds five hundred crore rupees, to an unregistered person, is required to have a dynamic Quick Response (QR) code.

b. Vide Circular No. 156/12/2021 dated 21st June 2021, clarifications had been issued on the various issues regarding applicability of Dynamic QR code on B2C invoices. Vide S. No 4 of the said Circular, it had been clarified that QR code shall not be required in case of services effected to a recipient outside India even where the place of supply of such service is in India (i.e., such supply does not qualify as

export of service as per GST law), and payment was received by supplier in foreign currency, through RBI approved mediums.

Relevant extract of the circular is reproduced below:

<p>In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?</p>	<p>No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier</p>
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c. It was further highlighted to GIC that representations had been received that in some cases, though the service recipient was located outside India, and place of supply of the service was in India, the payment was received by the service provider located in India not in foreign exchange, but through other modes approved by RBI, like Special Non-Resident Rupee Account (SNRR A/c) or similar other rupee-based account. In such cases, the supplier would not be fulfilling the condition specified in S. No. 4 of the Circular No. 156/12/2021 dated 21st June 2021, and accordingly, would be required to print dynamic QR code on the invoice. It had been represented that relaxation from printing dynamic QR code on the invoices in such cases should be available if the payment was received through any RBI approved mode of payment, and not necessarily in foreign exchange.

d. It was stated by GSTPW, CBIC that the matter had been examined and it was observed that such issue may be faced by any entity, which receives payments from recipients outside India through RBI approved mediums but NOT in foreign exchange necessarily, and where the place of supply of service was in India as per the provisions of the IGST Act. As per present wording of S. No. 4 of Circular No. 156/12/2021 dated 21st June 2021, such suppliers would not be benefitted by relaxation granted from printing of dynamic QR code on the invoices, as the payment was not received in foreign exchange. The intention of clarification as per S. No. 4 in the said circular was not to deny relaxation in such cases, where the payment is received by the supplier as per RBI approved mode, other than foreign exchange.

e. Accordingly, it was proposed before GIC that Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June, 2021 might be substituted by the following entry:

<p>4. " In cases, where receiver of services is located outside India, and payment is being received by the supplier of services through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the</p>	<p>No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as</p>
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Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?	such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."
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f. It was also informed by GSTPW, CBIC that the Law Committee in its meeting held on 08.10.2021 had approved the issuance of a Circular to clarify the aforesaid issue by substituting the Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21st June 2021.

g. **Decision:** The GIC approved the proposal to issue a clarification in respect of applicability of Dynamic QR Code as proposed above.

h. **Implementation status :** The recommendation of GIC has been implemented by way of issuance of Circular No. 165/21/2021-GST dated 17.11.2021.

2. Decision of GIC by Circulation on 17th November, 2021 on notifying changes in Rule 137 of CGST Rules, 2017.

a. In the agenda note received from GSTPW, CBIC, it was mentioned that Anti-profiteering provisions were introduced for the first time in the indirect tax regime of the country and Section 171 of the Central Goods & Service Tax (CGST) Act, 2017 deals with anti-profiteering. As per Section 171 of CGST Act, read with Rule 122 and Rule 137 of CGST Rules, 2017, National Anti-Profiteering Authority (NAA) has been constituted to examine whether input tax credit availed by the registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in price of goods or services or both supplied by him and whether the benefit of reduced rate of tax or the input tax credit has been passed to recipient by way of commensurate reduction in prices. In case NAA finds any profiteering by the registered person, it may order inter alia reduction in prices, commensurate benefit to recipient, impose penalty on the registered person and cancellation of registration of the registered person. In terms of Rule 137 of the CGST Rules, 2017, the tenure of NAA is only four years, from the date on which the Chairman enters upon his office, unless the Council recommends otherwise.

b. The proposal before the GIC was that the tenure of National Anti-profiteering authority as per the present Rule 137 is expiring on 30.11.2021. The matter of extension of tenure of National Anti-Profiteering Authority (NAA) was deliberated by GST Council in its 45th Meeting held on 17th September, 2021. The Council recommended extending the tenure of NAA by one year beyond 30.11.2021.

c. **Decision:** The members of the GIC had approved the above proposal.

d. **Implementation status :** The recommendation of GIC has been implemented by way of issuance of Notification No. 37/2021-Central Tax dated 01.12.2021.

3. Decision of GIC by Circulation on 29th November, 2021 on GST on service supplied by restaurants through E-Commerce operators

a. In the agenda note it was stated that the GST Council in its 45th meeting held on 17th September, 2021 recommended to notify “Restaurant Service” under section 9(5) of the CGST Act, 2017 w.e.f 01.01.2022, i.e. to make Electronic Commerce Operators (ECOs) liable to pay GST on ‘restaurant service’ supplied through them. Accordingly, notification No. 17/2021 Central Tax (Rate) dated 18.11.2021 under section 9(5) of CGST Act, 2017 and corresponding notifications under IGST Act and UTGST Act have been issued which will come into force w.e.f 01.01.2022.

b. It was further stated that certain representations have been received from ECOs such as Swiggy and Zomato requesting for clarification regarding modalities or issues related to compliance to these notifications. These issues were placed before Fitment Committee in its meeting held on 25.11.2021. After due discussion and deliberation, Fitment Committee recommended to issue a clarification on the issues raised by stakeholders. As some of the issues raised were procedural in nature, the Fitment Committee referred the draft clarification to Law Committee for its consideration. On 26.11.2021, the Law Committee deliberated upon the draft clarification including procedural aspects and made some suggestions.

c. It was also highlighted that since the change is coming into force from 01.01.2022, it is imperative that we issue clarification expeditiously on the modalities and compliance related aspects, as it might require software up-gradation or/and other preparations by ECOs in different facets of their business to ensure smooth implementation of the notifications w.e.f 01.01.2022.

d. Accordingly, a draft circular was prepared clarifying the following issues:

Sl No	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As ‘restaurant service’ has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.

3.	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	Yes. ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
4.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
5.	Can the supplies of restaurant service made through ECOs be recorded as inward supply of ECOs (liable to reverse charge) in GSTR 3B?	No. ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge).
6.	Would ECOs be liable to reverse proportional input tax credit on his input goods and services for the reason that input tax credit is not admissible on 'restaurant service'?	ECO provides their own services as an electronic platform and an intermediary for which it would acquire inputs/input service on which ECO avails ITC. The ECO charges commission/fee etc for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (to say restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
7.	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	No. As stated above, the liability of payment of tax by ECO as per section 9(5) shall be discharged in cash.
8.	Would supply of goods other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account. On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies.

		Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such services.
9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10.	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc. in the GST return.	<p>A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B.</p> <p>The ECO may, on services notified under section 9 (5) of the CGST Act, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being.</p> <p>Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose.</p> <p>Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.</p>

e. **Decision:** The members of the GIC had approved the above proposal.

f. **Implementation status:** The decision of GIC was implemented by way of issuance of Circular No. 167 / 23 /2021 - GST dated 17th December, 2021.

4. Decision of GIC by Circulation on 15th & 21st December, 2021

4.1 *Agenda 1: Recording of UIN on invoices for foreign Diplomatic Missions/ UN organizations.*

a. In the agenda note, it was mentioned that Section 55 of the CGST Act, 2017 provides that the Government may, on the recommendations of the Council, by notification, specify any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of

foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them. Accordingly, vide Notification No. 16/2017- Central Tax (Rate) dated 28.06.2017, the following agencies have been notified by the GST Council under Section 55 of the CGST Act, to claim a refund of taxes paid on the notified supplies of goods or services or both received by them:

1. Any specialized agency of the United Nations Organization,
2. Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
3. Consulate or Embassy of foreign countries and
4. Any other person or class of persons as may be specified.

b. It was also mentioned that the agencies notified under the provisions of Section 55 of the CGST Act, 2017 for claiming refund are granted Unique Identity Number (UIN) in terms of the provisions of section 25(9) of the CGST Act, 2017 read with rule 17 of the CGST Rules, 2017. Refund for the Foreign Diplomatic Missions is given for the tax paid on their purchases based on the terms of reciprocity which are specific to countries. The refund claim is subject to such conditions and restrictions as may be prescribed.

c. Rule 95 of the CGST Rules, 2017 provides for the procedure of refund of taxes to UINs and the conditions for grant of such refund. The said rule provides as under:

Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal or otherwise either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR11. An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.

The refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice

(b) name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice; and

The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule. Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

d. From the perusal of the sub-rule (3) of rule 95 of CGST Rules, it was noted that the refund of tax paid by the UN missions/ Embassies, etc. having UIN is available only if the UIN number of the applicant is mentioned on the tax invoice. It was also stated that the recording of UIN on the invoice is a necessary condition under rule 46 of the CGST Rules, 2017.

e. It was further stated that it had been reported that many of the suppliers/vendors had been declining supply of Goods or services to Foreign Diplomatic Missions/ UN Organizations on the premise that such UIN was not a valid GSTIN and therefore cannot be recorded in their invoices. Due to such non-compliance of recording of UIN, Foreign Diplomatic Missions/ UN Organizations weren't eligible for refund on such invoices, on which their UIN number is not recorded. Considering the difficulty faced

by Foreign Diplomatic Missions/ UN Organizations in availing refund of tax paid in respect of such invoices, it was decided to waive the requirement of recording of UIN number on the invoices for the purpose of availment of refund by the Foreign Diplomatic Missions/ UN Organizations, initially for the period 01.07.2017 to 31.03.2018 and Year 2018-19 vide Circular No. 43/17/2018-GST dated 13.04.2018 and Circular No.63/37/2018-GST dated 14.09.2018 respectively, subject to the condition that the hard copy of such invoices submitted for claim of refund shall be attested by the authorized representative of the said Foreign Diplomatic missions/ UN Organization. Subsequently, after noticing that the said difficulty still continued due to non- recording of UIN by some retailers/ suppliers in respect of supplies made to Foreign Diplomatic Missions/ UN Organizations, the waiver was continued for Year 2019-20 and 2020-21 as well (i.e., up to 31.03.2021) vide corrigendum dated 06.09.2019 to the Circular No.63/37/2018-GST dated 14.09.2018 and Circular No. 144/14/2020-GST dated 15.12.2020 respectively.

f. It was further stated that the last time, when the file for approval of GIC decision for extension of the above said waiver for the Year 2020-21, up to period 31.03.2021, was placed for approval of Hon'ble Finance Minister, Hon'ble FM while approving GIC decision for extension of waiver till March 2021, had desired that a permanent system be put in place for this.

g. In this regard, GSTN was requested to have a discussion with Ministry of External Affairs to take necessary action in this regard before the expiry of term of waiver given for non-recording of UIN on invoices i.e., by March, 2021.

h. GSTPW, CBIC stated that GSTN vide letter dated 23.07.2021 had informed that the UINs of Embassies/ Consulate don't have PAN registration in India. Therefore, the registration number metrics of UINs are different from the GSTINs of normal taxpayer. However, GST system does not validate the invoices to the UINs and declared under GSTR-11 or RFD-10 with the supplier invoices declared under GSTR-1.

i. A meeting was taken by GSTPW, CBIC on 30.11.2021 with the representatives of GSTN, MEA, Retailers Association of India and some major retailers, especially those who were dealing with UIN entities/holders, to discuss the above issue.

j. During the meeting, it was clarified by GSTN that there is no issue pertaining to any technological restriction on the portal regarding declaration of UIN by the suppliers on the invoices issued to the Embassies/ UN missions etc. Besides, there is also no validation on the portal, either in respect of the refund application filed by the Embassies/ UN missions, etc. in FORM RFD-10 or in the statement of inward supplies in FORM GSTR-11 to be filed by such entities. Besides, both GSTIN and UIN are 15 digits and have similar alpha-numeric formats and therefore, there should not be any technical challenge before retailers/ suppliers in displaying UINs of Embassies/ UN Missions in the invoices.

k. Retailer Association of India informed that the most of the major retailers are already complying with the requirement of display of UIN in the invoices issued to UIN holders. However, there are some retailers who have not been able to make a provision for display of UIN on the invoices in their system. The retailers present during the meeting informed that in cases of some retailers almost all the supplies are B2C and accordingly, they have not made any provision in their system for display of either GSTIN or UIN of the recipients. It will be highly uneconomical for them for changing their systems for displaying UINs of recipients for meagre number of buyers and they would rather prefer to lose such a small number of customers, instead of incurring huge expenses for overhaul of their systems. It was

also stated that while most of the big retailers have made the provisions in their systems to capture the details of UIN but mostly small vendors and grocery stores might not have such a provision for display of UIN on invoices.

l. Data regarding refunds to UIN since 01.07.2017 was sought from GSTN. As per the data, it is observed that a total refund amount of Rs 1335.75 cr. has been claimed by the UIN entities u/s 55 of CGST Act during the period from 01.07.2017 till 30.09.2021, which amounts to an average of about Rs 320 Crore per year. It may be pertinent to mention that the average number of UIN holders claiming refund under section 55 of the CGST Act is approximately 250.

m. The data regarding the percentage of invoices not having UIN number in the refund claims of UIN holder u/s 55 has been taken from CGST Delhi South Commissionerate, which is the nodal office for UIN refunds for Delhi and handles the maximum number of UIN refunds in the country. As per data provided by them vide email dated 06.12.2021 in respect of top 20 UIN refund claimants for the quarter Jan-march 2021, the percentage amount of refund claimed by Embassies/ UN missions, etc., involved in respect of the invoices not containing details of UIN numbers, is about 0.324 percentage of total refund amount claimed.

n. Further it was clarified that in view of the above, it is felt that though the amount involved in the refund claims in respect of invoices, which do not contain details of UIN number, is a very small amount and there does not appear to be any major revenue risk if the present system of allowing refund to UINs on such invoices on the basis of attestation on hard copy of such invoices by Authorized representative of the UIN entity is continued. On the basis of feedback received during meeting with retailers on 30.11.2021, it is felt that it may be difficult for all the retailers, especially the smaller retailers, to make the necessary changes in their accounting software for capturing and displaying UIN on the invoices.

o. Therefore, considering this ground reality and the difficulties faced by Foreign Diplomatic Missions/ UN Organizations in getting the refund in respect of invoices which do not contain the details of UIN, as well as MEA's request for waiver of the requirement of mandatory mentioning of UIN on invoices, it is proposed that we may consider to insert a proviso in Rule 95 (3) with effect from 01.04.2021 as below:

RULE 95: Refund of tax to certain persons

(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued under section 55 shall apply for refund in FORM GST RFD 10 once in every quarter, electronically on the common portal or otherwise, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR 11.

(2) An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD 02.

(3) The refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice;

(b) name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice

(c) Such other restrictions or conditions as may be specified in the notification are satisfied.

Provided that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10.

(4) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

(5) Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

p. Lastly, it was stated that the Agenda was placed before Law Committee in its meeting dated 08.12.2021 for approval and the same had been approved by LC.

q. **Decision:** The members of the GIC approved the agenda item.

r. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 40/2021-Central Tax dated 29.12.2021.

4.2 Agenda 2 : *Changes in Rules and Forms consequent to notification of amended Sections related to enforcement in CGST Act, 2017*

a. In the agenda, note it was stated that various amendments in the provisions of Central Goods and Services Tax Act, 2017 (“CGST Act” in short) were made vide the Finance Act, 2021. As per recommendations of GST Council in 45th Meeting, the amended provisions of the CGST Act have to be made effective with effect from 01.01.2022. Consequent to the amendment in various provisions of the CGST Act, corresponding rules and forms relating to following sections of the CGST Act, were also required to be amended:

- I. The amended provisions of section 129 and 130, delinks these two sections. Further, amended provisions of section 129 (6) provides for sale of detained or seized goods in the prescribed manner and time to recover the penalty payable under sub-section (3) of section 129, if person fails to pay the amount of penalty within fifteen days of order issued under sub-section (3) of section 129.
- II. Also, a proviso has been added in sub-section (6) of Section 107 of the CGST Act, 2017 providing for pre-deposit of twenty five percent of penalty as per order under sub-section (3) of Section 129 for filing an appeal against the said order before the appellate authority.
- III. Section 83 is also being amended providing for attachment of property provisionally belonging to the beneficiary referred in sub-section (1A) of Section 122 of CGST Act, 2017.

b. It was further stated that the corresponding amendment in CGST Rules, 2017 would be required in rule 142 (3), rule 142(5), rule 154, rule 159, and insertion of a new rule for recovery of penalty by sale of goods or conveyance detained or seized in transit (Rule 144A). In addition, changes would also be required in FORM DRC-10, FORM DRC-11, FORM DRC-22 and FORM APL-01. Besides, it was also

proposed to prescribe a new FORM DRC- 22A for enabling the person, whose property has been provisionally attached, to file an objection to the order of provisional attachment as per provision in sub-rule (5) of Rule 159 of CGST Rules, 2017. FORM DRC-23 also needs some modification to align the same with the provisions of the Act.

c. Lastly, it was mentioned that the Law Committee in its meetings held on 13th December 2021 had approved the proposed amendments to the CGST Rules, 2017.

d. **Decision:** The members of the GIC approved the agenda item.

e. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 40/2021-Central Tax dated 29.12.2021

4.3 Agenda 3: *Prescribing mechanism for filing of refund claim by taxpayers registered in erstwhile Union Territory of Daman & Diu post merger with Dadra & Nagar Haveli*

a. An agenda note was sent by GSTN regarding issue faced by the taxpayers of erstwhile Union Territory (UT) of Daman & Diu in claiming refund in view of merger of UT of Daman & Diu with UT of Dadra & Nagar Haveli.

b. In the said agenda note reference was invited to a letter GSTN received from the Commissioner, Central GST, Diu wherein he informed that due to merger of UT of Daman & Diu with UT of Dadra & Nagar Haveli, the taxpayers registered under the erstwhile UT of Daman & Diu are unable to file refund for the period prior to merger. The state code of the GSTINs of taxpayers of erstwhile Daman & Diu UT has changed from 25 to 26 and these taxpayers have transferred their ITC balance from the electronic credit ledger of the old GSTIN, by reversing it through last GSTR-3B filed prior to merger, to the new GSTIN, by availing the ITC through the first GSTR-3B filed post-merger. Now, when such taxpayers are trying to apply for refund on account of zero-rated supplies or inverted duty structure for the period prior to merger from the old GSTIN, they are unable to do as there is no balance available in the electronic credit ledger as the same has already been transferred to the electronic credit ledger of the new GSTIN. They are also unable to apply for refund from the new GSTIN because all the invoices bear the old GSTIN and the system has certain validations which do not allow the refund application to be filed from the new GSTIN for the period prior to the merger.

c. Due to the aforesaid facts, it has been submitted that the ITC transferred to the new GSTIN will always remain as balance and the impacted taxpayers would not be able to claim refund of ITC on account of zero-rated supply/inverted duty belonging to the period prior to merger. To enable such taxpayers to file refund application of unutilised ITC on account of zero-rated supply/inverted duty for period prior to merger using their new GSTINs, the GSTN has proposed the following process for the categories of refund where debit of ITC is required, the impacted taxpayer will be allowed to file the refund application under 'Any Other' category in the new GSTIN. In the Remarks column of the application, the taxpayer will enter 'Refund of ITC on account of goods/services supplied at Zero rated/Inverted duty structure for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. At this stage, the taxpayer will not make any debit entry in his electronic credit ledger. Once the tax officer is satisfied with the correctness of the refund claim, he/she may direct the taxpayer to debit the ITC from the electronic credit ledger by using DRC 03. For example, if the tax officer is satisfied that out of Rs 10000, only Rs 5000 is liable to be refunded, he/she will direct the taxpayer to

make a debit. Once the taxpayer has debited the ITC, the tax officer may proceed with sanction and disbursement of the final refund amount.

d. For the refund categories where debit of ITC is not required, GSTN has suggested that the taxpayer can be allowed to file refund application under the category “Any others” mentioning the reason in the Remarks field. The tax officer may proceed ahead to scrutinize the application as usual. Though the taxpayer could file such refund with the help of his original GSTIN but officers may not be able to reverse the ITC using PMT 03 in case refund is to be disbursed in the form of ITC.

e. GSTN had further informed that the portal will not allow the taxpayer to file the refund application from his old GSTIN as no ITC would be available in the electronic credit ledger of the old GSTIN. GSTN has mentioned that the approach suggested above is quite secure besides being practical and easy to implement. GSTN has prepared a draft circular for clarifying the manner in which refund claim for the period prior to merger can be filed by such taxpayers.

f. Lastly, it was stated that the agenda note along with the draft circular was placed before the Law Committee in its meeting held on 18.11.2021, wherein the aforesaid proposal was approved.

g. **Decision:** The members of the GIC approved the agenda item.

h. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Circular No. 168/24/2021-GST dated 30.12.2021

4.4 Agenda 4: *Extension of due date for filing Annual Return for financial year 2020-21*

a. In the agenda note it was stated that the due date for filing Annual Returns specified under section 44 of the Central Goods and Services Tax Act, 2017 (in short “CGST Act”) read with rule 80 of the Central Goods and Services Tax Rules, 2017 (in short “CGST Rules”) for the financial year 2020-21 is 31st December 2021.

b. It might be noted that the amendments to section 35(5) and section 44, as per section 110 and 111 of the Finance Act, 2021, were notified w.e.f. 1st August, 2021 vide Notification No. 29/2021-Central Tax dated 30.07.2021. Vide Notification No. 30/2021-Central Tax dated 30.07.2021, exemption from FORM GSTR-9C was provided to taxpayers having AATO up to Rs. 5 crores. Moreover, vide Notification No. 31/2021-Central Tax dated 30.07.2021, taxpayers having AATO up to Rs. 2 crores were exempted from the requirement of furnishing annual return for FY 2020-21. FORM GSTR-9 and FORM GSTR-9C for FY 2020-21 were also made available on the portal in August 2021.

c. It was further stated that the number of representations have been received during the last week from various trade associations and tax practitioners representing the following:

Due date of statutory compliances for FY 2020-21 (AY 2021-22) under the Income Tax Act, 1961 and the Companies Act, 2013 have been extended.

Due date to furnish tax audit report under Section 44AB of Income Tax Act, 1961 has been extended from 30th September 2021 to 15th January, 2022. Further, due date of furnishing of Income Tax return in such cases has been extended to 15th February 2022.

Due date for filing various returns/forms for the Financial Year 2020-21 under the Companies Act, 2013 also stands extended to 31st December 2021.

d. It was also stated that there were representations that GST Annual returns could be finalised only after completion of tax audit/ company audit work to ensure the correctness of turnover to be reported in GST Annual returns along with ITC claimed and to determine whether any balance tax is payable by the taxpayer.

e. GSTPW, CBIC stated that the above issue had been examined. In terms of rule 80 (3) of the CGST Rules, read with section 44 of the CGST Act, a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C, reconciling the value of supplies declared in the return furnished for the financial year 2020-21, with the audited annual financial statement for financial year 2020-21, is required to be furnished on or before 31st December, 2021. However, considering that the due date of furnishing tax audit report in Income Tax Act has been extended to 15th January 2022, and also due date for filing various returns/ forms under Companies Act 2013 has been extended till 31st December 2021, it may be desirable that to extend the due date for furnishing the annual return under GST Laws beyond 31st December, 2021 to enable proper reconciliation of value of supplies declared in the return under CGST Act for the financial year 2020-21, with the audited annual financial statement for financial year 2020-21.

f. **Decision:** The members of the GIC approved the agenda item.

g. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 40/2021-Central Tax dated 29.12.2021.

5. **Decision of GIC by Circulation dated 12th January, 2022 on Ad hoc settlement of IGST**

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

17. Apportionment of tax and settlement of funds. —

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

b. It was further stated that as per the accounts made available by the CGA, balance of about ₹ 35,000 crore is available in the IGST account by end-December. Therefore, it is proposed to apportion ₹ 35,000 crore on ad-hoc basis, 50% to Centre and 50% to States/UTs. This will reduce the revenue gap of States/UTs and, therefore, the compensation required as well.

c. **Decision:** The members of the GIC approved the agenda item.

6. **Decision of GIC by circulation on 4 February, 2022 on lowering of threshold of generation of e-invoices up to turnover limit of ₹ 20 crore and above**

a. In the agenda note it was mentioned that GSTN vide email dated 02.12.2021 had informed that now GSTN/ NIC are in preparedness for lowering of threshold of generation of e-invoices up to turnover limit of INR 20 crore and above.

b. Further it was stated that GST Council, in its 37th meeting held on 20th September 2019, had recommended the roll out of e-invoicing in a phased manner. Accordingly, electronic invoicing system was introduced from 01.10.2020 for taxpayers with turnover of more than ₹ 500 crores in any preceding financial year from 2017-18 onwards for B2B transactions and for export invoices. The same was extended for taxpayers with turnover of more than ₹ 100 crores from 01.01.2021. Further, vide notification No. 05/2021 dated 08.03.2021, the same had been extended for taxpayers with turnover of more than ₹ 50 crores from 01.04.2021.

c. GSTPW, CBIC stated that data had been received from GSTN vide email dated 18.12.2021 related to number of taxpayers along with their turnover and the same is stated as under:

Summary of Slab wise PAN level AATO of 2020-21		
Turnover Slab	No. of PAN	No. of GSTINS
20 Cr to 50 Cr	1,53,500	2,19,156
25 Cr to 50 Cr	1,02,039	1,50,064
30 Cr to 50 Cr	67,895	1,02,441
50 Cr to 100Cr	48,217	86,963
100 Cr to 500Cr	35,154	1,00,635
Above 500Cr	8,912	70,800

d. Further the agenda note highlighted that E-invoice has been one of the major reforms taken by the Government which is beneficial for both tax administration as well as trade. It helps taxpayers in backward integration and automation of tax relevant processes, and real-time data update on the GSTN system and thereby, drastically reducing the time taken in filing the returns. Therefore, it is proposed that next phase of e- invoicing may be rolled out. Taxpayers with annual turnover of more than INR 20 Crore in any preceding financial year from 2017-18 onwards may be brought under the ambit of e-invoice for B2B transactions and for export invoices in the fourth phase as per capacity of GSTN/NIC.

e. Further, sufficient window of 2-3 months may be provided to taxpayers to make necessary IT changes as well as for NIC to enable the specified taxpayers on sandbox for testing. GSTPW, CBIC stated that data suggests that approximately 2,19,156 GSTINs have AATO between INR 20 Cr to 50 Cr who would be impacted by the decision. Accordingly, it is proposed that this provision for lowering threshold for issuance of e-invoice to INR 20 crore may be made applicable with effect from 1st April 2022 to provide sufficient time to taxpayers as well as NIC to make necessary preparations.

f. **Decision:** The members of the GIC approved the agenda item.

g. **Implementation status:** The recommendation of GIC has been implemented by way of issuance of Notification No. 01/2022-Central Tax dated 24.02.2022.

7. Decision of GIC by circulation on 23rd March, 2022 on deferring e-Wallet Scheme and extending exemption from IGST and Cess on Imports of Goods under AA/EPCG/ EOU for further period of three months till 30.06.2022

a. In the agenda note it was stated that it might be recalled that the implementation of e-Wallet scheme, as recommended by the Council in its 22nd meeting, has been deferred periodically with the approval of GST Council. As of now, the same has been deferred till 31.03.2022 and consequently exemption from IGST and Cess on imports of goods under AA/EPCG/ EOU have been provided till 31.03.2022. However, Hon'ble Finance Minister while permitting the extension of the exemption from payment of IGST/Cess etc. on imports under AA/EPCG/EOU Schemes up to 31.03.2022, had directed to look into the technical issues related to e-wallet.

b. It was further stated that the Directorate General of Export Promotion (DGEP) while examining the issue has observed that the scale of IT systems to implement the e-wallet would be huge and complex with numerous linkages between DGFT, GSTN, ICES, Customs, supporting manufacturers, BRC module etc. There would be further complexities in Return and Accounting system of payment etc. and all these would add extra burden upon compliance requirement. Further, there would be complexity in settlement in case part payment is done through e-wallet and part through cash/ITC ledger. The creation of 'virtual credit' in the e-wallets may be required to be synchronized with the RBI regulations. Accordingly, after examination of the issue, DGEP had suggested to discontinue the pursuing of e-wallet scheme and to continue with the present exemption from IGST and Cess etc. on the imports made under AA/EPCG/EOU schemes.

c. GSTPW, CBIC also stated in the agenda note that the issue has been comprehensively deliberated by the Law Committee. The Law Committee has recommended the following:

i. Present refund mechanism to exporters have been stabilized and streamlined. Present Exemption Notifications may be continued.

ii. e-wallet scheme may not be pursued further.

d. Since the tax exemption on imports under AA/EPCG/EOU scheme is expiring on 31.03.2022, and the GST Council meeting is not likely to be held before 31st March, it was also proposed that exemption from IGST and Cess on imports of goods under AA/EPCG/ EOU may be extended for further period of three months till 30.06.2022.

e. **Decision:** The members of the GIC approved the agenda item.

f. **Implementation status:** In pursuance of the GIC decision dated 21.03.2022, Notification No. 18/2022-Customs dated 31.03.2022 and Notification No. 19/2022-Customs dated 31.03.2022 have been issued for amending the Principal notifications for exemption from IGST and Cess on Imports of Goods under EOU and AA/EPCG respectively.

8. Decision of GIC by Circulation on 29th March, 2022 on Ad hoc Settlement of IGST Amount of ₹ 20,000 Crores.

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

17. Apportionment of tax and settlement of funds. —

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

b. It was further stated that as per the accounts made available by the CGA till Feb'2022, and the expected unsettled IGST balance net of settlement and refund during the current month, about ₹20,000 crore is available in the IGST account by end-March, 2022.

c. Therefore, it was proposed to apportion ₹20,000 crore on ad-hoc basis, 50% to Centre and 50% to States/UTs. This would reduce the revenue gap of States/UTs and, therefore, the compensation required as well.

d. **Decision:** The members of the GIC approved the agenda item.

9. Decision of GIC by Circulation dated 19 April, 2022 on changes in FORM GSTR-3B in light of notification No. 17/2021- Central Tax (Rate)

a. In the agenda note it was stated that on the recommendations of GST Council in its 45th meeting, "Restaurant Service" has been notified under section 9(5) of the CGST Act, 2017 w.e.f. 01.01.2022, i.e., to make Electronic Commerce Operators (ECOs) liable to pay GST on 'restaurant service' supplied through them [notification no. 17/2021-Central Tax (Rate) dated 18.11.2021 and corresponding notifications under IGST Act and UTGST Act].

b. It was further stated that certain representations were received from ECOs wherein the issue of how the details of supplies notified under section 9(5) shall be furnished was raised, and it was requested to provide separate lines in GSTR returns for furnishing the same.

c. It was also stated that the issue was deliberated by the Law Committee and it observed that as the provisions regarding payment of tax by ECOs in respect of delivery of "restaurant service" were into force w.e.f. 1 January, 2022, while on the immediate basis, the information in respect of supplies made through ECOs under Section 9(5) of CGST Act might be allowed to be declared both by suppliers as well as ECOs in the existing rows/ tables of GSTR-3B, however, the matter might be examined by the GSTN to provide for separate rows in GSTR-3B for declaration of such supplies through ECOs under section 9(5) by both the suppliers as well as by ECOs.

d. Additionally, it was clarified vide Circular No. 167/23/2021-GST dated 17.12.2021 that the ECOs may report such supplies provided through them under section 9(5) as outward taxable supplies for the time being and may also furnish the details of such supplies under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case may be, for accounting purpose. It was also clarified that the registered persons supplying restaurant services through ECOs under section 9(5) would report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B for the time being. Further, GSTN was requested to provide separate rows/tables in GSTR-3B to declare the supplies through ECOs under section 9(5) by both the suppliers and ECOs.

e. GSTPW, CBIC also stated that GSTN had informed that the development of an additional table for reporting taxes paid under section 9(5) of the CGST Act, both by ECOs and the suppliers, has been completed. Therefore, it was proposed to issue a notification in order to notify the changes in FORM GSTR-3B to this effect.

f. Haryana suggested certain alternatives to the introduction of Tables in Form GSTR1/3B.

g. **Decision:** In light of comments received from Haryana the matter has been referred to Law committee for further examination.

10. Decision of GIC by circulation dated 17th May, 2022 on extension of due date of filing FORM GSTR-3B for the month of April, 2022 and due date of payment of tax for the month of April, 2022 by the taxpayers who are under QRMP scheme, because of technical glitch in generation of FORM GSTR-2B

a. In the agenda note it was stated that GSTN has reported that for the tax-period of April, 2022, the process of generating GSTR 2B and auto-population of GSTR-3B on the portal by 14th May, 2022 did not proceed as planned. Efforts were made to carry out the process again on 15th and 16th May, 2022. GSTN has further informed that the GSTR 2B process has been running well since October, 2020 and that no change in policy or business process design has been made since then. Therefore, the glitch is a pure technical glitch. It was reported that the expected time to resolve the glitch is by midnight of 18th May, 2022.

b. In the agenda note it is stated that taxpayers have effectively lost 4 days for reconciling their admissible ITC as communicated to them in FORM GSTR- 2B, as FORM GSTR-2B would now be generated on 18th of May, 2022. Accordingly, it is proposed that

i. The due date of filing FORM GSTR-3B for the month of April, 2022, by registered person furnishing return under sub-section (1) of section 39 of the CGST Act, be extended from 20th May, 2022 to 24th May, 2022; and

ii. The due date of payment of tax for the month of April, 2022 by the taxpayers who are under QRMP (Quarterly return Monthly payment) scheme be extended from 25th May, 2022 to 27th May, 2022.

c. **Decision:** The members of the GIC approved the agenda item.

d. Implementation status : In pursuance of GIC decision dated 17.05.2022, Notification No. 05/2022 – Central Tax dated 17th May, 2022 was issued for extending the due date for furnishing the return in FORM GSTR-3B for the month of April, 2022 and Notification No. 06/2022 – Central Tax dated 17th May, 2022 has been issued for extending the due date for depositing the tax due under proviso to sub-section (7) of Section 39 of the Central Goods and Services Tax Act, 2017 in FORM GST PMT-06 for the month of April, 2022 till the 27th May, 2022.

11. Decision of GIC by Circulation dated 18th May, 2022 on waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22

a. In the agenda note it was stated that Sub-rule (1) to rule 62 of the CGST Rules, 2017 requires every registered person paying tax under section 10 to furnish a return for every financial year in **FORM GSTR-4**, till the 30th day of April following the end of such financial year, besides furnishing a

statement, every quarter containing the details of payment of self-assessed tax in **FORM GST CMP-08**, till the 18th day of the month succeeding such quarter. Accordingly, the due date to furnish **FORM GSTR-4** for FY 2021-22 was 30th April, 2022.

b. The Agenda Note drew attention to the advisory dated 30.04.2022 issued by GSTN to composition taxpayers in respect of the issues arising out of negative liability in **FORM GSTR-4**. The liability of the complete year is required to be declared by the taxpayers in **FORM GSTR-4** under applicable tax rates by filling up table 6 mandatorily. In case, there is no liability the said table may be filled up with '0' value. If no liability is declared in table 6, it was presumed (on portal) that no liability is required to be paid, even though taxpayer may have paid the liability through **FORM GST CMP-08**. In such cases, liability paid through **FORM GST CMP-08** was treated as excess tax paid and was moved on portal to Negative Liability Statement for utilization of same for subsequent tax period's liability.

c. The Agenda Note stated that a large number of tickets were received on the GSTN Helpdesk for reducing the negative liability from the Negative Liability Statement. The said issue was deliberated in the Law Committee meeting held on 08.10.2021.

d. And accordingly, the amount available in negative liability statement had been debited for all taxpayers. It was noticed that some taxpayers had utilised the amount available in negative liability statement for paying the liability to file statement in **FORM GST CMP-08** or **GSTR-4** of subsequent financial year. In such cases, the amount utilised out of negative liability statement had been debited in the cash ledger. Though such liability should have been paid by depositing the amount through challan, but in some cases the amount had not been deposited by the taxpayers. The taxpayers who had deposited the amount in cash ledger, the debited amount had been adjusted, whereas in case the amount of liability had not been deposited through challan, the balance in cash ledger became negative. In such cases, the taxpayers were advised by GSTN through the above-mentioned advisory to deposit the past liability through challan of equal amount urgently. In case the liability had been paid through adding in the next years' liability, the same could be claimed as refund through application in **Form GST RFD-01**.

e. The Agenda Note also stated that a large number of representations had been received from the taxpayers stating that due to the debit made by the system in cash ledger, they are suddenly facing cash crunch for paying the remaining due amount as per GSTR-4 return. Since the said action has been initiated on the system towards the end of the month of April, shortly before the due date of filing GSTR-4 return for FY 2021-22, viz. 30.04.2022, taxpayers have complained of paucity of time to arrange for requisite funds. Therefore, a large number of taxpayers have reported difficulty in furnishing **FORM GSTR-4** by the due date.

f. The issue was deliberated by the Law Committee in its meeting held on 07.05.2022. Law Committee has recommended that late fee may be waived for delay in filing GSTR-4 for FY 2021-22 for two months from the due date, i.e. late fee under section 47 may be waived **for the period 01.05.2022 till 30.06.2022** for delay in filing **FORM GSTR-4** for FY 2021-22.

Accordingly, draft notification was placed before the GIC for approval.

g. **Decision:** GIC members approved the agenda item.

h. Implementation status: In pursuance of GIC decision dated 18.05.2022, Notification No. 07/2022 – Central Tax dated 17th May, 2022 has been issued vide which late fee payable for delay in furnishing of **FORM GSTR-4** for FY 2021-22 under section 47 has been waived for the period from the 1st day of May, 2022 till the 30th day of June, 2022.

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

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

It may be recalled that vide para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and outward supplies are same. Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 is reproduced, as under:

“Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.”

2. In this context, attention is drawn to the Hon’ble High Court of Gauhati’s order dated 02-09-2021 in the case of BMG Informatics Pvt Ltd. v. Union of India wherein the Hon’ble Court has observed as under:

“28. Consequently, in view of the clear unambiguous provisions of Section 54(3) (ii) providing that a refund of the unutilized input tax credit would be available in the event the rate of tax on the input supplies is higher than the rate of tax on output supplies, we are of the view that the provisions of paragraph 3.2 of the circular No.135/05/2020-GST dated 31.03.2020 providing that even though different tax rate may be attracted at different point of time, but the refund of the accumulated unutilized tax credit will not be available under Section 54(3)(ii) of the CGST Act of 2017 in cases where the input and output supplies are same, would have to be ignored.

29. Consequent upon the conclusion arrived at, we are of the view that the rejection of the claim for refund by the petitioner assessee in the order dated 22.05.2020 of the Assistant Commissioner by referring to the provisions of paragraph 3.2 of the circular No.135/05/2020-GST dated 31.03.2020 would be unsustainable in law.

30. But at the same time, we also observe that the reasoning given by the Joint Commissioner (Appeals) in the appellate order dated 29.10.2020 for reversing the order of rejection by the Assistant Commissioner would also be not sustainable. The only reasoning given by the Joint Commissioner (Appeals) is that the issue decided by the Assistant Commissioner was not included in the show cause notice dated 10.04.2020 and, therefore, there was a violation of the principles of natural justice. We are also unable to agree with the other aspect of the order of the Joint Commissioner (Appeals) that merely because the order of the Assistant Commissioner dated 22.05.2020 was set aside on the ground of there being a violation of the principles of natural justice in the show cause notice dated 10.04.2020, therefore, without making any further enquiry as to whether the tax rate on the input supplies was higher than the tax rate on the output supplies, the Joint Commissioner (Appeals) would direct a refund of the unutilized input tax credit under Section 54(3)(ii) of the CGST Act of 2017. From such point of view, even the order of the Joint Commissioner (Appeals) dated 29.10.2020 would be unsustainable in law.

31. Consequently, both the orders i.e., dated 22.05.2020 of the Assistant Commissioner as well as the appellate order dated 29.10.2020 of the Joint Commissioner (Appeals) are set aside.

32. The matter stands remanded back to the Assistant Commissioner, GST, Guwahati to

consider the matter afresh and arrive at his own factual satisfaction as to whether the actual rate of tax on the input supplies made by the petitioner assessee is higher than the actual rate of tax on the output supplies made by them and depending upon the satisfaction that may be arrived to pass a reasoned order on the claim of the petitioner assessee for refund under Section 54(3)(ii) of the CGST Act of 2017. If the Assistant Commissioner arrives at his satisfaction that the actual rate of tax on the input supplies made by the petitioner assessee is higher than the actual rate of tax on the output supplies appropriate order for refund may be passed and on the other hand, if the Assistant Commissioner upon factual deliberation arrives at his satisfaction that the actual rate of tax on the input supplies was not higher than the actual rate of tax on the output supplies, again an appropriate order may be passed by giving reasons.

*33. However, we have taken note of that the circular No.135/05/2020-GST dated 31.03.2020 was issued in exercise of the powers under Section 168(1) of the CGST Act of 2017. As already noted, Section 168(1) of the CGST Act of 2017 pertains to a situation where the Central Board of Indirect Tax and Customs considers it necessary and expedient to do so for the purpose of uniformity in implementing the CGST Act of 2017. In other words, the provisions of Section 168(1) can be invoked to bring in uniformity in the implementation of the CGST Act of 2017. **In the instant case, when the provisions of Section 54(3)(ii) of the CGST Act of 2017 are unambiguous and explicitly clear in nature, there is no requirement of bringing in any uniformity in the implementation of the Act and the provisions of Section 54(3)(ii) would have to be applied in the manner it is provided in the Act itself.**"*

3. On perusal of the order of the Hon'ble HC of Gauhati, it is observed that the Hon'ble High Court has questioned the issuance of clarification in the said matter vide Circular No. 135/05/2020-GST, dated 31.03.2020 by exercising the powers under Section 168(1) of the CGST Act, 2017 stating that as the provisions of Section 54(3)(ii) of the CGST Act of 2017 are unambiguous and explicitly clear in nature, there is no requirement of bringing in any uniformity in the implementation of the provisions of Section 54(3)(ii).

3.1 In this regard, it is submitted that para 3 of the Circular No. 135/05/2020-GST, dated 31.03.2020 was issued to clarify a situation where the supplier was dealing in goods which were taxed at a higher rate and subsequently the rate of tax on same goods was reduced from a particular date. There may be a situation when input tax credit gets accumulated in the electronic credit ledger of the said supplier on account of supply of goods, in stock on date of such reduction of tax, at a rate lower than what was paid while procuring those goods (before date of such reduction of tax). The issue arose whether refund of ITC would be admissible in such cases on account of inverted rate structure. **The aforesaid issue was deliberated by the Law Committee in its meeting held on 27.12.2019 on the basis of a reference received from the State of Delhi wherein it was decided that as in such a case, the rate of tax on inputs and output supplies are same at any given point of time and the conditions of section 54(3)(ii) for refund of accumulated credit on account of inverted duty structure do not get satisfied in such a case. It was decided that the issue may be clarified through a circular.** In this context, the issue was examined in the impugned Circular noting that the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. However, while giving the conclusion, the circular mentioned **that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.**

4. The facts of the case in order of Hon'ble Gauhati High Court mentioned above are that the taxpayer had obtained input supplies either from the manufacturer, or from some other authorized dealer and made the output supplies to a Government Department or PSU or a Research and Educational Institute by availing partial exemption of the GST under Notification 45/2017-GST (Rate) dated 14.11.2017 of the Government of India in the Ministry of Finance, Department of Revenue. The Notification 45/2017-Central Tax (Rate) dated 14.11.2017 has been issued under Section 11(1) of the CGST Act of 2017 and provides that on the recommendation of the GST Council, the goods specified

in column (3) of the table therein are exempted from the so much of the central tax leviable thereon under Section 9 of the Act as in excess of the amount calculated at the rate of 2.5% in respect of supplies to the institutions specified in the corresponding entry in column (2) of the said table. Accordingly, in the said case, the rate of tax on input are higher, whereas the rate of tax on output supplies are lower on account of the concessional notification in respect of specified supplies. **Hon'ble Court has held that para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 is unsustainable in law as the present case gets covered under section 54(3)(ii), whereas the impugned circular bars it.**

5. It may be seen that the intent behind para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 was to cover only such cases where the input and output goods were same and the rate of tax on such goods was reduced at a certain point of time, leading to a situation where same goods attracted different tax rates at different points in time thus causing accumulation of input tax credit (ITC). As the rate of tax was same at a particular point of time on input and output goods, the condition of clause (ii) of first proviso to sub-section (3) of section 54 did not appear to be satisfied in respect of such cases.

5.1 However, the said circular did not cover those cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification. As in such cases, the rate of tax on inputs is higher than the rate of tax on output supplies and such supplies are neither Nil rated nor fully exempt supplies, such cases appear to be covered under clause (ii) of first proviso of sub-section (3) of section 54 of the CGST Act, 2017 and the credit accumulated on account of the same appears to be admissible for refund under the said clause, provided supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under said clause.

6. In view of the above, Law Committee in its meeting held on 18.11.2021 deliberated the issue and recommended that the issue may be clarified through a circular that the refund of accumulated input tax credit on account of inverted structure as per clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is admissible in cases where input and output goods are same and the accumulation of input tax credit is on account of rate of tax on inputs being higher than the rate of tax on output supplies at the same point of time, due to a concessional notification issued by the Government, other than cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under said clause. The draft Circular as recommended by the Law Committee is enclosed as **Annexure-A**.

7. The agenda along with the draft circular is placed before the GST Council for deliberation and approval.

F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the January, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification – Reg.

Various representations have been received seeking clarification with regard to applicability of para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 in cases where the supplier is required to supply goods at a lower/nil rate under Concessional Notification issued by the Government. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law in this regard across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the issue as under:

2. Vide para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020, it was clarified that refund on account of inverted duty structure would not be admissible in cases where the input and output supply is same. Para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 is reproduced, as under:

“Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of sub-section (3) of section 54 of the CGST Act. It is hereby clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same.”

3. The matter has been examined. The intent of para 3.2 of Circular No. 135/05/2020-GST dated 31.03.2020 was not to cover those cases where the supplier is making supply of goods under a concessional notification and the rate of tax of output supply is less than the rate of tax on input supply (of the same goods) at the same point of time due to supply of goods by the supplier under such concessional notification.

4. Therefore, it is clarified that in such cases, refund of accumulated input tax credit on account of inverted structure as per clause (ii) of sub-section (3) of section 54 of the CGST Act, 2017 would be allowed in cases where accumulation of input tax credit is on account of rate of tax on outward supply being less than the rate of tax on inputs (same goods), as per some concessional notification issued by

the Government providing for lower rate of tax for some specified supplies subject to fulfilment of other conditions. **Accordingly, para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020 stands substituted as under:**

“3.2 It may be noted that refund of accumulated ITC in terms of clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

3.3 There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.”

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.
6. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

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

Kind reference is drawn to the judgment dated 13.09.2021 pronounced by the Hon'ble Supreme Court of India in case of UOI vs M/s VKC Footsteps wherein the vires of rule 89(5) of the Central Goods and Services Tax Rules, 2017 (in short "CGST Rules") was challenged on the ground that clause (ii) of the 1st proviso to section 54(3) of the Central Goods and Services Tax Act, 2017 (in short "CGST Act") provides for refund of ITC availed on both inputs and inputs services, however, rule 89(5) restricts the refund of ITC availed on input services. Hon'ble SC in its judgment dated 13.09.2021 has upheld the vires of rule 89(5). However, Hon'ble SC has requested GST Council to have a re-look into the formula prescribed under rule 89(5). The relevant portion of the judgment is reproduced below:

"104 We now turn to the submissions of the counsel for the assessee regarding the anomalies in the formula. In our view, the submission of Mr Sujit Ghosh, that the formula creates a distinction between suppliers having a higher component of input goods than those having a higher component of input services, and must be read down accordingly, must be rejected. The purpose of the formula in Rule 89(5) is to give effect to Section 54(3)(ii) which makes a distinction between input goods and input services for grant of refund. Once the principle behind Section 54(3)(ii) of the CGST Act is upheld, the formula cannot be struck down merely for giving effect to the same.

105 The aberrations which have been pointed out by the Mr Sridharan and Mr G Natarajan certainly indicate that the formula is not perfect. The formula makes a presumption that the output tax payable on supplies has been entirely discharged from the ITC accumulated on account of input goods and there has been no utilisation of the ITC on input services. While a similar formula is provided in Rule 89(4) with regard to zero rated supplies, in that case, the 'Net ITC' includes input goods and input services and thus, there is no imbalance between the different components of the formula. The formula prescribed in Rule 89(5) however, seeks to deduct the total output tax from only one component of the ITC, namely ITC on input goods. This in our view is at odds with reality, where the ITC on both input goods and input services is accumulated in the electronic ledger and is then utilised for the payment of output tax. In making such an assumption, the formula tilts the balance in favour of the Revenue by reducing the refund granted. We are equally cognizant of the fact that the proposed solution, that is prescribing an order of utilisation of the ITC accumulated on input services and input goods, may tilt the balance entirely in favour of the assessee as that would make a contrary assumption that the output tax is discharged by the ITC accumulated on account of input services entirely. Another possible solution could be that the Rule itself provides for a statutory assumption or a deeming fiction of utilisation of a certain percentage of ITC on input services towards the payment of output tax for the purpose of calculation of refund.

[...]

111 The above judicial precedents indicate that in the field of taxation, this Court has only intervened to read down or interpret a formula if the formula leads to absurd results or is unworkable. In the present case however, the formula is not ambiguous in nature or unworkable, nor is it opposed to the intent of the legislature in granting limited refund on accumulation of unutilised ITC. It is merely the case that the practical effect of the formula might result in certain inequities. The reading down of the formula as proposed by Mr Natarjan and Mr Sridharan by prescribing an order of utilisation would take this Court down the path of recrafting the formula and walk into the shoes of the executive or the legislature, which is impermissible. Accordingly, we shall refrain from replacing the wisdom of

the legislature or its delegate with our own in such a case. However, given the anomalies pointed out by the assesseees, we strongly urge the GST Council to reconsider the formula and take a policy decision regarding the same.”

2. On perusal of the judgment, it can be observed that the Hon’ble Apex Court, while upholding the vires of rule 89(5), has taken cognizance of the anomalies pointed out by the assesseees in the formula prescribed under sub-rule (5) of rule 89 of CGST Rules, 2017 and has requested GST Council to reconsider the said formula. In this regard, the relevant portion of the judgment wherein the submissions of the party’s counsel have been recorded is reproduced below:

“95 Mr G Natarajan, Mr Sujit Ghosh, learned Counsel, and Mr V Sridharan, learned Senior Counsel, have also urged an alternative submission for the challenge to Rule 89(5). It has been submitted that the formula prescribed in Rule 89(5) which seeks to grant refund of the ITC accumulated on account of input goods, is inherently flawed and will lead to anomalous results. The alternative submission is made on the assumption that Section 54(3)(ii) read with Rule 89(5) is restricted to refund of ITC accumulated on account of input goods only, and not input services.

96 Mr G Natarajan, learned Counsel appearing on behalf of the intervenor, has submitted that as it was originally framed, ‘Net ITC’ in Rule 89(5) allowed for a refund on account of an inverted duty structure both for input goods and input services. The position was amended initially on 18 April 2018 with prospective effect and thereafter on 13 June 2018 with retrospective effect on 1 July 2017. The formula prescribed in Rule 89(5) seeks to identify the quantum of ITC availed on input goods attributable to the outward supplies having an inverted rate structure. From such quantum of ITC on input goods, the tax payable by the supplier on such inverted rated supplies of goods and services is reduced to arrive at the quantum of credit accumulating on account of inverted rate structure, which is eligible for refund. The submission of Mr Natarajan is that in the formula prescribed under Rule 89(5), while reducing “tax payable on such inverted rated supplies of goods or services”, the taxpayer should first be allowed to utilize the ITC availed on input services which is otherwise not eligible for refund. If the formula prescribed under Rule 89(5) is not construed in the above manner, it is alleged that it will lead to inequality between taxpayers dealing with outward supplies involving only an inverted rate structure (single line of goods) and taxpayers dealing with outward supplies having both an inverted rate structure and those not having inverted rate structure. Thus, it has been submitted that the Court should read down the formula prescribed in Rule 89(5) to the effect that while calculating the refund entitlement as the difference between Net ITC and tax payable on such supplies having inverted rate structure, it is presumed that the ITC accumulated on account of input services be allowed to be used for payment of tax payable on inverted goods and services, and the remaining balance of tax, which is paid out of accumulated ITC on account of input goods, is deducted from Net ITC in the formula.

97 Mr G Natarajan’s submission indicates an aberration where a registered person with a single product with an inverted duty structure is neither able to use the unutilized ITC for the payment of tax on output supply nor is allowed a refund. On the other hand, a registered person with products involving an inverted duty structure and otherwise, is in a position to utilise the ITC availed on input services for payment of tax on turnover not having an inverted rate structure. Mr G Natarajan has given the following example:

S. No.	Description	Tax payer having only turnover of inverted rate structure	Tax payer having both turnover of inverted rate structure and other turnover
(i)	(ii)	(iii)	(iv)
1	Value of supply of goods, attracting 5% GST (Turnover having inverted rate structure)	Rs. 50,00,000	Rs. 50,00,000
2	Value of supply of goods, not having inverted rate structure	NIL	Rs. 50,00,000
3	Adjusted Total Turnover (1+2)	Rs. 50,00,000	Rs. 1,00,00,000
4	GST payable @ 5% on turnover having inverted rate structure on (1)	Rs. 2,50,000	Rs. 2,50,000
5	GST payable @ 18% on turnover not having inverted rate structure	NA	Rs. 9,00,000
5	ITC on inputs availed during the tax period	Rs. 3,00,000	Rs. 6,00,000
6	ITC on input services availed during the tax period	Rs. 50,000	Rs. 1,00,000
7	Refund entitlement as per the formula	$\left[\frac{\text{Rs. } 3,00,000 \times \text{Rs. } 50,00,000}{\text{Rs. } 50,00,000} \right] - \text{Rs. } 2,50,000 = \text{Rs. } 50,000$	$\left[\frac{\text{Rs. } 6,00,000 \times \text{Rs. } 50,00,000}{\text{Rs. } 1,00,00,000} \right] - \text{Rs. } 2,50,000 = \text{Rs. } 50,000$
8	Remarks	The ITC of Rs. 50,000 availed on input services is neither allowed as refund, nor used for payment of tax on output supply, but allowed to accumulate.	The Balance input credit of Rs. 3,00,000 and the entire credit of Rs. 1,00,000 availed on input services can be used for payment of tax on turnover not having inverted rate structure.

98 The submission of Mr Natarajan has also been supported by Mr V Sridharan in rebuttal. The formula in Rule 89(5) is reproduced below:

“Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services”.
(emphasis supplied)

99 Mr V Sridharan has urged that the second leg of the formula, that is, “tax payable on such inverted rated supply of goods and services” takes into account the entire tax payable on output supplies. In reality, the tax payable on output supplies would have been discharged by utilising the ITC on input goods and input services. However, the formula under Rule 89(5) presumes that nothing has been utilised from the ITC on input services and the entire tax on output supplies is discharged by utilising ITC on input goods. It was urged that although the stated objective of the formula is to grant refund of unutilised ITC accumulated on account of input goods, by deducting the entire sum of tax payable on output supplies, the quantum of such refund is reduced and the cascading effect of taxes is maximised. As a solution to the said anomaly, Mr Sridharan has proposed that for the purposes of Rule 89(5), an assumption must be made that ITC accumulated on account of input services, which is not refundable under Section 54(3), is used for discharging the output tax payable on inverted rate supply of goods and services. The remaining balance of output tax, must be then presumed to have been discharged from the ITC accumulated on account of input goods and it is only this remaining balance that should be deducted from the formula to calculate the refund. In other words, Mr Natarajan and Mr Sridharan propose an order of utilisation in the formula by which the ITC accumulated on account of input services is used first for discharging the tax liability and only then is the ITC accumulated on account of input goods used. During the course of his submissions, Mr Sridharan has relied on the decision of this Court in **Commissioner of Income Tax, Coimbatore v. Lakshmi Machine Works** and has urged before us to adopt a purposeful and schematic interpretation to the formula which will make it comparable and workable.

100 Mr Sujit Ghosh has urged before us that the formula in Rule 89(5) creates a distinction between suppliers of services having a higher component of input goods than input services as against suppliers of services having a higher component of input services than input goods. In his submissions, Rule 89(5) would favour the former as they would be entitled to a larger quantum of refund on account of more use of input goods.”

3. In this regard, it would be pertinent to reproduce sub-rule (5) of rule 89 of the CGST Rules, which provides formula for calculation of refund of unutilised ITC on account of inverted duty structure, as under:

“(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula: -

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

Explanation: - For the purposes of this sub-rule, the expressions –

- (a) “Net ITC” shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) [*“Adjusted Total turnover” and “relevant period” shall have the same meaning as assigned to them in sub-rule (4).*]

4. Hon’ble Supreme Court has upheld the exclusion of ITC availed on input services from the computation of Net ITC. However, the Apex Court has noted that the formula assumes that the tax payable on inverted rated supply of goods and services has been paid by utilising input tax credit on inputs only, such assumption skews the formula in favour of revenue. The Apex Court has, therefore, requested GST Council to reconsider the formula in view of the submissions made by the party’s counsel. Hon’ble Supreme Court has also suggested that the Rule itself can provide for a statutory assumption or a deeming fiction of utilisation of a certain percentage of ITC on input services towards the payment of output tax for the purpose of calculation of refund.

5. In this regard, it is worth mentioning that a taxpayer can discharge its outward tax liability by utilising the ITC available in electronic credit ledger and the moment ITC is utilised from the electronic credit ledger, it may not be possible to differentiate whether the ITC, which has been utilised for discharging tax liability, is attributable to inputs or input services. Further, no data is captured on the GST portal, either in **FORM GSTR-3B** returns or even in Annual Return in **FORM GSTR-9/9C**, regarding ITC availed on account of inputs as well as input services separately (in the annual return, based on the representations received from the taxpayers, option has been made available to the taxpayer not to give bifurcation of ITC availed on account of inputs and input services). Besides, there is also no such data on ITC utilization also, to show the amount of ITC on account of inputs and input services separately that has been utilised for discharge of outward tax liability. **In view of this, it may not be possible at this stage to find out or prescribe either any actual percentage based on past data of the taxpayer or even any deeming percentage of ITC on inputs and input services utilised towards the payment of output tax for the purpose of calculation of refund under sub-rule (5) of rule 89 of the CGST Rules, 2017.** Therefore, prescribing a deeming percentage of tax payable being discharged utilising the ITC availed on input services in the formula, as suggested by the Hon’ble SC, is not feasible in absence of any empirical data regarding the same.

6. In absence of any empirical data, an alternate option is to consider utilisation of ITC on account of inputs and input services for payment of output tax on inverted rated supply of goods and services in the same ratio in which ITC has been availed on inputs and input services during the said tax period. This objective criterion can be used to consider revision of the formula prescribed in rule 89(5) as suggested by Hon’ble Supreme Court. Accordingly, the following amendment in formula prescribed in rule 89(5) is proposed:

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

By the proposed amendment in the formula as above, only that part of tax payable on inverted supply of goods and services would be subtracted that is attributable to have been paid utilising the ITC availed on input goods. This would bring objectivity in the formula and will also help in achieving the desired goal of removing, to a large extent, the anomaly in formula as pointed out by the Hon’ble Supreme Court in the aforesaid judgment.

7. The data (as on 11.10.2021) regarding the inverted duty structure refund filed in **FORM GST RFD-01** w.e.f. 26.09.2019, as received from GSTN, is as under:

(Amount in Rs. Crores)

FY	No. of GSTI Ns applied	No. of ARNs	Total Claim Amount	Net ITC Reported		Tax payable on such inverted rated supply reported		No. of ARN Sanctioned	No. of ARNs Rejected	Amount	
				I+C+S	Cess	I+C+S	Cess			Sanctioned	Rejected
2019-20	17932	42436	8023.69	30671.04	353.18	17347.23	122.43	41004	1529	7338.31	685.37
2020-21	40296	109299	14235.58	56271.36	120.95	29228.60	13.91	104317	4994	11881.14	2354.43
2021-22	30036	59564	8734.92	31690.41	105.06	15820.14	5360.65	57644	2043	7591.26	1143.66
Total		211299	30994	118633	579	62396	5497	202965	8566	26811	4183

From the table above, it can be seen that from 26.09.2019 to till 11.10.2021, refund amounting to **Rs. 26,811 crores** have been sanctioned on account of inverted rate structure. It is mentioned that a Group of Ministers(GoM) has also been constituted by GST Council on the issue pertaining to rate rationalisation including the issue of removal of inversion in various goods and services which may reduce the requirement of refunds on account of inverted rate structure.

8. Alternatively, one view could be that present formula in rule 89(5) of the CGST Rules is proper and does not require any change.

9. The issue was deliberated by the Law Committee in its meeting held on 18.11.2021. In the absence of any empirical data, **LC has recommended** to consider utilisation of ITC on account of inputs and input services for payment of output tax in the same ratio in which ITC has been availed on inputs and input services during the said tax period and to use this objective criteria to revise the formula prescribed in rule 89(5) as suggested by Hon'ble SC. Accordingly, the following amendment in formula prescribed in rule 89(5) has been recommended by LC:

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

10. The agenda is placed before the GST Council for deliberation and approval of the recommendation of the Law Committee.

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

Due to cross-empowerment, an enforcement action against a taxpayer assigned to State Tax authorities can be initiated by the Central Tax authorities and vice versa. In such cases, various consequential actions relating to such cases such as appeal, review, adjudication, rectification, revision, etc need to be taken.

2. In this regard, section 6 of the CGST Act provides for cross-empowerment of officers appointed under the State Goods and Services Tax Act as proper officers for the purposes of the CGST Act. Similar provisions exist in various State Goods and Services Tax Acts empowering officers of Central Tax in relation to taxpayers under State Administrations. The said section is reproduced below:

“6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances. — (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1), –

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.”

3. GST Council in its 9th meeting held on 16.01.2017 had discussed and made recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action as recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:

“viii. Both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain”

4. References have been received that there are varied practices in the field regarding the issuance of recurring Show Cause Notices (SCNs). There is no clarity about the administration or authority who will issue the recurring Show Cause Notices arising out of investigation initiated and finalized by Central Tax authorities to taxpayers under State Administration and vice versa. In some cases, the authority which initiates the investigation is also issuing recurring SCN whereas in some cases, it is being left for the concerned jurisdictional Tax authority, who is administering the taxpayer, to issue recurring SCN. This may create confusion and may lead to a situation in which none of the authorities issue the recurring SCN in timely manner and therefore, there is a need to have a uniform practice in

such matters.

5. Recommendations of the Law Committee

5.1 The issue has been deliberated in the Law Committee in its various meetings. On the issue of cross-empowerment in enforcement action, Law Committee has recommended that:

“A taxpayer located within a State is open to enforcement action by both authorities. For example, an enforcement action against a taxpayer assigned to State can be initiated by the Central authorities (and vice versa). In such cases, all consequential action relating to such case including, but not limited to, appeal, review, adjudication, rectification, revision will lie with the authority which had initiated the enforcement action i.e. the Central authorities in the instant case.

Further refund in such cases may be granted only by jurisdictional tax authority, administering the taxpayer.”

5.2 On the issue of issuance of recurring Show Cause Notice, the Law Committee has recommended that:

“It may be more appropriate that the recurring SCNs may be issued by the concerned jurisdictional tax authorities administering the taxpayer, i.e. even if investigation is conducted by Central tax authorities and initial SCN is issued by them, the recurring SCN may be issued only by the jurisdictional tax authority administering the taxpayer and if the such jurisdictional tax authority is state tax, the recurring SCN may be issued by the concerned State tax authority. Since issuance of recurring SCNs does not involve any fresh investigation as the subject matter as well as ground of SCN remain the same, it may be desirable that such further/ recurring SCNs are issued by the actual jurisdictional authorities (which is responsible for assessment of returns of the taxpayer), as they will be in a position to access the records and returns of the taxpayers, and to check whether the grounds of SCN still exist or not and take a view/ action for issuance of recurring SCN, based on facts in the said period. Besides, if the same authority who has taken enforcement based action (but does not administer the said taxpayer) is mandated to issue recurring SCN also, it will put unnecessary burden on the investigating tax authority to keep a track on subsequent practice of the taxpayer after conclusion of investigation and to collect all the data and records for issuance of recurring SCN.”

6. Accordingly, the recommendations of the Law Committee as detailed in para 5 above, are placed before the GST Council for approval.

Agenda Item 3(iv): Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices.

2. The matter of issuing a circular for clarifying various issues related to fake invoice was deliberated by the Law Committee. It was deliberated that some fundamental principles for deciding the nature of demand and penal action to be taken against the persons involved in such unscrupulous activities may be clarified in the circular through questions and answers, and the said principles can be considered for actual action in a case, depending upon the specific facts and circumstances of the case. The Law Committee in its meeting held on 11.04.2022, approved the draft Circular which is enclosed as **Annexure A**.

3. Accordingly, the agenda note is placed before the GST Council for deliberation and approval.

Draft Circular No. /2022-GST

F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated.....2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)/

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices–Reg

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit (hereinafter referred to as “ITC”) fraudulently. Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), in respect of such transactions involving fake invoices. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the issues detailed hereunder;

Sl. No.	Issues	Clarification
1.	In case where a registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both, whether such	Since there is only an issuance of tax invoice by the registered person ‘A’ to registered person ‘B’ without the underlying supply of goods or services or both, therefore, such an

	<p>transaction will be covered as “supply” under section 7 of CGST Act and whether any demand and recovery can be made from ‘A’ in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act.</p> <p>Also, whether any penal action can be taken against registered person ‘A’ in such cases.</p>	<p>activity does not satisfy the criteria of “supply”, as defined under section 7 of the CGST Act. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, no tax liability arises against ‘A’ for the said transaction, and accordingly, no demand and recovery is required to be made against ‘A’ under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, no penal action under the provisions of section 73 or section 74 is required to be taken against ‘A’ in respect of the said transaction.</p> <p>The registered person ‘A’ shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.</p>
2.	<p>A registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by ‘A’, for payment of his tax liability in respect of his said outward supplies. Whether ‘B’ will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>Since the registered person ‘B’ has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act.</p> <p>Further, as per provisions of section 75(13) of CGST Act, if penal action for fraudulent availment or utilization of ITC is taken against ‘B’ under section 74 of CGST Act, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on ‘B’ under any other provisions of CGST Act, including under section 122.</p>
3.	<p>A registered person ‘A’ has issued tax invoice to another registered person ‘B’ without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person ‘C’ by issuing</p>	<p>In this case, the input tax credit availed by ‘B’ in his electronic credit ledger on the basis of tax invoice issued by ‘A’, without actual receipt of goods or services or both, has been utilized by ‘B’ for passing on of input tax credit by issuing tax invoice to ‘C’ without any underlying supply of goods or services or</p>

<p>invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.</p>	<p>both. As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act.</p> <p>However, in such cases, 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.</p>
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2. The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios. Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)

Principal Commissioner (GST)

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

A. Notifying Section 111 of Finance Act, 2022 relating to amendment in Section 50(3) of CGST Act

1.1 Vide Section 111 of the Finance Act, 2022, sub-section (3) of section 50 of the CGST Act, 2017 is proposed to be amended retrospectively w.e.f. 01.07.2017 as follows:

~~(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43 shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four per cent., as may be notified by the Government on the recommendations of the Council.~~

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”

Thus, as is clear from above, the legislative intent behind carrying out the amendment to section 50(3) is to clarify that, as such, it is not the entire ITC availed, but only the utilized portion of ITC that shall attract interest. In other words, it is not the availment of ITC per se but the utilization of ITC that will determine the applicability of interest in terms of proviso to section 50(3) of the CGST Act, 2017.

1.2 Further, vide Section 116 of the Finance Act, 2022, Notification 13/2017- Central Tax dated 28th June 2017 has been amended to provide that rate of interest chargeable under sub-section (3) of section 50 of CGST Act shall be 18% (instead of 24%) with retrospective effect from 01.07.2017.

1.3 As per the sub-section (2) of section 1 of the Finance Act 2022, the amendment made via Section 100 to 114 of the Finance Act, 2022 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. In this regard, a date when these provisions of the Finance Act, 2022 pertaining to the CGST Act, 2017 shall come into the force has to be determined by the Council. However, it is felt that early notification of the retrospective amendment of sub-section (3) of section 50 of CGST Act, 2017 (proposed vide section 111 of Finance Act 2022) will provide clarity to all the taxpayers as well as tax officers and remove ambiguities regarding chargeability of interest in respect of the wrongly availed ITC, which will help in reducing avoidable litigations and finalization/closure of past cases on this issue. It is, therefore, proposed that section 111 of Finance Act 2022, providing for retrospective amendment of sub-section (3) of section 50 of CGST Act (with effect from 01.07.2017) may be notified by the Centre at the earliest.

2. Framing of rules for the calculation of interest in terms of provisions of Section 50 of CGST Act, 2017

2.1 Sub-section 2 of section 50 mentions that the manner of calculation of interest to be paid under sub-section (1) of Section 50 of CGST Act has to be prescribed through Rules. The said rule has not been prescribed till now. Therefore, there is a need to frame the requisite rule for the implementation of the said provision.

2.2 Further, as the proposed sub-section (3) of Section 50 provides that the manner of calculation of interest payable as per the said sub-section is to be prescribed through rules, for which the requisite rule is also required to be framed.

2.3 The Law Committee in its meeting held on 07.05.2022 has recommended that a new rule 88B may be inserted in CGST Rules as below:

88B. Manner of calculating interest on delayed payment of tax;

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of Section 50.

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of Section 50.

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilized, for the period starting from the date of utilization of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under sub-section (3) of section 50.

Explanation. —For the purposes of this sub-rule—

- (1) Input tax credit wrongly availed shall be construed to have been utilized, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilization of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
- (2) The date of utilization of such input tax credit shall be taken to be—
 - (a) the date, on which the return is due to be furnished under section 39, or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or
 - (b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases

2.4 It was also recommended by Law Committee that the aforementioned draft rule shall be finalized in consultation with the Ministry of Law and Justice. Law Committee also recommended that the above rule should be notified with retrospective effect i.e. 01.07.2017.

B. Notifying clause (c) of section 110 of the Finance Act, 2022

3.1 Vide clause (c) of section 110 of the Finance Act 2022, sub-section (10) of section 49 of CGST Act is substituted to provide for transfer of any balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person. As there is no provision of transfer of any amount from or to SGST / UTGST electronic cash ledger, the amendment is required to be **notified only by the Centre and is not required to be notified by States/ UTs**. As the said provision is for

ease of doing business and to provide for increased cash flow to the business, **it is proposed that the same may be notified by the Centre at the earliest based on the readiness of functionality by GSTN.**

3.2 In order to implement the said amendment, requisite rules are also required to be framed. Accordingly, Law Committee in its meeting held on 08.06.2022 recommended **insertion of a sub-rule (14) in rule 87** of CGST Rules to allow for transfer of unutilized balance in CGST & IGST cash ledger to a distinct person, without going through refund procedure, subject to the condition that such transfer will not be allowed if unpaid liability exists in the electronic liability register of the said registered person. The sub-rule as recommended by the Law Committee is reproduced below:

“87. Electronic Cash Ledger. -

(14) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT-09:

Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.”

3.3 Law Committee also recommended amendment in **FORM GST PMT –09**, as shown in red below:

FORM GST PMT –09					
<i>[See rule 87(13), 87(14)]</i>					
Transfer of amount from one account head to another in electronic cash ledger					
1.	GSTIN				
2.	(a) Legal name	<Auto>			
	(b) Trade name, if any	<Auto>			
3.	ARN				
4.	Date of ARN				
4A.	GSTIN of transferee on the same PAN				
5. Details of the amount to be transferred from one account head to another					
(Amount in Rs.)					
Amount to be transferred from			Amount to be transferred to		
Major head	Minor head	Amount available	Major Head	Minor head	Amount transferred
1	2	3	4	5	6
<Central tax, State/ UT tax, Integrated tax, Cess>	Tax		<Central tax, State / UT tax Integrated tax, Cess>	Tax	
	Interest			Interest	
	Penalty			Penalty	
	Fee			Fee	
	Others			Others	
	Total			Total	
6. Verification					
I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.					
Place	Signature				
	Name of Authorized Signatory				
	Designation /Status				
Date					
Instructions -					
1. Major head refers to - Integrated tax, Central tax, State/UT tax and Cess.					

2. Minor head refers to – tax, interest, penalty, fee and others.
3. The form may be filled up if amount from one major / minor head is intended to be transferred to another major/minor head. Minor head for transfer of amount may be same or different.
4. The amount from one minor head can also be transferred to another minor head under the same major head.
5. Amount can be transferred from the head only if balance under that head is available at the time of transfer.
6. Amount available in cash ledger under CGST / IGST head can be transferred to any other taxpayer registered on the same PAN under CGST/IGST head, if required.
7. Amount shall not be allowed to be transferred if unpaid liability exists in the Electronic Liability Register of the transferor.

4. The Council may also decide from which date other provisions of the Finance Act, 2022 pertaining to GST may be notified by the Centre and the States/ UTs.

5. Accordingly, the agenda is placed before the GST Council for deliberation and approval.

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

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

1.1 Reference is invited to para 2 of Circular No.147/03/2021-GST dated 12.03.2021 vide which the para 41 of Circular No.125/44/2019-GST dated 18.11.2019 was amended to remove the restriction from availing the ITC of the tax paid on the deemed export supply by the recipient when the refund of tax paid on such deemed export is claimed by the recipient. The said restriction was removed in order to enable the recipient of the deemed export supply to file refund due to the requirement of portal to debit the amount claimed as refund from the electronic credit ledger. Para 41 of Circular No. 125/44/2019-GST dated 18.11.2019, as amended by Circular No. 147/03/2021-GST dated 12.03.2021, reads as under:

*“41. Certain supplies of goods have been notified as deemed exports vide Notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89 (1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017-Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and ~~that he has not availed input tax credit on such invoices~~ **the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period.** The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies. The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.”*

1.2 In view of the above, it can be stated that the recipient is required to first claim input tax credit (ITC) of the tax paid on deemed export supply in his return and at the time of filing of application for refund of such amount, recipient is required to deduct such amount from his electronic credit ledger. Further, in order to ensure that no excess refund is claimed, the circular provides for a restriction that the refund amount shall not exceed the amount of input tax credit availed by the recipient in his valid return.

1.3 As the recipient has been allowed to avail ITC of the tax paid on the deemed export supplies for the purpose of claiming refund vide Circular No. 147/03/2021-GST dated 12.03.2021, the ITC so availed becomes the part of total ITC availed by the said recipient during the said tax period. Doubts have been raised by the field formations regarding applicability of the provisions of Chapter V of the CGST Act, 2017 for such availment of ITC by the recipient on the tax paid on deemed export supply and regarding the calculation of “Net ITC” under the provisions of rule 89(4) and rule 89(5) of the CGST Rules, in such cases where the recipient of deemed export supply claims ITC on the tax paid on such supply, for the purpose of claiming refund of such tax paid.

1.4 The said issues were deliberated by the Law Committee and it was recommended that following two issues may be clarified through a circular:

- (i) Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017?
- (ii) Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017?

Clarifications, as recommended by the Law Committee, are covered at Sl. No 1 and 2 of the draft Circular enclosed with the agenda note.

B. Clarification on various issues of section 17(5) of the CGST Act and supply by employer to employees

2.1 Section 17(5) of the CGST Act restricts the availment of ITC in respect of certain cases and in this regard, the following provision was made in section 17(5)(b), effective from the 1st day of July, 2017:

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

- (a)*
 - (b) the following supply of goods or services or both—*
 - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;*
 - (ii) membership of a club, health and fitness centre;*
 - (iii) rent-a-cab, life insurance and health insurance except where—*
 - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or*
 - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and*
 - (iv) travel benefits extended to employees on vacation such as leave or home travel concession;*
-”*

2.2 Subsequently, above provision was substituted by the Central Goods and Services Tax (Amendment) Act, 2018 and the following provision was brought into force with effect from 1st February, 2019.

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

- (a)*
- (aa)*

(ab)

(b) the following supply of goods or services or both—

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, **leasing, renting or hiring of motor vehicles, vessels or aircraft** referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c)"

2.3.1 In the context of section 17(5) of the CGST Act, various doubts have been raised by the field formations as to -

- i. whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?
- ii. whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?

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

2.4 Law Committee in its meeting dated 11.04.2022 deliberated on the issue and recommended that the issue may be clarified through a circular that –

- i. proviso after sub-clause (iii) of section 17(5)(b) of CGST Act is applicable for all sub-clauses (i), (ii) & (iii) of section 17(5)(b);
- ii. “leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 **refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items;**
- iii. supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST [this aspect was earlier made known to the public through press release dated 10.07.2017]

Clarifications, as recommended by the Law Committee are covered at Sl. No 3, 4 and 5 of the draft Circular enclosed with the agenda note.

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

3.1 Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities in terms of the provisions of the CGST Act.

3.2 Law Committee had deliberated on the issues in its meeting dated 07.05.2022 and recommended to issue a clarification on usage of electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities in terms of the provisions of the CGST Act. Clarifications, as recommended by the Law Committee are covered at Sl. No 6, 7 and 8 of the draft Circular enclosed with the agenda note

4. The agenda note along with the draft circular (enclosed as Annexure) is placed before the GST Council for deliberation and approval.

F. No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the _____, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on various issue pertaining to GST- reg.

Various representations have been received from the field formations seeking clarification on certain issues with respect to –

- i. refund claimed by the recipients of supplies regarded as deemed export;
- ii. interpretation of section 17(5) of the CGST Act;
- iii. perquisites provided by employer to the employees as per contractual agreement; and
- iv. utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarify the issues as under:

S. No.	Issue	Clarification
Refund claimed by the recipients of supplies regarded as deemed export		
1.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports would be subjected to provisions of Section 17 of the CGST Act, 2017?	The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such

		refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.
2.	Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017?	The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.
Clarification on various issues of section 17(5) of the CGST Act		
3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b)?	<ol style="list-style-type: none"> 1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under: <i>“Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”</i> 2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in sub-section (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified <i>“that scope of input tax credit is being widened, and it would now be made</i>

		<p><i>available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.”</i></p> <p>3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.</p>
4.	<p>Whether the provisions of sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act bar availment of ITC on input services by way of “leasing of motor vehicles, vessels or aircraft” or ITC on input services by way of any type of leasing is barred under the said provisions?</p>	<p>1. Sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act provides that ITC shall not be available in respect of following supply of goods or services or both—</p> <p><i>“(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:</i></p> <p><i>Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply”</i></p> <p>2. It is clarified that “leasing” referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred under sub-clause (i) of clause (b) of sub-section (5) of section 17 of the CGST Act in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.</p>
Perquisites provided by employer to the employees as per contractual agreement		
5.	<p>Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?</p>	<p>1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in</p>

		<p>relation to employment.</p> <p>2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.</p>
Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities		
6.	Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?	<p>1. In terms of sub – section (4) of section 49 of CGST Act, the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”), subject to the provisions relating to the order of utilisation of input tax credit as laid down in section 49B of the CGST Act read with rule 88A of the CGST Rules.</p> <p>2. Sub-rule (2) of rule 86 of the CGST Rules provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B of the CGST Act.</p> <p>3. Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act) is defined in clause (82) of section 2 of the CGST Act as the <u>tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.</u></p> <p>4. Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.</p> <p>5. It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for</p>

		making payment of any tax which is payable under reverse charge mechanism.
7.	Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST Laws?	As per sub-section (4) of section 49, the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.
8.	Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST Laws?	As per sub – section (3) of section 49 of the CGST Act, the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST Laws.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

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

Various references and representations have been received, including from Ministry of MSME, Ministry of Textiles, Department for Promotion of Industry & Internal Trade (DPIIT), Confederation of All India Traders (CAIT), NASSCOM, etc. regarding challenges being faced by small traders in supplying the goods and services through electronic commerce operator (hereinafter referred to as “ECOs”). The representations seek relaxations from the requirement of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the Central Goods and Services Tax Act, 2017 (in short “CGST Act”). Requests have also been made for allowing Composition dealers to supply through ECOs.

2. Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, irrespective of aggregate annual turnover:

2.1 It has been represented that the mandatory registration requirement for every supplier supplying goods through ECOs under section 24(ix) of the CGST Act, irrespective of the aggregate annual turnover, has resulted in huge disparity between online and offline sellers. The online sellers, even if having aggregate turnover well below the threshold limit, are required to get compulsorily registered under the existing provisions of CGST Act thereby discouraging MSMEs, including small artisans and women entrepreneurs, from supplying goods and services through ECOs. Requests have been made by various associations to remove the provision of compulsory registration for small businesses / suppliers / MSMEs supplying through ECOs in order to bring them at par with other offline suppliers. It has been stated that the compulsory registration provision is not giving a level playing field to taxpayers below the threshold turnover of Rs 40/ 20 lakhs, who make supplies through e-commerce operators.

2.2 Similar proposals have been received from Ministry of MSMEs, Ministry of Textiles, Department for Promotion of Industry & Internal Trade (DPIIT) and NITI Aayog for reconsideration of the said provisions of section 24(ix) of the CGST Act since it makes a distinction between online sellers and offline sellers, as while the suppliers supplying through ECOs (online suppliers) are required to take compulsory registration even if their aggregate annual turnover is below the threshold limit of Rs 40 Lakh/ Rs 20 Lakh, the sellers who operate offline are allowed exemption from registration for supply of goods and/or services up to Rs. 40 Lakh/ Rs. 20 Lakh. It has been suggested that suppliers supplying goods and services through ECOs may also be allowed exemption from registration upto this threshold limit of aggregate turnover, on par with offline sellers. It has also been suggested that Permanent Account Number (PAN) based authentication can be introduced for such unregistered persons making supplies through e-commerce platforms. PAN may be made mandatory for on-boarding of such unregistered sellers on ECO platforms and a PAN based reporting may be introduced in the hands of the ECOs. This will enable the authorities to track the PAN based turnover of a particular seller across multiple ECOs.

3. Issue of restriction imposed under section 10(2)(d) of the CGST Act on composition dealers for not allowing them to supply through E-Commerce operators:

3.1 Representations have also been received requesting for allowing Composition dealers to use E-Commerce platforms. The composition scheme available as per section 10 of the CGST Act cannot be opted by registered persons supplying goods or services on e-commerce platforms, by virtue of exception carved out under section 10(2)(d) of the CGST Act. As a result, there is again lack of parity

between online and offline sellers, thereby discouraging small sellers from operating on e-commerce platforms. It has been represented that Composition scheme should be allowed for small and mid-size sellers operating through online marketplaces with TCS of 1% still being complied with by the e-commerce operator.

4. Relevant provisions of the CGST Act are detailed as below:

4.1 Section 22(1) of the CGST Act provides for requirement of registration.

“Persons liable for registration. — (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

*Provided that where such person makes taxable supplies of goods or services or both from any of the **special category States**, he shall be liable to be registered if his aggregate turnover in a financial year **exceeds ten lakh rupees:***

Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified:

*Provided also that the Government may, at the request of a State and on the recommendations of the Council, **enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods**, subject to such conditions and limitations, as may be notified:*

Explanation. — For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.”

4.2. Section 24 of the CGST Act provides for compulsory registration in certain cases.

“24. Compulsory registration in certain cases. — Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, —

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

.....

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

....”

Accordingly, in terms of clause (ix) of section 24 of the CGST Act, persons supplying goods or services or both through ECOs, who are required to collect tax at source under section 52, are compulsory required to obtain registration, irrespective of annual aggregate turnover.

4.3 Section 23(2) of the CGST Act provides power to the Government to exempt a class of person from obtaining registration.

“23. Persons not liable for registration. — (1) *The following persons shall not be liable to registration, namely: —*

.....

(2) *The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.*”

4.4 Section 10 of the CGST Act provides for eligibility and conditions for opting to pay tax under composition scheme. Sub-section (2) of section 10 of the Act is reproduced hereunder:

(2) *The registered person shall be eligible to opt under sub-section (1), if: —*

- (a) *save as provided in sub-section (1), he is not engaged in the supply of services;*
- (b) *he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;*
- (c) *he is not engaged in making any inter-State outward supplies of goods or services;*
- (d) *he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;*
- (e)

Accordingly, in terms of section 10(2)(d) of the CGST Act, persons supplying goods or services or both through ECOs, who are required to collect tax at source under section 52, are not eligible for opt for composition scheme. Similar provision exists under section 10(2A) (c) of the CGST Act.

4.5 It may be pertinent to mention that in terms of sub-section (2) of section 23 of the CGST Act, the Government has exempted **persons supplying services through e-commerce operators** for taking compulsory registration and such persons are entitled to avail the threshold exemption *vide* notification No. 65/2017-Central tax dated 15.11.2017. In effect, as the provisions of GST Laws stand now, only the **persons supplying goods through ECOs are compulsory required to obtain registration, irrespective of their aggregate annual turnover.**

5. Examination of the issues

5.1 The issues have been examined. The increasing digitalisation of the economy has fundamentally changed the nature of retail distribution channels for sales of goods and services/intangibles to private consumers (business-to-consumer or B2C sales). E - Commerce Operator platforms have emerged as the major hub or channel for the continuously expanding volume of e-

commerce sales. Further, the impact of COVID pandemic has also provided a push factor for small traders to supply through the ECOs. Accordingly, there appears to be a need to support such small traders/ suppliers/ entrepreneurs/ artisans who are supplying goods through e-commerce operators, and provide them parity with offline suppliers, as far as taxation is concerned.

5.2 Further, the composition levy scheme has been made specifically for small taxpayers which ensures a simple and hassle-free compliance scheme. Such taxpayer does not have to maintain elaborate records and instead of regular monthly returns, which a normal taxpayer has to file under GST, he has to file a simple annual return in **FORM GSTR-04** and pay taxes on certain percentage of his turnover of **taxable supplies** of goods and services in the State or Union territory, on quarterly basis through **CMP-08**. Accordingly, it appears that the restriction imposed under section 10(2)(d) of the CGST Act on persons supplying goods or services or both through ECOs from opting for composition scheme merits review.

5.3 In this context, the tax administration so far has been constrained in allowing unregistered persons and composition dealers to supply through ECOs for a variety of reasons. First of all, for persons supplying through offline mode, registration is mandatory for making inter-state supplies. Similarly, composition dealers are not allowed to make inter-state supplies. If unregistered persons and composition dealers are to be allowed to supply through ECOs, ensuring that they make only intra-state supplies through such ECOs is essential to maintain parity between offline and online suppliers. Further, as the unregistered persons are not required to declare principal place of business, it becomes another challenge to keep track of supplies made through ECOs by such unregistered persons. Hence, adequate resolution of such concerns may be required if unregistered persons / composition dealers are allowed to make supplies through ECOs.

6. Recommendations of the Law Committee

6.1 The demands of trade and association and suggestions of various Ministries/ Departments, as detailed in para 2 and 3 above, appear relevant. **The Law Committee deliberated the issue and has recommended the following proposals as detailed in para 6.2 to 6.4**, which would resolve the issues highlighted in these references/ representations regarding the disparity faced by such smaller online sellers to a large extent and will also address the concerns of tax administration as discussed in para 5.3 above.

6.2 In respect of supplier supplying goods through ECOs who are required to be mandatorily registered under section 24(ix) of the CGST Act, 2017: Provide exemption from mandatory registration under section 23(2) of the CGST Act for class of suppliers making supplies of goods through E-commerce operators, subject to conditions that –

- a. The exemption is available upto aggregate turnover on all India basis not exceeding the turnover specified under sub-section (1) of section 22 of the CGST Act and notifications issued thereunder.

*[Similar exemption was provided for Casual taxable persons, making taxable supply of **handicrafts goods**, from obtaining registration under CGST Act vide Notification No.32/2017-Central Tax dated 15th September, 2017 & amendment made vide Notification No.38/2017-CT dated 13th October,2017. Further, in terms of sub-section (2) of section 23 of the CGST Act, the Government has **exempted persons supplying services through e-commerce operators** for taking compulsory registration and such persons are entitled to*

avail the threshold exemption vide notification No. 65/2017-Central tax dated 15.11.2017.];

- b. **they shall not make any inter-State taxable supply;**
- c. they would be mandatorily required to declare their Permanent Account Number (PAN) and Principal place of business.
- d. **For each PAN, such unregistered person shall be restricted to declare principal place of business in only One State.**
- e. The ECO would be required to declare the supplies made by unregistered persons through them in FORM GSTR-8 statement (by inserting a suitable table in it). ECO would also be mandated to ensure that no inter-State supply through them is allowed in respect of such unregistered persons by making necessary checks and validations on their system/platform; failing which the penalty would be imposable on ECO.

Needless to mention that ECO will not be required to deduct any TCS in respect of such supplies made by unregistered persons through them.

6.3 Law Committee has also discussed the basic modalities for enabling unregistered person to make supply through ECOs. The same is enclosed as **Annexure** to this agenda note.

6.4 In respect of composition dealers who are restricted under section 10(2)(d) of the CGST Act from making supplies through E-Commerce operators: Make a special procedure under section 148 of the CGST Act, for persons supplying through ECOs to opt for composition scheme by fulfilling all other eligibility conditions provided under section 10(1) and (2) or section 10(2A), as the case may be, of the CGST Act. Rate of tax for goods or services has already been prescribed for composition taxpayers. This may be subject to conditions such as the following:

- (a) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;
- (b) he is **not engaged in making any inter-State outward supplies** of goods or services;
- (c) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council
- (d) he is neither a casual taxable person nor a non-resident taxable person.

[In this regard, it is submitted that vide Notification No. 66/2017-CT dated 15.11.2017, in exercise of such powers under section 148, taxpayers were exempted from payment of tax on advances received in case of supply of goods. A similar exercise of powers under section 148 may be carried out for persons supplying through ECOs to opt for composition scheme as proposed above]

6.4.1 Further, ECO would be required to declare the supplies made by such composition dealers through them through existing GSTR-8 statement (by inserting a suitable table in it, if required). ECO would also be mandated to ensure that no inter-State supply through them is allowed in respect of composition dealers by making necessary checks and validations on their system/platform

6.4.2 Whenever a registered person supplies goods/services through e-commerce operator, TCS collected by e-commerce operator would be credited to electronic cash ledger of the of the composition dealer supplying goods/services. Given that composition sellers are required to remit taxes in cash only, they can then make payment of GST on outward supplies using TCS balance available in the electronic cash ledger. This will have no bearing on the working capital of the such composition dealers. From a compliance perspective, it would encourage small sellers to adopt GST compliances effectively, since composition dealers are exempt from maintenance of elaborate accounts and records. Instead, they have to file a simple quarterly return.

7.1 By the measures proposed in para 6 above, parity will be ensured between online and offline suppliers, which will give a major push to Ease of doing business especially for micro and small businesses, artisans and women entrepreneurs working from homes by enabling them to sell their products through ECO platforms. Such on-boarding of the smallest of the MSMEs on to e-commerce platforms would yield rich dividends in terms of opening up employment and business opportunities to small and micro enterprises in remote areas of the country. The unorganised sectors, especially in the rural and semi-rural parts of the country, will benefit immensely from these proposed measures.

7.2 Simultaneously, the said proposals also safeguard concerns of revenue as the unregistered suppliers would declare at the time of their onboarding on e-commerce platform, their Permanent Account Number (PAN) and Principal place of business. The ECOs would also declare the supplies made by unregistered persons through them, besides ensuring that no inter-state supply is allowed in respect of such unregistered persons and composition dealers. As such, the availability of information of the supplies being made by unregistered person (based on their PAN) through various ECOs, along with other requisite checks as proposed, will only boost the compliance further, leading to revenue augmentation.

8. The recommendations of the Law Committee, as detailed in para 6 above, are placed before the GST Council for deliberation and approval. **Once in-principle approval to the proposal is accorded by the GST Council, Law Committee may be authorized to draft appropriate rules, notifications, special procedures etc.**

Modalities for enabling unregistered person to make supply through ECOs

1. **Declaration at the time of on-boarding:**
 - a) Declaration can be obtained from unregistered person desiring to make intra-State supplies through ECOs in a specified **FORM XX**, at the time of onboarding on ECO platform.
 - b) Such declaration may be made **on GST portal** through PAN based login. Two-way authentication may be desired – PAN verification as in the case of registration; and Aadhaar authentication of the declarant in specified cases.
 - c) Declaration in **FORM XX** would, inter-alia, contain the place(s) of business, Email Address, Mobile Number, Constitution of Business, turnover of preceding FY etc.
 - d) Validations would be made in **FORM XX** to ensure that all the places of business declared by the declarant are in the same State / UT.

2. **Integration with ECOs**
 - a) The declarations made on the portal to be transmitted to ECOs through API or through any suitable means (to be explored by GSTN)
 - b) ECO will ensure that supplies by unregistered persons through them are not allowed UNTIL and UNLESS the declaration filed by such person has been acknowledged by the portal.

3. **Geo-location restrictions:**
 - a) ECOs would be required to place a check on pin code (both bill to and ship to) to be in the same state as that of the seller. For example, M/s. ABC, an unregistered dealer based out of Maharashtra, should not be allowed to make supplies if the pin code of the recipient (bill to or ship to) is of other state.
 - b) ECO should be held responsible to ensure that unregistered dealers are only allowed to make intra-state supplies through its platform.
 - c) Penal provision may have to be incorporated for imposing penalty on ECOs, in case of inter-State supply made by unregistered person through them.
This will address the concern that there are no instances of inter-State supplies through ECOs in respect of such unregistered dealers.

4. **Changes in reporting requirement under FORM GSTR-8**
 - a) Every ECO would be required to report supplies made by unregistered persons through them on monthly basis.
 - b) Currently ECO furnishes monthly statement in **FORM GSTR-8** whereby seller GSTIN-wise supplies are reported. **FORM GSTR-8** would be required to be amended by inserting a suitable table to provide for PAN based reporting in respect of supplies made by unregistered persons.

Once in-principle approval to the proposal is accorded by the GST Council, appropriate rules, notifications, special procedures etc. would be required to be drafted by the Law Committee, in consultation with GSTN.

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

Reference has been received from Ministry of Power wherein they have highlighted the problem faced in filing of refund of unutilised Input Tax Credit (ITC) in account of export of electricity and has requested to expedite the refund of input tax credit to exporting generators.

2. As per section 16(2) of IGST Act, 2017, credit of ITC is available for making zero rated supplies, even if such supply is an exempted supply. Though the 'electrical energy' has been wholly exempted from levy of GST, however, being zero rated supply, the registered person exporting electricity is eligible to seek refund of unutilized ITC. However, the following issues are being faced by the exporters of electricity while filing refund claim of unutilized ITC:

2.1 As per the provisions of sub-rule (2) of Rule 89 of the CGST Rules, the claimant is required to furnish the details of shipping bill or bill of export along with the refund application. Clause (b) of sub-rule (2) of Rule 89 of CGST Rules is reproduced below as under:

*“(b) a statement containing **the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;**”*

2.2 Further, the claimant is also required to furnish EGM details in the statement referred above. However, electricity being an intangible good, **the export of electricity is neither covered by any Shipping Bill/ Bill of export nor is there any requirement of filing EGM in respect of export of electricity**, due to which the exporters of electricity are not be able to file the refund claim of unutilized ITC on the GST Portal.

3. The export/import of electricity is regulated by Central Electricity Regulatory Commission (CERC), a statutory body functioning under section 76 of the Electricity Act, 2003. CERC has issued Guidelines for Import/Export (Cross Border) of Electricity, 2018 and the Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2019. These guidelines and regulations regulate the cross-border trade of electricity, under which consent from the Central Electricity Authority (CEA), Ministry of Power, Government of India is required to export electricity. Further, the **Regional Power Committee**, constituted by the CEA, issues a monthly report i.e. **the Regional Energy Account (REA)** to show the number of units of electricity exported. Since the mechanism to regulate the export of electricity was already in place, the matter was examined in consultation with Ministry of Power, Government of India to examine whether the same mechanism can be adopted to establish the export of electricity for the purpose of GST.

4. It was informed by the Ministry of Power that for the purpose of electricity generation and drawal, **scheduled energy** is treated as deemed produced/ delivered and any deviation from scheduled energy is treated under the provisions of CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014. Accordingly, they have proposed that **quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, can be used as proof of export of electricity and can be considered for calculating the value of zero-rated supply in case of export of electricity**. Further, Ministry of Power has informed that Central Electricity Authority (CEA) will instruct the RPC Secretariats to issue a statement of scheduled energy for exported electricity by Generation Plants **(in the format enclosed as Annexure-I) as a part of the monthly Regional Energy Account (REA) issued by Regional Power Committee**

(RPC) Secretariat, which will also be uploaded on the websites of RPC Secretariat. Such monthly REA can be downloaded by GST officers as well as the concerned electricity generator for the purpose of refund under Rule 89(4) of CGST Rules 2019.

5. In order to calculate the refund of unutilised input tax credit in respect of zero-rated supply of the electricity, the turnover of electricity exported may be calculated on the basis of scheduled electricity exported (as per details available in monthly REAs referred above) and the tariff per unit for electricity exported (as per agreed contracted rates). It may be noted that as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (E) of the sub-rule (4) of rule 89, the turnover of electricity supplied domestically is required to be excluded while calculating the adjusted total turnover. Further, in terms of sub-section (2) of section 17 of CGST Act, 2017, the ITC attributable to exempt supplies is not available to the supplier thereby meaning that the supplier is not eligible to avail ITC of the tax paid on inward supplies of goods and services used for effecting such outward exempt supply of electricity domestically. Therefore, "Net ITC" in the above formula would also not include the ITC attributable to such exempt domestic supply of electricity. In cases where the exporter of electricity is not having any other outward supply under the same GSTIN, "Net ITC" will be the ITC availed on inward supplies (inputs and inputs services) used in supply of electricity which is exported.

5.1 Usually, the quantum of electricity exported as specified in the statement of scheduled energy exported and on invoice should be same. However, in certain cases, it might happen that the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with REA on Regional Power Committee website. In such cases, turnover of export of electricity may be calculated using the **lower of the quantum of electricity** exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.

6. It is also mentioned that export of electricity happens through transmission lines which are laid either underground or on pillars attached/fixed to the ground thereby meaning that it can be considered that the export of electricity is taking place by land. Further, relevant date in case of export of goods by land, has been specified at Explanation (2)(a)(ii) under Section 54 of the CGST Act, 2017 as the date on which such goods pass the frontier. Considering the intangible nature of supply of electricity, it may not be possible to determine the actual date on which the specific unit of electricity exported can be considered as passing the frontier. Therefore, as suggested by Ministry of Power, it is proposed to **consider the last date of the month, in which energy has been exported as per monthly REA, as date on which the electricity exported has passed the frontier.** The same may be clarified in the circular, proposed to be issued, as detailed in para 8.

7. Further, to enable the electricity exporter to apply for unutilised ITC, the following amendments may be made in the CGST Rules, 2017:

(A) Amendment in clause (b) of sub-rule (2) of rule 89 of CGST Rules, 2017

"(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods, other than electricity;"

(B) Insert the following clause after clause (b) of sub-rule (2) of rule 89 of CGST Rules, 2017:

“(ba) A statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement along with copy of statement of scheduled energy for exported electricity by Generation Plants issued by Regional Power Committee Secretariat as a part of Regional Energy Account (REA) under Regulation 2(1)(nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity;

(C) Insert the following Statement in **FORM GST RFD-01**:

Statement 3B [Rule 89 (2)(ba)]
Refund Type: Export of electricity without payment of tax (accumulated ITC)

S.No.	Invoice/Document Details				REA Details					Tariff per Unit in Rs. (As per agreement)	Units exported (Lower of cl. No 5 and 10)	Value of electricity exported in Rs. (11 x 12)
	Type of Document	No.	Date	Energy exported (Units)	Generating Station	Period	Ref. No.	Date	Scheduled Energy Exported (Units)			
1	2	3	4	5	6	7	8	9	10	11	12	13

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

8. Law Committee deliberated the issue in its meeting held on 09.03.2022 and has recommended amendment in Rules as detailed in para 7 above and for issuance of a circular clarifying various issues and procedure for filing of refund claim pertaining to export of electricity. The draft circular is placed as “**Annexure-II**”.

9. The agenda note along with the draft circular, as recommended by the Law Committee, is placed before the GST Council for approval.

Annexure-I

Statement of Scheduled Energy for exported electricity by Generation Plants (Using Fuel except nuclear, gas, domestic linkage coal, mix fuel) for claiming Input Tax Credit

1. Month in which electricity was exported : (mmm/yyyy)
2. Name of Generating Station and Location : (insert name of Generating station, District, State)
3. Name of Company : (insert name of Company)
4. GSTIN of Company : (insert GSTIN of Company)
5. Installed capacity of Generating Station : (insert Installed capacity in MW)
6. Connection point, State and region : (specify “STU/ISTS” – insert name of sub-station), state, region

7. Details of the Scheduled Energy during the month:

Domestic	
Name of Domestic Entity	Scheduled Energy in (MU)
(buyer entity 1)	de1
(buyer entity 2)	de2
(PX)	de3
--	--
(buyerentityN)	deN
Subtotal Domestic Sale (A)	Sum of (de1+de2+.....+deN)
Cross Border	
Country 1_entity1	ee1
Country 2_entity2	ee2
--	--
CountryN_entity3	eeN
Subtotal Export (B)	Sum of (ee1+ee2+....+eeN)
Total Scheduled Energy of Generating Station (C=A+B)	(insert sum of subtotal-A and subtotal-B)

Note: As per Complementary Commercial Mechanism under Section 6.1 (d) of CERC (Indian Electricity Grid Code) Regulations, 2010; beneficiaries shall pay energy charges for the scheduled dispatch, in accordance with the relevant contracts/ orders of CERC.

F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the , 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners /
Commissioners of Central Tax (All)

Madam/Sir,

Subject: Manner of filing refund of unutilized ITC on account of export of electricity – reg.

Reference has been received from Ministry of Power regarding the problem being faced by power generating units in filing of refund of unutilised Input Tax Credit (ITC) on account of export of electricity. It has been represented that though electricity is classified as “goods” in GST, there is no requirement for filing of Shipping Bill/ Bill of Export in respect of export of electricity. However, the extant provisions under Rule 89 of CGST Rules, 2017 provided for requirement of furnishing the details of shipping bill/ bill of export in respect of such refund of unutilised ITC in respect of export of goods. Accordingly, a clause (ba) has been inserted in sub-rule (2) of rule 89 and a Statement 3B has been inserted in **FORM GST RFD-01** of the CGST Rules, 2017 vide Notification No. **XX/2022-CT** dated **XX/XX/2022**. In order to clarify various issues and procedure for filing of refund claim pertaining to export of electricity, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby prescribes the following procedure for filing and processing of refund of unutilised ITC on account of export of electricity:

2. Filing of refund claim:

2.1 Till the time necessary changes are carried out on the portal, the applicant would be required to file the application for refund under “**Any Other**” category electronically in **FORM GST RFD-01**, on the portal. In remark column of the application, the taxpayer would enter “Export of electricity- without payment of tax (accumulated ITC)”. At this stage, the applicant is not required to make any debit from the electronic credit ledger.

2.2 The applicant would be required to furnish/upload the details contained in Statement 3B (and not in statement 3) of **FORM GST RFD-01** (in pdf format), containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement.

2.3 The applicant will also be required to upload the copy of **statement of scheduled energy for electricity exported by the Generation Plants** (in format attached as Annexure-I) issued as part of

Regional Energy Account by Regional Power Committee Secretariat (“RPC”) under regulation 2 (1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010, for the period for which refund has been claimed and the copy of the relevant agreement(s) detailing the tariff per unit for the electricity exported. The applicant will also give details of calculation of the refund amount in Statement -3A of **FORM GST RFD-01** by uploading the same in pdf format along with refund application in **FORM GST RFD-01**.

3. Relevant date for filing of refund:

As per sub-section (1) of section 54 of the CGST Act, 2017, time period of two years from the relevant date has been specified for filing an application of refund. Electrical energy is in nature of “goods” under GST and is exported on a continuous basis through the transmission lines attached to the land. Therefore, it is not possible to determine the specific date on which a specific unit of electricity passes through the frontier. However, a statement of scheduled energy for export of electricity by a Generation Plant is issued by Regional Power Committee RPC Secretariat, as a part of Regional Energy Account (hereinafter referred to as “REA”) under Regulation 2(1)(nnn) of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010. Accordingly, it is hereby clarified that in case of export of electricity, the relevant date shall be the last date of the month, in which the electricity has been exported as per monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under regulation 2(1)(nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010.

4. Processing of refund claim by proper officer

4.1 Rule 89(4) provides for the formula for calculation of refund of unutilised ITC on account of zero-rated supplies which is reproduced as under:

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

Export of electricity being zero-rated supply, refund of unutilised ITC on account of export of electricity would also be calculated using the same formula.

4.2 The turnover of export of electricity would be calculated by multiplying the energy exported during the period of refund with the tariff per unit of electricity, specified in the agreement. It is clarified that **quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity.** Such **monthly Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat, as uploaded on the websites of RPC Secretariat, can be downloaded by GST officers as well as the concerned electricity generator** for the purpose of refund under Rule 89(4) of CGST Rules 2019. The **calculation of the value of the exports of electricity** during the month, can be done based on the quantity of scheduled electricity exported during the month by the exporter (as detailed in the REA for the month) and the tariff rate per unit (details of which will have to be provided by the concerned exporter based on agreed contracted rates).

4.3 It is also mentioned that usually, the quantum of electricity exported as specified in the statement of scheduled energy exported and on invoice should be same. However, in certain cases, it might happen that the quantum of electricity exported as mentioned on invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with REA on Regional Power Committee website. In such cases, turnover of export of electricity shall be calculated using the lower of the quantum of electricity exported mentioned on the statement of scheduled energy exported and that mentioned on the invoice issued on account of export of electricity.

4.4 Adjusted Total Turnover shall be calculated as per the clause (E) of sub-rule (4) of rule 89. However, as electricity has been wholly exempted from the levy of GST, therefore, as per the definition of adjusted total turnover provided at clause (E) of the sub-rule (4) of rule 89, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover. The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making domestic supply of electricity.

4.5 The proper officer shall calculate the admissible refund amount as per the formula provided under Rule 89(4) and as per the clarification furnished above. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**.

5. Difficulties, if any, in implementation of these instructions may be informed to the Board (gst-cbec@gov.in).

(Sanjay Mangal)
Principal Commissioner (GST)

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

Section 44 of the CGST Act provides for filing of Annual Return (FORM GSTR-9/9A) and Annual Reconciliation Statement (FORM GSTR-9C) by specified taxpayers for every financial year. *Vide* Notification no. 56/2019 –CT dated 14th November, 2019, the Annual Return FORM GSTR-9 & Annual Reconciliation Statement FORM GSTR-9C were simplified for the Financial Years 2017-18 & 2018-19 by making few entries optional. Further, *vide* Notification No. 79/2020-CT dated 15th October, 2020, said forms were simplified for the Financial Year 2019-20 as well by making few entries/tables optional. **Moreover, the said forms for FY 2020-21 were simplified *vide* Notification No. 30/2021-CT dated 30.07.2021.**

2. Rule 80 of the CGST Rules, 2017 was amended in light of the amendments in section 35(5) and section 44 of the CGST Act. In terms of amended provisions, -

(i) the filing of annual return (in **FORM GSTR-9 /9A**) for the **FY 2020-21** was exempted for taxpayers having aggregate annual turnover upto two crore rupees, *vide* notification No. 31/2021- CT, dated 30.07.2021;

(iii) the requirement for filing self-certified reconciliation statement in **FORM GSTR-9C** has been made for those taxpayers whose aggregate annual turnover is more than Rs. 5 Crores (refer rule 80(3) of the CGST Rules);

(iii) the Annual Return forms for **FY 2020-21** were simplified *vide* Notification No. 30/2021-CT dated 30.07.2021, making few tables as optional.

3.1 In light of the same, the Law Committee in its meeting held on 23.03.2022 discussed and examined changes in Annual Return forms. It has been suggested that in a long run, the annual return should cover the features of proposed changes in **FORM GSTR-3B**, as suggested by the Law Committee. However, as the FY 2021-22 is over, there may be demand to notify the Annual Return forms for FY 2021-22 at the earliest. Accordingly, the Law Committee was of the view that the annual return forms (FORM GSTR-9 and FORM GSTR-9C) for FY 2021-22 may be notified with minimal changes to the forms notified for FY 2020-21. The Law Committee examined the relaxations provided in FY 2020-21 and has recommended modifications / continuation / discontinuation of such relaxations based on their present relevance. The said recommendations of the Law Committee are enclosed as **Annexure** to this note. The portion where the relaxations are proposed to be discontinued are shown in **red**.

3.2 Law Committee has also recommended that AATO threshold for granting exemption from filing annual return in **FORM GSTR-9/9A**, which was Rs. 2 crores for FY 2020-21, may be continued for FY 2021-22 also.

4. The issue is placed before the GST Council for deliberation and approval.

RECOMMENDATIONS OF LAW COMMITTEE ON ANNUAL RETURN FORMS

Table 1: Simplification of FORM GSTR-9		
Table No.	Details of relaxations in previous FYs	Recommendations of Law Committee
4I to 4L	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to either file 4B to 4E net of credit notes/ debit notes/ amendments or report such details separately in 4I to 4L.	It has been informed by GSTN that tables 4B to 4E and tables 4I to 4L are being separately auto-populated from relevant tables of GSTR-1. Therefore, the relaxation may not be continued for FY 2021-22.
5D, 5E and 5F	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to either separately report his supplies as exempted, nil rated and non-GST supply or report consolidated information for all these three heads in the “exempted” row only.	Consolidated value may be given for 5D and 5E. Separate reporting for 5F may be sought.
5H to 5K	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to fill Table 5A to 5F net of credit notes/ debit notes/ amendments or report such details separately in 5H to 5K.	The relaxation may be continued for FY 2021-22 as there is marginal or no revenue implication.
6B, 6C, 6D and 6E	2017-18 & 2018-19: The registered person was given an option to either report the breakup of input tax credit as inputs, capital goods and input services or report the entire input tax credit under the “inputs” row only. 2019-20 & 2020-21: The registered person was required to report the breakup of input tax credit as capital goods and was given an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the “inputs” row only.	The relaxation on the pattern of 2020-21 may be continued for 2021-22.
	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to either report Table 6C (RCM supplies from unregistered persons) and 6D (RCM supplies from registered persons) separately or report the consolidated details of Table 6C and 6D in Table 6D only.	
7A to 7E	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to either fill his information on reversals separately in Table 7A to 7E or report the entire amount of reversal under Table 7H only. However, reversals on account of TRAN-1 credit (Table 7F) and TRAN-2 (Table 7G) were to be mandatorily reported.	The relaxation may be continued for FY 2021-22.

12 and 13	<p>2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill these tables.</p> <p>➤ It was felt that this information is not essential for the tax administration.</p>	The relaxation may be continued for FY 2021-22.
15	<p>2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill this table.</p> <p>➤ It was felt that tax administration already has all the data on refund and demands for the taxpayers.</p>	The data is already available with tax officer in the form of MIS reports. Therefore, the relaxation on the pattern of 2020-21 may be continued for 2021-22.
16A, 16B and 16C	<p>2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill these tables.</p>	The relaxation may be continued for FY 2021-22.
17	<p>FY 2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill this table.</p>	<p>With effect from the 1st April, 2021, it has been made mandatory for a taxpayer, having turnover of more than five crore rupees in the preceding financial year, to furnish 6 digits HSN/ SAC code on the invoices issued for supplies of taxable goods and services. A taxpayer having turnover of upto five crore in the preceding financial year is required to furnish 4 digits HSN code on B2B invoices. Accordingly, instructions and requirements of table 17 may be aligned with these HSN requirements. The relaxation may not be continued for FY 2021-22.</p>
18	<p>FY 2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill this table.</p>	Since HSN details are not communicated in GSTR-2A, and HSN requirements for

		suppliers may be different from that for the annual return filer, it may be difficult for the annual return filer to reconcile HSN wise details of inward supplies. Therefore, the relaxation may be continued for FY 2021-22.
Table 2: Simplification of FORM GSTR-9C		
Table No.	Details of relaxations in previous FYs	Recommendations of Law Committee
Table No.	Details	Recommendations
5B to 5N	<p>2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill these tables. If any adjustments were required to be reported, then the same could be reported in Table 5O.</p> <p>➤ It was felt that a number of big companies which have a presence in multiple States face a lot of challenges in reporting State wise unbilled revenue, unadjusted advances, deemed supply details, etc. It was also felt that, from an indirect tax administration point of view, this data may not be required. In fact, this table was to act as a pointer of the adjustments that taxpayers need to make to derive GST turnover from income tax / audited financial turnover. Since, filing this data was a challenge, it was recommended that taxpayers may be given an option to either file the data row wise or directly report all adjustments through table 5O (adjustment tab).</p>	The relaxation may be continued for FY 2021-22.
Table 12B and 12C	2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill these tables.	The data in 12B and 12C may now be sought separately for FY 2021-22 as the same would help to reconcile the input tax credit reported in the audited financial statement with the input tax credit taken in the GST returns
Table 14	<p>2017-18, 2018-19, 2019-20 & 2020-21: The registered person was given an option to not fill this table.</p> <p>➤ Trade and industry have widely represented that neither the internal accounts nor the audited financial statements mandate maintaining of expense-head wise input tax credit.</p>	The relaxation on the pattern of 2020-21 may be continued for 2021-22.

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

The process of return filing has been simplified over a period of time. W.e.f. 12.12.2020, **FORM GSTR-3B** is getting auto-generated on the portal by way of auto-population of input tax credit (ITC) from **FORM GSTR-2B** (auto-generated inward supply statement) and auto-population of liabilities from **FORM GSTR-1** (Outward supply statement), with an editing facility to the registered person. However, it has been observed that there still are some infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 of the CGST Act (composition taxable persons) and UIN holders. Also, there appears to be lack of clarity regarding reporting of information about reversal of Input Tax Credit (hereinafter referred to as the “ITC”) as well as ineligible ITC in Table 4 of **FORM GSTR-3B**.

2. It is desirable that correct reporting of information is done by the registered person in **FORM GSTR-3B** and **FORM GSTR-1** so as to ensure correct accountal and accurate settlement of funds between the Central and State Governments. In order to clarify the issue regarding information to be furnished by the registered person in **FORM GSTR-3B** and **FORM GSTR-1**, the Law Committee in its meeting held on 07.05.2022 approved the draft Circular which is enclosed to this note as **Annexure A**. Further, Law Committee also recommended that settlement of reversals of ITC and ineligible ITC to be done on the basis of Table 4(B)(1) and 4(D)(2) of **FORM GSTR-3B**. Law Committee has also suggested label changes in FORM GSTR-3B which is detailed in separate agenda on CGST Rule amendment.

3. Accordingly, the agenda note is placed before the GST Council for deliberation and approval.

F.No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the April,2021

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)

The Principal Directors General/Directors General (All)

Madam/Sir,

Subject: 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 –reg.

The process of return filing has been simplified over a period of time. With effect from December 2020, **FORM GSTR-3B** is getting auto-generated on the portal by way of auto-population of input tax credit (ITC) from **FORM GSTR-2B** (auto-generated inward supply statement) and auto-population of liabilities from **FORM GSTR-1** (Outward supply statement), with an editing facility to the registered person. However, it has been observed that there still are some infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 of the CGST Act (composition taxable persons) and UIN holders. Also, there appears to be lack of clarity regarding reporting of information about reversal of Input Tax Credit (hereinafter referred to as the “ITC”) as well as ineligible ITC in Table 4 of **FORM GSTR-3B**.

2. It is desirable that correct reporting of information is done by the registered person in **FORM GSTR-3B** and **FORM GSTR-1** so as to ensure correct accountal and accurate settlement of funds between the Central and State Governments. Accordingly, in order to ensure uniformity in return filing, the Board, in exercise of its powers conferred under sub-section (1) of section 168 of the CGST Act, hereby clarifies various issues in succeeding paragraphs.

3. Furnishing of information regarding inter-State supplies made to unregistered persons, composition taxable persons and UIN holders:

3.1 It has been noticed that a number of registered persons are not reporting the correct details of inter-State supplies made to unregistered persons, to registered person paying tax under section 10 of the CGST Act (composition taxable persons) and to UIN holders, as required to be declared in Table 3.2 of **FORM GSTR-3B**, under the notion that the taxable value of the same along with tax payable has already been reported in Table 3.1 of the said **FORM**.

3.2 In this context, it may be noted that the information sought in Table 3.2 of **FORM GSTR-3B** is required to be furnished, **place of supply-wise**, even though the details of said supplies are already part of the supplies declared in Table 3.1 of the said **FORM**. For assisting the registered persons, Table 3.2 of **FORM GSTR-3B** is being auto-populated on the portal based on the details furnished by them in their **FORM GSTR-1**.

3.3 Accordingly, it is hereby advised that the registered persons making inter-State supplies -

(i) to the unregistered persons, shall also report the details of such supplies, **place of supply-wise**, in Table 3.2 of **FORM GSTR-3B** and Table 7B or Table 5 of **FORM GSTR-1**, as the case may be;

(ii) to the registered persons paying tax under section 10 of the SGST/CGST Act (composition taxable persons) and to UIN holders, shall also report the details of such supplies, **place of supply-wise**, in Table 3.2 of **FORM GSTR-3B** and Table 4A or 4C of **FORM GSTR-1**, as the case may be, as mandated by the law.

3.4 It is further advised that any amendment carried out in Table 9 or Table 10 of **FORM GSTR-1** or any entry in Table 11 of **FORM GSTR-1** relating to such supplies should also be given effect to while reporting the figures in Table 3.2 of **FORM GSTR-3B**.

4. Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of GSTR-3B

4.1 Table 4(A) of the **FORM GSTR-3B** is getting auto-populated from various entries of **FORM GSTR-2B**. However, various reversals of ITC on account of rule 42 and 43 of the CGST Rules or for any other reasons are required to be made by the registered person, on his own ascertainment, in Table 4(B) of the said **FORM**. It has been observed that different practices are being followed to report ineligible ITC as well as various reversals of ITC in **FORM GSTR-3B**.

4.2 It may be noted that the amount of Net ITC Available as per Table 4(C) of **FORM GSTR-3B** gets credited into the electronic credit ledger (ECL) of the registered person. **Therefore, it is important that any reversal of ITC or any ITC which is ineligible under any provision of the CGST Act should not be part of Net ITC Available in Table 4(C) and accordingly, should not get credited into the ECL of the registered person.**

4.3 In this context, it is pertinent to mention that the facility of static month-wise auto-drafted statement in **FORM GSTR-2B** for all registered persons has been introduced from August, 2020. The statement provides invoice-wise total details of ITC available to the registered person including the details of the ITC on account of import of goods. Further, details of the said statement are auto-populated in Table 4 of return in **FORM GSTR-3B** which are editable in the hands of registered person. **It may be noted that the entire set of data that is available in FORM GSTR-2B is carried to the table 4 in FORM GSTR-3B, except for the details regarding ITC that is not available to the registered person either on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply.** It is pertinent to mention that the ineligible ITC, which was earlier not part of calculation of eligible/available ITC, is now part of calculation of eligible/available ITC in view of auto-population of Table 4(A) of **FORM GSTR-3B** from various tables of **FORM GSTR-2B**. Thereafter, the registered person is required to identify ineligible ITC as well as the reversal of ITC to arrive at the Net ITC available, which is to be credited to the ECL. In

light of the above, the procedure to be followed by registered person is being detailed hereunder for correct reporting of information in the return:

- A. Total ITC (eligible as well as ineligible) is being auto-populated from statement in **FORM GSTR-2B** in different fields of Table 4A of **FORM GSTR-3B** (*except for the ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply*).
- B. Registered person will report reversal of ITC, which are absolute in nature and are not reclaimable, such as on account of rule 38 (reversal of credit by a banking company or a financial institution), rule 42 (reversal on input and input services on account of supply of exempted goods or services), rule 43 (reversal on capital goods on account of supply of exempted goods or services) of the CGST Rules and for reporting ineligible ITC under section 17(5) of the CGST Act in **Table 4 (B) (1)**.
- C. Registered person will report reversal of ITC, which are not permanent in nature and can be reclaimed in future subject to fulfilment of specific conditions, such as on account of rule 37 of CGST Rules (non-payment of consideration to supplier within 180 days), section 16(2)(b) and section 16(2)(c) of the CGST Act in **Table 4 (B) (2)**. Such ITC may be reclaimed in **Table 4(A)(5)** on fulfilment of necessary conditions. Further, all such reclaimed ITC shall also be shown in **Table 4(D)(1)**. **Table 4 (B) (2)** may also be used by registered person for reversal of any ITC availed in **Table 4(A)** in previous tax periods because of some inadvertent mistake.
- D. Therefore, the net ITC Available will be calculated in Table 4 (C) which is as per the formula **(4A - [4B (1) + 4B (2)])** and same will be credited to the ECL of the registered person.
- E. **As the details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1).**
- F. **ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported by the registered person in Table 4D(2). Such details are available in Table 4 of FORM GSTR-2B**

4.4 Accordingly, it is clarified that the reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules thereunder is required to be made under **Table 4(B)** and not under **Table 4(D)** of **FORM GSTR-3B**.

4.5 For ease of understanding, the manner of reversals is being elucidated in the illustrations enclosed as **Annexure** to this Circular.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Annexure to Circular

Illustration I:

1. A Registered person M/s ABC is a manufacturer (supplier) of goods. He supplies both taxable as well as exempted goods. In a specific month, say April, 2022, he has received input and input services as detailed in Table 1 below. The details of auto-population of Input Tax Credit on all Inward Supplies in various rows of Table 4 (A) of FORM GSTR-3B are shown in column (7) of the Table 1 below:

Table 1

S. No	Details	IGST	CGST	SGST	Total	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	ITC on Import of goods	1,00,000	-	-	1,00,000	Auto-populated in Table 4(A)(1)
2	ITC on Import of Services	50,000	-	-	50,000	
3	ITC on Inward Supplies under RCM	-	25,000	25,000	50,000	Auto-populated in Table 4(A)(3)
4	ITC on Inward Supplies from ISD	50,000	-	-	50,000	Auto-populated in Table 4(A)(4)
5	ITC on other inward supplies	2,00,000	1,50,000	1,50,000	5,00,000	Auto-populated in Table 4(A)(5)
6	Total	4,00,000	1,75,000	1,75,000	7,50,000	

Other relevant facts:

Note 1: Of the other inward supplies mentioned in row (5), M/s ABC has received goods on which ITC is barred under section 17(5) of the CGST Act having integrated tax of Rs. 50,000/-

Note 2: In terms of rule 42 and 43 of the CGST Rules, M/s ABC is required to reverse ITC of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax.

Note 3: M/s ABC had not received the supply during April, 2022 in respect of an invoice for an inwards supply auto-populated in row (5) having integrated tax of Rs. 10,000/-.

Note 4: M/s ABC has reversed ITC of Rs. 500/- central tax and Rs. 500/- state tax on account of Rule 37 i.e. where consideration was not paid to the supplier within 180 days.

Note 5: An amount of ITC of Rs 10,000/ central Tax and Rs 10,000/- state tax, ineligible on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, has not been auto-populated in Table 4(A) of FORM GSTR-3B from GSTR-2B.

2. Based on the facts mentioned in Table 1 above, M/s ABC is required to avail ITC after making necessary reversals in Table 4 of FORM GSTR-3B as detailed in Table 2 below:

Table 2

4. Eligible ITC				
Details	IGST	CGST	SGST/ UTGST	Explanation
1	2	3	4	
(A) ITC Available (whether in full or part)	----	----	----	
1. Import of Goods	1,00,000	----	----	
2. Import of Services	50,000	----	----	
3. Inward Supplies liable to Reverse Charge (other than 1 & 2 above)	----	25,000	25,000	
4. Inward Supplies from ISD	50,000	----	----	
5. All other ITC	2,00,000	1,50,000	1,50,000	
(B) ITC Reversed / Reduced	----	----	----	
1. Reversal of ITC as per rule 42 and 43 of CGST Rules	125,500	52,000	52,000	1. Refer para 4.3 (B) of circular 2. Reversal of Rs. 75,500/- integrated tax, Rs. 52,000/- central tax and Rs. 52,000/- state tax under rule 42 and 43 [Note 2] 3. Ineligible ITC of Integrated tax of Rs. 50,000/- under section 17(5) [Note 1]
2. Others	10,000	500	500	1. Refer para 4.3 (C) of circular 2. Reversal of integrated tax of Rs. 10,000/-, where supply is not received [Note 3] 3. Reversal of ITC of Rs 500/- central tax and Rs 500/- state tax on account of Rule 37 [Note 4]
(C) Net ITC Available (A)-(B)	2,64,500	122500	122500	C=A1+A2+A3+A4+A5-B1-B2
(D) Ineligible ITC				
1. As per section 17(5)	-	-	-	1. Refer para 4.3 (E) of circular

				2. Reversals under section 17(5) are not required to be shown in this row. The same are to be shown under 4(B)(1)
2. Others		10,000	10,000	<ol style="list-style-type: none"> 1. Refer para 4.3(F) of circular 2. Ineligible ITC on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act, which has not been auto-populated in Table 4(A) of GSTR-3B

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

A proposal for amendment in **FORM GSTR-3B** was deliberated in the Law Committee meeting held on 14.12.2020. Subsequently, a sub-committee of officers was constituted by the Law Committee to deliberate on issues pertaining to IGST settlement and ITC reversals. The said sub-committee of officers submitted its report on various data requirement for the purpose of IGST settlement under section 17 of the IGST Act, 2017. A note was also received from Gujarat on issues relating to unutilized balance in IGST fund and changes in format of GSTR-3B required for the purpose of IGST settlement.

2. Accordingly, a comprehensive study has been done in respect of the return required to be filed under section 39 of the CGST Act by considering *inter alia* various representations and suggestions received over a period of time. Brief history of return filing under GST, amendments made in the Finance Act, 2022 in respect of the provisions related to Returns and elaborate proposal for changes in **FORM GSTR-3B** are discussed below. **The proposed changes ensure that the GSTR1-GSTR2B linkage remains intact and as far as possible, the GSTR-3B should be auto-generated consequent to furnishing details in FORM GSTR-1.**

A. Brief history of return filing under GST:

1. The original design of return involved an elaborate process of filing of GSTR-1, 2 & 3 in a sequence which also envisaged inter-linking with back and forth flow of invoices. However, GSTR-1-2-3 model were kept in abeyance. Instead, as an interim measure, a summary return in **FORM GSTR-3B** was introduced, along with the statement of outward supplies in **FORM GSTR-1**.
2. Subsequently, a new return system was envisaged (ANX-1/ ANX-II and RET-01). Section 43A was also inserted into the CGST Act vide CGST Amendment Act, 2018. However, section 43A was not notified.
3. In the 39th meeting of the GST Council, it was recommended that the transition to the new return system may be made in an incremental manner by:-
 - i. the linking of the input tax credit in **FORM GSTR-3B** to the details of the supplies reflected in the **FORM GSTR-2A**;
 - ii. linking of the details of the statement of outward supplies in **FORM GSTR-1** to the liability in **FORM GSTR-3B**.
4. In the 42nd GST Council meeting, it was recommended that the present system of **GSTR-1/3B return filing to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system.**

B. Amendment recommended by the Council in the provisions related to Returns:

Amendments in CGST Act were recommended by the GST Council in its 43rd meeting to align the GST Law with the GSTR-1/ 2B/ 3B return filing system. The salient features of proposed return filing are as below:

- i. Filing of **FORM GSTR-1** to be mandatory before filing of return in **FORM GSTR-3B**;
- ii. Filing of **FORM GSTR-1** to be sequential;
- iii. No two-way communication while filing return;

- iv. Provision of furnishing of details of inward supplies to be removed, instead **FORM GSTR-2B** (static return) shall be made available to recipients;
 - v. Restrictions in ITC to extend where details of the Input Tax Credit of such supplies which have not been communicated to the registered persons
 - vi. Provisions for Spike Rules to be incorporated in Section 37 & 38
- Accordingly, based on the recommendations of GST Council, amendments have been made in the return related provisions of the CGST Act, through the Finance Act, 2022 and will come into effect once the said provisions of the Finance Act, 2022 are notified.

C. Major demands by taxpayers in GSTR-3B:

- i. It has been a long pending demand of trade and industry to allow amendment in FORM GSTR-3B. At present, any omission or mistake made while filing a GSTR-3B return, can be rectified in the return to be furnished for the month/ tax period during which such omission or mistake are noticed. Such rectifications/ adjustments can be made upto due date of filing return for September of the next year, or the date of filing annual return, whichever is earlier.
- ii. In exceptional circumstances, sometimes value of credit notes issued by a supplier exceeds value of invoices and debit notes issued by him during a tax period. This leads to net negative value of supplies for the taxpayer in the said tax period. Presently, negative values are not allowed to be reported in any table of **GSTR-3B**. Similarly, recipient may have to report negative values in ITC table due to receipt of credit notes in a month whose value is more than the total ITC available for the month. Trade and industry have been asking the facility of reporting negative values since long.
- iii. There is currently no clarity with respect to reporting of various kind of reversals of ITC in specific rows of FORM GSTR-3B. Ineligible ITC as per section 17(5) has to be reported in Table 4(D). However, while some taxpayers report it in Table 4(D), others just take net ITC (after reducing ineligible credit) in Table 4(A).
- iv. Taxpayers face difficulty in reconciling various reversals and subsequent reclaims of ITC. Reversal may be required due to conditions such as goods not received/ non-payment of consideration within 180 days. However, ITC reversed may be reclaimed later. Currently, no specific rows for such reversals and reclaims is provided which makes reconciliation difficult for the taxpayer.

D. Major demands for better tax administration:

- i. Auto-population of values from GSTR-1 into GSTR-3B in specific rows: This would establish one-to-one correspondence to a large extent between rows of GSTR-1 & GSTR-3B, thereby providing clarity to the taxpayer and tax officers.
- ii. Restricting editing of values auto-populated in GSTR-3B from GSTR-1: FORM GSTR-3B may be designed such that going forward it may be feasible to put restriction on editing of specific rows in GSTR-3B in line with extant provisions of CGST Act.
- iii. Streamlining the process of settlement of IGST revenues: The ITC reversed needs to be considered for Settlement of IGST. Further, amendments made by taxpayer in those details which are required for settlement purpose (viz.in Table-3.2 or section 17(5) reversals etc.) needs to be captured for ensuring accurate settlement of IGST revenues. Distinction must be made between:
 - a. the ITC reversed which need not be reclaimed in future; and
 - b. the ITC which is reversed but may be claimed in future.
- iv. Line-wise entry in **FORM GSTR-3B** will facilitate the process of scrutiny and audit by the tax administration due to availability of better quality of data. This will in turn help in revenue mobilization efforts of tax administration.

E. Present FORM GSTR-3B structure:

- i. Auto drafted Input Tax Credit statement in **FORM GSTR-2B** has been made available to the taxpayer w.e.f. August 2020 containing all data regarding ITC available based on B2B supplies received from other persons, imports, ISD and RCM supplies
- ii. Auto-population of ITC and liabilities in **FORM GSTR-3B** (Payment return) from **FORM GSTR-2B** (auto-generated inward supply statement) and **FORM GSTR-1** (Outward supply statement) respectively has been started w.e.f. December 2020 which has simplified the return filing.
- iii. Red Flag reports for R1-3B or 2B-3B mismatch introduced in 1st Quarter of 2019.

F. PROPOSAL FOR CHANGES IN FORM GSTR-3B:

Keeping in view the challenges of taxpayers as detailed above and the journey of return enhancements done till date, it is proposed to make changes in the format of GSTR-3B which would cover the following aspects:

- i. **Auto-population of values from GSTR-1 into GSTR-3B in specific rows:** This would establish one-to-one correspondence to a large extent between rows of GSTR-1 & GSTR-3B, thereby providing clarity to the taxpayer and tax officers. Further, it would minimize requirement of user input in GSTR-3B and ease GSTR-3B filing process.
 - ii. **Provision for allowing amendment in GSTR-3B vide insertion of various amendment tables for outward supplies, input supplies liable to reverse charge and ITC:** Since **FORM GSTR-1** and **FORM GSTR-2B** have been linked with **FORM GSTR-3B**, it is recommended that amendment in **FORM GSTR-3B**, as far as feasible, should flow from amendment in FORM GSTR-1, as far as outward liabilities are concerned. Even in the new return system which was envisaged, the amendment in RET-1(RET-1A) was proposed through amendment in details of outward supply (ANX-1/ANX-1A). Therefore, for giving more clarity to the taxpayers, separate amendment table (for liabilities) may be introduced in **FORM GSTR-3B** so that any amendment made in **FORM GSTR-1** gets reflected in **FORM GSTR-3B** clearly. Similarly, an amendment table may also be incorporated in **FORM GSTR-3B** to show any amendment in ITC portion. [*The amendment tables may be activated only on selection by taxpayers*]
 - iii. Allowing **negative values in GSTR-3B** & carrying forward the negative values of previous tax period to current tax period.
 - iv. Providing specific rows for showing **various reversals and subsequent reclaims of ITC.**
 - v. **Streamlining the process of settlement of IGST revenues:** The ITC reversed needs to be considered for Settlement of IGST. Further, amendments made by taxpayer in those details which are required for settlement (viz. in Table-3.2 or section 17(5) reversals etc.) need to be captured for ensuring accurate settlement of IGST revenues. Distinction must be made between:
 - a. the ITC reversed which need not be reclaimed in future; and
 - b. the ITC which is reversed but may be claimed in future.
3. Based on the abovementioned principles, Law Committee in its meeting dated 18.11.2021 and 29.12.2021 approved a draft **FORM GSTR-3B** return which is enclosed to this note as **Annexure A**. Explanatory instructions relating to the draft return are enclosed as **Annexure B**. Law Committee also recommended minor changes in **FORM GSTR-1** which is enclosed to this note as **Annexure C**. **Further, it was decided by the Law Committee that the said draft of GSTR-3B & changes in GSTR-1 may be taken to Council for in-principle**

approval and seeking directions to place the same in public platform for seeking inputs/suggestions of the stakeholders. Based on the feedback received, the matter may be examined by the Law Committee and placed before the GST Council for taking a final decision and implementation thereafter.

4. Accordingly, the agenda note is placed before the GST Council for deliberation and approval.

FORM GSTR-3B
[See rule 61(1)]
Monthly / Quarterly Return

Year	y	y	y	y
Month/ Quarter				

1.	GSTIN	
2(a).	Legal name of the registered person	<Auto >
2(b)	Trade name, if any	<Auto >
2(c)	ARN	<Auto >(after filing)
2(d)	Date of filing	<Auto >(after filing)

3. Details of Outward Supplies and inward supplies liable to reverse charge

Part A: Outward Supplies, inward supplies liable to reverse charge, supplies under section 9(5) and advances received/adjusted

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess	Auto-population logic
1	2	3	4	5	6	
(a) Taxable outward supplies (other than zero rated, deemed export, reverse charge, nil rated, exempted)	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 4A of GSTR-1
(b) Exports	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 6A of GSTR-1
(c) Supplies made to SEZ unit or SEZ developer	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 6B of GSTR-1
(d) Deemed exports	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 6C of GSTR-1
(e) Outward supplies attracting reverse charge	<Auto>	<NIL>	<NIL>	<NIL>	<NIL>	Table 4B of GSTR-1
(f) Inward supplies (liable to reverse charge)						
(1) Import of services	<Manual>	< Manual>	< Manual>	< Manual>	< Manual>	-----

(2) Others	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 3 Part A, Section III, B2B- Invoices of GSTR-2B Table 4 Part A Section III, B2B- Invoices of GSTR-2B
(g) Supplies on which ECO is required to pay tax u/s 9(5) [To be furnished by ECO]	< Auto >	< Auto >	< Auto >	< Auto >	< Auto >	New Table may be inserted in GSTR-1 so that supplies on which ECO is required to pay tax u/s 9(5) may be shown in the said table by ECO
(h) Supplies made through ECO on which ECO is required to pay tax u/s 9(5) [To be furnished by the supplier]	<Auto>	<NIL>	<NIL>	<NIL>	<NIL>	Proposed Table 14 [row (b) to be inserted] of GSTR-1
(i) Other outward supplies (Nil rated, exempted)	<Auto>	<NIL>	<NIL>	<NIL>	<NIL>	Table 8 of GSTR-1
(j) Non-GST outward supplies	<Auto>	<NIL>	<NIL>	<NIL>	<NIL>	Table 8 of GSTR-1
(k) Advances received/Advances adjusted in the current tax period	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	Table 11 Part I of GSTR-1

Part B: Out of the supplies shown in Part-A above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders

Nature of Supplies	Place of Supply (State/UT)	Total Taxable value	Amount of Integrated Tax	Auto-population logic
1	2	3	4	
(a)Supplies made to unregistered persons	<Auto>	<Auto>	<Auto>	Table 5 & 7B of GSTR-1
(b) Supplies made to composition taxable persons	<Auto>	<Auto>	<Auto>	Table 4 of GSTR-1
(b) Supplies made to UIN holders	<Auto >	<Auto>	<Auto>	Table 4 of GSTR-1

Part C: Amendment Table

Nature of Supplies	Tax Period to which it pertains	Differential taxable value	Differential Integrated Tax	Differential Central Tax	Differential State/UT Tax	Differential Cess	Place of Supply	Auto-population logic
1	2	3	4	5	6	7	8	
(a) Amendment made in the statement of outward supplies relating to details furnished in Part-A in earlier tax period	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>		Table 9, 10 & 11 of GSTR-1
(b) Amendment to inward supplies attracting reverse charge i.e. row (f) of Part-A furnished in earlier tax period	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>	<Auto>		Table 3 Part A, Section III, B2B-Debit Notes, B2B-Invoices(Amendment), B2B-Debit Notes(Amendment) of GSTR-2B Table 4 Part A Section III, B2B-Debit Notes, B2B-Invoices(Amendment), B2B-Debit Notes(Amendment) of GSTR-2B
(c) Amendments made in the statement of outward supplies relating to details furnished in Part-B in earlier tax period <i>[This being subset of (a), not to be added in tax liability; only required for settlement purpose]</i>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	<Auto,NE>	Table 9 &10 of GSTR-1

Part D: Negative value carried forward from previous tax period

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(a) Negative value carried forward other than (b)	<Auto, NE>	<Auto, NE>	<Auto, NE>	<Auto, NE>	<Auto, NE>
(b) Negative value carried forward in respect of RCM supplies	<Auto, NE>	<Auto, NE>	<Auto, NE>	<Auto, NE>	<Auto, NE>

4. Eligible and ineligible ITC

Description	Integrated Tax	Central Tax	State/UT Tax	Cess	Auto-population
1	2	3	4	5	
(A) ITC Available					
(1) Import of goods	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part A Section IV
(2) Import of services	<Manual>	<Manual>	<Manual>	<Manual>	-----
(3) Inward supplies liable to reverse charge (other than 2 above)	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part A Section III
(4) Inward supplies from ISD	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part A Section II
(5) ITC on Domestic Inwards Supplies excluding 1 to 4	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part A Section I
(6) ITC reclaimed					
(a) ITC which was reversed in (B)(4)(a) in earlier tax period	<Manual>	<Manual>	<Manual>	<Manual>	-----
(b) ITC which was reversed in (B)(4)(b) in earlier tax period	<Manual>	<Manual>	<Manual>	<Manual>	-----
(c) ITC which was reversed in (B)(4)(c) in earlier tax period	<Manual>	<Manual>	<Manual>	<Manual>	-----
(B) ITC Reversed					
(1) As per rules 38,42 and 43	<Manual>	<Manual>	<Manual>	<Manual>	-----

(2) As per section 17(5)	<Manual>	<Manual>	<Manual>	<Manual>	-----
(3) On account of credit notes in respect of inward supplies	<Auto>	<Auto>	<Auto>	<Auto>	GSTR-2B: Table 3 Part B Section I Table 4 Part B Section I
(4) Others					
(a) On account of section 16(2)(b) i.e. goods/services not received in the current tax period	<Manual>	<Manual>	<Manual>	<Manual>	-----
(b) On account of second proviso to section 16(2)	<Manual>	<Manual>	<Manual>	<Manual>	-----
(c) Others	<Manual>	<Manual>	<Manual>	<Manual>	-----
(C) Net ITC Available [(A) – (B)]	<Auto>	<Auto>	<Auto>	<Auto>	

4A. Amendments to details of ITC available and ITC reversed furnished in earlier tax periods

Description	Tax Period to which it pertains	Differential tax			
		IGST	CGST	SGST/UTGST	Cess
1	2	3	4	5	6
(A) Amendment to ITC available		<Manual >	<Manual >	<Manual >	<Manual >
(B) Amendment to ITC reversed					
(1) As per rules 38,42 and 43		<Manual >	<Manual >	<Manual >	<Manual >
(2) As per section 17(5)		<Manual >	<Manual >	<Manual >	<Manual >

Taxpayer will be able to see the tax period to which the amendment pertains

Taxpayer will be able to select the sub-category of ITC available to be amended from drop-down menu

5. Payment of tax

Description	Tax payable	Paid through ITC				Tax paid TDS./TC S	Tax/Cess paid in cash	Interest	Late Fee
		Integrated Tax	Central Tax	State/UT Tax	Cess				
1	2	3	4	5	6	7	8	9	10
Integrated Tax									
Central Tax									
State/UT Tax									
Cess									

Instructions –

1. Terms used:
 - a. Auto: Auto-populated
 - b. NE: Non-editable
 - c. POS: Place of Supply
2. Table 3 will capture information related to outward supplies and inward supplies liable to reverse charge:
 - a. **Part-A** will contain details of outward supplies, inward supplies liable to reverse charge, supplies under section 9(5) and advances received/adjusted. Any debit/credit notes issued in the current tax period will not be declared here. Further, any amendment to an invoice, including amendment to debit/credit note, pertaining to earlier tax periods will not be reported here. Part-A will be auto-populated from Tables 4, 6, 8, 11 and proposed Table 14 of **FORM GSTR-1** other than row (f) which will be partly auto-populated from **FORM GSTR-2B** and partly user entry.
 - b. **Part-B** will contain details of inter-state outward supplies made to unregistered persons, composition taxable persons and UIN holders out of the supplies declared in Part-A. It will be auto-populated from relevant entries of Table 4, 5 and 7 of **FORM GSTR-1**.
 - c. **Part-C** will contain amendment made to statement of outward supplies relating to details furnished in Part-A and Part-B in earlier tax period and amendment to inward supplies attracting reverse charge furnished in Part-A of earlier tax period.
 - i. Row (a) will contain amendment made in the statement of outward supplies relating to details furnished in rows (a), (b), (c), (d), (e), (g), (h) and (k) of Part-A furnished in earlier tax period. It will be auto-populated from Tables 9, 10 & 11 of GSTR-1 and will be non-editable. This row will be displayed to the taxpayer only if he shows any amendment/debit note/credit note in **FORM GSTR-1**. PoS column of this row will be masked i.e no value will be entered in the PoS column of this row.
 - ii. Row (b) will contain amendment made to inward supplies attracting reverse charge i.e. row (f) of Part-A furnished in earlier tax period. It will be auto-populated from **FORM GSTR-2B**. However, it can be edited by the taxpayer. Further, taxpayer can select the time period to which such amendment pertains. This table will be activated either on selection by taxpayers or if the debit note, amendment to invoice or amendment to debit note is done by the supplier. PoS column of this row will be masked i.e no value will be entered in the PoS column of this row.
 - iii. Row (c) will contain amendment made in the statement of outward supplies relating to details furnished in Part-B furnished in earlier tax period. It will be auto-populated from Tables 9 & 10 of GSTR-1 and will be non-editable. Further, row (c) being a sub-set of row (a), it will not to be added in tax liability. This row will be displayed to the taxpayer only if he shows any amendment/debit note/credit note in **FORM GSTR-1**. Column of Place of Supply of this row will be auto-populated from GSTR-1 and will be non-editable.
 - d. **Part-D** will contain negative value carried forward from previous tax period. It will contain negative value carried forward from previous tax period in respect of RCM supplies and negative value carried forward from previous tax period in respect of non-RCM supplies. It will be non-editable.
3. Unreported invoice i.e. invoice which has not been declared in **FORM GSTR-1** will be declared in Table 3 Part-A and/or Table 3 Part-B as applicable and not in Table 3 Part-C.
4. Table 4 will capture information related to details of ITC. All availment/reclaim in ITC are

- to be reported in 4(A) and all reversals in ITC are to be reported in 4(B).
- a. **4(A)** will contain ITC available on account of import of goods, import of services, inward supplies liable to reverse charge (other than import of services), inward supplies from ISD, any other ITC on domestic inwards supplies and any reclaim of ITC. It is to be noted that row (6) i.e. “ITC reclaimed” will contain all reclaims other than the reclaims pertaining to rule 38, 42 & 43 and section 17(5). Details in 4(A) will be auto-populated from **FORM GSTR-2B** other than ITC pertaining to import of services[4(A)(2)] and ITC reclaimed[4(A)(6)] which will both be entered manually by the taxpayer. Details in 4(A)(3) will be auto-populated from **FORM GSTR-2B** in respect of invoices pertaining to supplies received from registered person only and the taxpayer would be required to manually enter the ITC, if any, pertaining to tax paid on supplies received from unregistered person.
 - b. **4(B)** will contain ITC reversed on account of rule 38, 42 & 43, section 17(5), credit notes and other reversals. Other reversals will include such reversals which are not covered under section 17, viz where invoice is received but supply of corresponding goods/services is not yet received, where consideration has not been paid for the said supply within the time specified under second proviso to section 16(2), etc. Once the eligibility conditions for availing ITC are satisfied, the taxpayer can claim the ITC under “ITC reclaimed” category [Table 4(A)(6)]. Entries in 4(B) will be made manually by the user. However, ITC reversed on account of credit notes[4(B)(3)] will be auto-populated from **FORM GSTR-2B**.
 - c. **4(C)** i.e. “Net Liability” will be calculated as difference of values reported in 4(A) and 4(B).
5. Table 4A will contain amendments to details of ITC available and ITC reversed furnished in earlier tax periods. This table will be activated only on selection by taxpayers. Taxpayer will make the entries in this table tax period-wise. While filling Table 4A the following must be ensured:
- a. Any amendment in ITC due to debit/credit notes will be reported in Table 4 and not in Table 4A.
 - b. Further, it is to be noted that any downward/upward revision in reversal of ITC on account of rule 38, 42 & 43, section 17(5) will be reported in table 4A and not in Table 4.
 - c. Any upward amendment/revision in reversal of ITC other than on account of rule 38, 42 & 43, section 17(5) will be reported in row (B)(4) of Table 4 and any downward amendment/revision in reversal of such ITC will be reported in row (A)(6) of Table 4.
 - d. Any upward amendment/revision in reclaim of ITC other than on account of rule 38, 42 & 43, section 17(5) will be reported in row (A)(6) of Table 4 and any downward amendment/revision of such ITC will be reported in row (B)(4) of Table 4.
6. Table 5 i.e. the payment table will be auto-populated from other tables in **FORM GSTR-3B** and will be non-editable.

Proposed changes in GSTR-1:

1. Net of B2C debit note/credit note which are shown in Table 7 of GSTR-1 may be shown in amendment table i.e. Table 10 of GSTR-1 instead.
2. Table 14 proposed by LC may be amended to include supplies made by supplier supplying through ECO on which ECO is required to pay tax u/s 9(5) as follows:

14. Details of the supplies made through e-commerce operators

Nature of Supply	GSTIN of e-commerce operator	Value of supplies made	Value of supplies returned	Net value of supplies	Tax amount			
					Integrated tax	Central tax	State / UT tax	Cess
1	2	3	4	5	6	7	8	9
(a)Supplies made through e-commerce operators liable to collect tax under section 52								
(b)Supplies made through e-commerce operators liable to pay tax under section 9(5)								

3. Table 15 may be introduced to show amendment done in supplies shown in the proposed Table 14.
4. New Table may be inserted in GSTR-1 so that supplies on which ECO is required to pay tax u/s 9(5) may be shown in the said table by ECO. Further, rows/table for amendment done in such supplies may also be incorporated in GSTR-1.

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

Law Committee, in its various meetings, has deliberated upon several issues and has recommended changes in some of the provisions of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”). In addition to the changes in the CGST Rules, some changes in the FORMS have also been recommended by the Law Committee. These changes are discussed below:

I. Amendment to rule 21A:

1.1 In terms of rule 21A(2A) of the CGST Rules, centralised suspension of registration can be made through portal, on recommendation of the GST Council/ GIC. W.e.f. November, 2021, registrations which are liable for cancellation under clause (b) or clause(c) of sub-section (2) of section 29 of the CGST Act, are being suspended centrally through the GST portal on 1st of every month, under sub-rule (2A) of rule 21A of CGST Rules, 2017, **based on their turnover** as below:

- a) Taxpayers where six or more monthly GSTR-3Bs have not been furnished and their turnover/ estimated turnover (AATO) in preceding financial year is more than Rs. 50 lakhs.
- b) Taxpayers where quarterly GSTR-3Bs have not been furnished for two or more quarters and their turnover/ estimated turnover (AATO) in preceding financial year is more than Rs. 50 lakhs.

1.2 Centralized suspension of registration for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29, **irrespective of turnover**, may involve a large number of registrants, and may create operational difficulty in handling such large number of cases of cancellation by tax officers. Accordingly, the proposal of GSTN regarding a system of automatic revocation of suspension in such cases, once all the pending returns are filed on the portal by the taxpayer, was approved by the Law Committee in its meeting dated 08.10.2021 and accordingly, the LC recommended insertion (shown in red color) of second proviso in sub-rule (4) of rule 21A as below:

Rule 21A	
Rule 21A. Suspension of registration.-	
(1)	
(2)	
(3)	
(4)	The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect:
	Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit:-
	Provided further that where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in clause (b) or clause (c) of sub-

section (2) of section 29 and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

(5)

II. Amendment to Explanation 1 after rule 43:

2.1 Duty Credit Scrip (DCS) is an incentive scheme which is an export promotion benefit offered by the Government of India under the Foreign Trade Policy (FTP) 2015. Such DCSs are transferrable and GST was required to be paid on its sale / supply. However, w.e.f. October, 2017 [vide notification No. 35/2017-Central Tax (Rate), dated 13-10-2017 (entry No 122A)], the said supply was exempted from GST.

2.2 Various representations have been received from field formations and trade and industry seeking clarification as to whether the registered persons, who make such exempted supply of DCSs, are required to reverse ITC under rule 42 on common inputs and input services used for both taxable (including zero-rated) supply as well as the said exempted supply of DCSs.

2.3 The issue was deliberated by the Law Committee. The Law Committee opined that though supply of MEIS/Duty Credit Scrip by the exporters is an exempt supply under GST, the credit availed on inputs and input services by the exporters for making taxable supplies including zero rated supplies should not be considered as common credit on such taxable supplies and the exempted supply of DCS. Therefore, there should be no requirement of reversal of input tax credit for such exempted supply of DCS by the exporters. Accordingly, the Law Committee recommended that clause (d) may be inserted in Explanation 1 after rule 43 of CGST Rules, 2017 (shown in red color below) to clarify the aforesaid stand.

Explanation 1 after rule 43

Explanation 1: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) [omitted]

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E) dated the 13th October, 2017.

III. Amendment to rule 46:

3.1 The taxpayers having Annual Aggregate Turnover above Rs 20 Cr. have been enabled for e-invoicing on Invoice Registration Portal (IRP). The enablement has been done on the Invoice Registration Portal (IRP) on the basis of the turnover declared by the taxpayers in **FORM GSTR-3B**. Presently, as per various notifications of e-invoicing, certain entities/ sectors of taxpayers such as SEZ, GTA, insurer/banking company, passenger transportation service, government department/local authorities, etc. are exempted from the mandate of e-invoicing. These taxpayers who are otherwise not required to generate e-invoice, have also got enabled and are now requesting for their e-invoice status to be disabled as their recipients seek e-invoice from them instead of regular invoices, causing avoidable business disputes.

3.2 The issue was deliberated by the Law Committee. The Law Committee recommended that rule 46 of the CGST Rules, which provides for particulars to be declared in an invoice, may be amended to specify that invoice shall contain a declaration by the registered person to the effect that invoice is not required to be issued in the manner prescribed under rule 48(4) of the CGST Rules, in all cases where an invoice is issued, other than in the manner under rule 48(4), by the taxpayer having AATO more than the threshold notified for issuance of e-invoice. The proposed amendment to rule 46 is shown in red color below:

Rule 46
46. Tax invoice.-Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,- (a) (r).... (s) a declaration that invoice is not required to be issued in the manner prescribed under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner under sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover notified under sub-rule (4) of rule 48.

IV. Amendment to rule 87:

4.1 Rule 87 (3) of CGST Rules provides that the amount to be deposited by taxpayer in his cash ledger towards taxes, interest, penalty, fees or any other amount, may be deposited using the following modes of payment namely:-

- (i) Internet Banking through authorised banks;

- (ii) Credit card or Debit card through the authorised bank;
- (iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or
- (iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft.

4.2 GST Council in its 42nd meeting held on 5th and 12th October 2020 had approved “Unified Payment Interface (UPI) & Immediate Payment Service (IMPS)” as a payment option for payment of Goods and Services Tax in addition to the four modes of payment as specified under Rule 87(3) of CGST Rules, 2017. Accordingly, development of these two payment modes is under process by GSTN. Principal CCA is also in the process of formalising these payment systems in consultation with NPCI, RBI and the Banks.

4.3 Law Committee has recommended amendment in rule 87(3), rule 87(5), **FORM PMT-06** and **FORM PMT-07** so that appropriate action for implementation of new payment mode may be initiated. The proposed amendments to rule 87 and **FORM PMT-06** and **FORM PMT-07** are shown in red color below:

Rule 87
<p>87. Electronic Cash Ledger.-</p> <p>(1) ...</p> <p>(2) ...</p> <p>(3) The deposit under sub-rule (2) shall be made through any of the following modes, namely:-</p> <ul style="list-style-type: none"> (i) Internet Banking through authorised banks; (ia) Unified Payment Interface (UPI) from any bank; (ib) Immediate Payment Services (IMPS) from any bank; (ii) Credit card or Debit card through the authorised bank; (iii) National Electronic Fund Transfer or Real Time Gross Settlement from any bank (iv) Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft: <p>(4) ...</p> <p>(5) Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement or Immediate Payment Service mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:</p> <p style="padding-left: 40px;">Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.</p> <p>(6) ...</p>

Form GST PMT –06

[See Rule 87(2)]

CHALLAN FOR DEPOSIT OF GOODS AND SERVICES TAX

CPIN	<<Auto Generated after submission of information>>	Date <<Current date>>	Challan Expiry Date --
------	--	-----------------------	------------------------

GSTIN	<<Filled in/Auto populated>>
Name (Legal)	<<Auto Populated>>
Address	<<Auto Populated>>

Email address	<<Auto Populated>>
Mobile No.	<<Auto Populated>>

		Details of Deposit					(All Amount in Rs.)	
Government	Major Head	Minor Head						
		Tax	Interest	Penalty	Fee	Others	Total	
Government of India	Central Tax (----)							
	Integrated Tax (----)							
	CESS (----)							
	Sub-Total							
	State (Name)	State Tax (----)						
UT (Name)	UT Tax (----)							
Total Challan Amount								
Total Amount in words								

Mode of Payment (relevant part will become active when the particular mode is selected)

<input type="checkbox"/> e-Payment (This will include all modes of e-payment such as CC/DC, net banking and UPI. Taxpayer will choose one of this)	<input type="checkbox"/> Over the Counter (OTC)	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> IMPS
	Bank (Where cash or instrument is proposed to be deposited)	
	Details of Instrument <input type="checkbox"/> Cash <input type="checkbox"/> Cheque <input type="checkbox"/> Demand Draft	
<input type="checkbox"/> NEFT/RTGS		

Remitting bank	
Beneficiary name	GST
Beneficiary Account Number (CPIN)	<CPIN>
Name of beneficiary bank	Reserve Bank of India
Beneficiary Bank's Indian Financial System Code (IFSC)	IFSC of RBI
Amount	

Note: Bank Charges, if any, shall be paid separately to the bank by the person making payment.

<input type="checkbox"/> IMPS	
Remitting bank	
Beneficiary name	GST
Beneficiary Account Number (CPIN)	<CPIN>
Name of beneficiary bank	<Selected Authorized Bank>
Beneficiary Bank's Indian Financial System Code (IFSC)	<IFSC of selected Authorized Bank >
Amount	

Note: Bank Charges, if any, shall be paid separately to the bank by the person making payment.

Particulars of depositor	
Name	
Designation/ Status (Manager, partner etc.)	
Signature	
Date	
Paid Challan Information	
GSTIN	
Taxpayer Name	
Name of Bank	
Amount	
Bank Reference No. (BRN)/UTR/RRN	
CIN	
Payment Date	
Bank Ack. No. (For Cheque / DD deposited at Bank's counter)	

Form GST PMT -07

[Refer Rule 87(8)]

APPLICATION FOR INTIMATING DISCREPANCY RELATING TO PAYMENT

1.	GSTIN					
2.	Name (Legal)					
3.	Trade name, if any					
4.	Date of generation of challan from Common Portal					
5.	Common Portal Identification Number (CPIN)					
6.	Mode of payment (tick one)	Net banking <input type="checkbox"/>	CC/DC <input type="checkbox"/>	NEFT/RTGS <input type="checkbox"/>	IMPS <input type="checkbox"/>	OTC <input type="checkbox"/>
7.	Instrument detail, for OTC payment only	Cheque / Draft No.	Date	Bank/branch on which drawn		
8.	Name of bank through which payment made					
9.	Date on which amount debited / realized					
10.	Bank Reference Number (BRN)/ UTR No., if any					
11.	Retrieval Reference Number (RRN) - IMPS					
12.	Name of payment gateway (for CC/DC)					
13.	Payment detail	Central Tax	State Tax	UT Tax	Integrated Tax	Cess
<p>Verification (by authorized signatory)</p> <p>I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief.</p> <p align="right">Signature</p> <p>Place Name of Authorized Signatory</p> <p>Date Designation /Status.....</p>						

V. Amendment to rule 89:

5.1.1 Vide para 47 of Circular No. 125/44/2019-GST dated 18th November, 2019, it was clarified that if the export value declared on the shipping bill is different than the value declared in the tax invoice, the lower of the two values would be considered for processing of refund of unutilized input tax credit on account of export of goods made without payment of tax. However, there is still some confusion among the field formations regarding the meaning of the term export value declared in the corresponding shipping bill under the Customs Act – whether the same has to be taken as FOB value or CIF value or invoice value.

5.1.2 The FOB value includes the transaction value of the goods and the value of services performed to deliver goods to the border of the exporting country, while CIF value includes the transaction value of the goods, the value of services performed to deliver goods to the border of the exporting country and the value of the services performed to deliver the goods from the border of the exporting country to the border of the importing country. Further, in terms of the provisions of the Customs Act, 1962, the value of export goods is the transaction value of goods **for delivery at the time and the place of exportation, i.e. port of export (in India)**, thereby meaning that the export value of goods is based on the FOB value. Therefore, it can be stated that the relevant export value declared in the corresponding shipping bill under the Customs Act should be the FOB value. On the other hand, the value of imported goods is the transaction value of goods for delivery at time and place of importation, i.e. port of import (in India), thereby meaning that value of imported goods is based on CIF value.

5.1.3 The clarification issued vide para 47 of Circular No. 125/44/2019-GST dated 18th November, 2019 does not in any manner affect the value which an exporter may charge from the importer. The said clarification has been issued for processing of refund of unutilised ITC under section 54 of CGST Act, read with rule 89 of CGST Rules, on account of export of goods. It is also added that para 47 of Circular No. 125/44/2019-GST dated 18th November, 2019 also makes it clear that the said clarification is applicable when the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, and in such cases, the lower of the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be taken into account while calculating the eligible amount of refund. As the value being referred in Para 47 of the said circular is export value declared in the shipping bill/ bill of export under the Customs Act, the said relevant export value in shipping bill is intended to be the FOB value declared in the shipping bill/ bill of export, as discussed in Para 5.1.2 above.

5.1.4 Law Committee deliberated on the issue and was of the view that the term export value declared in the corresponding shipping bill under the Customs Act mentioned in the clarification issued vide para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 refers to FOB value only. Law Committee, however, felt that an explanation may be inserted under rule 89(4) of CGST Rules, so as to remove any ambiguity in the matter, and to ensure uniformity in processing of refunds of unutilised ITC on account of export of goods. Law Committee also recommended that Statement 3 of RFD-01 may be modified to include a column for capturing FOB value declared in Shipping Bill/ Bill of export under the heading “Shipping bill/Bill of export”

5.2.1 Second proviso to sub-rule (1) of rule 89 prescribes the person and the supplies which are eligible for refund in respect of supplies made to SEZ Developer/Unit. 2nd proviso to sub-rule (1) of rule 89 is reproduced as under:

“Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone;”

5.2.2 As per the above proviso, in respect of supplies to SEZ Developer/Unit, the refund is available only to the supplier of goods or services and in respect of only those supply of goods or services which are meant for authorised operations. Further, the said proviso prescribes that receipt of such supply of goods or services by SEZ should have been endorsed by the specified officer of the Zone. However, “specified officer” mentioned in the above proviso has not been defined or clarified in CGST Rules.

5.2.3 In this regard, it is pertinent to mention that rule 30 of the SEZ Rules, 2006 deals with the procedure for procurements from the Domestic Tariff Area. Sub-rule (4) of rule 30 provides for endorsement of the documents/ Bill of Export pertaining to supply from DTA to SEZ by the authorised officer. Sub-rule (4) of rule 30 of SEZ Rules, 2006, is as under:

*“(4) A copy of the document referred to in sub-rule (1) or copy of Bill of Export, as the case may be, with an endorsement by the **authorised officer** that goods have been admitted in full into the Special Economic Zone shall be treated as proof of export and a copy with such endorsement shall also be forwarded by the Unit or Developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within forty-five days failing which the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the Domestic Tariff Area supplier;”*

5.2.4 In view of the above, it can be stated that there is contradiction in the designation of the officer as prescribed under the CGST Rules, 2017 and that under the SEZ Rules, 2006 who is required to endorse the documents pertaining to receipt of supplies of goods and service in SEZ from DTA. Further, due to this contradiction and lack of clarity, it has been reported that many tax authorities are rejecting the refunds of the suppliers making supplies of goods or services or both to SEZ on the ground that the documents pertaining to supply to SEZ have been endorsed by the Authorised Officer of the SEZ and **not** by the Specified officer of the said SEZ.

5.2.5 Authorised Officer and specified officer have been defined in rule 2 of the SEZ Rules, 2006, as under:

(c) “Authorised Officer” means an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the Special Economic Zone and authorized by the Specified Officer to discharge any of his functions under these rules;

(zd) “Specified Officer” in relation to a Special Economic Zone means Joint or Deputy or Assistant Commissioner of Customs for the time being posted in the Special Economic Zone;

As per the above provisions of SEZ Rules, 2006, a specified officer, being a superior authority in hierarchy, can authorise an authorised officer to discharge any of his functions.

5.2.6 Accordingly, Law Committee deliberated on the issue in its meeting dated 07.05.2022 and recommended that to clarify the matter and to align the provisions of sub-rule (1) of rule 89 of CGST Rules with those pertaining to supplies by DTA to SEZ in SEZ Rules, 2006, **an explanation** may be inserted at the end of sub-rule (1) of rule 89, as under:

Explanation: For the purpose of this sub-rule, “Specified Officer” means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.

5.3 The proposed amendment to rule 89 is shown in red color below.

Rule 89
<p>89. Application for refund of tax, interest, penalty, fees or any other amount.-</p> <p>(1) Any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:</p> <p style="padding-left: 40px;">Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:</p> <p style="padding-left: 40px;">Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –</p> <p style="padding-left: 80px;">(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;</p> <p style="padding-left: 80px;">(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:</p> <p>...</p> <p>....</p> <p style="padding-left: 40px;">Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.</p> <p>Explanation: For the purpose of this sub-rule, “Specified Officer” means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.</p> <p>(1A) ...</p> <p>(2) ...</p> <p>(3) ...</p> <p>(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section</p>

16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(F) ...

Explanation: For the purpose of this sub-rule, the value of goods exported out of India shall be taken as –

(i) the FOB value declared in the Shipping Bill or Bill of Export form, as the case may be, as per Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.

(4A)

VI. Amendment in FORM GSTR-3B

A. In light of notification No. 17/2021-Central Tax (Rate)

6.1.1 It is informed that on the recommendations of GST Council in its 45th meeting, “Restaurant Service” have been notified under section 9(5) of the CGST Act, 2017 w.e.f. 01.01.2022, i.e. to make Electronic Commerce Operators (ECOs) liable to pay GST on ‘restaurant service’ supplied through them [notification no. 17/2021-Central Tax (Rate) dated 18.11.2021 and corresponding notifications under IGST Act and UTGST Act].

6.1.2 Certain representations were received from ECOs wherein the issue of how the details of supplies notified under section 9(5) shall be furnished was raised and it was requested to provide separate lines in GSTR returns for furnishing the same. The issue was deliberated by the Law Committee. Law Committee observed that as the provisions regarding payment of tax by ECOs in respect of delivery of “restaurant service” are coming into force w.e.f. 1st January, 2022, while on the immediate basis, the information in respect of supplies made through ECOs under Section 9(5) of CGST Act may be allowed to be declared both by suppliers as well as ECOs in the existing rows/ tables of GSTR-3B and GSTR-1.

6.1.3 Accordingly, the issue was clarified vide Circular No. 167/23/2021-GST dated 17.12.2021 that the ECOs may report such supplies provided through them under section 9(5) as outward taxable supplies, for the time being, and may also furnish the details of such supplies under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose. It was also clarified that the

registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being. Further, GSTN was requested to provide separate rows/ table to provide for separate rows in GSTR-3B for declaration of the supplies through ECOs under section 9(5) by both the suppliers as well as by ECOs.

6.1.4 Now, GSTN has informed that the development of an additional table for reporting taxes paid under section 9(5) of the CGST Act, both by ECOs as well as by the suppliers, has been completed. Therefore, Law Committee in its meeting dated 08.06.2022 proposed to issue a notification in order to notify the changes in **FORM GSTR-3B** to this effect. Law Committee further recommended that corresponding amendments in GSTR-1 may also be expedited. The proposed changes in **FORM GSTR-3B** are shown in red color below.

6.1.5 The proposal to insert the necessary table in GSTR-3B, as recommended by the Law Committee, was placed before the GST Implementation Committee (GIC) for approval on 19.04.2022. While all other members agreed to the said proposal; Haryana, raised a few issues for examination, mainly suggesting that it may not be desirable to introduce a new table in GSTR-3B for a small number of taxpayers; that amendment in GSTR-1 may also be required in addition to GSTR-3B for proper reconciliation; and that instead of making any changes in GSTR-3B, an additional return **FORM GSTR-8A** for ECOs may be introduced to capture such details. Haryana desired that the issue may be reexamined by the Law Committee.

6.1.6 The matter was accordingly, deliberated by the Law Committee in its meeting dated 08.06.2022. The Law Committee recommended to go ahead with the proposed changes in GSTR-3B. Further, Law Committee also recommended that GSTN may expedite development of functionality for changes in GSTR-1, proposed by law Committee to capture the details of supplies made through ECOs for optimal reconciliation.

B. In light of Agenda note # ... placed before the GST Council relating to clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B

6.2. In terms of the Circular proposed vide the agenda note on clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in **FORM GSTR-3B** placed before the GST Council, certain label changes are required in Table 4 of **FORM GSTR-3B** which are shown in red color below.

FORM GSTR-3B

[See rule 61(5)]

Year				
Month				

1.	GSTIN																		
2.	Legal name of the registered person	Auto Populated																	

3.1 Details of Outward Supplies and inward supplies liable to reverse charge (other than those covered by Table 3.1.1)

Nature of Supplies	Total Taxable	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(a) Outward taxable supplies (other than zero rated, nil rated and exempted)					
(b) Outward taxable supplies (zero rated)					
(c) Other outward supplies (Nil rated, exempted)					
(d) Inward supplies (liable to reverse charge)					
(e) Non-GST outward supplies					

3.1.1 Details of Supplies notified under section 9(5) of the CGST Act, 2017 and corresponding provisions in IGST/UTGST/SGST Acts.

Nature of Supplies	Total Taxable	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(i) Taxable supplies on which electronic commerce operator pays tax u/s 9(5) [to be furnished by the electronic commerce operator]					
(ii) Taxable supplies made by registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax u/s9(5) [to be furnished by the registered person making supplies through electronic commerce operator]					

3.2 Of the supplies shown in 3.1(a) and 3.1.1(i) above, details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders

	Place of Supply (State/UT)	Total Taxable value	Amount of Integrated Tax
1	2	3	4
Supplies made to			

Unregistered Persons			
Supplies made to Composition Taxable Persons			
Supplies made to UIN holders			

4. Eligible ITC

Details	Integrated Tax	Central	State/UT	Cess
1	2	3	4	5
ITC Available (whether in full or part)				
(7) Import of goods				
(8) Import of services				
(9) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(10) Inward supplies from ISD				
(11) All other ITC				
ITC Reversed				
(1) As per rules 38, 42 & 43 of CGST Rules and section 17(5)				
(2) Others				
(C) Net ITC Available (A) – (B)				
(D) Ineligible ITC Other Details				
(1) As per section 17(5) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period				
(2) Others Ineligible ITC under section 16(4) & ITC restricted due to PoS rules				

5. Values of exempt, nil-rated and non-GST inward supplies

Nature of supplies	Inter-State supplies	Intra-State supplies
1	2	3
From a supplier under composition scheme, Exempt and Nil rated supply		
Non GST supply		

6.1 Payment of tax

Description	Tax payable	Paid through ITC				Tax paid TDS./TCS	Tax/Cess paid in cash	Interest	Late Fee
		Integrated Tax	Central Tax	State/UT Tax	Cess				
1	2	3	4	5	6	7	8	9	10
Integrated Tax									
Central Tax									
State/UT Tax									

Cess									
------	--	--	--	--	--	--	--	--	--

6.2 TDS/TCS Credit

Details	Integrated Tax	Central Tax	State/UT Tax
1	2	3	4
TDS			
TCS			

Verification (by Authorised signatory)

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Instructions:

1) Value of Taxable Supplies = Value of invoices + value of Debit Notes – value of credit notes + value of advances received for which invoices have not been issued in the same month – value of advances adjusted against invoices

2) Details of advances as well as adjustment of same against invoices to be adjusted and not shown separately.

3) Amendment in any details to be adjusted and not shown separately.

4) An ECO shall not include in 3.1(a) above, the supplies on which the ECO is required to pay tax under section 9(5) of the CGST Act, 2017 and shall report such supplies in 3.1.1(i) above.

5) A person making supplies through an Electronic Commerce Operator (ECO) shall not include in 3.1(a) above, the supplies on which the ECO is required to pay tax under section 9(5) of the CGST Act, 2017 and shall report such supplies in 3.1.1(ii) above.

6. Accordingly, the agenda note is placed before the GST Council for deliberation and approval. Pari-Materia changes would also be required in the respective SGST Rules.

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

Rule 86 of the CGST Rules, 2017 provides for electronic credit ledger (ECL). Further, the provisions relating to re-credit of amount in electronic credit ledger are provided under sub-rule (4) & (4A) of rule 86, which are reproduced below:

*“(4) If the refund so filed is rejected, either fully or partly, the amount debited under sub rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03** .*

*(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03** .”*

On perusal of the above, it is observed that the said provisions provide for re-credit of amount in electronic credit ledger only in two situations, which are:

- i. Rejection of refund of unutilised ITC
- ii. Sanction of refund of excess payment of tax. In such cases of refund, the amount is refunded to the taxpayer in cash as well as credit of Input Tax Credit (ITC) in ECL in same proportion in which the tax liability for the said period has been discharged by the taxpayer thereby meaning that the proportion of excess tax paid by utilising the amount in ECL is eligible to be re-credited to the ECL.

2. Various representations have been received from the field formations and trade/ industry seeking procedure for re-credit of input tax credit (ITC) in the electronic credit ledger, in cases where a registered person deposits the amount of erroneous refund of accumulated ITC or of IGST paid on account of exports, sanctioned to him. However, as detailed above, at present, there is neither any functionality on the portal nor any provision in CGST Rules which allows for re-credit of amount in electronic credit ledger in any other case except for those referred above.

3. In this regard, GSTN has developed a new functionality in **FORM GST PMT-03A** to make re-credit of amount in ECL independent of refund process so as to enable tax authorities to re-credit ITC in ECL, on deposit of amount of erroneous refund by the taxpayer in cash. Accordingly, there is a need to incorporate suitable provisions which allow for re-credit of amount in electronic credit ledger in such cases.

4. The issue has been examined and deliberated by the Law Committee in various meetings. Law Committee observed that in view of the aforesaid provisions, it can be stated that in the following cases if the refund amount, paid in excess, had been rejected *ab-initio*, the said rejected amount would have been re-credited by the proper officer in the ECL of the taxpayer in terms of the provisions of sub-rule (4) of rule 86 read with rule 93 of the CGST Rules, 2017:

- i. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- ii. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ

- developer/Unit without payment of tax.
- iii. Refund of unutilised ITC due to inverted tax structure.

Accordingly, Law Committee found merit in the proposal that in cases mentioned above, if the erroneous refund amount is deposited by the taxpayer, the amount so deposited can be re-credited in the ECL of the taxpayer.

5. As per sub-rule (10) of rule 96, IGST refund route is not available in certain situations mentioned therein. There are, however, cases where taxpayers paid integrated tax (IGST) on export of goods, due to ignorance or lack of clarity about the said provisions, and claimed refund of such IGST in contravention of the provisions of sub-rule (10) of rule 96. In such cases, where the refund of IGST was not admissible on export of goods in terms of conditions specified in sub-rule (10) of rule 96, the taxpayer could have claimed refund of accumulated ITC under the provisions of sub-section (3) of section 54 by exporting the goods without payment of tax. Therefore, in such cases, as IGST was not required to be paid by the taxpayer on export of goods in the first place itself, rejection of such refunds of IGST due to provisions of sub-rule (10) of rule 96, would have resulted in taxpayer filing for refund of excess payment of tax. Sanction of refund of such excess payment of tax would have resulted in payment of some amount to the taxpayer in cash and some amount by credit in ECL in the same proportion in which the tax liability for such tax period has been discharged using cash and ITC. Therefore, the Law Committee took a view that in such cases of contravention of sub-rule (10) of rule 96, where the erroneous refund of IGST has been deposited by the taxpayer in cash, direct re-credit of amount in ECL of the taxpayer may be allowed, in order to facilitate taxpayers and to ease the compliance process, instead of going through the procedure of filing of a separate refund claim for excess payment of tax.

6. Law Committee accordingly **proposed that in respect of categories of refund, mentioned in para 4 & 5 above, where the erroneous refund amount is deposited by the taxpayer in cash, along with the applicable interest, on his own motion or on being pointed out by tax officer, the amount so deposited can be re-credited to the ECL of the taxpayer.** Further, Law Committee also recommended that in such cases of re-credit through **FORM GST PMT-03A**, the recredit will be allowed **ONLY** in the electronic credit ledger and **NOT** in electronic cash ledger.

8.1 In view of the above, to provide for re-credit of amount in ECL where the amount of erroneous refund has been paid by the taxpayer, in cases of refund of unutilised ITC or in cases of refund of IGST in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017, **the Law Committee proposed the following amendment** in the CGST Rules:

I. Insertion of the following sub-rule (4B), after sub-rule (4A) in rule 86:

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him –
a. under sub-section (3) of section 54 of the Act, or
b. under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,
*along with interest and penalty, wherever applicable, through **FORM GST DRC-03**, in cash,*
on his own or on being pointed out, an amount equivalent to the amount of erroneous refund
deposited by the registered person shall be re-credited to the electronic credit ledger by the
*proper officer by an order made in **FORM GST PMT-03A**.*

II. **Notification of FORM GST PMT-03A.**

FORM GST PMT -03A**[See Rule 86(4B)]****Order for re-credit of the amount to electric credit ledger**

Reference No:

Date:

1. GSTIN –
2. Name (Legal) –
3. Trade name, if any
4. Address –
5. Ledger from which debit entry was made- _____ Cash / credit ledger
6. Debit entry no. and date –
7. Payment Reference Number (DRC 03): _____ dated _____
8. Details of Payment:-

Cause of Payment	(Deposit of erroneous refund of unutilised ITC or Deposit of erroneous refund of IGST)
Details of Refund Sanction order	<ol style="list-style-type: none"> 1. Shipping Bill/ Bill of Export No. & Date _____ 2. Amount of IGST paid on export of goods _____ 3. Details of Exemption/Concessional Rate Notification used for procuring inputs _____ 4. Amount of refund sanctioned _____ 5. Date of credit of refund in Bank Account _____ <p>(or)</p> <ol style="list-style-type: none"> 1. Category of refund & relevant period of refund _____ 2. GST RFD-01/01A ARN & Date - _____ 3. GST RFD-06 Order No. & Date _____ 4. Amount of refund claimed _____ 5. Amount of refund sanctioned _____

10. No. and date of order giving rise to recredit -

11. Amount of credit -

S.No	Act (Central Tax/ State tax/ UT Tax/ Integrated Tax/ CESS)	Amount of credit (Rs.)					
		Tax	Interest	Penalty	Fee	Other	Total
1	2	3	4	5	6	7	8

Signature
Name
Designation of the officer

Note: 'Central Tax' stands for Central Goods and Services Tax; 'State Tax' stands for State Goods and Services Tax; 'UT Tax' stands for Union territory Goods and Services Tax; 'Integrated Tax' stands for Integrated Goods and Services Tax and 'Cess' stands for Goods and Services Tax (Compensation to States)

9.2 Law Committee in its meeting held on 07.05.2022 also recommended to issue a circular for clarifying various issues relating to manner of re-credit in electronic credit ledger using **FORM GST PMT-03A**. The circular as recommended by Law Committee is enclosed as Annexure.

10. The agenda along with the draft circular, as recommended by the Law Committee, is placed before the GST Council for deliberation and approval please.

Circular No. XXX/XX/2022-GST

F. No. CBIC-20001/2/2022-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated the _____, 2022

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A – regarding

Difficulties were being faced by the taxpayers in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund sanctioned to them had been paid back by them either on their own or on being pointed by the tax officer. In order to resolve this issue, GSTN has recently developed a new functionality of **FORM GST PMT-03A** which allows proper officer to re-credit the amount in the electronic credit ledger of the taxpayer. Further, sub-rule (4B) in rule 86 of the CGST Rules has been inserted vide Notification No. XX/2022-CT dated XX.XX.2022 to provide for re-credit in the electronic credit ledger where the taxpayer deposits the erroneous refund sanctioned to him.

2. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”), hereby clarifies the following:

3. Categories of refunds where re-credit can be done using FORM GST PMT-03 A:

3.1 Reference is invited to sub-rule (4B) of rule 86 of the CGST Rules, which is reproduced as under:

(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him –
a. under sub-section (3) of section 54 of the Act, or
b. under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,
*along with interest and penalty, wherever applicable, through **FORM GST DRC-03**, in cash, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03A**.*

3.2 From the above, it can be stated that in respect of the following categories of refund sanctioned erroneously, re-credit of amount in the electronic credit ledger can be done through **FORM GST PMT-03A**, on deposit of such erroneous refund along with interest and penalty, wherever applicable, by the taxpayer:

- a. Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

4. Procedure for re-credit of amount in electronic credit ledger:

4.1 The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through **FORM GST DRC-03** by debit of amount from electronic cash ledger. While making the payment through **FORM GST DRC-03**, the taxpayer shall clearly mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017.

4.2 Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format enclosed as **Annexure-A**, to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund thus paid back through **FORM GST DRC-03**, to electronic credit ledger.

4.3 The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, 2017, and penalty, wherever applicable, has been paid by the said registered person in **FORM GST DRC-03** by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in **FORM GST PMT-03A**, preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

From,

GSTIN - _____

Legal Name- _____

Trade Name- _____

To,

Jurisdictional Proper officer,

Address _____

Subject: Request for re-credit of amount in Electronic Credit Ledger

I/We have been granted refund under the following category (please tick the relevant category):

- a. Refund of IGST, obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017.
- b. Refund of unutilised ITC on account of export of goods/services without payment of tax.
- c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
- d. Refund of unutilised ITC due to inverted tax structure.

2. The details of refund sanction order are as under:

(a) In case of refund of IGST, obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules, 2017:

6. Shipping Bill/ Bill of Export No. & Date _____
7. Amount of IGST paid on export of goods _____
8. Details of Exemption/Concessional Rate Notification used for procuring inputs

9. Amount of refund sanctioned _____
10. Date of credit of refund in Bank Account _____

(b) In other cases of refund:

6. Category of refund & relevant period of refund _____
7. GST RFD-01/01A ARN & Date _____
8. GST RFD-06 Order No. & Date _____
9. Amount of refund claimed _____
10. Amount of refund sanctioned _____
11. Date of credit of refund in Bank Account _____

3. I/We have deposited the erroneous refund amount of Rs. _____ along with interest of Rs. _____ and penalty of Rs. _____ (wherever applicable) vide FORM GST DRC -03 Ref/ARN _____ dated _____ voluntarily on my own ascertainment/ against a notice/order/letter No. _____ dated _____ issued by (details of the tax authority). It is now requested to re-credit an amount equivalent to the amount of erroneous refund, so deposited, in the Electronic Credit Ledger.

4. I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Date:

Signature of Authorized Signatory
Name
Designation / Status

Agenda Item 4 : Issues recommended by the GSTN

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

GST Council in its 31st meeting held on 22nd December 2018, decided that a New Return System under GST would be introduced for taxpayers. Under this New Return System, it was envisaged that small taxpayers (with a turnover up to 5 crores) could opt to file the return quarterly. It was proposed that the main return GST RET-1 (parallel of GSTR-3B), would contain details of all supplies made, Input Tax Credit availed, and the payment of taxes, along with interest, if any. And would include two annexure forms, GST ANX-1 and GST ANX-2. GST ANX-1 [Annexure of Outward Supplies, (parallel of GSTR-1)] for reporting details of all Outward Supplies, Inward Supplies liable to Reverse Charge, and Import of Goods and Services that would need to be reported invoice-wise (except for B2C supplies).

2. GST ANX-2 [Annexure of Inward Supplies, (parallel to GSTR-2 of the original design)] would report details of all Inward Supplies. Most of these details would be auto-drafted from the details uploaded by the suppliers in their GST ANX-1. The recipient of supplies would be able to take action on these auto-drafted documents, which would be available to them on a real-time basis.

3. Thereafter, in the 39th meeting of the GST Council, held on 14th March 2020, it was decided to avoid major/ big-bang changes in the GST system and the transition to the New Return System should be made incrementally. The new Return design was put in abeyance parallelly. Thus, it was decided that the salient features of the New GST Return system would be incorporated into the existing return filing system. It would start with linking the present system like GSTR-1 and GSTR-2A with GSTR-3B. Further, other significant changes like introducing new statement of Input Tax Credit (GSTR-2B), its linking to GSTR 3B, and Nil filing by SMS would be added gradually.

4. Therefore, GSTN started the **Returns Enhancement and Advancement Project (REAP)** on 1st April 2020, wherein a dedicated team was set up to expeditiously deliver functional changes to GST System on a Time & Material (T&M) basis. The comparison of main features between the present return system upgraded under REAP and the proposed new return system is stated as under:

SI No.	Feature	New Return System	Present Return after REAP
1.	Auto Population of liability to Return	Y	Y
2.	Generation of Statement having auto population of credit	Y	Y
3.	Auto population of ITC to Return	Y	Y
4.	Quarterly filing of Return for small taxpayer	Y	Y
5.	Auto population of import data to ITC	Y	Y

6.	Option to Keep ITC pending or reject invoice by recipient	Y	Under Consideration
7.	Deemed filing of GSTR-1/ GST ANX-1	Y	N
8.	Separate Amendment Return	Y	Under Consideration
9.	No change allowed in auto populated values	Y	Y
10.	Auto population of e-invoice data in GSTR-1	N	Y
11.	Nil filing of GSTR-1 & GSTR-3B by SMS.	N	Y

5. A brief description of enhancements made in GSTR-1 and GSTR-3B as above and new features added are as follows:

- a. **GSTR-2B:** It is an auto-drafted ITC statement which is generated for every normal taxpayer on the basis of the information furnished by his suppliers in their respective GSTR-1/IFF, GSTR-5 (non-resident taxable person) and GSTR-6 (input service distributor). The statement indicates availability and non-availability of input tax credit to the taxpayer against each document filed by his suppliers.
- b. **Auto-population of GSTR-3B:** GST Portal now provides the taxpayers with auto-populated GSTR-3B. The liability figures to be reported are computed from the GSTR-1 and IFF filed by the taxpayers. Credit is auto-populated from system-generated GSTR-2B. Thus, now there is an interlinking between GSTR-1, GSTR-2B and GSTR-3B.
- c. **HSN Search Functionality:** To help taxpayers search for accurate HSN's, GSTN has provided a search HSN functionality on GST Portal. The taxpayer can search the respective HSN code according to their outward supplies either by number or by mentioning the product they are supplying.
- d. **Enhancements in GSTR-2A:** New features have been included in GSTR-2A like GSTR-1 & GSTR-3B filing status for a record and whether the invoice will reflect in Table-8A of GSTR-9.
- e. **Interest Calculator Functionality in GSTR-3B:** Now Interest calculation has been automated on delayed filing of GSTR-3B.
- f. **Code Enhancement in GSTR-1:** Major software & hardware enhancement have been done recently in two phases in GSTR-1, which has resulted in faster & smooth filing of GSTR-1 and enhanced system capacity.
- g. **Quarterly GSTR-1 and GSTR-3B:** Taxpayers having aggregate turnover up to Rs. 5 crore now have the option of filing GSTR-3B on quarterly basis.
- h. **Auto population of e-invoice data in GSTR-1:** e-invoice data is auto populated into GSTR-1 of the seller.

6. The proposed Section 43A in CGST Act, which was the basis of new return design, has since been deleted from the Act with the approval of the GST Council. The corresponding changes for the present return (enhanced by REAP) has also been approved by the GST Council.

7. **Proposal: Given the enhancement and improvements made in the present return system, the associated challenges in law, and the fact that now most of the key feature of the New Return System have already been implemented in the existing return system; it is proposed that GST Council may take a call on the final withdrawal of the 'New Return System.**

Agenda Item 4 (ii) : Extension of REAP and LEAP Projects beyond 31.03.22 for FY 2022-23

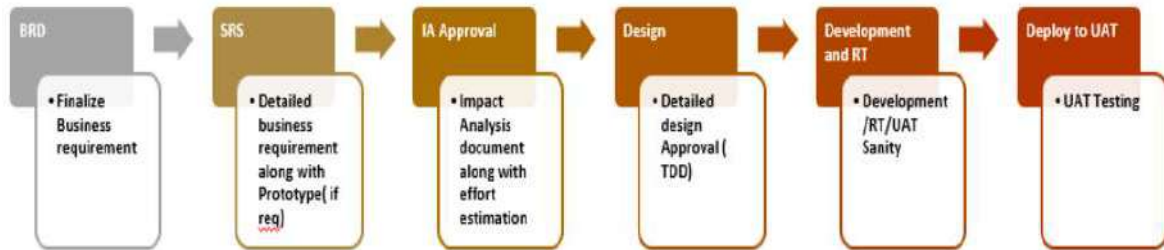
The proposal of Software development under actual identified resources utilization, commonly known as Time and Material (T&M) basis, to implement the changes identified under Roadmap for incremental improvements to existing Returns (Linking of GSTR-1/GSTR-2A/2B with GSTR-3B) was placed before the GST Council in its 39th meeting held on 14th March 2020. Consequently, Council approved the proposal of incremental enhancement of existing Returns on a T&M basis and since then GSTN started T&M model for more expeditious execution of the CRs.

Currently GSTN use both models for implementation of Change Request:

- All critical time sensitive changes are taken up under T&M model where implementation is needed in time bound manner and has immensely colossal impact on GST System/Taxpayers/Revenue etc.
- All other changes are taken up under Non T&M model or CR based model (also known as waterfall model)

The main difference in T&M model and normal CR model is that in T&M model payment is calculated in terms of man-days of resources identified which are deployed exclusively for the project. In CR based model (waterfall model) payment is made for individual CR and effort is estimated for each step in the development and payment is made for effort in the development. Sizable voluminous time gets spent on estimation of efforts and then designing with to and fro movement between GSTN and Infosys till acquiescent is arrived at the effort estimation.

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



On the other hand, Change Management in T&M Model includes TFD creation straight from BRD involving 4 stages and needs close monitoring of project implementation



- To analyze implication of T&M model, some changes of similar magnitude were compared under two models and it appears that in T&M model the delivery time for project is much

shorter and generally in 3+ months important changes can be implemented which used to take 9+ months earlier under CR model.

- The scale of payment is similar for the vendor whereas changes are completed in lesser time.
- The experiences of last 2 years suggest that Time & Material Model is a better method to achieve the objectives. GSTN has also become now experienced in running this model.

Approval obtained in the 42nd and 43rd meeting of GST Council:

- After taking note of improved efficiency of service delivery under T&M project, GST Council approved that all Critical IT changes shall be carried out using T&M model and **was extended up to 31st March 2022 in 42nd Meeting of GST Council with maximum number of resources to be deployed at any given point of time will not exceed 200** and all payments would be made based on actual deployment of manpower.

However:

- The changes being requested to GSTN are continuous and also all the States are moving to the Back Office of Model 2 States developed and managed by GSTN.
- The constant inflow of change requirements with expectation of expeditious turnaround time from Law Committee, are mostly to reduce leakages of revenue as well as improving taxpayer services.
- There remain constant consequential change requirements under BIFA (Analytical Platform).

Proposal:

GST Council may accordingly like to approve:

- **The extension of the current T&M model from 1st April 2022 till 30th March 2023 (Max resources not exceeding 200)**
- **Conversion of existing Change Management (Non -T&M Model) model into T&M model with max. number of resources, not exceeding 100 at any given point of time till 30th March 2023**
- **These decisions are essentially related to the project implementation and therefore, in future they may be taken by the GSTN Board and GST Council may be kept informed where the decision would impact the budget of GSTN substantially.**

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

1. The e-Invoicing System called IRP (Invoice Registration Portal) is at present being run by NIC. In its 43rd GST Council of 28th May 2021 the proposal to establish multiple IRPs was approved, whereby GSTN was directed to empanel 3 to 5 e-Invoice Registration Partners. Accordingly, GSTN initiated the process for IRP empanelment, through advertisements placed in leading national dailies. A total of 71 applications from across the country were received. Due diligence was carried out in relation to these companies in multiple rounds of technical and financial feasibility.

2. The top 4 companies out of above were finally called for empanelment as IRPs, which are as follows:

Ser #	IRP Name	Rank
1	M/s Cygnet Infotech Private Ltd.	1
2	M/s IRIS Business Services Ltd.	2
3	Defmacro Software Private Ltd (commonly known as ClearTax).	3
4	M/s Ernst & Young LLP.	4

3. NIC has also now also approached GSTN for go ahead to establish a second IRP. Thus, with the 4 empanelled private IRPs and 2 IRPs of NIC (if approved), a total of 6 IRPs are expected to be established in next few months, which shall provide an adequate IT infra and eco-system to insure uninterrupted invoice registration services to the businesses. The taxpayers shall have option to choose between the services of IRPs and system shall have opportunity to balance the load in case anyone IRP portal faces any challenge such as long queue.

4. **The following proposal is now placed before the Council for:**

- a. **The Council may take note of empanelment of the 4 IRPs as detailed above.**
- b. **The Council may approve the establishment of the 2nd IRP of NIC.**

Agenda Item 5: Performance Report of the NAA (National Anti-profiteering Authority) for the 2nd quarter (July to September 2021), 3rd quarter (October to December 2021) and 4th quarter (January to March, 2022) of the F.Y 2021-22 for the information of the Council

The performance report of Anti-profiteering for the 2nd quarter (July to September 2021, 3rd quarter (October to December, 2021) and 4th quarter (January to March, 2022) of Financial Year 2021-22 at various levels, is as under:

1.1. Performance of National Anti-Profiteering Authority:

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
Quarter 1st July, 2021 to 30th September, 2021						
139	28	0	0	0	0	167
Quarter 1st October, 2021 to 31st December, 2021						
167	15	0	0	0	0	182
Quarter 1st January, 2022 to 31st March, 2022						
182	26	0	0	0	0	208

1.2 Performance of DG(Anti-profiteering):

Opening Balance (No. of cases)	Receipt	Disposal	Mode of disposal of cases		Closing Balance (No. of cases)
			Report to NAA confirming profiteering	Report to NAA for closure action	
Quarter 1st July, 2021 to 30th September, 2021					
80	8	30	29	1	58
Quarter 1st October, 2021 to 31st December, 2021					
58	5	29	26	3	34
Quarter 1st January, 2022 to 31st March, 2022					
34	2	7	6	1	29*

*Out of these 29 cases, 19 cases have been stayed by various Hon'ble High Courts

- One case has been held up per direction by NAA.
- Actual pendency of cases in which Investigation is under process are 9 only. It includes 2 new cases received in March 2022.

1.3 Performance report of the Standing Committee on Anti-profiteering:

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
Quarter 1st July, 2021 to 30th September, 2021			
38	62	54	46
Quarter 1st October, 2021 to 31st December, 2021			
30*	57	58	29
Quarter 1st January, 2022 to 31st March, 2022			
29	49	48	30

* The closing balance of the quarter July to September, 2021 is different from the opening balance of the subsequent quarter October to December, 2021 as there were 16 reminders to the earlier complaints.

1.4 Performance report from the State Level Screening Committee:

Opening Balance (No. of cases)	Receipt	Disposal		Closing Balance (No. of cases)
		Cases referred to Standing Committee	Cases Rejected	
Quarter 1st July, 2021 to 30th September, 2021				
65*	69	24	74	36
Quarter 1st October, 2021 to 31st December, 2021				
36	80	18	5	93
Quarter 1st January, 2022 to 31st March, 2022				
87**	55	5	89	48

*Report from Haryana SLSC was not received so the Closing Balance for the quarter ending June, 2021 (68) differs from the Opening Balance for the quarter ending September, 2021 (65) by 3.

**As report from Andhra Pradesh has not been received so Closing Balance of Quarter ending December 2021 and Opening Balance of Quarter ending March 2022 in r/o Andhra Pradesh may differ by 3.

3 cases reported as Receipt in the month of December 2021 are old cases already sent to Standing Committee by the State Level Screening Committee which have now been referred back by Standing Committee for Relied Upon Documents / Reasoning /Fresh recommendation and hence may not be treated as new case Receipt.

So, the total Closing Balance and Opening Balance may differ by 6.

2. During these quarters NAA has undertaken the following activities/initiatives-

- i. The functioning of the Authority remained affected during the quarter due to the lack of prescribed quorum of the Authority required under Rule 134(1) of The CGST Rules, 2017, no quasi-judicial functions and proceedings could be held and therefore, no cases and complaints could be disposed till December 31,2021. As on 31st December 2021, the number of cases pending for quasi-judicial proceedings at the level of the authority was 182.
- ii. Vide Notification No. 37/2021 dated 01.12.2021 issued by the Department of Revenue, the term of the Authority was extended up to 30.11.2022.
- iii. The quorum of the National Anti-Profiteering Authority was restored since 29.04.2021 with joining of two newly appointed Members in February 2022. Consequently, quasi-judicial proceedings commenced. The total number of cases pending before the Authority as on 31.03.2022 was 208. The total number of hearings fixed till 31.03.2022 are 106, whereas the total number of fresh notices issued to the parties calling for their initial submission till 31.03.2022 was 62.
- iv. The Authority reviewed the performance of the DGAP and the Anti-profiteering Machinery for the quarter on 09.03.2022 and found that the DGAP had 34 cases where investigation was in progress while the Standing Committee and the State Level Screening Committees had 29 cases and 94 cases pending disposal respectively as on 09.03.2022. The Authority took cognizance of Order issued by Hon'ble Supreme Court of India dated 10.01.2022 in the case of Suo Moto Writ Petition No. 3 of 2020, wherein it was decided to extend the limitation for all proceedings under all laws and rules till 28.02.2022 on account of Covid 19 pandemic. After studying this Order of the Hon'ble Supreme Court, the Authority has noted that the limitation for all cases (which would have expired during the period from 15.03.2020 to 28.02.2022) will have an extended limitation period accordingly.
- v. At present 136 Writ Petitions have been filed by various parties before the High Court of Delhi, Telangana, Bombay, Madras, Allahabad, Karnataka, Gujarat, Uttarakhand, and Kolkata in which the Union of India, the GST Council, the NAA and the DGAP have been made respondents. They have challenged the constitutional validity of Section 171 of the CGST Act, 2017 as well as the Rules. Out of the above Writ Petitions, 78 have been fixed for final disposal before the Delhi High Court. The NAA has also engaged the Solicitor General to defend these Writ Petitions. Some cases may be remanded to the NAA by the Hon'ble High Courts across the country and appeals may also be filed in the Hon'ble

Supreme Court of India against the orders of the High Courts. The NAA has also constituted a panel of advocates in this regard.

Accordingly, the quarterly performance report of the National Anti-profiteering Authority for the period from July 2021 to March 2022 is placed before the GST Council.