

Minutes of the 47th Meeting of GST Council held on 28th & 29th June, 2022

The 47th meeting of the GST Council was held on 28th & 29th June, 2022 at Chandigarh under the chairpersonship of the Hon'ble Union Finance Minister, Ms. Nirmala Sitharaman. The list of Hon'ble Members of the Council who attended the meeting is at **Annexure-1**. The list of the officers of the Centre, the States, the GST Council Secretariat and the GSTN who attended the meeting is at **Annexure-2**.

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

1	Confirmation of Minutes of GST Council Meetings
	i.45 th Meeting of GST Council held on 17 th September, 2021
	ii.46 th Meeting of GST Council held on 31 st December, 2021
2	Ratification of the Notifications, Circulars and Orders issued by the GST Council and decisions of GST Implementation Committee for the information of the Council
3	Issues recommended by the Law Committee for the consideration of the GST Council
	i.Issuance of clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification
	ii.Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted duty structure
	iii.Authority to issue recurring SCN in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to State and vice versa
	iv.Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices
	v.Notifying clause (c) of section 110 and section 111 of the Finance Act, 2022
	vi.Issuance of clarification on various issues pertaining to GST
	vii.Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use e-Commerce platforms
	viii.Refund of unutilized Input Tax Credit on account of Export of Electricity
	ix.Annual Returns for FY 2021-22
	x.Clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1
	xi.Comprehensive changes/amendments in FORM GSTR-3B
	xii.Proposal for amendments to CGST Rules, 2017

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	xiii.Re-credit of amount in electronic credit ledger after recovery of erroneous refund
	xiv.Extension of limitation under section 168A of the CGST Act, 2017
	xv.Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and extension of due date for filing FORM GST CMP- 08 for Q1 of FY 2022-23
	xvi.Refund of accumulated ITC to Duty-Free Shops
	xvii.Exemption from IGST and Cess on imports/domestic procurement of goods by AA/EPCG/ EOU and for doing away with e-Wallet
	xviii.Amendment in CGST Rules for handling of pending IGST refund claims
	xix.Errata
	xx.Consent based data sharing for non-GST purposes
4	Issues recommended by the GSTN i.Development of New Return System ii.Extension of REAP and LEAP Projects beyond 31.03.22 for FY 2022-23 iii.Status of Establishing Multiple Invoice Registration Portals (IRPs) to cater to the requirement of extending e-Invoicing to all the Businesses
5	Performance Report of the NAA (National Anti-profiteering Authority) for the 2 nd quarter (July to September, 2021), 3 rd quarter (October to December, 2021) and 4 th quarter (January to March, 2022) for the information of the Council
6	Issues recommended by the Fitment Committee a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relation to goods - Annexure I to the Agenda b) Issues where no change has been proposed by the Fitment Committee in relation to goods - Annexure II to the Agenda c) Issues deferred by the Fitment Committee for further examination in relation to goods -Annexure III to the Agenda d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relation to services - Annexure IV to the Agenda Recommendations made by the Fitment Committee on issues related to Tour and Hospitality Sector, and on positive list of services to be specified in Sr. No. 3/3A of Notification No. 12/2017-CT(R) as given at Annexure-IVA and Annexure-IVB, respectively to the Agenda e) Issues where no change has been proposed by the Fitment Committee in relation to services - Annexure V to the Agenda f) Issues deferred by the Fitment Committee for further examination in relation to services -Annexure VI to the Agenda
7	C-PACE Project for Ease of Doing Business in India
8	Review of revenue position under Goods and Services Tax
9	Report of Group of Ministers on feasibility of implementation of e-way bill requirement for movement of gold and precious stones.
10	Proposal to apportion IGST amount of Rs.27,000 crore for the financial year 2022-23 on ad hoc basis

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11	Amendments to provisions relating to GSTAT in CGST Act, 2017
12	Ad-hoc Exemption Orders issued under Section 25(2) of Customs Act, 1962 for information
13	Recommendations of the 16th IT Grievance Redressal Committee for approval/decision of the GST Council
14	Interim Report of the Group of Ministers (GoM) on Rate Rationalisation for consideration of the GST Council
15	Report of Group of Ministers (GoM) on GST System Reforms
16	Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

Preliminary discussion

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

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

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

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

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



3.4 The Secretary stated that the GST Council in its 45th meeting at Lucknow, formed a GoM on GST System Reforms under the Chairmanship of Shri Ajit Pawar, Hon'ble Deputy Chief Minister, Maharashtra, to analyse, study and come up with ways and means to minimize tax evasion and offer other suggestions that can help avoid frauds in GST. The GoM comprised Hon'ble Members from Haryana, Assam, Tamil Nadu, Delhi, Andhra Pradesh, Chhattisgarh and Odisha. The GoM had submitted its interim report which was placed before the Council for deliberations in the present agenda. The Secretary thanked all the Hon'ble Members of this GoM for their valuable recommendations.

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

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

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

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

4. The first agenda item pertained to confirmation of the minutes of the 45th GST Council meeting held on 17th September, 2021 and the 46th meeting of the GST Council held

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on 31st December, 2021. The Secretary stated that some comments had been received from few States which were basically editorial changes and had been carried out.

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

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

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

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

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

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

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



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

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

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

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

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

7.2 The Principal Commissioner, GST Policy Wing informed that the Hon'ble Supreme Court of India in case of UOI v. M/s VKC Footsteps vide its Order dated 13.09.2021 had upheld the vires of Rule 89(5) of the Central Goods and Services Tax Rules, 2017 but had taken cognizance of the anomalies in the formula prescribed under Rule 89(5) of CGST Rules, 2017. The Hon'ble Supreme Court had upheld the exclusion of ITC availed on input services from the computation of Net ITC. However, the Apex Court had noted that the formula prescribed in Rule 89(5) assumed that the tax payable on inverted rated supply of goods and services had been paid by utilising input tax credit on inputs only and that there

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had been no utilisation of the ITC on input services, such assumption skewed the formula in favour of revenue. The Apex Court had, therefore, urged the GST Council to reconsider the formula.

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

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

The Council agreed with the recommendation of the Law Committee.

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

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

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

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



7.7 The Hon'ble Member from Andhra Pradesh gave the suggestion that information on investigation initiated against any taxpayer should be provided on the GSTN portal. Further, he stated that if investigation was already initiated against a taxpayer by State officials then instead of initiating a new investigation, information should be passed on by the Centre to the concerned State and vice-versa. He stated that this will ensure greater efficiency and would also eliminate parallel investigations and thus would make the tax administration more taxpayer friendly.

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

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

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

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

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

7.11 The Principal Commissioner, GST Policy Wing clarified that the proposal did not prohibit prosecution and the people issuing fake invoices would continue to be liable for penalty and prosecution. The Circular clarifies the applicability of legal provisions in cases

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where only fake invoices are issued without corresponding supply of any goods or services. In such situations, GST cannot be levied as there is no supply. But simultaneously, it is proposed that penal actions can be taken under Section 122 of the Act. Further, such person is liable for prosecution under Section 132 where the amount involved is more than the specified amount under the said provision.

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

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

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

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

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

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

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

7.17 He stated that vide Section 110 (c) of the Finance Act, 2022, Section 49 (10) of CGST Act was substituted to provide for transfer of any balance of CGST/IGST in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person.



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

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

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

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

The Council agreed to the proposal that -

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

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d. **01.10.2022 to be date of notification of the other provisions of Finance Act 2022**

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

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

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

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

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

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

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

7.23.3 Another issue was whether various perquisites provided by employer to its employees as per contractual agreement, were liable for GST. The Law Committee clarified that any perquisites provided by employer to its employees in accordance with the terms of



contract were in lieu of services provided by the employee and as per Schedule III of the CGST Act, the same would not be subjected to GST.

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

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

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

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

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

7.26 These issues were discussed in the Law Committee and it was observed that the requirement of mandatory registration was made because registration is required for any inter-state supply, irrespective of the threshold turnover. Now, inter-state supply is also

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

7.27 The Principal Commissioner, GST Policy Wing sought in principle approval of the Council regarding these agendas and stated that post approval, the Law Committee could be authorized to work out further modalities. Also, corresponding changes in GSTN portal would be required. In the officers' meeting, it was decided that if the Council approves, 1st January, 2023 would be notified as date of implementation. Further, the Law Committee recommended a condition that for each PAN, only one principal place of business in one State can be declared. There was a view that that an offline person can carry out business in 2 or 3 states making intrastate supplies within those states and his threshold limit will be considered by aggregating all places of business.

7.28 The Secretary informed that if the agenda gets approved it would be a significant decision for small traders. He further informed that MSMEs had been approaching with the request to allow them to do business online without registration and that post-COVID online mode has become the prevalent mode for doing business. The change would address the concern of MSMEs and also bring parity between offline and online suppliers. Regarding the proposal of calculation of threshold turnover of a person registered in 2 or 3 states by aggregating all his supplies, the Secretary informed that this was not part of the agenda but requested the Council to consider the same. He informed that a small offline dealer can give



PAN details in different states and can do business without registration provided the aggregate turnover in all states does not exceed the threshold limit. The Secretary requested the Council that the same modality may be allowed in online mode as the aggregate turnover can be calculated through online mechanism provided, they make only intra-state supply. He further informed that reservations were raised by some officers that this may be done later. The Secretary requested that if Council agrees, in-principle approval may be given as it would take around 6 months to implement and to put necessary safeguards in place to prevent any misuse.

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

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

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

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7.32 The Hon'ble Member from Karnataka raised the issue of using multiple PANs by different members of same household. The Secretary stated that the same situation exists in the offline mode also. The Hon'ble Member stated that in offline mode, there is a possibility of physical verification whereas the same doesn't exist online mode. The Secretary stated that in these cases principal place of business is declared. Therefore, if different PANs are catering to same principal place of businesses, it can be checked. He also requested GSTN to ensure that the principal place of businesses are geo-tagged while updating the system, so as to address the concerns of Hon'ble Member from Karnataka.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

The GST Council approved the agenda item and recommended –

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



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

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

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

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

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

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changes ensure that the GSTR1-GSTR 2B linkage remains intact and as far as possible, the GSTR-3B should be auto-generated consequent to furnishing details in GSTR-1.

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

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

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

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

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



three months and to NIL after another 3 months. It was stated that this would expedite the return filing and would also help in cleaning the tax payer base.

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

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

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

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

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

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

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

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

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

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

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

7.53 The Principal Commissioner, GST Policy Wing mentioned that requests were made to extend the period of limitation under Sections 73/74 and Sections 54/55 on account of problems being faced by the taxpayers as well as tax administration in respect of demands and refunds getting time barred due to long period of lockdown/restrictions. He informed that the issue was deliberated by the Law Committee in its meeting held on 11.04.2022 and



07.05.2022. The Law Committee observed that Centre as well as State governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices, from time to time during COVID period. Further, it was a conscious policy decision not to do enforcement actions in the initial period of implementation of GST Law, thereby no action for scrutiny, audit etc. could be undertaken during initial period of GST implementation. Since the due date of filing Annual return for FY 2017-18 was 5th/7th February, 2020, based on which limitations for demand under the Act are linked, and since the onset of COVID happened immediately after that, thereby, audit and scrutiny for FY 2017-18 were impeded due to various restrictions during COVID period. The Law Committee, accordingly, recommended that limitation under section 73 for FY 2017-18 for issuance of order in respect of demand linked with due date of annual return, may be extended till 30th September, 2023 under the powers available under section 168A of CGST Act. Law Committee further took a view that no such extension is required for timelines under section 74 of the Act, as the Act provides for sufficient limitation time of 5 years in respect of such cases, i.e. much beyond the period affected by COVID-19.

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

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

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

7.55 Every registered composition taxpayer is required to furnish a return for every FY in GSTR-4 besides furnishing a quarterly statement containing the details of payment of self-assessed tax in GST CMP-08. The self-assessed tax paid by the taxpayer and declared in

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quarterly statements is auto-populated on the portal in table 5 of GSTR-4. If no liability is declared in table 6, it was presumed that no liability is required to be paid, even though taxpayer may have paid the liability through GST CMP-08. In such cases, liability paid through GST CMP-08 was treated as excess tax paid and was moved on the portal to Negative Liability Statement for utilization of same for subsequent tax period's liability. The Law Committee took a view that amount in negative liability statement needs to be debited on the portal as a remedial action and it was also decided wherever the amount available in negative liability statement had been utilized by the taxpayer for paying the liability of subsequent financial year, such amount needs to be debited from electronic cash ledger (ECL) of the concerned taxpayer. In case the liability had already been paid through challan or by adding in the liability of the subsequent period, the same was advised to be claimed as refund.

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

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

The Council agreed with the recommendations of the Law Committee along with the proposed draft Notifications. GSTN has also been asked to expeditiously resolve the



issue of negative balance in Electronic Cash Ledger being faced by some of the composition taxpayers.

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

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

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

- i. To align rules and notifications with the decision of Hon'ble High Courts to treat the supply of goods by Duty Free Shops to outgoing international passengers as zero-rated supply by:-

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

The GST Council approved the proposal of the Law Committee.

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

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



initial phase of GST implementation and that at present, the issue has been addressed by exemption from tax/concessional rate available to AA/EPCG/EoU license holders and merchant exporters and by faster refunds both under IGST route and as well as that pertaining to un-utilized input tax credit on account of zero-rated supply. The Law Committee recommended that the present Notifications exempting IGST and Cess etc. on the imports made under AA/EPCG/EoU schemes may be continued and E-wallet scheme may not be pursued further.

The Council agreed to the proposal and accordingly recommended that-

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

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

7.61 The Principal Commissioner, GST Policy Wing mentioned that at present, the processing of refund of IGST paid on account of export of goods under provisions of Section 16(3)(b) of IGST Act is system based and is done in accordance with Rule 96 of CGST Rules. Rule 96(4) provided for withholding of refunds only in two specified situations and it does not provide for withholding the refund on account of exporter having being identified as a risky exporter by the system. The Law Committee recommended amendment in Rule 96(4) to include this scenario. Further, Rule 96(5) provided for transmission of intimation of withholding of IGST refunds to the jurisdictional proper officer, applicant and the common portal only in case where it is withheld under sub- section (10) or (11) of Section 54 and not in other cases. The Law Committee recommended to omit sub-rule (5) and to insert new sub-rules to provide for transmission of intimation of all IGST refunds withheld to the jurisdictional proper officer through common portal. Further, under Rule 96(1) the shipping bill filed by exporter is deemed to be an application of refund and therefore, any mismatch in the data furnished by the exporter in GSTR-1 results in the refund getting processed only on rectification of such mistake. In such cases, the refund claims get pending due to mistake made by exporter. Law Committee recommended adding a proviso to Rule 96(1) to provide

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that shipping bill may be deemed to be an application for refund under this sub-rule only when there are no mismatches in the data furnished in shipping bill and GSTR-1. Further, it was also recommended by the Law Committee that the proposed amendments may be carried out retrospectively w.e.f. 01.07.2017.

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

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

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

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

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



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

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

The Council approved the recommendation of Law Committee.

Agenda Item 4: Issues recommended by GSTN

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

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

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

The agenda item was unanimously approved by the Council.

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

8.2 The CEO, GSTN mentioned that this proposal is of commercial nature. He informed that GSTN started working on Time and Material (T & M) model of developing modules

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

The agenda item was unanimously approved by the Council.

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

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

The agenda item was unanimously approved by the Council.



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

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

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

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

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

10.2 Joint Secretary, TRU started the discussion with item No.6. He stated that there was a request for limited period exemption from IGST for defense items imported by the private

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vendors, since the procurement by Government for defense and defense PSUs were also exempt. He explained that this was a very small list of specified items and this exemption would be only for a period of five years lapsing in 2024. He clarified that this is an end use-based exemption where Joint Secretary from Ministry of Defense certifies that these imports are for defense forces and they fall under the specified list.

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

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

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

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

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



agreed to enable utilizing of ITC which had accumulated due to the inverted tax structure on diamond industry.

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

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

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

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

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

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

10.11 Joint Secretary, TRU explained that different rates on items of Chapter 23 (animal feed, their inputs, oil cakes etc.) have led to disputes. He informed the Council that in this chapter head there are large number of items including manufactured items which entailed

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

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

10.13 He further stated that the other issue involved is of reverse charge on scrap. There is significant evasion in scrap and scrap traders vanish without paying the taxes on the tax invoice. The manufacturers complain that they are suffering on this account that their suppliers were not paying the tax and corresponding ITC became ineligible. So they requested for the reverse charge mechanism on scrap. On this matter, the Fitment Committee was of the view that the reverse charge mechanism was not possible. Reverse charge could apply only at the beginning of supply chain. However, it was suggested that a meeting with the industry could be held for the issue requires re-examination. After the 45th Council meeting, the Fitment Committee examined this issue in great length over three meetings. The trade submitted that if Reverse Charge Mechanism (RCM) is there, they would be able to



take the credit and it would not create any additional obligation if suppliers were not filing GST return. So, they would be absolved of any liability that may arise on account of non-payment of taxes by the scrap dealer. However, Fitment Committee examined the issue and found that scrap entailed a supply chain with number of suppliers involved. There was a lot of aggregation which happens in supply chain of scrap. It was not the case here that only one scrap dealer would supply to one manufacturer but there were number of scrap dealers collecting scrap and they would give it to the dealer who aggregated and then it would go to some other dealer for further aggregation. Therefore, there were multiple supply chains some of which originated from imports. On imports the taxes were paid by the importer. So, if importer had paid tax of 18% and again if manufacturer would be asked to pay on reverse charge, then this would lead to a 36% tax on the scrap, out of which on about 18%, ITC would be available but other 18% would become the absolute cost. So, bringing scrap under reverse charge was not possible. Accordingly, when this was examined by Fitment Committee, it was *ab initio* opined that it was not feasible to introduce reverse charge in case of scrap. Another aspect was that the iron and steel were such items that if scrap dealers were taken out of this chain then there would issues with ITC in the subsequent supply chain and the compliance issue would also be there. Continuing with forward charge on scrap has help GST administration keep a check on supply chain. These were the prime factors on the basis of which the Fitment Committee had opined that reverse charge on any supply in the chain after the first stage was not feasible.

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

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give a serious thought for the reverse charge mechanism so that the tax evasions on scrap could be checked.

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

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

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

10.17 Joint Secretary, TRU introduced the next item in the Agenda (Annexure- IV to Agenda) of the Fitment Committee. He stated that Nepal and Bhutan were landlocked countries, and their imports and exports took place from the Indian ports and seaports. In the case of imports to Nepal and Bhutan, the containers moved from the seaport to Nepal and Bhutan and after the cargo had been offloaded, then empty containers moved out from these countries and came back to the port in India. Here, the issue was regarding the applicability of GST on activities associated with transit cargo to Nepal and Bhutan. The exemption notification exempts the supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) but when the empty container come from Nepal after dropping the cargo, services related to transport of such containers were not being exempted because the notification wording only specifies onward cargo to Nepal. However, the intention was to



exempt both inward and outward cargo to Nepal and Bhutan as this was only transiting in India for the purpose of import and export. All the empty containers which came from Nepal/Bhutan after dropping import consignment and any service relating to them should not be taxed. He informed the Council that this matter was discussed in Officer's meeting and there was in principle agreement, but the issue was raised as to what was transit cargo and how it was happening. He further informed the Council about the procedure in Custom to deal with the cargo and it could be looked into, as the issue raised is more of enforcement rather than a policy issue.

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

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

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

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

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

10.23 Joint Secretary, TRU proceeded with item number 11 pertaining to Goods Transport Agency (GTA) services and informed that the previous day some issues were raised about Goods Transport Agency services. It currently attracted 5% tax rate without Input Tax Credit (ITC) when on reverse charge and 12% with ITC on forward charge. But when a GTA service provider availed the route of paying GST with ITC at 12%, he was barred from taking 5% under Reverse Charge Mechanism route ever again. So, the issue was being raised about providing flexibility to GTA so that in a particular year if they wanted to shift to 5% tax rate without ITC from the 12% rate, they could do so. This flexibility was there in other services also. So, the Fitment Committee recommended that this flexibility should be there in this sector also to facilitate the trade. Fitment Committee had proposed that a GTA can opt both

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the routes- to operate under forward charge or under Reverse Charge Mechanism but he had to express his intention before the beginning of a financial year. A GTA opting to pay GST under forward charge may be allowed to pay GST@ 12% with ITC on some consignments while simultaneously availing 5% rate without ITC on the other consignments during a financial year provided he pays GST on forward charge basis on all its services during that financial year. This modality would provide greater flexibility to GTAs while not compromising the revenue.

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

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

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

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

10.26 Joint Secretary, TRU discussed the agenda regarding the items on Annexure IVA relating to tour and hospitality sector. The Hon'ble Member from Delhi queried regarding



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

The Council agreed on this.

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

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Fitment Committee agreed that transport by vessels is a mode of transport rather than a luxury and approved the proposed clarification.

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

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

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

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

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

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



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was directed that inputs from each State should be taken based on which a positive list of services to be exempted had been drafted. In the relevant notifications, 'public authority' word had been proposed to be inserted because in certain States, local authorities had been replaced by public authorities.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

13.1 Hon'ble Member from Kerala thanked the Secretary and informed the Council in the 37th GST Council meeting held on 20.09.2019, a GoM consisting of Finance Minister of

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

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

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

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

13.5 Hon'ble Minister from Odisha suggested that prescribing a minimum threshold should be left to the States. The Secretary clarified that the implementation was being left to the States and the States had the option to fix the threshold limit at Rs.5 lakhs or Rs.10 lakhs also. He further clarified that Centre was giving liberty to the respective States and that it was up to the states to implement or not to implement the recommendations.

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



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

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

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

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

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

15. The Secretary introduced Agenda item 11 which was a note on amendments to provisions relating to GSTAT in CGST Act, 2017. He stated that the Courts, the Standing Committee on Finance and other Committees had emphasised the need to set up the Tribunals. In the absence of Tribunals, people were being forced to file Writ Petitions and a number of cases had been decided by the High Courts and by the Hon'ble Supreme Court in place of Tribunals. He further informed that since the GST Tribunals would decide on matters pertaining to CGST, SGST and IGST which would affect the States and Centre and

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therefore, parity had to be maintained in the membership between States and Centre. The Secretary informed that that process would still take time because the Act needed to be amended and then the Rules were to be formulated and the process of selection of Members would take place. He invited JS DoR to make a presentation.

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

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

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

- a. Section 109(3): The constitution of members of Principal Bench reflects inadequate representation to the States,
- b. Section 109(6): There should be provision of one default Bench in States in the Law itself (sans Council nod afterwards) with further expansion in Benches requiring Council recommendation,
- c. Section 109(10): Increasing limit of 5 Lakh for a Single member bench.
- d. Section 109(12): Transfer to Technical Members (State) by President of PB should be within the State,
- e. Section 110(1) (d) :
 - i. The qualifying criteria for Technical Member (State) require a relook, especially with respect to selection from State cadre Group A officers.
 - ii. Also, States should be given liberty to decide the rank of the candidate for the purpose of appointment as Technical Member (State). This is especially because for Technical Member (Centre) no qualifying rank is specified.
 - iii. Further, "...or in the field of finance and taxation:" requires relook because, the word 'finance' includes treasury



department, whose inclusion may not be intended. 'Taxation' should include VAT and GST.

- f. Section 110(2A): The selection of Technical Members (State) should mandatorily be from home State.
- g. Section 110(3): The balance between appointments of the number of Technical Members from the Centre and States and their balance at the location, within State and within country should be maintained from the inception of the Tribunal.
- h. Section 110(4): The Chief Secretary as a member of Search cum Selection Committee (ScSC), should be from the State of the Bench to which appointment of Technical Members of that State is being considered,
- i. Section 110(5A): Instead of recommendations of Panel of two names for one post of Technical Members, the ScSC should recommend only one name for one post of Technical Members,
- j. Section 110(9): There should be no reappointment of Technical members, the reason being that it would not give enough opportunity to others. Moreover, tenure period of 4-year as a Technical Member is fairly long period.

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

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

15.6 Hon'ble Member from Delhi stated that Council was formed by the GST Law and the spirit of the GST Law was federal. That everything or any decision that they took, the outcome had to be Federal and not Central oriented. Regarding the formation of State level benches of Tribunals, he raised few observations such as whether the Technical Member would be from State or Centre Services, whether the Technical Member would be transferable from one state to another which appears to be Central not federal in structure. He also sought clarification regarding re-appointment of the Members. He further supported the

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view of the Hon'ble Member from Tamil Nadu to form a GoM which could consider all aspects specially how to keep the structure and character of the Tribunal Federal rather than Central and give its report in 3 months' time.

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

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

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

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

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

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

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

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

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

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

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

17.2 Additional Agenda on legal issues (refund issues),

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

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

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

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

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

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

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

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

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



an interim report; that it was decided that further detailed discussions and suggestions were required for submitting the report on tax rate slabs and slab structuring.

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

18.4 He further stated that on the issue of works contract services, the GoM observed that there was a need to correct the inverted duty structure, however, the increase of six percent GST rate on works contract services provided to the Government may strain on the budget of the States and the GST Council might take a final view on that issue considering that present rate structure in works contract is causing inverted duty structure and has compliance issues. On the issue of review of exemptions, he stated that exemptions on goods and services also led to disruption of credit chain and blockage of ITC and therefore all the exemptions under GST were examined by the GoM; that exemption on a few items which had consumer sensitivity viz. bread, tea, coffee, poultry feed etc. were retained; that certain exemptions on goods and services had been suggested to be rationalized and the proposed rate on such goods would be the same as applies to the respective HSN code; that one of the majority category of exemptions reviewed was exemption on unbranded food items including cereals. Currently, only branded food items attracted tax and revenue from those items had fallen as compared to

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the pre- GST regime. Therefore, the GoM was of the view that this could be simplified by replacing the term branded with 'pre-packaged and labelled' and this would be in accordance with the Legal Metrology Act & Rules; that in other cases, no rate change was being suggested and such items sold loose and unlabelled would continue to remain exempt and hence majority of consumers buying loose food grains would remain unaffected.

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

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

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

18.8 Hon'ble Member from Goa thanked the Convenor of the GoM and all members. Supporting the proposal given by the Hon'ble Member from Delhi, he stated that the GoM had given such a good report after due deliberations on the inputs received from the Members, Fitment Committee, officers and that it may not be prudent to discuss each item as



the discussion might turn State specific rather than being focused on revenue. He mentioned that considering all the aspects, the interim report as proposed would help in correcting inversion in rates, rationalisation of exemption and also augmentation of revenue, though the GoM needed more time to analyse how much increase in revenue would be there. He then requested the Council to accept the interim report as suggested by GoM.

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

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

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

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

18.13 Hon'ble Member from Haryana thanked the Hon'ble Chief Minister of Karnataka and convenor of GoM for giving his detailed presentation on all suggestions recommended by the GoM. However, on the proposal of withdrawal of exemptions on renting of residential

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dwelling for residential use [when supplied to business], he stated that if we tax this supply, the business establishments which provided house facility to their small employees would stop doing the same and suggested that there might be a threshold of the house rent amount for taxing; the rent below that threshold limit might be exempted.

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

18.15 The Joint Secretary, TRU explained that there was a threshold exemption for services also and the objective to exempt residential dwelling was to exempt the rent paid by the individuals or non-commercial person as there should not be any tax burden on him. He further stated that corporates were taking a number of other services for their employees also and were paying tax on the same. There was no such differentiation there.

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

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

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



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

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

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

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

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

19.2 The first issue on the subject was regarding the new registration and the biometric authentication, second issue was to study the profile of new registrants from the system and compulsory physical verification of these registrations, third was to check the existing tax payers whether they were doing fake invoicing or not with the help of the system and take them up for physical verification. Fourth item was regarding the Geo-coding of addresses. It was observed that while seeking new registrations many tax payers were giving non existing addresses/ false addresses. GSTN is proposing to make arrangements to fetch the meta data

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

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

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

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

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

19.7 The fifth item was the electricity bill meter data capture during the registration process. There was lot of information which was there in the State data bases which was not

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

19.8 The second last item was about the use of incorrect bank accounts at the time of registration. It was observed in almost all the States that many of the bank accounts filled at the time of registration were incorrect in the sense that the name of the bank accounts did not match with the registrants. Therefore, it was proposed that GSTN would tie up with the NPCI, so that a check would be done. All that information would be fetched from the GSTN system and would be submitted to NPCI and they would respond for each request and that could be verified how many bank accounts were false. Some trials had been done by the GSTN and the numbers were quite huge so some kind of methodology had to be devised.

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

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

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

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

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

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

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

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

19.17 The representative from GSTN stated that for fast tag integration, NIC had done some work and an App had been given to the officers wherein live data was being shared. Regarding covering a situation wherein if on the same route, a vehicle had moved multiple times as indicated by the fast tag payments, they would look into developing the said analytic and as and when developed, that would be presented before the Council.

19.18 The Deputy Chief Minister of Delhi stated that there was substantial information in BIFA which by default issued a Red Alert and that fast tag data could also be an innovative



way to add to BIFA analytics. So that an inspector sitting in his office could also see the links and by default from the fast tag data, he could do random cross checking.

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

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

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

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

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

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

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

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

19.27 The representative from GSTN stated that he would start with integrating e-waybill data sharing and as they moved along, they would take guidance of the GoM on IT, which was a standing GoM and whatever was required to be shared, over a period of time, they would develop the module. The Secretary observed that the Council agreed on the proposal of Tamil Nadu and Uttar Pradesh pertaining to sharing of e-waybill data.

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

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

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

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



Chief Minister of Meghalaya, the Chairperson of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming to present the report before the Council.

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

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

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

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

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

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

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

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

20.4.4 Valuation:

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

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

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

20.7 Hon'ble Member from Tamil Nadu stated that two things need to be discussed extensively. That the regulation of those activities varied from state to state because gambling sector was under the state regulatory ambit and all states retained the right to ban that, but taxation was independent of the activity being allowed or not. That the second was regarding improvement of the infrastructure, the technology, the data capture and identification models to bring the betting into the light and avoid the likelihood of its moving into a grey or black market. He further stated that all the Members sought to maximize revenue while reducing those types of activities and having compliance to law. That it may not be relatively exorbitant and there was still some scope of review.

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



that principle had to be taken into consideration. She stated that from lottery, west Bengal received a huge amount of GST and that was almost 4,000 crores. Lottery had already been decided in M/s Skill Lotto case; so while deciding the issues in case of casino, online gaming etc. that principal had to be taken into consideration.

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

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

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

20.12 Hon'ble Member from Tamil Nadu stated that there are some profound issues such as enforcement and movement of the activities into the grey market. The identification of locus

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is easy in casino, hard in racing, least in online gaming. That all the three games had that risk. He further submitted that if the GoM had already submitted a report, like in the earlier case of rate rationalization, either the Council should look into it entirely all over again or not at all. That there were bigger issues there but if the GoM was to reopen, that should not be opened for just one of the three industries rather it should be opened for all the three industries.

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

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

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



minimized the possibility of evasion also. That service providers should be mandated to track the location of the user of their platform perhaps by tracking the payments done by the user on the online platform.

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

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

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

20.19 Hon'ble Member from Haryana stated that he totally agreed with what Hon'ble Chief Minister of Karnataka had said. As regards place of supply he stated that either the address had to be the permanent address where the player was registered or the place of the transaction or the place of initializing the transaction. He further submitted that GoM could have a re-look in case of casino but the Council might go ahead with the recommendations of GoM on horse racing and online gaming.

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

20.21 The Chairperson stated that the spirit of taking decisions in the Council had always been consensus in the interest of the country. That some states yielded, some sectors yielded, some industries yielded and some did not, but eventually, the Council arrived at something which could effectively be implemented with reasonable surety. That the Council corrected the faults which were observed on implementation of various provisions. That the clubbing on these activities together was because all the three games were gaming, betting and

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gambling and that common thread between the three was betting and gambling. That the common thread was not contentious at all and that was gambling and therefore, she would not want anything that undermine the efforts made by the GoM. However, if some Members had differing views, these may require examination by GoM to assess if there is a need to bring in a certain calibration into the final recommendations. This may have to be done, taking into account the point raised more than once by minister of Tamil Nadu such as need for a better regulation, better technology etc. **The Chairperson requested the Convenor of the GoM, and the Chief Minister of Meghalaya, to elicit the information from Goa, Tamil Nadu, Telangana, for their respective areas to put everything together and submit the report by 15th of July.**

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

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

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



22. General Discussion on Compensation

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

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

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

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

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

22.6 The Secretary further clarified that Rs.64000/- crore was distributed in advance to help the States and for any difference in calculation, the State must submit the certificate

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from AG. That all the compensation due was paid to the States who had submitted the AG Certificate and that Rajasthan had not submitted the AG certificate. On submission of such a certificate, the dues would be paid immediately.

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

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

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

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

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

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

22.13 Hon'ble Member from Tamil Nadu stated that though there was an increase in the revenue as pointed out by the Secretary but the increase was not of 14% of CAGR

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

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

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

22.16 Hon'ble Member from Uttar Pradesh stated that introduction of GST had worked well and that their State had taken steps to control the expenses but the Covid had spoiled the finances of the States. He submitted to look at the taxation structure on certain items and to devise strategies to achieve the pre GST revenue on these items. He further stated that though

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in principle, they did not seek compensation and wanted to be self-reliant but due to special circumstances, the State requested to continue the compensation.

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

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

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

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



first week of August on these two items alone so that these important decisions could be taken.

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

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