



## Minutes of the 45<sup>th</sup> Meeting of the GST Council held on 17<sup>th</sup> September, 2021

The 45<sup>th</sup> meeting of the GST Council (hereinafter referred to as 'the Council') was held on 17<sup>th</sup> 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 45<sup>th</sup> Meeting of the Council:

1. Confirmation of Minutes of GST Council Meetings
  - i. 43rd GST Council Meeting held on 28<sup>th</sup> May 2021
  - ii. 44th GST Council Meeting held on 12<sup>th</sup> 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](http://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



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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-Profitteering 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 45<sup>th</sup> meeting of the GST Council and stated that this physical meeting is being held after the 38<sup>th</sup> 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 (16<sup>th</sup> 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 43<sup>rd</sup> and 44<sup>th</sup> GST Council Meeting**

4. The first agenda item pertained to confirmation of the minutes of the 43<sup>rd</sup> GST Council meeting held on 28<sup>th</sup> May, 2021 and the 44<sup>th</sup> GST Council meeting held on 12<sup>th</sup> 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 43<sup>rd</sup> and 44<sup>th</sup> GST Council meetings with the changes suggested above. The Council decided to adopt the Minutes of the 43<sup>rd</sup> and 44<sup>th</sup> 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 16<sup>th</sup> 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.

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**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](http://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](http://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

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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 not 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 43<sup>rd</sup> 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.

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**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.

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**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

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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 37<sup>th</sup> and 38<sup>th</sup> 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 34<sup>th</sup> meeting held on 02.10.2019. The same was placed for information before GST Council in its 38<sup>th</sup> 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.



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**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 39<sup>th</sup> 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 39<sup>th</sup> 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.

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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 42<sup>nd</sup> 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

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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-Profiteering Authority) for the 1<sup>st</sup> 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-Profiteering 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.

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

Order No.	Date	Remarks
AEO No. 06 of 2021	03 <sup>rd</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>rd</sup> 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 <sup>th</sup> 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



face~~d~~ 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~~d~~ 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

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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**



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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 24<sup>th</sup> May 2021 based on the decision taken in the 42<sup>nd</sup> 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 6<sup>th</sup> 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 17<sup>th</sup> August 2021 and submitted their inputs to the GoM. The 2<sup>nd</sup> meeting of the GoM was held on 31<sup>st</sup> 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. 1<sup>st</sup> 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

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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 UT's. 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

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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%

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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 the 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 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

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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



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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

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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.

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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.



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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%.

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**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.



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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 31<sup>st</sup> December, 2021. Besides that, it has also been recommended to reduce GST from 12% to 5% on seven other drugs till 31<sup>st</sup> December, 2021 [as mentioned in para 4 (b) of the agenda]. He submitted that if Council agrees, concession to these seven drugs till 31<sup>st</sup> December, 2021. The Ministry of Health and Family Welfare and Department of

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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 31<sup>st</sup> 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 31<sup>st</sup> December, 2021.

17.6. The Secretary clarified that the tax reduction till 31<sup>st</sup> December, 2021 will be applicable only on specified medicines as mentioned in the agenda and not on instruments/equipment as



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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 Vilepso 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



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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

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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.

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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



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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

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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

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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.

  
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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.


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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 15<sup>th</sup> meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 12<sup>th</sup> August, 2021 at 11.00 a.m. to resolve grievances of the

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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 15<sup>th</sup> ITGRC are attached as **Annexure-A** in which there are 06(six) Annexures.

19.1. The agenda for the 15<sup>th</sup> ITGRC meeting covered the following issues-

- a. Eleven cases of TRAN-1/TRAN-2 filing pertaining to Court cases (**Annexure -2 of the 15<sup>th</sup> 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 15<sup>th</sup> ITGRC Minutes**).
- c. Four cases of non-technical nature as per extended scope of the ITGRC, approved during the 32<sup>nd</sup> Meeting of the GST Council; and arising out of court cases (**Annexure -5 of the 15<sup>th</sup> ITGRC Minutes**).
- d. Approval of Standard Operating Procedure (SOP) for correcting Technical issues requiring data fixes through backend utilities (**Annexure -3 of the 15<sup>th</sup> 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 15<sup>th</sup> 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 15<sup>th</sup> 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 32<sup>nd</sup> 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 32<sup>nd</sup> 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.

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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.

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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 known with certainty	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.

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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.



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- 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 3<sup>rd</sup> 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 15<sup>th</sup> meeting of the ITGRC were placed before the 45<sup>th</sup> 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:



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- 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-profitteering 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-profitteering issues is required.

20.5. The Hon'ble Member from Goa stated that he feels that the Anti-Profitteering Authority should be strengthened. He further stated that giving anti-profitteering 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-profitteering. Further, there is need to have a strengthened anti-profitteering 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-Profitteering 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-profitteering 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-profitteering 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**

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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 1<sup>st</sup> 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 arrears 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 39<sup>th</sup> meeting. It had earlier been discussed in the 43<sup>rd</sup> 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

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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 1<sup>st</sup> 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

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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.


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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 14<sup>th</sup> Finance Commission it was reduced to 2.45% which was further reduced to 1.92 % approx. by 15<sup>th</sup> 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

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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,

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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 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

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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 14<sup>th</sup> and 15<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> October, 2021.

21.31. The Secretary to the Council mentioned that the 45<sup>th</sup> 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


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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.

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## Annexure-1

List of Hon'ble Ministers who attended 45<sup>th</sup> Meeting of GST Council on 17<sup>th</sup> 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 Patralekha	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

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13	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister
14	Odisha	Shri Niranjana 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

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23	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Urban Development & Municipal Affairs Department(I/C) and Health and Family Welfare Department
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## Annexure-II

List of officials who attended 45<sup>th</sup> GST Council meeting on 17<sup>th</sup> 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)

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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

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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

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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

*[Handwritten Signature]*

CHAIRMAN'S INITIALS

# MINUTE BOOK



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

*(Signature)*

CHAIRMAN'S INITIALS

# MINUTE BOOK



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

*[Signature]*

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# MINUTE BOOK

Shipra



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

CHAIRMAN'S  
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Annexure-III



**Ratification of Notifications and Circulars**

CHAIRMAN'S  
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**Agenda 2: Ratification of Notifications, Circulars, Orders etc. (1/2)**

[Vol 1- Pg. 142-159]

Act/Rules	Notification/Circular/Order No.	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 43rd 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 on 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  
16<sup>th</sup> September 2021**

CHAIRMAN'S  
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Agenda No	Issue/Proposal	Status during Officers Meeting
3(i) [Vol I- Pg. 160-165]	<p><b><u>Aadhaar authentication of existing taxpayers under GST:</u></b></p> <ul style="list-style-type: none"> <li>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.</li> <li>To start with, Aadhaar authentication may be made mandatory for being eligible for <u>refund and revocation of cancellation of registration.</u></li> </ul>	Agreed
3(ii) [Vol I- Pg. 166-171]	<p><b><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></b></p> <p>It is proposed to clarify through Circular that:</p> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(iii) [Vol I- Pg. 172-182]	<p><b><u>Clarification in respect of certain GST related issues through Circular:</u></b></p> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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</li> </ul>	Agreed
3(iv) [Vol I- Pg. 183-186]	<p><b><u>Notifying www.gst.gov.in as the Common Goods and Services Tax Electronic Portal:</u></b></p> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	Agreed





Agenda No	Issue/Proposal	Status during Officers Meeting
<b>3(v)</b> [Vol 1- Pg. 187-188]	<p><u><b>Mechanism to collect late fee imposed under section 47 of the CGST Act for delayed filing of FORM GSTR-1:</b></u></p> <ul style="list-style-type: none"> <li>Late fee for GSTR-1 should be auto-populated in next open return in FORM GSTR-3B on the portal.</li> <li>The same is to be implemented on portal for prospective tax periods (from July, 2021 tax period onwards).</li> <li>Amendment in section 47 to delete reference to section 38</li> </ul>	Agreed
<b>3(vi)</b> [Vol 1- Pg. 189-193]	<p><u><b>Review of requirement of filing FORM ITC-04:</b></u></p> <p>Amendment in rule 45(3) of CGST Rules 2017 so as to allow:</p> <ul style="list-style-type: none"> <li>Taxpayers, whose annual aggregate turnover in preceding financial year is above Rs. 5 crores, shall furnish FORM ITC-04 <b>once in six months.</b></li> <li>Taxpayers, whose annual aggregate turnover in preceding financial year is up to Rs. 5 crores, shall furnish FORM ITC-04 <b>annually.</b></li> </ul>	Agreed
<b>3(vii)</b> [Vol 1- Pg. 194-196]	<p><u><b>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</b></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
<b>3(viii)</b> [Vol 1- Pg. 197-199]	<p><u><b>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):</b></u></p> <ul style="list-style-type: none"> <li>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 <b>retrospectively</b>, w.e.f. 01.07.2017.</li> <li>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.</li> </ul>	Agreed
<b>3(ix)</b> [Vol 1- Pg. 200-208]	<p><u><b>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:</b></u></p> <ol style="list-style-type: none"> <li>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"> <li>Such refund claims can be filed before the expiry of two years from the date of payment of tax under the correct head.</li> <li>For past cases, two years period to commence from the date of insertion of sub-rule (1A) to rule 89</li> </ul> </li> <li>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.</li> </ol>	Agreed

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CHAIRMAN'S INITIALS



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"> <li>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.</li> </ul>	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"> <li>Rule 36(4) of CGST Rules may be amended to restrict availment of ITC to that available in GSTR-2B.</li> <li>This amendment will be notified once section 109 of Finance Act, 2021 is notified.</li> </ul>	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"> <li>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.</li> </ul>	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"> <li>Issue a circular to clarify scope of the 'intermediary services' as per the present provisions of the IGST Act</li> </ul>	Agreed





Agenda No	Issue/Proposal	Status during Officers Meeting
3(xv) [Vol 1- Pg. 224-228]	<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"> <li>Section 123 of Finance Act may be considered to be notified at the earliest.</li> <li><u>Class of supplies:</u> 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.</li> <li><u>Class of persons:</u> The following categories of persons, may be notified: <ul style="list-style-type: none"> <li>Persons who have been granted Authorised Economic Operator (AEO) certification under SAFE Framework of WCO.</li> <li>Persons who have been granted status holder certification of 2 star or above by DGFT under Foreign Trade Policy.</li> <li>Government Departments, Public Sector Undertakings, Local Authorities and Statutory Bodies.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>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 39<sup>th</sup> Meeting (March 2020), a number of cases of fraudulent refunds through IGST route were noticed due to fraudulent availment of ITC.</li> <li>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.</li> <li>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.</li> </ul>

**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.

CHAIRMAN'S  
INITIALS



**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

CHAIRMAN'S  
INITIALS



### 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.



CHAIRMAN'S  
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**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.

CHAIRMAN'S  
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**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 I- 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 I- 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 43<sup>rd</sup> 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 37<sup>th</sup> and 38<sup>th</sup> 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 34<sup>th</sup> meeting held on 02.10.2019. The same was placed for information before GST Council in its 38<sup>th</sup> 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.

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**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 or the states.



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

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

[Vol I- 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.

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**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.

*[Signature]*

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### Agenda 3(iv): Notifying [www.gst.gov.in](http://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](http://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.

### 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, where as 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.





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## Annexure-4

## GST- Roadmap beyond July, 2022

The 45<sup>th</sup> 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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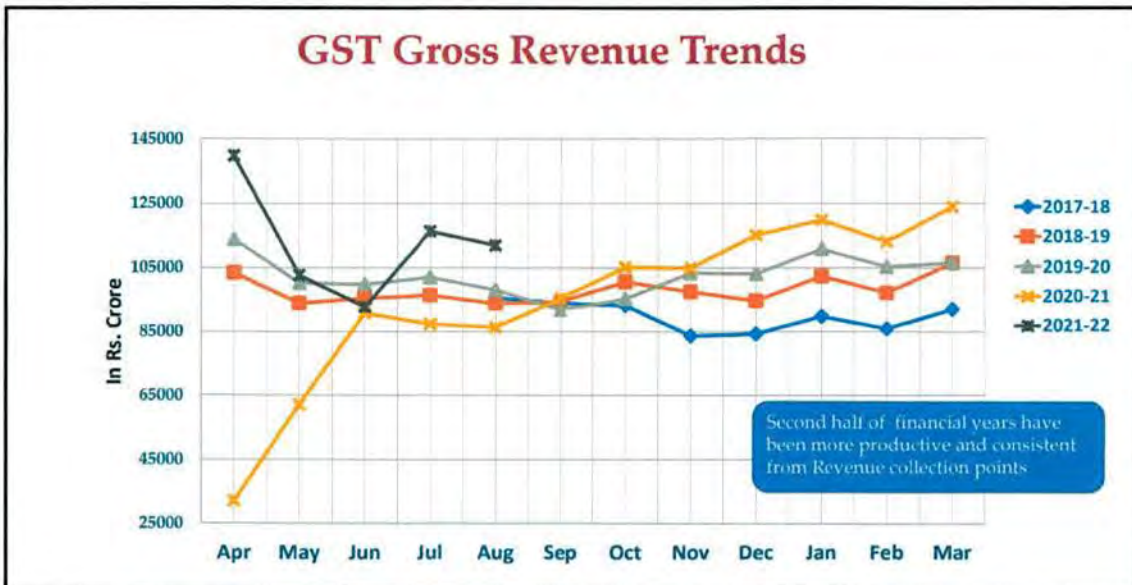
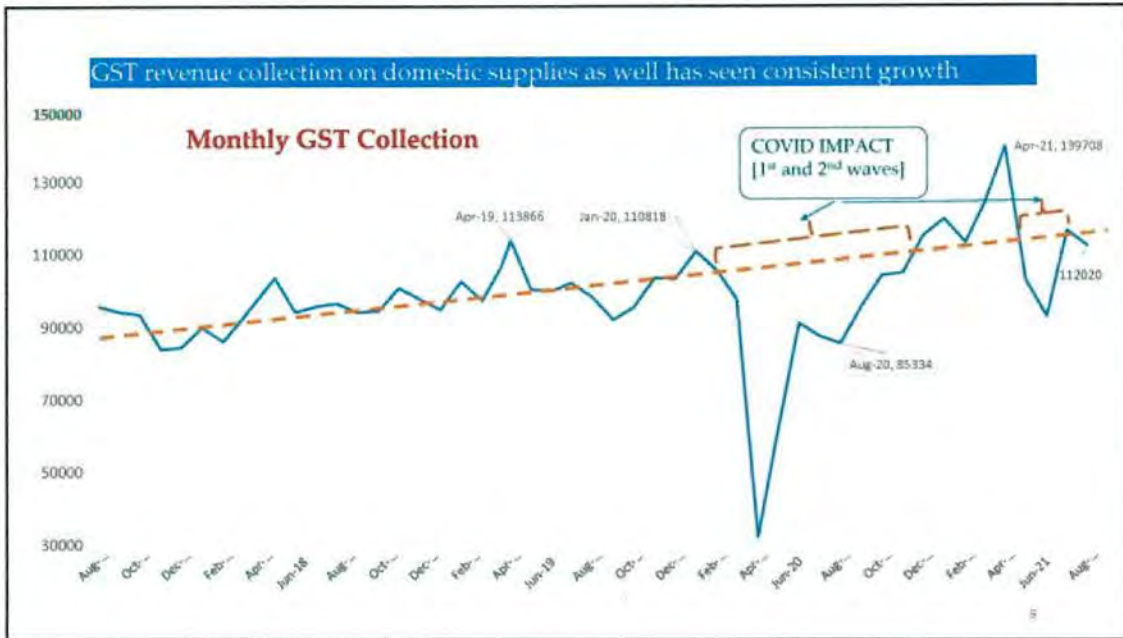
## Context

- 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

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## GST Revenue trends

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### Compensation cess collection vs revenue requirement projections..

#### The Legal Framework [1/2]

- Section 18 of the Constitutional (101<sup>st</sup> 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





### 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 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> GST Council meetings and then again in the 42<sup>nd</sup> and 43<sup>rd</sup> 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 41<sup>st</sup> and 42<sup>nd</sup> 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

### 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
  - o ₹ 1,11,500 crore per month till February 2022 and o ₹ 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
  - o SGST revenue ₹ 6.25 lakh crore
  - o Compensation cess available ₹ 1 lakh crore
  - o 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

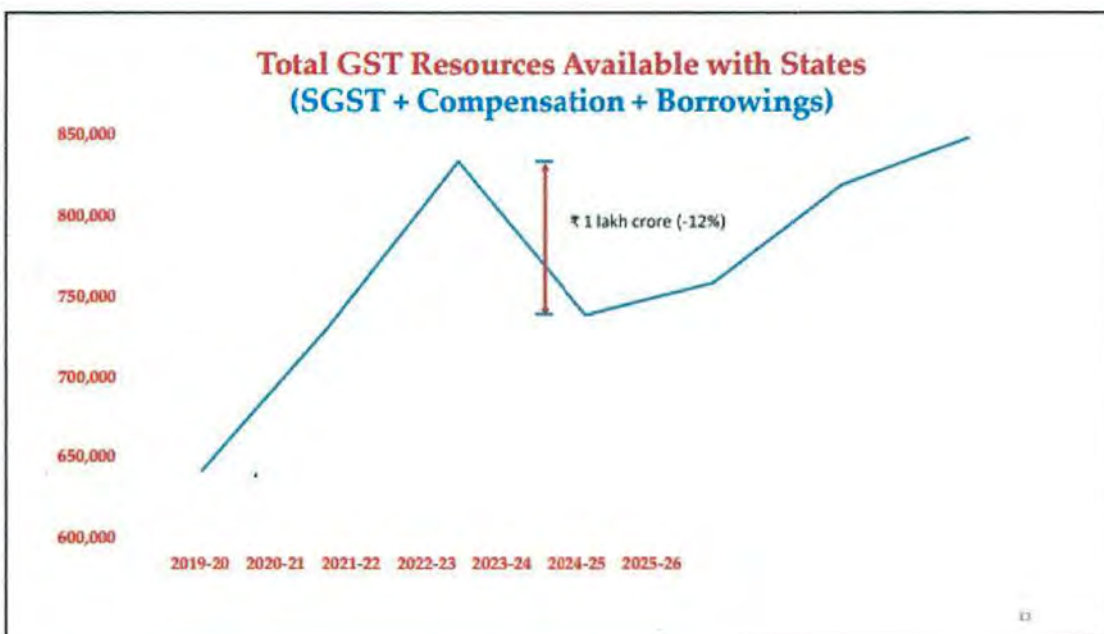
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### Compensation scenario [Apr 2020- Mar 2026]

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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**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]

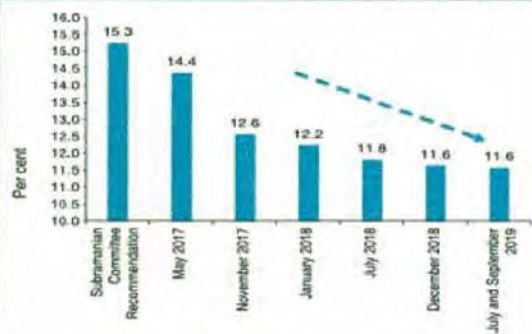
### Other concessions

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]

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## 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%	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

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**Major items @ 5% slab**

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

**Major items @ 12% slab**

- |  |                                  |
|--|----------------------------------|
| <i>Mobile</i>  | ■ Bicycle                        |
| Manmade Yarns  | ■ General pharma                 |
| Apparel(>Rs1000)                                     | ■ Agri machinery                 |
| Carpets Paintings                                    | ■ Drip irrigation .State         |
| Handicrafts Pickle, jam, jellies Water (20 Ltr pack) | <i>Lotteries</i>                 |
| Specified bio pesticides                             | ■ Cinema (upto Rs 100)           |
| <b>Paper and articles</b>                            | ■ Accommodation (Rs1000 to 7500) |
| <b>Fruit Juices</b>                                  | ■ Ghee/butter                    |
| <b>Tooth powder, Candles, hand bags</b>              | ■ Tractors                       |
| <b>Services to Govt/ Govt entity/authority</b>       | ■ 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

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### 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 o Refund ~ Rs 30000 cr a yr
- RMG Fabrics, footwear before GSTC

Items (Immediate correction)	tion]
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]

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### 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

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### 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
  - $F_{00}tw_{cars}$  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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### Review of composition coverage and rates

[ Spl committee of officers and Fitment Committee]

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## 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

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### 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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## Compliance measures

### 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..

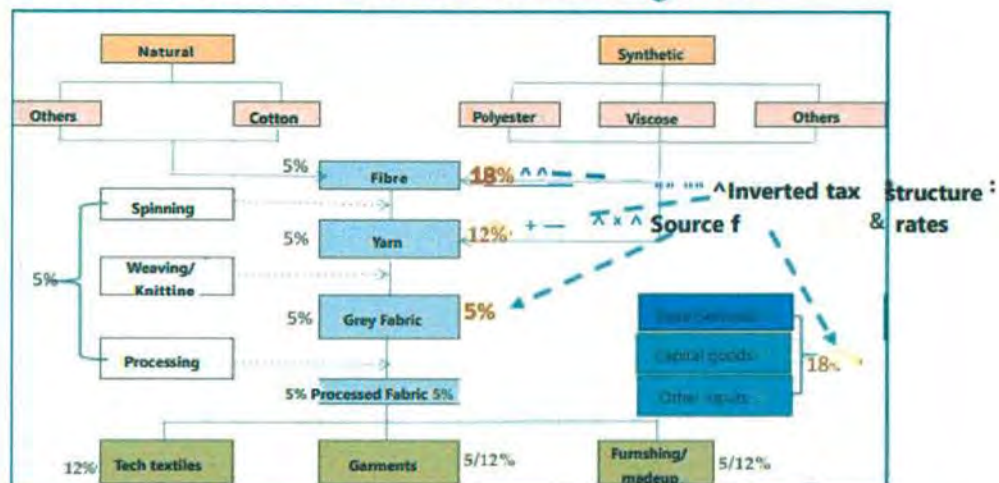
- Need for revenue augmentation measure is evident
- Of these, tax policy measures viz. correction of inverted rate structure, rate slab rationalisation, review of exemption, rationalisation of composition schemes have-
  - much larger revenue potential ○ certainty of outcome ○ ease of implementation
- 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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### 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%

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**Footwears:****Refund on account of inversion~ Rs 2000 cr a year****GST rate structure on footwears**

<b>5%</b>	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]
<b>18%</b>	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%

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## 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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