Confidential

सत्यमेव जयते

Agenda for

39th GST Council Meeting

14 March 2020

Volume – 1

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

File No: 119/39th GSTCM/GSTC/2020

GST Council Secretariat

Room No.275, North Block, New Delhi

Dated: 20th February 2020

Notice for the 39th Meeting of the GST Council scheduled on 14th March 2020

The undersigned is directed to refer to the subject cited above and to say that the 39th Meeting of the GST Council will be held on 14th March 2020 at Hall No.2-3, Vigyan Bhawan, New Delhi. The schedule of the meeting is as follows:

- Saturday, 14th March, 2020 : 11:00 AM onwards

2. In addition, an Officers' Meeting will be held on 13th March, 2020 at Hall No.2-3, Vigyan Bhawan, New Delhi as follows:

- Friday, 13th March, 2020 : 12:30 PM onwards

3. The agenda items for the 39th Meeting of the GST Council will be communicated in due course of time.

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

(-Sd-)

(Dr. Ajay Bhushan Pandey)
Secretary to the Govt. of India and ex-officio Secretary to the GST Council
Tel: 011 23092653

Copy to:

1. PS to the Hon'ble Minister of Finance, Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.

2. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi with the request to brief Hon'ble Minister about the above said meeting.

3. The Chief Secretaries of all the State Governments, Union Territories of Delhi, Puducherry and Jammu and Kashmir with the request to intimate the Minister in charge of Finance/Taxation or any other Minister nominated by the State Government as a Member of the GST Council about the above said meeting.

4. Chairman, CBIC, North Block, New Delhi, as a permanent invitee to the proceedings of the Council.

5. Chairman, GST Network

Agenda Items for the 39th Meeting of the GST Council on 14th March 2020

1. Confirmation of the Minutes of 38th GST Council Meeting held on 18th December 2019
2. Update by Infosys (through GSTN)
3. Review of Revenue Position
4. Issues recommended by the Fitment Committee for the consideration of the GST Council (Recommendations by the Committee of Officers on Revenue Augmentation)
5. Issues recommended by the Law Committee for the consideration of the GST Council
   A. Issues recommended by the Law Committee for the consideration of the GST Council
      i. Taxability of 'economic surplus' earned by brand owners of alcoholic liquor for human consumption
      ii. Challenges faced in apportionment of ITC in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules
      iii. Issue regarding waiver of penalty and interest on previous period due to removal of pre-import condition under Advance Authorization scheme
      iv. Levy of interest under the provisions of section 50 of the CGST Act, 2017 for delay in payment of tax
      v. Proposal for waiver of filing of FORM GSTR-1 by taxpayers who have availed the special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019.
      vi. Filing of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement)
      vii. Proposals for amendment in the CGST Rules, 2017
      viii. Proposals for amendment in the CGST Act, 2017 and the IGST Act, 2017
      ix. Scheme of 'Know Your Supplier'
      x. Notifying NPCI, Transunion CIBIL Ltd. and Association of Mutual fund of India under section 150(1)(p) and Banking Information return under Section 150(1)(e)
      xi. Proposal for Notification / Rule change for enabling AADHAAR based authentication in GST
      xii. Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal
      xiii. Exemption for certain class of registered persons from having e-invoicing along with extension of dates for implementation of e-invoicing
      xiv. Exemption for certain class of registered persons from capturing dynamic QR code along with deferment of implementation of QR Code
      xv. Agenda note for GST Council regarding extension of date of GSTR 3B filing for the month of Jan, 2020 till 31st March 2020
      xvi. Agenda note for GST Council regarding continuation of the existing system of furnishing FORM GSTR-1 and FORM GSTR-3B till the month of September, 2020

xvii. Transition Plan in view of merger of Union Territories of Dadra & Nagar Haveli and Daman & Diu

xviii. Deferring e-Wallet scheme and extending duty exemption for exporters

B. Deliberations of the Law Committee in the matter of the representation by Construction Federation of India on the orders of the Hon'ble High Court of Delhi

6. Creation of State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh

7. Quarterly Report of the NAA for the quarter October to December 2019 for the information of the GST Council

8. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government

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

10. Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council

11. Any other agenda item with the permission of the Chairperson

12. Date of the next meeting of the GST Council

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Discussion on Agenda Items

Agenda Item 1: Confirmation of the Minutes of the 38h GST Council Meeting held on 18th December 2019

The 38th Meeting of the GST Council (hereinafter referred to as 'the Council') was held on 18th December, 2019 at New Delhi under the Chairpersonship of Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon'ble Members/Ministers of the Council who attended the meeting is at **Annexure 1.** A list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting, is at **Annexure 2.**

2. The following agenda items were listed for the discussion in the 38th Meeting of the Council:

1. Confirmation of the Minutes of 37th GST Council Meeting held on 20th September 2019
2. Issues concerning GST on Lottery
3. GST Revenue Augmentation

   Recommendations of the GoM on Revenue Analysis and

   Deliberations of the Committee of Officers on Revenue Augmentation
4. Report of GoM on Real Estate on boosting real estate sector
5. Issues recommended by the Fitment Committee for the consideration of the GST Council
6. Issues recommended by the Law Committee for the consideration of the GST Council
   i. Standard Operating Procedure to be followed in case of non-filers of returns
   ii. Proposed amendments in the CGST Act, 2017
7. Creation of Public Grievance Redressal Committee as per Hon'ble High Court of Delhi's order in the case of Sales Tax Bar Association
8. Status of Group of Ministers (GoMs) constituted for various agenda items
9. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
10. Decisions of the GST Implementation Committee (GIC) for information of the Council
11. Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council
12. Quarterly Report of the NAA for the quarter July to September 2019 for the information of the GST Council
13. Presentation on developments regarding implementation of

i. GST EWB System – FASTag Integration

ii. New Return System

iii. Integrated refund system with disbursal by single authority

iv. Generation of electronic Invoice Reference Number

v. Linking GST registration with Aadhaar and proposed changes in the GST Law and GSTN System

14. Clarification on GST rate on fabrics and articles of textiles falling in Chapters 56 to 59 of the tariff pursuant to the order of the Hon'ble High Court of Delhi in Writ petition (Civil) No. 597 of 2019

15. Any other agenda item with the permission of the Chairperson

i. Creation of the State and Area benches of the Goods and Services Tax Appellate Tribunal (GSTAT)

ii. Measures for Revenue Augmentation

iii. Addendum to Agenda Item 10: Decisions of the GIC Implementation Committee (GIC) for information of the GST Council

iv. Proposal for change in GST rate on woven/non-woven bags and sacks of polypropylene/polyethylene, whether or not laminated and Flexible Intermediate Bulk Containers (FIBC) from 12% to 18%

16. Date of the next meeting of the GST Council

Preliminary discussion

3. The Chairperson invited the Union Revenue Secretary and the ex-officio Secretary to the GST Council (hereinafter referred to as the Secretary) to begin the proceedings. The Secretary welcomed everyone to the 38th GST Council Meeting. He, on behalf of the Council, welcomed Shri Dushyant Chautala, Deputy Chief Minister and the incoming Member, nominated from the State of Haryana to the Council. He also welcomed the following Council Members nominated specifically for the 38th GST Council Meeting:

i. Shri Mekapati Gautam Reddy, Minister for Industries & Commerce and Information Technology, Andhra Pradesh
ii. Shri Jayant Rajaram Patil, Finance Minister, Maharashtra
iii. Shri V. Hangkhanlian, Minister of Agriculture, Manipur
iv. Shri Kyrmen Shylla, Minister for Printing & Stationery Department, Revenue & Disaster Management and Social Welfare, Meghalaya
v. Dr. Harak Singh Rawat, Minister for Forests & Wild Life, Uttarakhand.

On behalf of the GST Council, he also placed on record its appreciation for contribution made by the outgoing Council Members, Capt. Abhimanyu (the then Minister for Excise & Taxation), Haryana and Shri Sudhir Mungantiwar (the then Finance Minister), Maharashtra.

3.1 After the preliminary discussions, the Hon'ble Chairperson asked the Secretary to take up the individual agenda items for consideration of the Council.

Agenda Item 1: Confirmation of the Minutes of the 37th GST Council Meeting held on 20th September, 2019

4. The Secretary informed that the first agenda item was the confirmation of the Minutes of the 37th GST Council Meeting (hereinafter referred to as Minutes) held on 20th September, 2019 in Goa. He stated that the Minutes was circulated to all the States in advance and some corrections had been suggested by the States during the Officers' Meeting held on 17th December, 2019.

4.1. The following three changes were proposed by the State of Odisha to the version of the Hon'ble Member from Odisha recorded in the Minutes:

i. In paragraph 4.23 of the Minutes, to replace the presently recorded version (They also suffered loss to the tune of Rs 600 crores on account of Sales Tax.) with the following version: 'They also suffered loss of VAT to the tune of Rs. 600 crores on account of paddy and pulses.'
ii. In paragraph 22 of the Minutes, to replace the last line (The Hon'ble Minister from Odisha suggested that there should be a check in GST System where a registered taxpayer should not be allowed to file **FORM GSTR-3B** unless he/she had file **FORM GSTR-1** in previous month.) with the following version: 'The Hon'ble Minister from Odisha suggested that there should be a check in GST System where a registered taxpayer should not be allowed to file **FORM GSTR-1** unless he/she had filed **FORM GSTR-3B** in previous month.'
iii. In paragraph 49.4. of the Minutes, to replace the first line (The Hon'ble Minister from Odisha stated that if any taxpayer did not provide the Aadhar number, his refund should be restricted.) with the following version: 'The Hon'ble Minister from Odisha stated that if any taxpayer did not provide the Aadhar number, his refund should be restricted, till he complies.'

4.2. The Secretary stated that the UT of Puducherry had suggested a change in version recorded in paragraph 14.4. of the Minutes of the Hon'ble Member from Puducherry (He further stated that Puducherry was entitled to 71% of the IGST amount collected by the Centre.) with the following version: 'He further stated that Puducherry was entitled to 0.27% of the IGST amount apportioned to the States which would work out to Rs 219 crore.'

4.3. He also stated that in paragraph 34.9. of the Minutes, the State of Uttar Pradesh had requested to replace the words recorded as 'revenue implication' with the word 'turnover.'

4.4. The Secretary proposed that the Council may confirm the Minutes of the 37th GST Council Meeting with the changes suggested above.

5. For **Agenda item 1**, the Council decided to adopt the Minutes of the 37th GST Council Meeting with the following changes.

5.1. To replace the sentence 'They also suffered loss to the tune of Rs 600 crores on account of Sales Tax.' in paragraph 4.23. of the Minutes with 'They also suffered loss of VAT to the tune of Rs. 600 crores on account of paddy and pulses.'

5.2. To replace the sentence 'The Hon'ble Minister from Odisha suggested that there should be a check in GST System where a registered taxpayer should not be allowed to file **FORM GSTR-3B** unless he/she had file **FORM GSTR-1** in previous month.' in paragraph 22 of the Minutes with 'The Hon'ble Minister from Odisha suggested that there should be a check in GST System where a registered

taxpayer should not be allowed to file **FORM GSTR-1** unless he/she had filed **FORM GSTR-3B** in previous month.'

5.3. To replace the sentence 'The Hon'ble Minister from Odisha stated that if any taxpayer did not provide the Aadhar number, his refund should be restricted.' in paragraph 49.4. of the Minutes with 'The Hon'ble Minister from Odisha stated that if any taxpayer did not provide the Aadhar number, his refund should be restricted, till he complies.'

5.4. To replace the sentence 'He further stated that Puducherry was entitled to 71% of the IGST amount collected by the Centre.' in paragraph 14.4. of the Minutes with 'He further stated that Puducherry was entitled to 0.27% of the IGST amount apportioned to the States which would work out to Rs 219 crore.'

5.5. To substitute the words revenue implication' in paragraph 34.9 of the Minutes with the word 'turnover'.

5.6. The Secretary also requested to be allowed to formally sign the already confirmed Minutes of the 34th GST Council Meeting held under the Chairmanship of the then Hon'ble Finance Minister and Chairperson of the Council, Late Arun Jaitley, on 19-3-2019 in New Delhi so that it can be put in public domain.

Agenda Item 2: Issues concerning GST on Lottery

6. The Secretary invited Shri Manish Kumar Sinha, Joint Secretary, TRU-II to brief the agenda to the Council.

6.1. Dr. Thomas T M Isaac, the Hon'ble Minister from Kerala intervened and stated that he and few other Hon'ble Ministers had requested for discussion on the issue of compensation to the States. However, he could not find the Agenda on compensation to the States listed and enquired as to when would the same be discussed. Shri Manish Sisodia, the Hon'ble Deputy Chief Minister of Delhi concurred with the views of the Hon'ble Minister from Kerala and stated that the agenda should have been listed and if not, then at least the reasons for not including the same may be informed. Shri Sushil Kumar Modi, the Hon'ble Deputy Chief Minister of Bihar stated that the compensation to States issue could be discussed along with Agenda Item 3 which would cover the issue of compensation to the States also. Dr. Amit Mitra, the Hon'ble Minister from West Bengal stated that the States had given up their taxation matters in the GST and, therefore, it was imperative to discuss compensation to them. Shri Manpreet Singh Badal, the Hon'ble Minister from Punjab stated that the agenda on revenue position should be discussed in every meeting as a part of agenda. The second issue he highlighted was regarding activating the dispute resolution mechanism which had been provided by the Constitution that the Council would establish a mechanism to adjudicate any dispute arising out of the recommendations of the Council or implementation thereof.

6.2. The Hon'ble Minister from West Bengal stated that the like Centre, the States had also surrendered many of their powers related to taxation so as to roll out GST regime. He recalled that prior to formation of GST Council, one of the reasons for which the Empowered Committee of Finance Ministers had agreed to GST regime was due to the binding nature and number of years for which compensation was agreed to be paid to States by the Government of India in case of revenue shortfall. However, he observed that for the first time, the compensation to States for August-September had been delayed for whatever reasons. The key point of the concerns expressed by the States and the desired agenda item was regarding the mechanism, periodicity, problems, prospects and the solutions related to

compensation to the States so that it becomes a consistent pattern as it has been so far. Shri T.S. Singh Deo, the Hon'ble Minister from Chattisgarh stated that time and again we had reminded ourselves about the federal nature of our polity and the constitution of GST Council. Therefore, the States should be reassured again as to what was the status of the single Member State and if a State had any issue and raised it to be included as an agenda, did it not merit a response. He further requested the Chairperson to reassure the Members that the issues which were of obvious importance would be taken up. The Hon'ble Minister from Kerala stated that the suggestion made by the Hon'ble Deputy Chief Minister of Bihar was acceptable and the issue of compensation to States could be clubbed along with Agenda item3. The Hon'ble Chairperson stated that there was absolutely no hesitation in discussing this issue; that she would like to quell any worry that Centre did not want to discuss compensation. She added that it had been told to her that the issues on revenue augmentation was discussed during the Officer's Meeting held on 17th December 2019 and a presentation was to be made in this regard as part of Agenda item 3 and compensation issues would be discussed as part of that Agenda in an elaborate manner. The Council agreed to discuss the issues related to revenue and compensation in Agenda item 3 and continued with discussion on issues concerning GST on Lottery.

6.3. The Joint Secretary, TRU-II (JS, TRU-II) initiated the discussion with a presentation **(**attached as **Annexure 3)** on this agenda item by stating that it was essentially the proceedings till date of the GoM on Lottery headed by Shri Sudhir Mungantiwar, the then Hon'ble Finance Minister of Maharashtra and associated litigations. The issues referred to GoM on Lotteries were GST rate on supply of lottery; ensuring destination principle for supply so that GST revenue accrued to the consuming State; valuation principles to be adopted for charging GST; addressing the Constitutional challenge to levy of GST on Lottery as 'Goods'; regulation of online lottery; and miscellaneous issues related to Casinos, Horse Racing and Online Gaming. He further stated that the issues currently pending before the GoM were the GST rates on supply of lottery and miscellaneous issues related to Casinos, Horse Racing and Online Gaming.

6.4. He added that the recommendation of the GoM to the 33rd GST Council Meeting held on 24.02.2019 were that a single rate of GST should be levied on lottery instead of existing two rates and as lottery was a sin and demerit good, it should be taxed at the higher rate of 18% or 28% to be decided by the GST Council. However, no final decision could be taken in this regard and the Council requested GoM to further deliberate on the issue. He added that in the GoM, finality could not be arrived on the issue due to different stance of the States. He stated that while Assam, Arunachal Pradesh, Goa and Maharashtra supported single rate of GST, the States of Kerala, Punjab, West Bengal and Karnataka supported the existing two rates of GST on lottery. Therefore, the convenor of the GoM directed that the matter be placed before the GST Council for appropriate rate structure on the supply of lottery. JS, TRU-II, recapitulating the issue of tax rates, stated that the recommendations ofGoM presented to 35th GSTC Meeting on 20.06.2019 were as follows:

> *(i) There was no consensus on the need for a new rate of GST on lottery. Assam, Arunachal Pradesh, Goa, Maharashtra supported single rate of GST. However, Kerala, Punjab, West Bengal and Karnataka supported the existing two rates of GST on lottery. Punjab was willing to consider lower uniform rate, if there were legal difficulties with rate differential. Therefore, the Convener of the GoM directed that the matter be placed before the GST Council and the Council decide appropriate rate structure on the supply of lottery. Given that this is a sin good, rate of tax should be high i.e. 28% or 18%.*
>
> *(ii) The constitutional challenge to the dual rate structure should be defended forcefully.*

The JS, TRU-II stated that in the 35th GST Council Meeting held on 20th June 2019, the Council was directed to seek legal opinion from learned Attorney General of India as to whether differential rate could be levied on lottery and whether it would violate Article 304 of the Constitution. He drew the attention to the opinion furnished by the learned Attorney General of India that there would be no impediment arising from the Constitution of India to the levy of a uniform rate of GST on 'State Run Lotteries' and State Authorised Lotteries'; that Article 304 of the Constitution of India had no bearing on the levy of differential GST on 'State Run Lotteries' and 'State Authorised Lotteries'; and that these two lotteries could be treated as different goods.

6.5. The JS, TRU-II also drew attention to a Writ Petition (C) No. 961/2018 filed in the Hon'ble Supreme Court relating to levy of GST on lottery on the grounds that GST could not be levied on lottery 'as goods'; GST on lotteries should be imposed after excluding the prize money component of the lottery ticket since the said amount never formed part of income in the lottery trade; and levy of GST on lottery at two different rates was in violation to the Constitution of India and all lotteries might be taxed at a uniform rate. He further stated that the learned Additional Solicitor General, Shri Vikramjit Bannerji had informed Department of Revenue that the Hon'ble Supreme Court had adjourned hearing of the petition to 15.01.2020 after giving final opportunity to the Group of Ministers/GST Council to decide on the issues agitated in the petition. In view of the above, he requested the GST Council to take decision on the issue of GST Rate on lottery, i.e., (a) whether a uniform rate of GST be levied on lottery? (b) If yes, what should be the rate of GST on lottery, 18% or 28%? (or any other rate). Further, he stated that the following issues might be referred to Law Committee to address the associated issues.as these issues were not part of the original terms of reference of the GoM: -

Supply	**Request made by the Industry**
Casinos	Value retained by a Casino after winnings as taxable value
Horse Racing	Value retained by a club after giving prize money as taxable value
Online Gaming	Value retained by an online platform after giving prize money as taxable value

6.6. The Hon'ble Chairperson requested the Hon'ble Members to give their views on the proposal.

6.7. The Hon'ble Minister from Kerala stated that in the 35th GST Council Meeting held on 21st June 2019, he had circulated a 15-page note where he had explained the rationale of differential treatment of the two types of lottery i.e. 'State Run Lottery' and 'State Authorised Lottery' in terms of actionable claims. He stated that the Council after long deliberation decided the current differential rate structure of 12% and 28% and that this position had been upheld by the Hon'ble High Court of Kolkata. Therefore, in his view, there was no need of a uniform rate on the two types of lottery. He also stated that he did not have the political mandate to change his stand and the Council might call for division and decide the issue of differential treatment of the lotteries. Dr. Himanta Biswa Sarma, the Hon'ble Minister from Assam stated that there had been enough debate on this issue. He added that he appreciated the views expressed by the Hon'ble Minister from Kerala but the North Eastern States too had their own view point on the issue. He stated that Kerala Government run its own lottery (State Run Lottery); however, the North-Eastern States did not have requisite infrastructure to run their own lotteries. Therefore, they had to outsource it to someone to run their lotteries. He likened it to State-operated bus service where the State also outsourced the bus service to private agencies to operate it

under the State's banner and the consumer did not have to pay differential rate for using the bus services irrespective of it being State run or State authorised. Similarly, there was no difference between the two kinds of lotteries. He added that irrespective of the argument of continuing the differential rate structure on lotteries, by having two different GST rates on lotteries, North-Eastern States were being discriminated. Therefore, he supported a Division to decide the issue. He also added that as lottery was a sin good, the GST rate might be pegged at higher rate of 28%.

6.8. Shri Mauvin Godinho, the Hon'ble Minister from Goa stated that this issue had been debated enough in the Council. He observed that even though the lotteries were classified as State Run and State Authorised, it could not be run privately. He had no doubt that irrespective of the fact that lottery was State Run or State Authorised, the lottery was one good and not two different goods, and therefore, they should attract the same rate of tax. He stated while the matter was under consideration in the Hon'ble Supreme Court, the Council was required to formulate its response as well. He stated that like the North Eastern States, the State of Goa was also losing because of the differential GST rates on lotteries. He also drew attention of the Council to the fact that a higher rate of 28% on lottery might lead to a legitimate business going underground and instead of lottery, people might start indulging in illegal things such as '*Satta Bazaar*' '*Matka*'. Therefore, he cautioned the Council while deciding the GST rate on lottery. On the issue of casino, he stated that the GoM could not deliberate on the issue of casinos that was referred to it by the Council and requested the Council to refer the matter to the Law Committee. He informed the Council that consequent to action by GST Intelligence Unit from Hyderabad, casinos in the State of Goa were on the verge of closing down, because GST was sought to be levied on the full amount, including the prize money instead of the gross gaming revenue. He requested that concerned authorities might be advised to wait till the issue got settled. The Hon'ble Minister from Goa concluded by saying that till now every decision was taken by consensus in the Council and all the Members were bound by it. He added that one should not distance oneself from decisions of the Council as the revenue collection fell during the slowdown in economy. The camaraderie and spirit of Council should be as it had been.

6.9. Shri Nitinbhai Patel, the Hon'ble Deputy Chief Minister of Gujarat stated that in GST we had implemented the principle 'One Nation, One Tax' and the differential rates of 12% and 28% on Lottery was not in line with the principles of GST. He stated that when the Hon'ble Supreme Court of India had required us to give an opinion by 15.01.2020 then the Council should decide on the issue. He also observed that till now all the decisions related to GST had been taken by consensus in the Council and till now it had never happened that a decision was taken by the Courts instead of the Council. He also stated that till date none of the decision on any issue had been done by division and requested the Council to decide something on the issue in hand by consensus again. He stated that in his view one standard rate could be prescribed for lottery. Further, as lottery was a sin good, it should attract higher GST rate of 28% so as to increase revenue for the Centre and the State simultaneously. The Hon'ble Deputy Chief Minister of Delhi requested JS, TRU-II to reiterate the advice furnished by the learned Attorney General of India. The JS, TRU-II stated that the Learned Attorney General had clarified that the two types of lottery could be intelligibly classified as two different goods but he also clarified that there was no bar in keeping the rate uniform. Thereafter, the Hon'ble Deputy Chief Minister of Delhi stated that two perspectives were being discussed on the issue, the first being in line with national interest for lottery being a sin good and the second was regarding augmentation of revenue by raising the GST rate on lottery. He added that on the first perspective, even if it was not domain of the Council, but he felt that for the sake of the country. With respect to the second perspective on revenue and it appeared that the revenue generated from lottery for one State clashed with the other. He stated that the Learned AG's opinion was not very clear, the GoM on Lottery had not given any categorical

recommendation and that the issue had been going on in Hon'ble Courts for a while. In this backdrop, he stated that he supported status quo to be maintained.

6.10. Shri Suresh Kumar Khanna, the Hon'ble Minister from Uttar Pradesh stated that the matter should be decided by consensus instead of division of votes and that supply of lottery should attract a uniform rate of 18% or 28%. Shri V. Narayansamy, the Hon'ble Chief Minister of Puducherry stated that the issue of GST on lottery had been deliberated in various Council Meetings. He stated that the differential rate on 'State Run Lottery' and 'State Authorised Lottery' was arrived after long deliberation in the Council. He added that in his view, a State authorising private parties to run its lotteries, taxed at higher GST rate, should not dictate terms to other States running their own lotteries taxed at lower GST rate and that it would be illogical and unacceptable. Therefore, in his view, they could continue to attract two different GST rates.

6.11. The Hon'ble Minister from West Bengal stated that his State had only paper lotteries i.e. 'State Run Lottery' and 'State Authorised Lottery', which were taxed differentially at 12% and 28% of GST rate respectively. Further, the State of West Bengal had banned online lottery and only paper lottery was there. He informed that the differential rates had been upheld by the Hon'ble High Court of Kolkata. He added that the lower tax rate of 12% on State Run Lottery was an incentive for people to buy it instead of the privately-run State Authorised Lotteries. Therefore, he wondered as to whether to continue the status quo or do away with dual rate and have a uniform rate as decided by the Council with the view of increasing revenue. However, he too preferred for status quo to continue and that the Council should try to reach to a decision by consensus and not by having division on the matter. The Hon'ble Deputy Chief Minister of Bihar stated that GST Council had been discussing this issue since long. He added that as stated by some of the Members, Goa and the North-Eastern States had been losing revenue due to this differential rate while they did not have many other sources of revenue. He observed that most of the States had given their opinion on the issue and the mood of the Council could be ascertained. He stated that personally he was of the opinion that Lottery should be banned across the country as it was a sin good. However, in the given context he supported a uniform higher rate for lotteries. He called upon the Council Members to move from 'unanimity' (*sarvaanumati)* to 'consensus' (*sarvasahmati*) and also to not insist for division of votes on the proposal.

6.12. Shri Metsubo Jamir, the Hon'ble Minister from Nagaland stated that the Hon'ble Member from Assam and Goa had explained the problems of North Eastern States and the smaller States vis-à-vis differential rates of GST on the two types of lotteries. He added the issue was not about lottery here, but the fact that because the apex body on GST matters i.e. GST Council was unable to take a decision on an issue and therefore, the Hon'ble Supreme Court would have to intervene in the matter based on litigation. While he appreciated the diversity of opinion among the Council members, he also stated that the outcome from today's meeting would reflect upon us and therefore, he felt that this body should make a decision in the matter. The Hon'ble Minister from Chattisgarh stated that in his view the issue did not seem to be of principles. He felt that the solution seemed to be struck in getting a particular viewpoint across. He observed that the State of West Bengal had two rates and were not being contested by the State; learned AG's opinion did not say that two rates were not allowed as per the Constitution. Therefore, he suggested to wait for the Hon'ble Supreme Court's decision in the matter. He also opined that the Council should continue with the tradition of decision by consensus instead of decision by majority.

6.13. The Hon'ble Minister from Assam stated the differential rates on State Run Lottery and State Authorised Lottery across the country was due to the decision of the Council. He stated that the North Eastern States lotteries did not have market in Kerala so they did not operate there whereas in West

Bengal by virtue of it being a neighbouring State the State Run Lottery of West Bengal and the State Authorised Lottery of North Eastern States operated in each other's region. Therefore, it was not that the North Eastern States had accepted something in West Bengal and not accepted in Kerala. He added that State Authorised Lottery of the North-Eastern States were unable to compete with State Run Lottery on account of higher differential rates on the former. He stated that the revenue accruing from Lottery for the larger States might be insignificant overall but for the smaller States of the North-Eastern region, the lottery revenue was very vital. He requested the Council Members and the Chairperson to accommodate the aspirations of the North-East, and if not then at least allow them to vote on the matter.

6.14. The Hon'ble Chief Minister from Puducherry added that even on the contentious issues, the Council had arrived at decisions by give and take and by consensus. Therefore, he requested the States demanding division and the Council Members to reconsider and not deviate from the tradition. He wondered as to what if the Council decided something on the matter and the same got challenged/decided otherwise in the awaited decision of the Hon'ble Supreme Court. Therefore, he suggested to arrive at any decision by consensus. Shri Dushyant Chautala, the Hon'ble Deputy Chief Minister of Haryana stated even though lottery was banned in Haryana, but since it was a sin good, it should be taxed in highest rate slab. He also stated that in line with tradition of the Council and its smooth functioning, it would be better if the matter could be decided by consensus instead of division of votes.

6.15. The Hon'ble Minister from West Bengal stated that the State Authorised Lotteries of North-Eastern States competed very well with State Run Lottery in the State of West Bengal. He observed that almost 92% of the revenue accruing to the State of West Bengal was from lotteries were generated from State Authorised lotteries. (This is shown in page 138 of the Detailed Agenda Notes - Volume.1). He observed that many States did not have paper lottery or might had only online lottery. Therefore, he suggested that the States where lottery was not banned might be allowed discretion on whether they wanted a dual rate or uniform single rate. The Hon'ble Minister from Punjab stated that they have no opinion in the matter. However, since some of the States were suggesting division, he wished to suggest a solution of levying GST rate of 12% and 18% on State Run Lottery and State Authorised Lottery. Thus, reducing the gap to only 6% between them. Perhaps, apart from levying GST, compensation cess could also be levied on lottery, as it was a sin good.

6.16. The Hon'ble Minister from Kerala once again stated that there were political compulsions as to why he could not agree to a single rate on lottery because they did not want private operators/intermediaries to come to Kerala. As regards the loss of revenue from lottery to the North Eastern States, he reiterated his proposal made during the previous Council Meetings to the States of North-East region to run their lottery and give them a better return than any private operator. He stated that the Council in its wisdom might decide on the issue and requested for division on the issue. The Hon'ble Minister from Assam clarified that his State did not run any lottery, nor did it allow any lottery to be operated, except in the autonomous region of Bodoland, where lottery was being run in four districts. However, he was fighting for *ashmita* of the people of North East. He stated that the crux of his submission was that the North Eastern States should not be discriminated and the path to integration of North East States with main stream India should be welcomed. Therefore, he submitted that the Lottery might be banned across the country since it was a sin good but as long as lottery trade was allowed, the North Eastern States should not be discriminated. He also stated that, if needed, the Council in its wisdom might decide the issue by division of votes.

6.17. Shri Brajendra Singh Rathore, the Hon'ble Minister from Madhya Pradesh stated that lottery was banned in his State. However, since the matter was already under consideration in the Hon'ble

Supreme Court, the Council might await the decision of the Hon'ble Court and defer its decision to next meeting. Shri D. Jayakumar, the Hon'ble Minister from Tamil Nadu stated that though his State did not run any lottery, he supported a uniform GST rate on lottery. Shri Chowna Mein, the Hon'ble Minister from Arunachal Pradesh stated that as one of the Member of the GoM on Lottery, they had earlier recommended to have a uniform GST rate on State Run Lottery and State Authorised Lottery and he reiterated the same. He further stated that they endorsed the views expressed by the Hon'ble Minister from Assam with respect to the North East. Shri Jishnu Dev Varma, the Hon'ble Deputy Chief Minister of Tripura stated that though his State also did not have any lottery, he also supported a single rate of lottery as the North Eastern States were smaller States with limited resources and they should have parity with the mainland States. Shri V. Hangkhanlian, the Hon'ble Minister from Manipur stated that even though they did not have lottery, still they also supported single GST rate on lottery. Shri Lalchamliana, the Hon'ble Minister of Mizoram also supported the views of Hon'ble Minister from Assam for the North Eastern States. He stated that their State also supported single GST rate on lottery.

6.18. Shri C P Singh, the Hon'ble Member from Jharkhand stated that his State had no lottery and he was of the opinion that lottery should be banned in the entire country. However, he supported uniform GST rate on lotteries. Shri Basavaraj Bommai, the Hon'ble Minister from Karnataka stated that his State ran no lottery. However, based on discussion in the Council, it appeared to him that there were two sets of States i.e. those who allowed the lottery and those who did not allow the lottery. He suggested that those who allowed lottery might be allowed to take any view in the matter after taking into consideration the view of stakeholders. Shri T. Harish Rao, the Hon'ble Minister from Telangana stated that the mood of the House was very clear with many States wanting to have a uniform GST rate on lotteries and requested the Hon'ble Minister from Kerala to not insist for division.

6.19. The Hon'ble Chairperson requested for final views of Hon'ble Council Members from the States of Assam and Kerala upon hearing the views of the other Council Members about the division and consensus in the process of decision making. The Hon'ble Minister from Kerala stated that he did not mean any insinuation but the issue on lottery was brought before the Council based on the representation made by lottery association and that he could not make a compromise on the issue. Therefore, the Members could proceed with Division as per the rule. The Hon'ble Minister from Assam stated that he too had expressed his views and he was alright with Division of votes for decision on the issue. The Chairperson clarified/stated that many issues were discussed in the GST Council at the request of some or the other association. She hoped that there was no question of any *mala fide* in the matter and the same was not implied in the Hon'ble Member from Kerala's statement. She once again asked the Members as to whether the Council should proceed as per the sense of the House or sought a Division. The Hon'ble Member from Goa suggested that Hon'ble Council Member from Kerala could put a note of dissent and the Council could proceed as per the sense of the House. However, the Hon'ble Minister from Kerala stated that the regulations framed by the GST Council for the conduct of its business provided that in case any Member sought division on any proposal then the same had to be agreed upon. The Hon'ble Chairperson with a view to re assess the sense of the Council asked the Members as to what should be done. The Hon'ble Members from many States including Uttar Pradesh, Gujarat, Bihar, Puducherry, Haryana, Uttarakhand Goa etc. stated that so far, we had run the Council by consensus and we should try to continue the same. The Hon'ble Minister from West Bengal suggested that if the Council felt that it would let the States do what they had with respect to taxation on lottery or change it as they wished. It could lead us to the solution of this impasse. The Hon'ble Chairperson once again on the behalf of the Council appealed to the Hon'ble Minister from Kerala to reconsider his demand for division. However, the Hon'ble Member from Kerala insisted on division.

6.20. The Hon'ble Chairperson requested the Secretary to follow the rules in this regard. The Secretary then read out the relevant Rule 14 i.e. 'Decision on proposals' in Chapter V from the Procedure and Conduct of Business Regulations of the Goods and Services Tax Council to the Members of the Council which reads as follows:

> *'All proposals before the Council shall be discussed threadbare. Thereafter, the Chairperson shall put the question and invite the Members of the Council to cast their votes by show of hands. In case Member seeks division on any proposal, the Chairperson shall put the proposal to vote through secret ballot'*

The Hon'ble Chairperson directed the Secretary to conduct the proceedings accordingly. Thereafter, the Secretary put forth the question before the Council to vote i.e. "Do you support the proposal to levy a uniform rate of tax on State Run Lottery and the State Authorised Lottery?". Then the Secretary requested the Hon'ble Members to indicate their decision by the show of hands if they supported the proposal. The Secretary then read out the names of the States who voted for the proposal. The 21 States, namely: the States of Arunachal Pradesh, Assam, Manipur, Mizoram, Nagaland, Sikkim, Tripura, Bihar, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir (UT), Jharkhand, Karnataka, Uttar Pradesh, Uttarakhand, Andhra Pradesh, Odisha, Tamil Nadu and Telangana raised their hands in favour of the proposal. Then, the Secretary requested the Hon'ble Members who were against the proposal, to raise their hands The Secretary read out the names of the States who voted against the proposal. The 7 States, namely: Puducherry (UT), Kerala, Maharashtra, Madhya Pradesh, Chhattisgarh, Delhi (UT) and West Bengal voted against the proposal. The States of Punjab, Rajasthan and Meghalaya did not cast their votes. The Secretary then pronounced that in accordance with the Procedure and Conduct of Business Regulations of the Goods and Services Tax Council, of the 28 States present and voting, 18 votes were required for passage of the proposal. He informed that 21 States had voted in favour of the proposal and therefore, the proposal to levy a uniform rate on lottery had been passed in GST Council.

6.21. The Hon'ble Chairperson of the Council thereafter asked the Council Members as to what GST rate should we apply on lottery. The Hon'ble Deputy Chief Minister of Bihar stated that because lottery was a sin good, it should attract 28% GST along with cess. The Hon'ble Minister from Punjab cautioned that the drawback of high rate on lottery would be an increase in illegal market business. The Hon'ble Minister from Kerala stated that the highest rate should apply because the benefit of rate reduction would go to the middlemen. The Hon'ble Ministers from Goa, Assam, Puducherry, Delhi, West Bengal, Maharashtra, Uttar Pradesh, Haryana and Arunachal Pradesh supported the levy of 28% GST. The Hon'ble Minister from Telangana and Goa stated that the issue of taxation on horse racing and Casino were yet to be finalised, while Andhra Pradesh supported 28% GST on lottery. The GST Council thereafter decided to levy 28% GST on lottery by consensus. The Hon'ble Minister from Telangana also requested the Chairperson to include the State of Telangana in the GoM on Lottery. The Hon'ble Minister from Kerala requested for grace period of two months for implementing the new rate of 28% so as to enable printing of fresh lottery tickets and exhaust the already printed lottery tickets. The Secretary proposed that the Council may approve that 28% rate of lottery would apply from 01.03.2020.

7. For **Agenda item 2,** the Council decided to apply a single uniform rate of 28% on supply of State Run Lottery as well as State Authorised Lottery with effect from 01.03.2020.

7.1. The Council also decided to refer the pending matters relating to casino, horse racing and online gaming to the Law Committee/Fitment Committee.

Agenda Item 3: GST Revenue Augmentation

Recommendations of the GoM on Revenue Analysis and

Deliberations of the Committee of Officers on Revenue Augmentation

8. The Secretary requested the Hon'ble Deputy Chief Minister of Bihar, the Convenor of the GoM on Revenue Analysis to present the recommendations of the GoM to the Council. The Hon'ble Deputy Chief Minister of Bihar mentioned that the GoM had observed that the revenue gap for the period April 2019 – August 2019 had increased for almost all the States compared to the period April 2018 – August 2018 and that most States had growth rate of less than 14% in pre-GST period. He further stated that the GoM had made the following recommendations:

i. States should be asked to suggest ways to improve the GST compliance.
ii. A study should be conducted on rationalisation of GST rates/ tariff and merger of GST slab;
iii. GST collection from real state sector should be analysed;
iv. How States can be better equipped to harness the tax potential on supplies of services;
v. A detailed study should be conducted on e-Commerce including deep discounts offered by them with a view to augmenting revenue;
vi. A study should also be conducted to explore avenues for expanding the scope of the Cess being levied including increase in the Cess rate or bringing some new items under the levy of Cess.

8.1. The Hon'ble Deputy Chief Minister of Bihar called upon Joint Secretaries, TRU-I and TRU-II to initiate the discussions on the agenda item concerning revenue analysis. The presentation (attached as **Annexure 4)** was made jointly by JS, TRU-I and JS, TRU-II. The JS TRU-I initiated the presentation by stating that a Group of Ministers' Meeting on analysis of revenue from GST took place on 09.11.2019 at North Block, New Delhi. Further, a Committee of Officers consisting of Central and State Governments officials was constituted to consider looking into areas such as measures to improve voluntary compliance, measures for expansion of tax base, systematic changes in GST including checks and balances to prevent misuse, policy measures and relevant changes needed in the law, improved compliance monitoring and anti-evasion measures using better data management and better administrative coordination. Further, a letter from GST Council Secretariat was also circulated to States and Central officials inviting suggestions/input/proposals as regards measures on compliance as well as rates, to help in augmenting revenue including suggestions on, review of items currently under exemption; GST and compensation Cess rates on various items; rate calibrations for addressing the inverted duty structure; compliance measures other than those currently under implementation; and any other measure to augment revenue. A meeting had also been convened of the Committee of Officers to suggest measures to augment GST revenue collection and administration on 10.12.2019 where valuable inputs had been obtained from the SGST officials. Several States had also provided written suggestions on the above.

8.2. Continuing the presentation, JS, TRU-II stated that monthly GST collection in the year 2019-20 was higher than that of 2018-19 except during the months of September, 2019 and October, 2019. He stated that the revenue in the month of November, 2019 was more than that of November, 2018 and the short period of negative growth in GST collection was already over. The JS, TRU-I stated that while the growth rate of GST collection for April, 2019 – November, 2019 on domestic supplies was 8.3%, the same for IGST collection on import of goods showed a decline of 7.2%. He stated that imports have witnessed compression as well. He further stated that the combined growth rate (GST and Cess collection on domestic supplies and imports) was 3.7% which was less than the expected rate of growth.

He presented the projection of requirement for compensation when growth rates were assumed at 5%, 8% and 10%. He stated that while in the previous two financial years, the Compensation Cess collection was more than its requirement, in the next two years, the gap was likely to be widened, depending on the growth rate. He presented compensation requirement gap under various growth rate scenarios. The JS, TRU-I then proceeded with the presentation on the evolution of the GST rate structure, the recommendation regarding the revenue-neutral rate made by the Committee headed by the then Chief Economic Adviser (CEA) and a recent report of RBI on the decline in weighted average (effective) GST rate since before May 2017 till September 2019. He also stated that the RNR estimated by the Committee headed by the then CEA, made certain assumptions about collection efficiency post-introduction of GST which is higher than that in the past, and comparable to or higher than some other jurisdictions. It was, thereafter, highlighted about actual collection of GST (excluding Cess) at different rates, which showed that the taxable base attracting 5% and 12% slabs were significant. The presentation also listed out some of the major items at 5% and 12% slabs and exempted items. He then dwelt upon the manufactured goods which suffer inverted duty structure on account of lower rate while the inputs attracted higher GST rate, which has resulted in refunds estimated at about Rs.20,000 crore in a year. Suggestions received for augmenting revenue from some of the States were thereafter highlighted. Finally, in the slide on the requirement of Cess, the Cess gap and the extent to which compensation requirement was covered under the various revenue growth rates scenario was presented by JS, TRU-I.

8.3. The Hon'ble Deputy Chief Minister of Delhi stated that the presentation did not reflect the timelines for bringing about invoice matching and implementation of HS codes. The Secretary clarified that requirement to upload invoices in **FORM GSTR-1** was being fulfilled by the requirement that the gap which was presently admissible in the ITC allowed to be availed and the dealers' invoices uploaded was restricted to 20%. This would be discussed as an Agenda Item 15 (ii) under measures for revenue augmentation.

8.4. The Hon'ble Minister from Kerala stated that projections of revenue and compensation Cess collections had to be based on the rate-structure, the compliance levels and the current slow-down in the economy. These three factors would determine the compensation gap and thus, a simple linear projection might not give the complete picture. He stated that there was a short-term problem that had created this gap. He highlighted that the then Chairperson of the GST Council, Shri Arun Jaitley had stated in one of the Council Meetings that GST Council could borrow to fund the compensation Cess requirement and also decide to extend it from 5 years to 6 years. The problem would arise around February, 2020. He then wanted to know as to why there was a delay in disbursement of compensation Cess when money was available. He stated that the bi-monthly disbursal of compensation was backed by the law. This problem could recur and this would lead to non-fulfilment of expenditure requirement by the States. He further highlighted that in the 7th GST Council Meeting, an assurance was given by the then Chairperson, which had been duly minuted.

8.5. The Hon'ble Minister from West Bengal enquired about the expected rate of growth and stated that they would first like to understand and examine all the information provided in the presentation and then react. Ultimately, all this was a function of the political economy of the country. He stated that regarding compensation, the Centre might confirm the frequency of compensation disbursal for the future, so that the States were assured of their fiscal space.

8.6. The Hon'ble Deputy Chief Minister of Delhi stated that GST rates structure should not be tinkered with and instead focus should be there on utilizing all the tools available to increase compliance level. He further stated that as per the information provided in the 37th GST Council Meeting held on

20th September 2019 in Goa, around Rs. 35,000 crore was lying in the compensation cess account and another Rs. 5000 crore were added to the account during last few months taking the total to around Rs.40,000 crore. He enquired as to why the disbursal of this amount was delayed when sufficient amount was available in the fund. Of the monthly budgeted requirement of about Rs. 5,000 crore, Delhi Government gets about Rs.2,500 crore from GST. He stated that since the compensation amount formed a significant part of the State's budget requirement every month, it was important to know the reason for the delay in disbursement.

8.7. The Hon'ble Minister from Chhattisgarh enquired as to whether it would be prudent to raise taxes when the economy was slowing down. He also wanted to know if we had data projections with respect to national levels of consumption of goods, for instance edible oil. According to him, it was imperative to have consumption data at the national level in respect of goods and services before discussing the GST rates. He wanted to know as to why the States were being compensated, and to his mind, this was on account of the fact that the GST rates had been slashed vis-à-vis the erstwhile applicable VAT rates. There was a lacuna in realization and according to him the realization potential under the existing rates structure should be exhausted and thereafter only should we resort to increasing the GST rates.

8.8. The Hon'ble Minister from Uttar Pradesh stated that in the VAT system, the revenue accruing to his State from Pan Masala was around Rs.1,500 crore while in GST it was Rs. 500 crore, implying a Rs.1000 crore deficit in this product alone. He further stated that in case of brick kilns too, the State was observing a decrease in tax realization from Rs.550 crores in VAT regime to Rs.75 crores in GST regime. He stated that all such anomalies in different products might be observed and be corrected through capacity-based levy or such methods. He further requested that Uttar Pradesh should be included in the Group of Ministers on Analysis of Revenue from GST. He further stated that while the parts of mobile phone were charged at 18%, the finished product of mobile phone was charged at 12%. He stated that such anomalies might also be corrected in a way to ensure the revenues for both the States and the Centre. He stated that the States of Uttar Pradesh did well in GST regime and that they were optimistic that the States would continue to do well in the future. Ideally, the GST rate should take care of 10% increase in the VAT collections.

8.9. The Hon'ble Minister from Punjab stated that we had reached mid-way in the assured compensation regime. He highlighted the fact that the rates were predominantly decided in the 14th GST Council Meeting held on 18th & 19th May 2017 in Srinagar. Further, in the subsequent meetings, there had been several rate reductions without sufficient discussion which compromised the revenue of the Centre as well as the States. He stated that if the revenues were not balanced quickly, the consensus might disappear in the GST Council. Shri V. K. Garg, Advisor, Financial Resources to Chief Minister, Punjab drew attention of the Council to the fact that several reports had made recommendations on the GST rates structure till the inception of GST and had made varying recommendations on the rates structure. He further stated that GST was collected as a tax on final consumption, so tax on intermediate products did not matter except when such products were used in making exempt supplies. Therefore, supposing it was assumed that all the steel produced in the country was used in making automobiles, then the GST rates structure on steel did not matter; this was for the reason that the GST rate on automobile would end-up collecting the due GST on its raw material which was steel. He stated that when looking at the revenue from each of the rate slabs, we were looking at the GST collections from the first stage of revenue, not at the stage of consumption. He stated that for the last two years, the rates which were reduced were the rates at the stage of final consumption to appease the sensitivity of the consumer. He clarified that the reduction in rate on final consumption goods or white goods like paints, resulted in a fall in revenue collections which was more than what was initially apparent. He further

underscored the point that the fall in GST revenue was not on account of economic slowdown alone, but due to rate reduction/structure.

8.10. The Hon'ble Minister from Karnataka stated that immediate course correction was necessary to meet the gap in revenue collection. The options available to cover the compensation gap were to either increase the Cess base or the Cess rate. He stated that item-wise rate review should be made to improve revenue collection, with a focus on core sectors and their cascading effect. He further stated that State-specific corrections could also be looked at and be presented to the Centre.

8.11. The Hon'ble Minister from Assam stated that the rate reduction had taken place under the belief that this would improve compliance and thereby resulting in higher collections. However, it needed to be studied in detail as to whether this had really happened. He further stated that he was happy with the compensation given because prior to GST, the VAT revenues of Assam were growing at the rate of 9%, while GST had given them an additional 5% through way of assured growth rate of 14% for compensation. He felt that before questioning the Central Government, the States also needed to look at as to what was the growth in VAT revenue prior to GST and also whether the States had done enough to improve their GST collections. He finally requested to make a more in-depth constructive presentation on revenue which should be forwarded to State Governments seven days in advance of the next GST Council Meeting.

8.12. The Hon'ble Deputy Chief Minister of Bihar stated that the steepest reduction in the GST rates was effected in the 23rd GST Council Meeting held in Guwahati on 10.11.2017 when GST rate of 28% on 243 items was reduced to 18%. He stated that any shortfall in tax collection because of this reduction in rates, should have been observed within the following months and not after two years. Hence, the current fall in GST collections should not be attributed to the rate reduction undertaken in earlier years. He further stated that the increase in threshold limit for registration could not have caused significant fall in revenue collection. He suggested that in GST regime, the excise component which was hidden earlier had become visible to the consumer which resulted in resistance to higher rate slabs, necessitating reduction of rate for few items. He stated that GST collections had fallen not due to downward rate revisions but due to economic slowdown. He stated that knee-jerk reactions should be avoided as economic growth was expected to grow after two to three quarters. He further stated that complacency in the State tax administration because of the assured compensation should be avoided. He stated that changing rates or merging of the slabs should be avoided during the slow-down in the economy and such measures could wait for next 4-5 months. He stated that measures like e-invoicing, Aadhaar integration, new returns, linking of e-Waybill with FASTag, blocking of ineligible ITC, cancellation of registration of non-filers and their regular monitoring by the Ministers would result in increase in compliance level, thereby increasing GST revenue collections. As the GDP was growing at the rate of about 5%, therefore, the Compensation Cess would also grow at the rate of 5% and it needed to be examined whether assured compensation growth rate could be linked to GDP growth rate instead.

8.13. The Chairperson suggested that the Detailed Agenda Note might be circulated to the States well in advance for the next meeting, after incorporating the inputs from all the Hon'ble Members. The Hon'ble Minister from Kerala wanted to know the status of disbursement of compensation Cess due in December, 2019 (for October, 2019 and November, 2019). He also requested that it might be assured that whatever accumulated IGST and Cess was collected should be distributed. The Hon'ble Deputy Chief Minister of Gujarat stated that as most of the States had less liquidity, whatever compensation Cess was collected, should be distributed among the States.

8.14. Thereafter, the Hon'ble Chairperson informed the Council that the States of Uttar Pradesh and Jammu & Kashmir (UT with Legislature) would be making presentations on the best practices in GST and measures taken by the Govt. of Jammu & Kashmir to improve revenue collections. Thereafter, the Hon'ble Minister from Uttar Pradesh asked Shri Alok Sinha, Additional Chief Secretary, Commercial Tax Department, Uttar Pradesh to make the presentation (attached as **Annexure 5**). This was followed by a presentation by Shri K K Sharma, Advisor to Lt. Governor, Jammu & Kashmir on measures taken by them to improve revenue collections (attached as **Annexure 6**).

9. For **Agenda item 3**, the Council took note of the presentation made by JS TRU-I and TRU-II and the suggestions made by the Hon'ble Members. The Council also took note of the presentations made by the State of Uttar Pradesh and UT of Jammu & Kashmir.

Agenda Item 4: Report of GoM on Real Estate on boosting Real Estate Sector

10. The Secretary asked Shri Manish Kumar Sinha, JS, TRU-II i.e. Secretary to the GoM on Real Estate to apprise the Council about the developments in the GoM and their recommendations by way of a presentation (attached as **Annexure 7**) on the agenda item. The JS, TRU-II stated that the Hon'ble Chairperson in the 37th GST Council Meeting held on 20.09.2019 desired that a meeting of the GoM on Real Estate be held to address the pending issues. Accordingly, a GoM meeting headed by Shri Nitinbhai Patel, the Hon'ble Deputy Chief Minister of Gujarat, was convened on 21.11.2019 to discuss and examine the following four issues: -

(i) Request from the State of Punjab to exempt from GST on long term lease of lands by private/ semi private bodies for setting up industrial parks.

(ii) Request from the State of West Bengal for examining the proposal to exempt the supply of construction services provided by the Co-operative Housing Society to its members.

(iii) Request from the State of Maharashtra on need to provide preferential tax treatment to free houses provided to slum dwellers in a slum rehabilitation/ redevelopment project and mechanism of taxing TDR handed over to builder by Government thereof.

(iv) Request from industry associations on need to review the value limit of Rs. 45 lakh in the definition of affordable residential apartment for a metropolitan region, if necessary.

10.1. The JS, TRU-II stated that of the four pending issues, one of the issues forwarded by the State of Punjab at 10(i) was decided. The three other issues listed at paragraph 10 had been deferred by the GoM for the reasons as listed in the Report of the GoM on boosting real estate sector, appended as Annexure 1 to this agenda item. He thereafter, elaborated the summary of the decisions of the GoM on the four issues as follows:

10.2. **Proposal 1 -** To exempt GST on long term lease of lands by private/ semi private bodies for setting up industrial parks.

i. Service by way of grant of long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations/ Undertakings or any other entity having 20% or more ownership of Central Government, State Government, Union

Territory to (a) industrial units or (b) developers in any industrial or financial business area, might be exempted from GST.

ii. In case of breach of land use subsequently, (i.e. from industrial use to any other use), the exemption might be withdrawn and GST with interest and penalty might be recovered jointly and severally from the entity that had availed the exemption originally and all lessees who had subsequently purchased or entered into agreement with original supplier and subsequent buyers / owners.

iii. The condition above (sl. no. ii) should be monitored and enforced by the State Government.

iv. GST @ 5% might be levied on long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by a *private person or entity, or an entity having less than 20% ownership of the Government. Similar safeguards as at sl. no. (ii) and (iii) above shall apply to this clause as well.

* The term 'private person' shall be clarified by way of a Circular.

The existing Explanation appended in the present notification would also apply and the number '50%" therein should be suitably substituted by '20%'.

10.3. **Proposal 2 -**To exempt the supply of construction services provided by the Co-operative Housing Society to its members.

10.3.1. It was requested from State of West Bengal to provide more data and examples to explain that 'no value addition is involved' and that there would be no loss of revenue in the proposal. West Bengal might also suggest safeguards in such a way that the exemption if granted, it would be available only to a very select kind of housing society, who deserve this relief and couldn't be misused by other cooperative societies.

10.4. **Proposal 3 -**To provide preferential tax treatment to free houses provided to slum dwellers in a slum rehabilitation/ redevelopment project and mechanism of taxing TDR handed over to builder by Government thereof; and

10.5. **Proposal 4 -**To review the value limits of Rs. 45 lakhs in the definition of affordable residential apartment for a metropolitan region, if necessary.

10.6. The GoM during its second Meeting felt that the **proposal 3** and **proposal 4**might be deferred till President's Rule was in operation in Maharashtra and to take them up for examination after new Government was formed in the State.

10.7. The JS, TRU-II then invited the Hon'ble Deputy Chief Minister of Gujarat, Convenor of the GoM, to brief the Council about the recommendation of the GoM for consideration of the Council.

10.8. The Hon'ble Convenor of the GoM on Real Estate thereafter briefed the Council and stated that the Meeting of the GoM was convened by video conferencing due to the urgency expressed by the State of Punjab on account of the planned initiative similar to 'Vibrant Gujarat'. He apprised the Council that the state of Punjab had highlighted before the GoM that in Punjab, land was scarcely available for industrial development and there could be instance where, the State Government entity directly did not allot the land to the industry for development. Further, it was also suggested by some States including

Punjab that even in the case of private person or entity offering land for development of infrastructure for financial business on lease, then even in such cases, the benefits of GST @ 5% might be passed on at par with Government entities. He added that, the Hon'ble Minister from Uttar Pradesh was of the view that even the GST rate of 5% even in case private person or entity should be recommended. However, all the Members of the GoM, after due consideration, decided to recommend that service by way long term lease of land for industrial plots or plots for development of infrastructure for financial business, provided by the entity having 20% or more ownership of Central/ State/ UT Government, might be levied GST rate of 5% and the Council could decide on the applicable rate. He also requested Hon'ble Minister from Punjab to present his views.

10.9. The Hon'ble Minister from Punjab stated that the rationale behind the proposal and Punjab's request was long term leasing of land from the point of view of Punjab's New Industrial Policy and the role this exemption could play in promoting the Make-in-India campaign. He further stated that presently there was double taxation on lease of land (i.e. stamp duty of around 5-7% in various States and GST of 18% on the same transaction) which was a major hurdle in promoting industry in Punjab. He added that it would also lead to creation of employment and generation of revenue. He therefore, requested the Council to agree with the suggestion of the GoM.

10.10. The Additional Chief Secretary, Commercial Tax Department, Uttar Pradesh stated that the suggestion from Uttar Pradesh regarding exempting GST in the case of private person or entity offering land on lease for development of infrastructure for financial business, the associated condition should be that it should have been approved by the Government because in their industrial policy they had scheme of private industrial parks which are 100% owned by the private person or entity but those are approved by the State Government through a rigorous process and adequate safeguards and therefore, instead of granting exemption only to entities with 20% ownership of Government, same could also be allowed to lease of land by private entities which did not have any Government ownership otherwise they might not be able to compete with the Government.

10.11. In view of the foregoing discussion, the Secretary suggested that for the time being, the Council might accept the first part of the recommendation of proposal 1 to exempt the transactions along with the two associated conditions i.e.

i. Upfront amount payable in respect of service by way of granting of long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations/ Undertakings or any other entity having 20% or more ownership of Central Government, State Government, Union Territory to (a) industrial units or (b) developers in any industrial or financial business area, might be exempted from GST.

ii. In case of breach of land use subsequently, (i.e. from industrial use to any other use), the exemption might be withdrawn and GST with interest and penalty might be recovered jointly and severally from the entity that had availed the exemption originally and all lessees who had subsequently purchased or entered into (sub-lease) agreement with original supplier (lessor) and subsequent buyers/owners.

iii. The condition above (sl. no. ii) should be monitored and enforced by the State Government by issuing necessary order in this regard.

10.12. The Secretary further suggested that all the second portion of the first proposal relating to rate levy of GST on long term lease of land of industrial plots or plots for development of infrastructure for

financial business, provided by a private person or entity, might be referred to the Fitment Committee and then their recommendations might be discussed in the GST Council Meeting for the reason that it required little more examination on account of its cross-implications. The Council agreed to the above-mentioned suggestions of the Secretary.

10.13. The Secretary also suggested that effective date for implementation of the recommendation of the Council above could be from 1st January 2020.The issues discussed in proposal 2, proposal 3 and proposal 4 as per the report of the GoM were still pending before the GoM on Real Estate. The Council agreed to the same.

11. For **Agenda item 4,** the Council recommended the following: -

a. to exempt the transactions along with the two associated conditions i.e.

i. Upfront amount payable in respect of service by way of granting of long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations/ Undertakings or any other entity having 20% or more ownership of Central Government, State Government, Union Territory to (a) industrial units or (b) developers in any industrial or financial business area, might be exempted from GST.

ii. In case of breach of land use subsequently, (i.e. from industrial use to any other use), the exemption might be withdrawn and GST with interest and penalty might be recovered jointly and severally from the entity that had availed the exemption originally and all lessees who had subsequently purchased or entered into (sub-lease) agreement with original supplier (lessor) and subsequent buyers / owners.

iii. The condition above (sl. no. ii) should be monitored and enforced by the respective State Governments by issuing necessary order in this regard.

b. This exemption shall be effective from 1st January, 2020.

c. Further, the Council also decided to refer the issue with respect to the second portion of the first proposal relating to rate levy of GST on long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by a private person or entity, or an entity having less than 20% ownership of the Government for further examination to the Fitment Committee before any decision by the GST Council.

d. The Council also took note about issues discussed in **proposal 2, proposal 3** and **proposal 4**(as per the report of the GoM) which were pending before the GoM on Real Estate.

Agenda Item 5: Issues recommended by the Fitment Committee for the consideration of the GST Council

Agenda Item 15 (iv): Proposal for change in GST rate on woven/nonwoven bags and sacks of polypropylene/polyethylene, whether or not laminated and Flexible Intermediate Bulk Containers (FIBC) from 12% to 18%

12. The Secretary asked JS TRU-I to present the fitment issue before the Council. He also informed that there were no fitment issues as such, but a Table Agenda (Agenda item 15 (iv)) concerning the GST rate rationalisation effected in the 37th Meeting of the GST Council on 20th September, 2019. Thereafter, JS, TRU-I stated that the Council in its 37th Meeting on 20th September, 2019 had recommended to rationalise the GST rates on woven/non-woven bags and sacks of

polypropylene/polyethylene (whether or not laminated) at a uniform rate of 12% to obviate classification disputes. He stated that earlier, the sacks and bags made up of man-made textile material, falling under heading 6305 attracted GST at the rate of 5% (their value being less than Rs.1000/-), while polypropylene, polyethylene and other plastic bags falling under heading 3923 attracted 18% GST. These differential rates gave rise to disputes regarding classification. To resolve the issue, a clarification was issued *vide* Circular No.80/54/2018-GST dated 31st December 2018. However, disputes continued and were aggravated due to multiple divergent Advance Rulings passed. To resolve the issue, the Council recommended a uniform rate of 12%. However, subsequent requests had been received from the trade associations stating that the major basic constituent ingredient for these bags was HDPE/PP granule which attracted 18% GST. They had further stated that 12% GST rate on woven and non-woven bags and sacks of polypropylene and polyethylene was leading to inverted duty structure and increasing the compliance burden and efforts for seeking refund on small manufacturers of these bags. This would make investment in the sector unviable. These woven and non-woven bags and sacks of polypropylene and polyethylene (whether or not laminated) were used in a number of applications such as packaging of cement, fertilizer, sugar, sponge iron/mineral packing etc. Increase of GST rate to 18% might not increase the cost of the bags to the end-consumer as this was a B2B product and full ITC of the GST paid on bags was available to the user industry. In fact, it would remove the inverted duty structure and accumulation of ITCs with the manufacturers of these bags. Moreover, FIBC classified under HS 63053200 were intermediate goods used in a number of industries for bulk packing and transportation of goods. ITC on GST paid on these goods was available to these users. The JS, TRU-I proposed, that to have uniform tax rate on all types of such bags, the GST rates on woven and non-woven bags and sacks of polypropylene and polyethylene, whether or not laminated (classified under 3923 or 6305) including Flexible Intermediate Bulk Containers (FIBC) may be considered for a raise from 12% to 18%. The Secretary proposed to the Council that the rate change may be effective from 1st January 2020.

12.1. The Hon'ble Minister from Tamil Nadu stated that the issue of rationalization of GST on matches was discussed in the 37th GST Council Meeting in Goa. He stated that even the Hon'ble Chief Minister of Puducherry agreed for GST rate at 12% and the same might be considered favourably. Further, he stated that his State received several representations on the very high rate of GST of 18% on insurance premium. The Secretary stated that these issues could be discussed in the Fitment Committee.

12.2. The Hon'ble Minister from Odisha stated that in his State 8 lakh poor people were working as pluckers of *tendu* leaves. Due to the high rate of 18% GST on *tendu* leaves, the poor were suffering. He added that the State of Odisha had declared *tendu* leaves as forest produce and pointed out that even in BJP's manifesto it had been promised to return the GST collected to the workers. The Hon'ble Minister added that he would move a proposal in this regard and requested the Fitment Committee to look into this issue. The Chairperson agreed and assured the matter would be looked into by the Fitment Committee.

13. For **Agenda item 5, read with Table Agenda item 15 (iv)**, the Council approved the proposal for change in GST rate on woven/nonwoven bags and sacks of polypropylene/polyethylene, whether or not laminated and Flexible Intermediate Bulk Containers (FIBC) from 12% to 18% with effect from 1st January 2020.

Agenda Item 6: Issues recommended by the Law Committee for the consideration of the GST Council

Agenda Item 6(i): Standard Operating Procedure to be followed in case of non-filers of returns

14. The Secretary asked Shri Yogendra Garg, Principal Commissioner, GST Policy Wing, CBIC to initiate the discussion on the issues recommended by the Law Committee for the consideration of the GST Council. The Principal Commissioner, GST Policy Wing, CBIC initiated the discussion by stating that the recommendations of the Law Committee were discussed in detail in the Officers' Meeting on 17th December 2019. The presentation made in this regard is annexed as **Annexure 8**. He stated that the rationale of recommendations was to improve compliance and simplify processes. He also stated that non-filers and late filers of returns had been a major issue in the GST regime, though some States such as Uttar Pradesh had dealt with the issue well, there had been no uniformity pan India in dealing with the same. He stated that the Law Committee recommended to issue a Circular for dealing with non-filers of returns under Sections 39, 44 & 45 of the GST Act. He further stated that some of the States were already issuing notices and the objective of the proposed draft circular was to make the process uniform and to improve due date filing of returns which has a direct correlation with the revenue. The draft circular delineated various steps *vis-à-vis* the return defaulters from issuing of a system generated message to notice in **FORM GSTR-3A** followed by best judgement assessment and ultimately, if the return was not filed for 6 months then initiation of action under Section 29 of the GST Act for cancellation of registration was proposed. He further added that the period of 30 days for reapplying for GST registration upon cancellation had been extended to 60 days on the suggestion of State of Odisha in the Officers' Meeting held on 17th December 2019. He also clarified that as for Composition tax payers, the return was filed annually, the same means that this could only be resorted to after the due date for such return.

15. For **Agenda item 6(i),** the Council approved the issuance of Circular outlining a Standard Operating Procedure in case of non-filers of returns as proposed.

Agenda Item 6(ii): Proposed amendments in the CGST Act, 2017

16. The Principal Commissioner, GST Policy Wing, CBIC introduced the Agenda relating to amendments to the CGST /SGST Acts in the Budget 2020-21. He stated that the proposed amendments were discussed in detail in the Officers' Meeting on 17th December 2019. He informed that there were altogether 12 amendments proposed, some of which were in the nature of aligning with the earlier amendments. The first amendment sought to align certain entries in Schedule II of the GST Act with the amendments carried out vide the CGST (Amendment) Act, 2018 with effect from 1st February 2019. Likewise, the second amendment had been proposed to align the Composition Scheme under Section 10(1) and (2) of the CGST Act with Section 10(2A) of the said Act. The third amendment proposed was to allow ITC on Debit Notes by linking it to the date of issuance of the Debit Note by amending Section 16(4) of the GST Act. The fourth amendment was to allow a taxpayer who had taken voluntary registration to cancel it by amending Section 29 of the GST Act. The next amendment proposed was for amending Section 31 so as to align section 31(2) with 31(1) regarding manner of issue of invoices for services as well. With respect to the sixth amendment proposed, the Principal Commissioner, GST Policy Wing, CBIC stated that in Officers' Meeting on 17th December 2019, it was viewed that there was no requirement of amending Section 49(4) of the GST Act, and that it would be prudent that a new rule may be drafted using the existing powers under law and accordingly, it was proposed that Rule 86A might be inserted so as to block ineligible input tax credits and control the menace of fake invoices immediately. The seventh amendment recommended was for providing a system generated Tax

Deduction at Source (TDS) certificate by amendment in Section 51(3) and doing away with the late fees requirement by omission of Sub-Section 4 of Section 51 of the GST Act. The eighth amendment proposed was to carry out certain amendments in Sections 122 and 132, so as to insert necessary provisions to make the person receiving the benefit of a fraudulent transaction liable for penalty and arrest. The Principal Commissioner, GST Policy Wing, CBIC stated that presently, the person who availed the fake ITC only was liable for penal provisions. The objective of the proposed amendment was to align the liability of the mastermind with the person who was taking the fake ITC. The ninth amendment proposed was to insert in Section 140 of the GST Act enabling provisions to prescribe the time-limit and the manner of availing transitional credit. This was proposed to be done retrospectively with effect from 01.07.2017. The tenth amendment proposed was for vesting functions relating to job-work extension and remuneration of chartered accountants/ cost accountants with the jurisdictional Commissioners of CGST. The next amendment proposed was for extending the existing time-period of 3 year to 5 years from the date of commencement of the GST Act in Section 172 to enable the Government to issue orders for removal of difficulties in implementing the provisions of the Act. The last amendment proposed in respect of Section 17(5) was for making input tax credit eligible in respect of commercial vessels like drilling rigs, dredgers etc. Principal Commissioner, GST Policy Wing, CBIC explained that credit was available on such 'vessels' prior to the first amendment of CGST Act in August, 2018 and that while no recommendation of the Council was made to restrict the same, inadvertently due to a drafting error, this credit had come to be denied which is the likely cause of hardship to dredging companies, oil exploration companies etc. and that it was proposed to make suitable amendments to restore the original position. However, the Hon'ble Member from Chhattisgarh wanted that the tax cost/implication of the proposal in respect to vessels and aircraft be brought to the Council before any decision. Therefore, this proposal was deferred.

17. For **Agenda item 6(ii),** the Council approved the amendments in the GST Act, as proposed and discussed above.

Agenda Item 7: Creation of Public Grievance Redressal Committee as per the Hon'ble High Court of Delhi's order in the case of Sales Tax Bar Association

18. The Secretary asked Principal Commissioner, GST Policy Wing, CBIC to introduce the agenda item. The Principal Commissioner, GST Policy Wing, CBIC, while introducing the agenda item also made a presentation (attached as **Annexure 8**). He stated that in view of the Writ petition W.P.(C) 9575/2017 & C.M. no. 38987/2017-Sales Tax Bar Association (regd.) & ANR in Hon'ble High Court of Delhi on non-availability of many functionalities on GST Portal, a proposal for suitable mechanism for grievance redressal at ground level was felt necessary. Therefore, a proposal for creating Grievance Redressal Committee had been placed for approval of the Council. The background details were mentioned in the agenda circulated.

18.1. He further stated that while in the Central Excise/Service Tax regime such an arrangement existed in the form of Regional Advisory Committee at the Zonal level, no such formal arrangement existed, under the GST regime to tackle grievances of specific/ general nature at the Zonal/ Commissionerate/ State level. Accordingly, it was proposed to operationalize a Grievance Redressal Committee (GRC) at Zonal/State level with membership of both CGST and SGST officers, representatives of trade and industry and other relevant officers of GSTN.

18.2. The constitution of the said Grievance Redressal Committee, its functions and mandate were proposed in the agenda as follows:

A. Constitution of the Committee:

i. Zonal Principal Chief Commissioner/ Chief Commissioner of Central Tax (Co-chair)
ii. Chief Commissioner/ Commissioner of State Tax (Co-chair)
iii. Representatives of various Trade Associations – **12 in number**
iv. Representatives of prominent Associations of Tax Professionals like Chartered Accountants, Tax Advocates, Tax Practitioners etc. – **4 in number**
v. Nodal officer of ITGRC of the Central Tax and Nodal officer of ITGRC of the State Tax.
vi. Representative of GSTN handling the concerned Zone/ State
vii. Any other member with the permission of the Co-chairs.
viii. Additional/Joint Commissioner of office of Zonal Principal Chief Commissioner/ Chief Commissioner of Central Tax and an officer nominated by the Chief Commissioner/ Commissioner of State Tax - Secretaries of the GRC.

B. Term of the Committee - The GRC would be constituted for a period of two (2) years and the term of each member so nominated also would be for a period of 2 years. Any member of the Committee absent for 3 consecutive meetings, without adequate reasons, would be deemed to have been withdrawn from the Committee and his place would be filled by fresh nomination by the Principal Chief Commissioner/Chief Commissioner of Central Tax and the Chief Commissioner/ Commissioner of State Tax.

C. Functions and mandate of the Committee:

(i) Examining and resolving all the grievances and issues being faced by the taxpayers, including procedural difficulties and IT related issues pertaining to GST, both of specific and general nature.

(ii) Referring any issue requiring a change in Act/Rules/Notification/ Form/Circular/ Instruction, etc., to the GST Council Secretariat and the relevant Policy Wing of the CBIC.

(iii) Referring any matter related to IT related issue pertaining to GST Portal, to GSTN.

Whenever an issue would be referred by the GRC, the concerned Policy Wing of CBIC would examine the said policy issue and if required, would make suitable recommendation on the same for consideration/ approval of the GST Council. Likewise, if the matter would be an IT related issue pertaining to GST portal, the same would be resolved by GSTN in a time bound manner, preferably within one month.

D. Periodicity of Meeting of the Committee – The Committee would meet once every quarter or more often as the Co-chairs may decide.

E. Mechanism of Working of the Committee: The stakeholders would send their grievances/suggestions to the Secretary of the Committee, who would place the same before the Committee. Further, the Secretary of the Committee should also submit a quarterly progress report to the GST Council Secretariat as well as to the GST Policy Wing, CBIC.

18.3. Further, GSTN had also proposed **(Annexure B to the Agenda 7)** that,

a) to ensure transparency and time bound handling of grievances and accountability, they would develop a portal for recording all such grievances (including their scanned images) and their disposal. It would be the responsibility of the Co-chairs to ensure timely entry of the grievances and updating the status of their disposal on the portal.

b) the nodal officers of GSTN, Policy Wing of CBIC and GST Council Secretariat would also be able to update status of action taken at their end. The details of action taken on all issues would be displayed on the portal, which would be available for viewing by all stakeholders to check the status of the resolution.

18.4. The above proposal was placed before the GST Council for consideration and approval. The Council after deliberations approved the proposal.

19. For **Agenda item 7,** the Council considered and approved the constitution along with the functions and mandate of the Grievance Redressal Committee as contained in the agenda.

Agenda Item 8: Status of Group of Ministers (GoMs) constituted for various agenda items

20. The Secretary asked Dr. Rajeev Ranjan, Special Secretary, GST Council Secretariat to present the status of various GoMs constituted on the recommendations of the Council for different agenda items. The Special Secretary thereafter stated that altogether 12 GoMs had been constituted on the recommendations of the Council. Of these, 6 GoMs, namely, GoM on Composition and tax structure on Restaurants, GoM on Reverse Charge Mechanism, GoM on Digital Payments, GoM on Sugar Cess, GoM for MSME and GoM on Revenue Mobilisation in case of Natural Calamities and Disasters had given their reports and recommendations before the Council and the Council had taken requisite action in respect of the same. It had, therefore, been proposed to not continue these GoMs. Further, it was proposed that 3 GoMs as mentioned in para 15 (ii) may continue. Of these, the GoM on IT challenges in GST implementation was the most active and met frequently on account of its mandate to monitor and resolve the IT challenges faced in the implementation of GST. Likewise, the GoM on boosting real estate under GST regime and GoM on Analysis of Revenue from GST were also proposed to be continued. During discussion under Agenda Item 2 for the issues concerning GST on Lottery, in view of the submission of the report of the GoM on Lottery which was annexed to the said agenda item, a decision had been taken to refer the matter relating to casinos, horse racing and online gaming to Law Committee. Therefore, it was decided to discontinue the GoM on issues relating to lottery. Finally, the Special Secretary stated that the two GoMs, namely GoM on IGST Settlement and GoM on movement of Gold and precisions Stones had been constituted recently and their reports were yet to be placed before the Council.

21. For **Agenda item 8**, the Council decided to continue with the 5 GoMs namely: GoM on IT challenges in GST implementation, GoM for boosting Real Estate Sector under GST regime, GoM on Analysis of Revenue from GST, GoM on movement of Gold and Precious Stones and GoM on IGST settlement.

21.1. The Council also decided to refer the pending matter relating to casinos, horse racing and online gaming to Law/Fitment Committee.

Agenda Item 9: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government

22. The Secretary asked Principal Commissioner, GST Policy Wing, CBIC to place the agenda before the Council. The Principal Commissioner, GST Policy Wing, CBIC stated that in the 37th Meeting held on 20.9.2019, the Council had ratified all the notifications, circulars and orders issued before 11.9.2019. He thereafter made a presentation (attached as **Annexure 8**) listing out all the notifications, rate and non-rate, of CGST, UTGST, IGST and Compensation Cess, Circulars and

removal of difficulty orders issued after 11.09.2019 till 13.12.2019, under the GST Laws by the Central Government as available on www.cbic.gov.in.

23. For **Agenda Item 9,** the Council granted deemed ratifications to the notifications, circulars and Orders as in agenda item and the presentation (attached as **Annexure 8**) made during the Council Meeting, which are available on www.cbic.gov.in.

Act/Rules	**Type**	**Notification/Circular/Order Nos**
CGST Act/CGST Rules	Central Tax	42 to 72 of 2019
	Central Tax (Rate)	14 to 26 of 2019
UTGST Act	Union Territory Tax (Rate)	14 to 26 of 2019
ITGST Act	Integrated Tax Integrated Tax (Rate)	04 of 2019 14 to 25 of 2019
GST (Compensation to States) Act	Compensation cess (Rate)	02 and 03 of 2019
Circulars	Under CGST Act, 2017	110 to 127 of 2019
ROD Orders	Under CGST Act	8 and 9 of 2019

23.1. The notifications, Circulars and Orders issued by the States which are *pari materia* with above notifications, Circulars and Orders were also deemed to have been ratified.

Agenda Item 10: Decisions of the GST Implementation Committee (GIC) for information of the Council

24. The Secretary asked Principal Commissioner, GST Policy Wing, CBIC to present the Agenda before the Council. Thereafter, Principal Commissioner, GST Policy Wing, CBIC stated that the GST Implementation Committee (GIC) took decisions between 21.9.2019 and 17.12.2019. Further, due to the urgency involved, certain decisions were taken by GIC after obtaining approval amongst GST Members by circulation. Thereafter, he made a presentation (attached as **Annexure 8**) on the decisions taken by Members of the GIC post 37th GST Council Meeting. Thereafter, he also submitted that an **Agenda Item 15(iii)**, which was addendum to Agenda Item No. 10 regarding decisions of the GIC in its Meeting held on 02.12.2019 was also placed before the Council for information.

25. For **Agenda item 10,** the Council took note of the decisions of the GST Implementation Committee between 21.09.2019 and 17.12.2019.

Agenda 11: Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council

Decisions/recommendations of the 8th IT Grievance Redressal Committee

26. Introducing this Agenda item, the Secretary stated that the 8th Meeting of the IT Grievance Redressal Committee (ITGRC) was held on 13th August 2019 to resolve grievance of the taxpayers arising out of technical and non-technical issues. (Minutes of the Meeting attached as **Annexure A** of this agenda Item).

26.1. As per the agenda note, a total **491 cases of TRAN-1/TRAN-2** had been examined by GSTN (**Agenda 1**) and presented before the Committee. Out of these, 442 cases were sent by Nodal officers and 49 were court cases. All above cases had been categorized broadly reason-wise in two major categories as 'A' and 'B' by GSTN team. **Category 'A'** included cases in which the taxpayer could not apparently file TRAN 1/TRAN 2 because of technical glitches while **Category 'B'** included cases where no technical issues were found from the system logs in filing TRAN 1/TRAN 2.

26.2. In pursuance of decision in 32nd GST Council Meeting, regarding extended scope of ITGRC, GST Council Secretariat had received another **22 cases** *vis-a-vis* extended scope of ITGRC and analysis of these cases was also presented before the committee (**Agenda 3**).

26.3. It was also observed by GSTN that 04 cases of TRAN 1 had been brought twice before the ITGRC in 6th and 7th Meeting with wrong description and recommendations based on incomplete facts, which needed reconsideration**.** GSTN had again examined the system logs of 04 cases and presented them before the Committee for appropriate decision (**Agenda 4**),

26.4. After detailed discussion, the 8th ITGRC decided and had recommended as under: -

Recommendation for Agenda 1, Agenda 3 and Agenda 4 for

(A) 491 Cases presented through GSTN (Agenda 1):

i) **To allow** filing of TRAN-1 in total **137 cases of TRAN-1 & TRAN-2** belonging to Category 'A' as per Annexures indicated in column No. 3 and 4 of Table-2 (136 cases of TRAN-1) & Table 4 (01 case of TRAN-2 in Category 'A') on account of technical/system issues as explained at paragraph 5 and paragraph 7 of Minutes, in accordance with the Law Committee recommendations regarding consequential benefits related to filing of TRAN 1.

ii) **Allowed** GSTN to **withdraw two (02) cases** (one of each TRAN-1 and TRAN-2) as mentioned in Table 5 of Minutes without any decision and directed GSTN to present these cases after proper analysis before the next ITGRC Meeting.

iii) **Not to allow** remaining **352 cases of Category 'B'** as per Annexures indicated in column No. 3 & 4 of Table-3 (351 cases of TRAN-1) and Table 4 (01 case of TRAN-2 in Category 'B') in absence of any evidence of technical/system errors in these cases as explained at paragraph 6 & 7 of Minutes, as was decided in similar cases in past seven ITGRC meetings.

(B) 22 Cases presented through GST Council Secretariat as per extended scope of ITGRC (Agenda 3):

Decision on these cases was deferred in view of discussion on the emerging issues as discussed with reference to **Agenda 2**. This matter would be discussed again in ITGRC in light of decision of **Agenda 2**, which inter alia included the issue of re-examining the limited

number of non-technical glitch/error cases. The details of discussion on **Agenda 2** might be referred for details.

(C) Cases which had been brought twice in 6th and 7th ITGRC (Agenda 4):

i) ITGRC allowed 03 cases of TRAN-1 which were earlier not allowed in 6th ITGRC but they were allowed in 7th ITGRC.

ii) Committee also accepted the proposal of fourth case to recall the decision of 7th ITGRC on this case, on account of error reported by GSTN and effectively restoring the decision of 6th ITGRC of allowing the filing/revision of TRAN-1.

Discussion on emerging issues before ITGRC (Agenda 2)

26.5. During the earlier ITGRC proceedings, it was observed that Nodal officers as well as GSTN had received various references and Writ Petitions where non-technical issues were also involved. The ITGRC could not handle those cases, as it was not empowered to take any decision on these issues. Further, on account of no appeal mechanism in respect of Forms TRAN-1/TRAN-2 under GST law, taxpayers were approaching various Hon'ble High Courts for grievance redressal. In 32nd GST Council Meeting, it was decided to enhance/expand the scope of the ITGRC to include those cases where no technical glitch/problem was evident, and the Commissioners would after examination recommend such cases but GSTN and GST Council Secretariat were receiving cases without proper scrutiny. Till 31st January, 2019, 62 cases (with incomplete details and not in conformity with the spirit of the decision of the 32nd GST Council Meeting) were received and placed before 4th ITGRC on 12.02.2019. Hence, it was recommended by the Committee that GST Council Secretariat might send another reminder to all States and Centre reiterating that the case details be checked; certified and it should also be clearly stated that the case was covered by the decision of 32nd GST Council Meeting along with clear recommendations from the State/Centre before sending by the concerned Jurisdictional Commissioner. Accordingly, 179 cases received till 31st March 2019 were placed before 6th ITGRC on 27.05.2019 while 22 cases were placed before 8th ITGRC which contained many of the cases that were found incomplete in 6th ITGRC. Till then, as no case has been allowed to file TRAN-1/TRAN-2 in accordance with the extended scope of ITGRC, therefore, such emerging issues before ITGRC were also discussed in the Committee as per Agenda 2.

26.5.1. In respect of Agenda 2 i.e. emerging issues in respect of cases involving non-technical glitches, it was discussed and recommended by ITGRC that for cases involving non-technical glitches, the process of examination by ITGRC might be redesigned and a pragmatic approach was required on the issue of allowing GST TRAN- 1/GST TRAN 2 for those taxpayers who were covered under the 32nd GST Council decision; having High Court decision and had filed the TRAN-1 before due date i.e. 27.12.2017 but not received the transitional credit due to non-technical error. The mechanism would include following aspects:

a. The process would be applicable to the taxpayers who had satisfied the criteria and represented before the nodal officer/Jurisdictional Commissioner for non-technical glitches as per 32nd GST Council Meeting's decision.
b. Definition of the non-technical error might include cases where TRAN-1/TRAN-2 had been filed before due date i.e. 27.12.2017 but credit not received to taxpayer including the scenario where the credit was entered in wrong column.
c. The jurisdictional Commissioners of the State/Centre should get the claim of the taxpayer checked including the verification of credit and ascertain the amount of credit (CGST/SGST) that was claimed in the various tables of GST TRAN 1/GST TRAN 2. Wherever required a

certificate from counterpart tax authorities may also be obtained regarding genuineness of claimed credit.

d. After being satisfied about the genuineness of the claim, the details should be sent to GSTN with proper recommendation and specific High Court order copy as per 32nd GST Council Meeting's decision to enable filing of TRAN-1/TRAN-2. The mode as well as format for such directions and the requisite certificate be finalised by GSTN in order to maintain the audit trail and generate report, if required.
e. If deemed necessary, post audit of the taxpayers could be carried out by tax authorities in a time-bound manner, who would claim transitional credit above a particular threshold.
f. In light of above, ITGRC could revisit the 'Category A' cases identified as non-technical cases placed in Annexure 3 of 6th ITGRC and Agenda 3 of the 8th ITGRC, taking inputs as required from GSTN.

26.6. The decisions/recommendations as per attached Minutes of the 8th ITGRC were placed for information of the Council.

27. For **Agenda item 11,** the Council took note of the decisions/recommendations of the 8th Meeting of the IT Grievance Redressal Committee.

Agenda Item 12: Quarterly Report of the NAA for the quarter July to September 2019 for the information of the GST Council

28. The Secretary introduced the Agenda item pertaining to various issues related to the National Anti-profiteering Authority (NAA) and stated that this agenda was discussed in the Officer's Meeting held on 17th December 2019. The quarterly performance report of National Anti-profiteering Authority along with performance reports of DGAP, Screening Committee and State Level Screening Committee for the quarter (July, 2019 to September, 2019) of the financial year 2019-20 was placed before the Council for information.

28.1. Performance of **National Anti-Profiteering Authority**:

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
50	39	2	1	1	3	84

28.2. The **final disposal of 2 cases by the NAA** was as under:

Sr. No.	Order No. and Date of Order	Respondent	Amount of Profiteering (Rs.)
1	46/2019 dt. 04.07.2019	HP India Sales	Nil
2	47/2019 dt. 26.09.2019	Paramount Propbuild Pvt. Ltd.	3,69,26,963

28.3. In addition, NAA had been conducting outreach program across the country to sensitize the jurisdictional Officers about their role and responsibility towards check of profiteering. During the tenure of this report, the outreach programs and zonal review meetings on Anti-Profiteering efforts was held at Indore on 16th September, 2019.

28.4. Further, the NAA had sent 516 profiteering complaints received by them till 31st July, 2019 via its web portal to 21 State Level Screening Committees

29. For **Agenda item 12,** the GST Council took note of the performance of the National Anti-profiteering Authority for the quarter July to September 2019...

Agenda Item 13: Presentation on developments regarding implementation of

i. **GST EWB System – FASTag Integration**

ii. **New Return System**

iii. **Integrated refund system with disbursal by single authority**

iv. **Generation of electronic Invoice Reference Number**

v. **Linking GST registration with Aadhaar and proposed changes in the GST Law and GSTN System**

30. The Secretary stated that a detailed presentation was given by Shri Prakash Kumar, CEO, GSTN in the Officer's Meeting held on 17.12.2019 regarding the GST EWB System – FASTag Integration, status of implementation of New Return System, Integrated Refund System with disbursal by Single Authority, Generation of Electronic Invoice Reference Number and Linking GST registration with Aadhaar. The presentation made so is attached as **Annexure 9** to the Minutes. Following were the salient features of the presentation of CEO, GSTN.

A. GST EWB System – FASTag Integration

30.1. The MoU withIndian Highways Management Company Limited (IHMPCL) & GSTN had been signed on 14.10.2019.

a. The MoU was for collaboration and working together for implementation track and trace mechanism to track the goods carrying vehicles through FASTag at the toll plazas across the country.

b. NPCI was extending its NPCINet to E-Way Bill system.

i. Routers at Primary Data Centre (at Delhi) & DR Centre (at Hyderabad) of NIC had been delivered.

ii. Lease line (link) had also been delivered. Installation process was in progress.

c. NPCI had already extended its network to the EWBS data center. Network testing and integration was completed.

d. APIs were ready and available on sandbox. Testing on simulators was complete. Sandbox would be made available by NIC by 15th January 2020. Sample data from NETC would be used for testing.

e. Integration was expected to be completed by mid-February, 2020.

B. New Return System

30.2. He updated on the extent of trial use of ANX-1 and ANX-2 in Centre and States till 15.12.2019 and also shared the status of development and deployment of ANX1 and ANX2 in his presentation on 17.12.2019. The New Return was proposed to be effective from 1.04.2019. He further informed that workshops were conducted on New Return in association with FICCI, PHD Chamber of Commerce, ASSOCHAM, CII and in coordination with Centre & State Tax Administrations.

C. Integrated refund system with disbursal by single authority

30.3. As regards updates on disbursement of refund through PFMS, CEO, GSTN, presented on 17.12.2019 that till 16.12.2019, total number of RFD-05 issued were 16,515 & out of which PFMS had accepted 7699 cases, rejected 61 cases, disbursed 5912 cases while 2400 cases were under processing. He had also presented the data as on 15.12.19 regarding refund applications which were not acknowledged and pending for more than 60 days (both State-wise and CBIC).

D. Generation of Electronic Invoice Reference Number

30.4. The CEO, GSTN presented the advantages of e-invoice Reference Number and that there was a need for standards to ensure complete inter-operability and elimination of manual data entry by businesses leading to transcription errors. He also presented the timeline for implementation of e-invoice and informed that NIC was developing the same for its roll out by 1st January, 2020 for taxpayers with turnover of Rs 500 crore on voluntary basis. In February, 2020, the taxpayers with turnover of Rs 100 crore would be required to use it on voluntary basis and thereafter, it will be made mandatory from 1st April, 2020 for tax payers with turnover above Rs 100 crore. He also informed about the stakeholder interaction plan for-invoicing which included Industry partners, Accounting Software Provider/GST Suvidha Provider & Accounting Software companies.

E. Linking GST registration with Aadhaar and proposed changes in the GST Law and GSTN System

30.5. As regards linking of GST registration with Aadhar and proposed changes in the GST Law and GST System, CEO, GSTN stated that this project was expected to be rolled out by 1st February 2020 and mentioned Infosys had completed Proof of Concept (POC) and had also completed the prototypes for the purpose.

31. For **Agenda item 13,** the Council took note of the latest updates as per the presentation made by CEO, GSTN.

Agenda Item 14: Clarification on GST rate on fabrics and articles of textiles falling in Chapters 56 to 59 of the tariff pursuant to the order of the Hon'ble High Court of Delhi in Writ Petition (Civil) No.597 of 2019

32. The Secretary asked JS, TRU-I to introduce the agenda item to the Council. The JS TRU-I, thereafter, submitted that the Hon'ble High Court of Delhi has directed *vide* its order dated 11.10.2019 to place before the Council the issue agitated before them and also to place a copy of the said order of the Hon'ble Delhi High Court. The issue brought before the Hon'ble High Court was that the Council in its 15th Meeting had prescribed that all fabrics were to be taxed at the rate of 5% and not 12% irrespective of whether they were used for making apparels or for specialised and industrial fabrics. The Department of Revenue filed affidavit and submitted before the Hon'ble High Court that the GST Council had made a specific recommendation to prescribe 12% GST rate on specialized and industrial fabrics of Chapters 56 to 59 which were notified by the Central and the State Governments and thus there was no variance from the recommendations of the GST Council on the GST rate on specialized and industrial fabrics of Chapters 56 to 59 and the notifications was issued by the Central and State Governments in pursuance of these recommendations. He further stated that the GST rates on fabrics was discussed in detail in the 15th GST Council Meeting held on 3rd June, 2017 and the GST rates were prescribed on the recommendations of the Council. The rate of 5% was prescribed on fabrics used for making apparels. The GST Council had recommended 12% GST rates on specialized and industrial fabrics. The Council had discussed the request for reduction in tax rates on fabrics of Chapters 56 to 59 from 12% to 5% in various meetings after the rollout of GST. The Council did not recommend any change in the tax structure on these goods i.e. technical textiles and specialized fabrics of Chapters56 to 59. He submitted that as per the directions of the Hon'ble High Court, the copy of order dated 11.11.2018 of the Hon'ble Delhi High Court was also placed before the Council along with his submissions.

33. **For Agenda item 14**, the Council took note of the order dated 11.10.2019 of the Hon'ble Delhi High Court. The decision of the Council to levy 12% GST on specialized and industrial fabrics and technical textiles of Chapters 56 to 59 was confirmed.

Agenda Item 15: Any other agenda item with the permission of the Chairperson

Agenda Item 15 (i): Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)

34. The Secretary introduced the agenda and stated that in terms of Section 109 of the CGST Act, 2017, Goods and Services Tax Appellate Tribunal (GSTAT) were being constituted by the Government on the recommendation of the GST Council. The Appellate Tribunal having National / Regional Benches at National level and the State / Area Benches at State level, to hear appeals against orders passed by the Appellate Authority or by the Revisional Authority. He further directed Special Secretary GST Council to brief the Council.

34.1. In order to recapitulate, Special Secretary GST Council stated that the recommendations of the GST Council in respect of creation of the GSTAT and further developments in chronological order were as under:

- **In the 28th Meeting of the GST Council on 21.07.2018 the Council recommended:**
    - Constitution of Goods and Services Tax Appellate Tribunal (GSTAT); and

- Creation of National Bench of GST Appellate Tribunal at New Delhi and three Regional Benches at Mumbai, Chennai and Kolkata.

- Union Cabinet approved creation of National Bench of the GST Appellate Tribunal at New Delhi.

- National Bench at New Delhi had also been notified vide Notification No. **S.O. 1359(E)—** [No.1/2019,[F.No.A.50050/99/2018-Ad.1C(CESTAT)] dated 13-03-2019 issued by Department of Revenue.

- Till the 37th Meeting , the Council had recommended setting up of State Benches and Area Benches in 29 States and 5 UTs as per request received from States. It had also recommended to separately consider constitution of benches in Uttar Pradesh due to court cases. It also took note of constitution of Jammu & Kashmir GST Appellate Tribunal in terms of proviso to Section 109(6) of the CGST Act, 2017.

- The Rules for the GSTAT called the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019 were notified by Central Government as per the recommendations of the GST Council in 28th meeting, vide notification No. G.S.R. 584(E)- [F.No.A.50050/99/2018-Ad.1C(CESTAT)] dated 21.08.2019.

- State and Area bench as recommended by the GST Council till 36th GST Council Meeting had also been notified by Department of Revenue.

34.2. Further, in the 37th Meeting of the GST Council on 20.09.2019 had recommended location of State Bench and Area Bench in respect of following 4 States as under:

Sl. No.	**Name of States/Union Territory**	**Location for State Bench**	**Location for Area Bench**
1.	Meghalaya	Shillong	No bench
2.	Mizoram	Aizawl	-do-
3.	Rajasthan	Jaipur	Jodhpur
4.	Karnataka*	Bengaluru	Two Area benches at Bengaluru

*State bench of Karnataka at Bengaluru is already created.

34.3. Now, request from Madhya Pradesh had been received to create a State Bench at Indore, while two more requests had been received from Meghalaya and Punjab seeking amendments in the earlier recommendations of GST Council for creating bench at Shillong and Chandigarh respectively. Meghalaya had also requested to club their State bench with the State bench of Assam at Guwahati, which was notified as a common bench for Arunachal Pradesh, Manipur, Nagaland & Sikkim. Punjab had requested to change their State bench from Chandigarh to Ludhiana.

34.4. Accordingly, the above stated requests for creation of State benches, as detailed below, were placed before GST Council for consideration:

Sl. No.	Name of States/Union Territory	Location for State Bench
1.	Madhya Pradesh	Indore
2.	Meghalaya	Guwahati* (request from Govt. of Meghalaya requested to club State Bench of Assam at Guwahati instead of earlier proposed at Shillong)
3.	Punjab	Ludhiana* (the Govt. of Punjab requested to change the State Bench of Punjab to Ludhiana instead of Chandigarh)

Agenda Item 15 (ii): Measures for Revenue Augmentation

1. **GSTR-1 Amnesty scheme along with E-Way Bill Blocking for non-filers of GSTR-1**

35. Pr. Commissioner GST Policy Wing, CBIC introduced this agenda by stating that the **FORM GSTR-1** filing had been low and had crossed 60% only once in the last six months. This was despite the introduction of sub-rule (4) of Rule 36 which restricted availment of input tax credit in respect of those invoices, the details of which have not been uploaded by the supplier under Section 37 of the CGST Act (in **FORM GSTR-1)** to 20% of the eligible credit available in **FORM GSTR-2A** for a taxpayer. Presently late fees for delay in furnishing of **FORM GSTR-1** by the due date was Rs.20 per day for NIL filers and Rs.50 per day for others. The maximum late fee was Rs.10,000 per month (Rs.5,000 under the CGST/SGST Act).

1) Many taxpayers, had represented that they were willing to file their **FORM GSTR-1** but they were not willing to pay Rs.10,000 per month of late fee. This was one of the key reasons for low or no filing of **FORM GSTR-1**.
2) It might be noted that in the current GST system, there was no procedure for part payment/invalid return. Therefore, the only way taxpayers could declare admitted liability was through **FORM GSTR-1**. This could be later recovered with interest by the Government. Therefore, in order to improve filing of **FORM GSTR-1** the following were proposed:
    a. A one-time amnesty scheme to file all **FORM GSTR-1** from July 2017 to November, 2019 might be given to taxpayers. There would be no late fees for filing such return if the same was filed till 10th January 2020.
    b. E-way bill generation might be blocked for non-filing of any two **FORM GSTR-1** (similar to **FORM GSTR-3B**)

2. **Credit availment to 10% of GSTR-2A in Rule 36(4)**

35.1. This rule was inserted to ensure discipline among the taxpayers for filing GST returns. On analysis it was found that in FY 2018-19, the total gap in **FORM GSTR-2A** and **FORM GSTR-3B** was 13%. Therefore, approximately 13% of the total credit was lying unmatched in the system currently. He, therefore, proposed that the Law Committee had recommended that in the interest of revenue and to increase the proportion of matched credit in the system, Rule 36(4) be amended to restrict input tax

credit on missing invoices for any recipient to 10% of the total supplies received in his **FORM GSTR-2A** from his suppliers.

3. **Credit blocking in specific instances**

35.2. Principal Commissioner, GST Policy Wing, CBIC initiated the discussion stating that during investigations it had been accepted by the persons/registered persons that the input tax credit that had been passed on was fake credit as the underlying invoices that had been passed on were fake invoices. In course of investigation, the recipients who had availed the said input tax credit had also been identified (Rs.9028 crore by Centre and Rs.2740 crore by the States). Section 16 required ineligible credit was to be reversed in the return which was not happening as the return **FORM GSTR-3B** were self-assessed and were on a summary basis so it was not possible to determine the exact reason for reversal. There was a facility in the portal which allowed the tax authorities to block utilization of ITC which was being used by State Officers in as many as 25 States/UTs. It was further stated by the Principal Commissioner, GST Policy Wing that this issue was discussed in great depth in the Officers' Committee meeting on 17th December 2019. To ensure uniformity and in the interest of revenue, it was proposed that the GST Council, as a measure of revenue augmentation, may approve insertion of a new rule 86A to block the utilization of such credit.

4. **Extension of due date for filing of FORM GSTR-9 / 9C for FY 2017-18**

35.3. Principal Commissioner, GST Policy Wing, CBIC stated that notification No. 56/2019 dated 14.11.2019 was issued to simplify filing of Annual Return (**FORM GSTR-9**) and Reconciliation Statement (**FORM GSTR-9C**) for FY 2017-18 and FY 2018-19. Certain changes were required in the offline utility for filing of **FORM GSTR-9C**. It had been informed that the offline utility for filing of **FORM GSTR-9C** had not been deployed yet (till 16.12.2019). Taxpayers were expressing concern that they would get very little time for compliance. Accordingly, it was proposed to extend the due date for filing the FORM GSTR-9 and FORM GSTR-9C for FY 2017-18 from 31.12.2019 to 31.1.2020.

5. **Return extension for North-Eastern States**

35.4. The Principal Commissioner, GST Policy Wing, CBIC stated that internet had been suspended in many of the North-Eastern Areas with curfew also imposed in many of the territories. In light of this, many trade bodies had expressed their inability to file their return FORM GSTR-1, GSTR-7, GSTR-8, GSTR-9 and GSTR-9C.Therefore, Assam had requested for extension in due dates of filing FORM GSTR-1, GSTR-7, GSTR-8, GSTR-3B, GSTR-9 and GSTR-9C. Likewise, Manipur and Tripura had also requested for extension in due dates of filing in certain forms. The Principal Commissioner, GST Policy Wing requested the other North-Eastern States to inform if there was need to extend due dates in their regions. It was further stated by him that Section 39(6) of SGST Act empowered State Commissioners to extend the due date of filing their respective returns. Further, if such return was extended by the State Commissioner, the due date under the CGST Act was automatically extended. Therefore, all forms except GSTR-8, GSTR-9 and GSTR-9C might be extended by the State Commissioners on recommendation of the Council.

36. Further, the **Agenda Item 15(iii)** and **Agenda Item 15(iv)** were discussed in the Agenda Item 5 and 10 respectively.

37. For **Agenda Item 15,** the Council approved the following:

i. Creation of the State and Area benches of the Goods and Services Tax Appellate Tribunal (GSTAT) as below:

Sl. No.	**Name of States/Union Territory**	**Location for State Bench**
1.	Madhya Pradesh	Indore
2.	Meghalaya	Guwahati* (request from Govt. of Meghalaya requested to club State Bench of Assam at Guwahati instead of earlier proposed at Shillong)
3.	Punjab	Ludhiana* (the Govt. of Punjab requested to change the State Bench of Punjab to Ludhiana instead of Chandigarh)

ii. (a) Late fees to be waived for the registered persons who failed to furnish the details of outward supplies in **FORM GSTR-1** for the months/quarters from July, 2017 to November, 2019 by the due date if the same were filed till 10th January, 2020 and to block E-way Bill generation for non-filing of any two **FORM GSTR-1**.

(b) To amend the Rule 36(4) of GST Rules to restrict availment of input tax credit in respect of those invoices, the details of which have not been uploaded in the return filed under Section 37 (**FORM GSTR-1)** to the extent of 10% of the total eligible ITC, the details of which have been uploaded in **FORM GSTR**-1.

(c) To insert a new Rule 86A to block input tax credits under certain circumstances.

(d) To extend due date for filing of FORM GSTR-9 / 9C for FY 2017-18 to 31.1.2020.

(e) To extend the last date for filing returns in specified forms in case of Assam and certain other North-Eastern States on account of suspension of internet in these regions.

iii. As recorded under Agenda Item No.10, the Council took note of the decisions of the 34th GIC Meeting held on 02.12.2019.

iv. The proposal in agenda item 15(iv) to increase the GST rates from 12% to 18% on woven and non-woven bags and sacks of polypropylene and polyethylene (whether or not laminated) (classified under 3923 or 6305) including Flexible Intermediate Bulk Containers (FIBC), with effect from 1st January 2020.

Other issues

38. Finally, The Secretary stated that he was putting forth a proposal which may be considered by the Council that changes in GST rates normally should be carried out only once in a year because otherwise frequent rate changes create a lot of uncertainty. He requested the Council that they might consider it for acceptance later. It was further suggested by the Hon'ble Member from Uttar Pradesh that the revenue implication of every rate change should also be placed before the Council, along with whether the said good or service was a final consumption or an intermediate consumption.

Agenda Item 16: Date of the next Meeting of the GST Council

39. This agenda item was not taken up for discussion.

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

Annexure 1

List of Hon'ble Ministers who attended the 38th GST Council Meeting on 18th December 2019

Sl No	State/Centre	Name of Hon'ble Minister	Charge
1	Govt of India	Ms. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Mekapati Gautam Reddy	Minister for Industries & Commerce and Information Technology
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister
5	Assam	Dr. Himanta Biswa Sarma	Finance Minister
6	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
7	Chattisgarh	Shri T.S. Singh Deo	Minister for Commercial Taxes
8	Delhi	Shri Manish Sisodia	Deputy Chief Minister
9	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat
10	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
11	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
12	Himachal Pradesh	Shri Vikram Singh	Minister for Industries
13	Jammu &Kashmir	Shri K K Sharma	Advisor to Lt. Governor
14	Jharkhand	Shri C.P. Singh	Minister - Department of Urban Development,Housing and Transport
15	Karnataka	Shri Basavaraj Bommai	Minister for Home Affairs and Co-operation
16	Kerala	Dr. T. M. Thomas Isaac	Minister for Finance & Coir

Sl No	State/Centre	Name of Hon'ble Minister	Charge
17	Madhya Pradesh	Shri Brajendra Singh Rathore	Commercial Tax Minister
18	Maharashtra	Shri Jayant Rajaram Patil	Finance Minister
19	Manipur	Shri V Hangkhanlian	Minister of Agriculture, Veterinary & Animal Husbandry
20	Meghalaya	Shri KyrmenShylla	Minister for Printing & Stationary Deptt, Revenue & Disaster Management and Social Welfare
21	Mizoram	Shri Lalchamliana	Minister, Taxation
22	Nagaland	Shri Metsubo Jamir	Minister, Urban, Municipal Administration
23	Odisha	Shri Niranjan Pujari	Finance & Excise Minister
24	Puducherry	Shri V. Narayansamy	Chief Minister
25	Punjab	Shri Manpreet Singh Badal	Finance Minister
26	Rajasthan	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal affairs, Parliamentary affairs
27	Sikkim	Shri. B.S. Panth	Minister for Tourism, Civil Aviation, Commerce and Industries
28	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
29	Telangana	Shri T. Harish Rao	Finance Minister
30	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
31	Uttarakhand	Dr. Harak Singh Rawat	Minister for Forests & Wild Life, Environment & Solid Waste Disposal

Sl No	State/Centre	Name of Hon'ble Minister	Charge
32	Uttar Pradesh	Shri Suresh Kumar Khanna	Finance Minister
33	West Bengal	Dr. Amit Mitra	Finance Minister

Annexure 2

List of Officials who attended the 38thGST Council Meeting on 18thDecember 2019

Sl. No	State/Centre	Name of the Officer	Charge
1	Govt. of India	Dr. A B Pandey	Revenue Secretary
2	Govt. of India	Dr. Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri Pranab Kumar Das	Chairman, CBIC
4	Govt. of India	Dr. John Joseph	Member (Tax Policy), CBIC
5	Govt. of India	Shri Sandeep M Bhatnagar	Member (GST &Investigation), CBIC
6	Govt. of India	Dr. Rajeev Ranjan	Special Secretary, GST Council
7	Govt. of India	Ms Archana Pandey Tiwari	Pr. Director General (Audit)
8	Govt. of India	Ms N Sumati	Pr. CCA
9	Govt of India	Shri Manoj Sethi	CCA
10	Govt. of India	Shri Anil Kumar Jha	Additional Secretary, DoR
11	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
12	Govt. of India	Shri Yogendra Garg	Pr. Commissioner, GST Policy Wing, CBIC
13	Govt. of India	Shri Sanjay Mangal	Commissioner, GST Policy Wing, CBIC
14	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU I, DoR
15	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
16	Govt. of India	Ms V. Usha	Pr. Commissioner, Ce.Ex, CBIC
17	Govt. of India	Shri A K Goel	Secretary, NAA

Sl. No	State/Centre	Name of the Officer	Charge
18	Govt. of India	Shri Rajesh Malhotra	DG (M&C), PIB
19	Govt. of India	Shri K M Nahar	MECO (M&C), PIB
20	Govt of India	Shri Gaurav Singh	Deputy Secretary, TRU-I
21	Govt of India	Shri Jainendra Singh Kandhari	OSD, TRU-I
22	Govt of India	Shri Praveen Kumar Bali	Dy. Comm., TRU-I
23	Govt of India	Shri S W Haider	Dy. Comm., TRU-I
24	Govt of India	Shri Abhishek Verma	Dy. Comm., TRU-I
25	Govt. of India	Shri Parmod Kumar	Commissioner (OCD) TRU-II
26	Govt. of India	Shri Pramod Kumar	Director, TRU-II
27	Govt. of India	Shri Harish Y. N	OSD, TRU-II
28	Govt. of India	Shri N Gandhi Kumar	Director, DoR
29	Govt. of India	Shri Amaresh Kumar	Joint Commissioner, GST Policy Wing, CBIC
30	Govt. of India	Shri Nimba Ram	Joint Commissioner, GST Policy Wing, CBIC
31	Govt. of India	Shri Vikash Kumar	Dy. Comm., GST Policy Wing, CBIC
32	Govt. of India	Shri Siddharth Jain	Dy. Comm., GST Policy Wing, CBIC
33	Govt. of India	Ms. Rajni Sharma	Dy. Comm., GST Policy Wing, CBIC
34	Govt. of India	Ms. Deepika Singh	Dy. Comm., GST Policy Wing, CBIC

Sl. No	State/Centre	Name of the Officer	Charge
35	Govt. of India	Ms. Megha Gupta	Asst Comm, GST Policy Wing, CBIC
36	Govt. of India	Shri Sumit Garg	Dy. Commr., TPRU
37	Govt. of India	Shri Shekhar Kumar	Dy. Commr., TPRU
38	Govt. of India	Shri Vipul Bansal	PS to Union Finance Minister
39	Govt. of India	Shri Binod Kumar	PS to MoS (Finance)
40	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
41	Govt. of India	Dr. Abhishek Chandra Gupta	OSD to Chairman, CBIC
42	Govt. of India	Shri Dev Kumar Rajwani	OSD to Chairman, NAA
43	GST Council	Shri Amitabh Kumar	Joint Secretary
44	GST Council	Shri S.K. Rahman	Joint Secretary
45	GST Council	Shri Dheeraj Rastogi	Joint Secretary
46	GST Council	Smt Ashima Bansal	Joint Secretary
47	GST Council	Shri Rajesh Agarwal	Director
48	GST Council	Shri G.S. Sinha	Director
49	GST Council	Shri Jagmohan	Director
50	GST Council	Ms. Ujjaini Datta	Director
51	GST Council	Shri Arjun Meena	Dy. Commissioner
52	GST Council	Shri Rakesh Agarwal	Dy. Commissioner
53	GST Council	Shri Rahul Raja	Under Secretary

Sl. No	State/Centre	Name of the Officer	Charge
54	GST Council	Shri Nitin Deepak Agarwal	Under Secretary
55	GST Council	Shri Mahesh Singarapu	Under Secretary
56	GST Council	Shri Krishna Koundinya	Under Secretary
57	GST Council	Shri SaribSahran	Superintendent
58	GST Council	Shri Adesh Nayak	Superintendent
59	GST Council	Shri Krishan Kumar Verma	Superintendent
60	GST Council	Ms Chanchal Soni	Superintendent
61	GST Council	Shri Maneesh Nemiwal	Superintendent
62	GST Council	Shri Om Veer Singh	Superintendent
63	GST Council	Shri Sumit Kumar	Superintendent
64	GST Council	Shri Vijay Kumar	Superintendent
65	GST Council	Shri Vipin Sethi	Superintendent
66	GST Council	Shri Sanjay Bansal	Superintendent
67	GST Council	Shri Rakesh Joshi	Inspector
68	GST Council	Shri Pankaj Bharadwaj	Inspector
69	GSTN	Shri Prakash Kumar	CEO
70	GSTN	Ms Kajal Singh	EVP, Services
71	GSTN	Shri Sarthak Saxena	OSD to CEO
72	Govt. of India	Dr Balbir Singh	Commissioner, CGST, Ahmedabad

Sl. No	State/Centre	Name of the Officer	Charge
73	Govt. of India	Shri MahendraRanga	Pr. Commissioner, CGST, Lucknow
74	Govt. of India	Shri V M Jain	Commissioner, CGST, Haryana
75	Govt. of India	Shri Satish Kumar Agarwal	Pr. Commissioner, CGST, Bengaluru
76	Govt. of India	Shri Pramod Kr Agarwal	Pr. Commissioner, CGST, Nagpur
77	Govt. of India	Ms. Hemambika R Priya	Pr. Commissioner, CGST, Delhi
78	Govt. of India	Shri B.K. Kar	Pr. Commissioner, CGST, Bhubaneswar
79	Govt. of India	Shri Krishna A Mishra	Pr Commissioner, CGST, Pune
80	Govt. of India	Shri Pramod Kumar Singh	Pr Commissioner, CGST, Jaipur
81	Govt. of India	Shri B. B. Mohapatra	Pr Commissioner, CGST, Raipur
82	Govt. of India	Shri Manas Ranjan Mohanty	Commissioner, CGST, Mumbai
83	Govt. of India	Shri Anuj Gogia	Commissioner, CGST, Uttarakhand
84	Govt. of India	Shri H. B. Negi	Commissioner, CGST, Shimla
85	Govt. of India	Shri Ashutosh Kr Baranwal	Pr. Commissioner, CGST, Chandigarh
86	Govt. of India	Shri M Srihari Rao	Commissioner, CGST, Vishakhapatnam
87	Govt. of India	Shri M. R. R. Reddy	Commissioner, CGST, Secunderabad
88	Andhra Pradesh	Dr D.Sambasiva Rao	Special Chief Secretary, Revenue

Sl. No	State/Centre	Name of the Officer	Charge
89	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner (State Tax) (GST)
90	Andhra Pradesh	Shri J. V. M. Sarma	Joint Commissioner (ST)(GST)
91	Arunachal Pradesh	Shri Kanki Darang	Commissioner (Tax, Excise &Narcotics)
92	Assam	Shri Anurag Goel	Commissioner, State Tax
93	Assam	Md. Shakeel Saadullah	Joint Commissioner (State Tax)
94	Bihar	Shri Arun Kumar Mishra	Additional Secretary, CTD
95	Bihar	Shri Binod Kumar Jha	Joint Commissioner, CTD
96	Chandigarh	Shri Mandip Singh Brar	E&TC
97	Chandigarh	Shri Ramesh Kumar Chaudhary	Asst. E&TC
98	Chhattisgarh	Ms Reena Babasaheb Kangale	Secretary and Commissioner, State Tax
99	Chhattisgarh	Shri S L Agrawal	Special Commissioner, State Tax
100	Chhattisgarh	Shri Manish Mishra	Dy Commissioner, State Tax
101	Delhi	Shri Rajeev Verma	Principal Secretary, Finance
102	Delhi	Ms Padmini Singla	Secretary, Finance
103	Delhi	Shri H. Rajesh Prasad	Commissioner, State Tax
104	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, State Tax
105	Goa	Shri Dipak Bandekar	Commissioner, CT
106	Gujarat	Shri Pankaj Joshi	Additional Chief Secretary

Sl. No	State/Centre	Name of the Officer	Charge
107	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
108	Gujarat	Shri Ridhidesh Rawal	Dy, Comm, State Tax
109	Haryana	Shri Anurag Rastogi	Principal Secretary, Excise & Taxation
110	Haryana	Shri Amit Agarwal	Commissioner, E & T Dept
111	Haryana	Shri Vijay Kumar Singh	Addl. Excise & Taxation Commissioner
112	Haryana	Shri Rajeev Chaudhary	Jt. Excise&Taxation Commissioner
113	Himachal Pradesh	Shri Sanjay Kundu	Pr. Secretary, State Taxes and Excise
114	Himachal Pradesh	Dr. Ajay Sharma	Commissioner of State Tax and Excise
115	Himachal Pradesh	Shri Rakesh Sharma	Addl. Commissioner., State Tax & Excise
116	Jammu & Kashmir	Shri P K Bhatt	Commissioner, State Tax
117	Jharkhand	Shri Prashant Kumar	Secretary cum Commissioner, State Tax
118	Jharkhand	Shri Santosh Kumar Vatsa	Special Secretary, State Tax
119	Jharkhand	Shri Brajesh Kumar	State Tax officer
120	Karnataka	Shri SrikarM.S	Commissioner, State Tax
121	Karnataka	Shri Nitesh Patil	Additional Commissioner (Intelligence), State Tax
122	Karnataka	Dr Avinash Menon	Additional Commissioner, State Tax

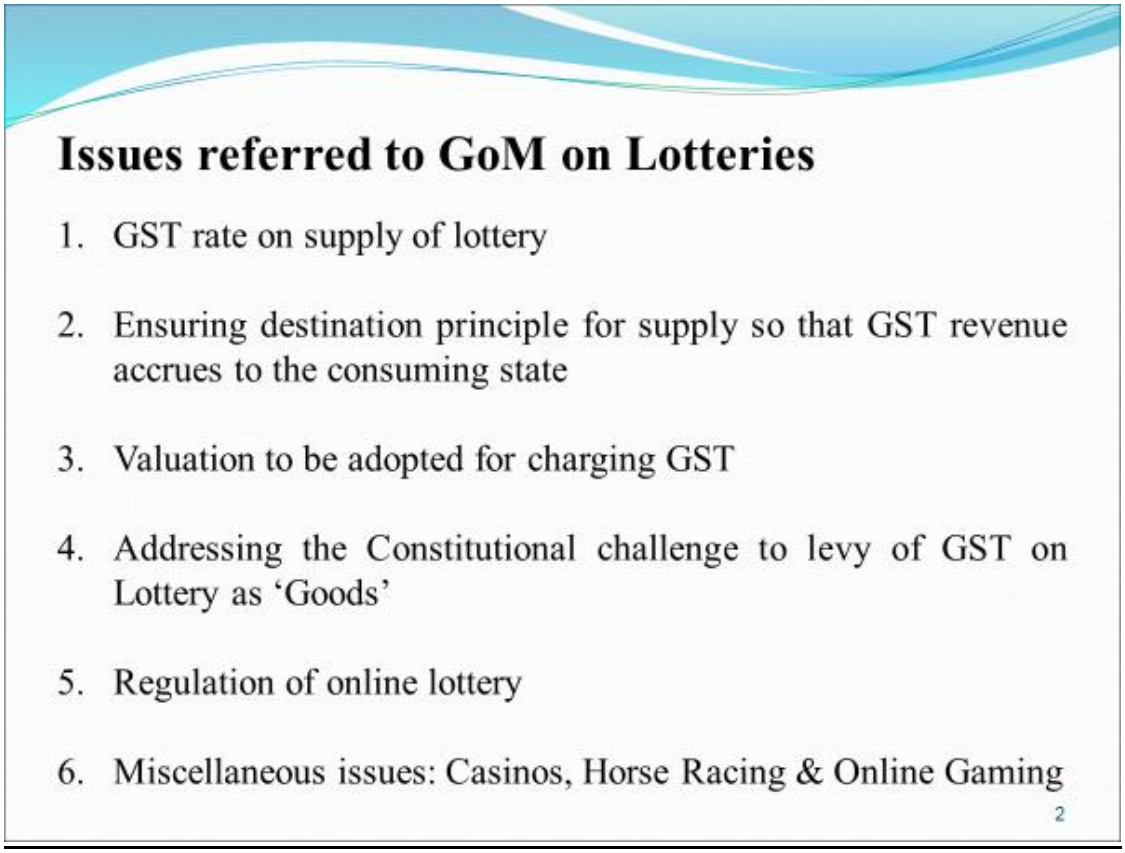
Sl. No	State/Centre	Name of the Officer	Charge
123	Kerala	Shri Manoj Joshi	Additional Chief Secretary (Finance & Taxes)
124	Kerala	Shri Anand Singh	Commissioner, State Tax
125	Madhya Pradesh	Shri Raghwendra Singh	Commissioner, State Tax
126	Madhya Pradesh	Shri Sudip Gupta	Joint Commr, State Tax
127	Madhya Pradesh	Shri Narendra Singh Chauhan	Dy. Comm, State Tax
128	Maharashtra	Shri Rajiv Jalota	Commissioner, State Tax
129	Maharashtra	Shri Kiran Shinde	Dy Commissioner, State Tax
130	Manipur	Ms. Jaspreet Kaur	Commissioner, State Tax
131	Meghalaya	Shri L Khongsit	Joint Commissioner, State Tax
132	Mizoram	Shri Vanlal Chhuanga	Commissioner & Secretary, Taxation Deptt
133	Mizoram	Shri R. Zosiamliana	Addl. Commissioner, State Tax
134	Nagaland	Shri Y Mhathung Murry	Addl Commissioner, State Tax
135	Odisha	Shri Ashok K K Meena	Principal Secretary, Finance
136	Odisha	Shri Sushil Kumar Lohani	Commissioner, CT & GST
137	Odisha	Shri Ananda Satpathy	Special Commissioner, CT & GST
138	Puducherry	Shri L Kumar	Commissioner, State Tax
139	Puducherry	Shri K Sridhar	Dy. Comm, State Tax
140	Punjab	Shri M. P. Singh	ACS cum Financial Commissioner, Taxation Deptt

Sl. No	State/Centre	Name of the Officer	Charge
141	Punjab	Shri V. K. Garg	Advisor, Financial Resources to Chief Minister
142	Punjab	Shri Vivek Pratap Singh	Excise and Taxation Commissioner
143	Punjab	Shri Pawan Garg	Deputy Excise and Taxation Commissioner
144	Rajasthan	Dr. Prithvi Raj	Secretary Finance (Revenue)
145	Rajasthan	Dr. Preetam B Yashvant	Commissioner, State Tax
146	Rajasthan	Shri Ketan Sharma	Addl. Commissioner, GST, State Tax Dept
147	Sikkim	Shri. J D Bhutia	Commissioner, State Tax
148	Tamil Nadu	Shri K. Gnanasekaran	Addl. Commissioner (Policy & Planning)
149	Tamil Nadu	Shri C Palani	Joint Commissioner, State Tax
150	Telangana	Shri Somesh Kumar	Special Chief Secretary
151	Telangana	Smt Neetu Prasad	Commissioner, State Tax
152	Telangana	Shri Laxminarayan Jannu	Addl. Commissioner, State Tax
153	Telangana	Shri N. Sai Kishore	Joint Commissioner, State Tax
154	Tripura	Shri Sudip Bhowmik	Deputy Commissioner, State Tax
155	Tripura	Shri Badal Baidya	Assistant Commissioner, State Tax
156	Uttarakhand	Dr Sunita Pandey	Deputy Commissioner, State Tax
157	Uttarakhand	Shri S.S. Tiruwa	Deputy Commissioner, State Tax

Sl. No	State/Centre	Name of the Officer	Charge
158	Uttar Pradesh	Shri Alok Sinha	Additional Chief Secretary, CTD
159	Uttar Pradesh	Ms. Amrita Soni	Commissioner, CTD
160	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, CTD
161	Uttar Pradesh	Shri Gaurav Rajput	Asst. Comm., State Tax
162	Uttar Pradesh	Shri K Mrityunjay	Asst. Comm., State Tax
163	West Bengal	Shri H.K. Dwivedi	Addl Chief Secretary, Finance
164	West Bengal	Ms Smaraki Mahapatra	Secretary, Finance
165	West Bengal	Shri Devi Prasad Karanam	Commissioner, CT
166	West Bengal	Shri Khalid Aizaz Anwar	In charge GST-PPU

Annexure 3


GOODS AND SERVICES TAX COUNCIL
Agenda on Lottery
38th GST Council Meeting, New Delhi
18th December 2019
1


Issues referred to GoM on Lotteries
1. GST rate on supply of lottery
2. Ensuring destination principle for supply so that GST revenue accrues to the consuming state
3. Valuation to be adopted for charging GST
4. Addressing the Constitutional challenge to levy of GST on Lottery as 'Goods'
5. Regulation of online lottery
6. Miscellaneous issues: Casinos, Horse Racing & Online Gaming
2

Issues pending before GoM

1. GST rate on supply of lottery

2. Miscellaneous issues: Casinos, Horse Racing and Online Gaming

3

Recommendation of GoM to 33rd GSTC Meeting on 24.02.2019 [Agenda 7(i)]

(i) A single rate of GST should be levied on lottery instead of existing two rates. (Presently, the lotteries run by the State are taxed at the rate of 12% whereas the lotteries authorized by State Government are taxed at the rate of 28%). A uniform rate would be in conformity with GST principles.

(ii) Lottery is a sin/demerit good and should be taxed at high rate of GST. GST Council may take the final decision on the appropriate single rate of tax on lottery either at the rate of 28% or 18%.

Decision of 33rd GSTC Meeting: Rate not decided and let it for GoM to decide the GST rate

4

Recommendation of GoM to 35th GSTC Meeting on 20.06.2019 [Agenda 7(i)]

(i) There was no consensus on the need for a new rate of GST on lottery. Assam, Arunachal Pradesh, Goa, Maharashtra supported single rate of GST. However, Kerala, Punjab, West Bengal and Karnataka supported the existing two rates of GST on lottery. Punjab was willing to consider lower uniform rate, if there were legal difficulties with rate differential. Therefore, the Convener of the GoM directed that the matter be placed before the GST Council and the Council decide appropriate rate structure on the supply of lottery. Given that this is a sin goods, rate of tax should be high i.e. 28% or 18%.

(ii) The constitutional challenge to the dual rate structure may be defended forcefully.

Decision of 35th GSTC Meeting: Legal Opinion of Ld. Advocate General be taken on the rate issue of lottery.

5

Legal Opinion of Learned Attorney General of India

- There would be no impediment arising out of the Constitution of India to the levy of a uniform rate of GST on 'State Run Lotteries' and 'State Authorised Lotteries'.
- Article 304 of Constitution of India, would have no bearing on the levy of differential GST on 'State Run Lotteries' and 'State Authorised Lotteries'.
- State Run Lotteries and State Authorized Lotteries can be treated as different goods.

6

Recommendation of 37th GSTC Meeting on 20.09.2019 [Annexure VII of Agenda, Vol 3]

(i) GoM on Lottery to decide the rate of GST on lottery

(ii) GoM to decide on the associated issues related to Casinos, Horse Racing and Online Gaming

- Decision of 37th GSTC Meeting: GoM on Lottery to meet and decide on the above two issues and bring it before the GST Council.

- GoM has not been able to meet due to elections in Maharashtra.

7

Writ Petition (C) No. 961/2018 by Skill Lotto Solutions Pvt Ltd at Hon'ble SC

Three main grounds by the petitioner: -

(i) GST cannot be levied on lottery as 'goods'.

(ii) GST on lotteries should be imposed after excluding the prize money component of the lottery ticket since the said amount never forms part of income in the lottery trade.

(iii) GST cannot be levied on lottery at two different rates as it is in violation of article 14, 19(1)(g), 301, 304 of the Constitution of India. The discriminatory rate of tax be set aside and all the lotteries may be taxed at the rate of 12%.

8

Writ Petition (C) No. 961/2018 by Skill Lotto Solutions Pvt Ltd at Hon'ble SC

- 30th April, 2019: Interim Order by Hon'ble SC after taking statement of ld. ASG that all the above issues will be considered by the GoM on lottery.

- 3rd December, 2019: Adjourned to 15.01.2019 after giving final opportunity to GoM/GST Council to decide on the agitated issues.

- 4th December, 2019: Shri Vikramjit Bannerji, Ld. ASG has informed Department of Revenue vide letter that Hon'ble SC has adjourned hearing of the petition to 15.01.2020, to enable the department to convey the decision of the GST Council on the issue as a final opportunity.

9

S.N.	Issue raised in the Writ Petition	Status
1	GST cannot be levied on lottery as 'goods'	GoM recommended that supply of lottery should continue to be treated as actionable claims i.e goods and leviable to GST as per the existing provisions of GST law. The 35th GST Council on 21st June 2019 accepted the decision of the GoM.
2	Impose GST on lotteries after excluding the prize money component of the lottery ticket.	GoM recommended that GST should continue to be levied on face value of lottery which includes prize money as per the existing provisions i.e Rule 31A of CGST Rules. The 35th GST Council 21st June 2019 accepted the decision of the GoM.

10

The next date of hearing in the Hon'ble SC on the matter is 15.01.2020, the Council is requested to take decision on the issue of tax rate on lottery i.e.

(a) Whether a uniform rate of GST be levied on lottery?

(b) If yes, what should be the rate of GST on lottery, 18% or 28% (or any other rate).

11

- Following issues may be referred to Law Committee as these issues were not part of the original terms of reference to the GoM: -

Supply	Request made by the industry
Casinos	Value retained by a Casino after winnings as taxable value.
Horse Racing	Value retained by a club after giving prize money as taxable value.
Online Gaming	Value retained by an online platform after giving prize money as taxable value.

- Suggest any other method to address the associated issues.
- Another set of litigation by Online gaming portals are going on.

12

Annexure 4

Committee of Officers to suggest measures to augment GST Revenue

The 38th Meeting of the GST Council
December 18, 2019

1

Contents..

- Committee of officers- constitution, TOR and deliberations
- Revenue trends
- Compensation requirement gap projections
- Evolution of GST rate structure viz a viz RNR Committee recommendation
- Suggestions from States for revenue augmentation
- Certain scenarios for revenue trends in next two years

2

Context

- After witnessing impressive growth in the fourth quarter of last FY, the GST revenue growth rate declined in recent months.
- The compensation requirements have increased significantly. The compensation cess collections are in adequate to meet this requirement.
- In view of these concerns, a Committee of Officers was constituted to suggest measures to augment revenue.

3

TOR of the Committee of Officers

- Systemic changes in GST including checks and balances to prevent misuse
- Measures to improve voluntary compliance
- Policy measures and relevant changes needed in law
- Measures for expansion of tax base
- Improved compliance monitoring and measures using data analytics
- Better administrative control

4

Constitution of Committee

- State CCTs
  - Maharashtra
  - Tamil Nadu
  - Uttar Pradesh
  - West Bengal
  - Punjab
  - Any other State (opts to join)
    - Odisha
    - M.P.
    - Haryana
    - Rajasthan
- Centre
  - Joint Secretary (Revenue)
  - Pr Commissioner GST
  - Joint Secretary (TRU I/II)
  - ADG (ARM)
  - ADG (System)
  - Joint Secretary (GST Council)
  - Executive VP, GSTN
- GSTC Sectt and GSTN
  - Joint Secretary (GST Council)
  - Executive VP, GSTN

5

Discussions in the Committee

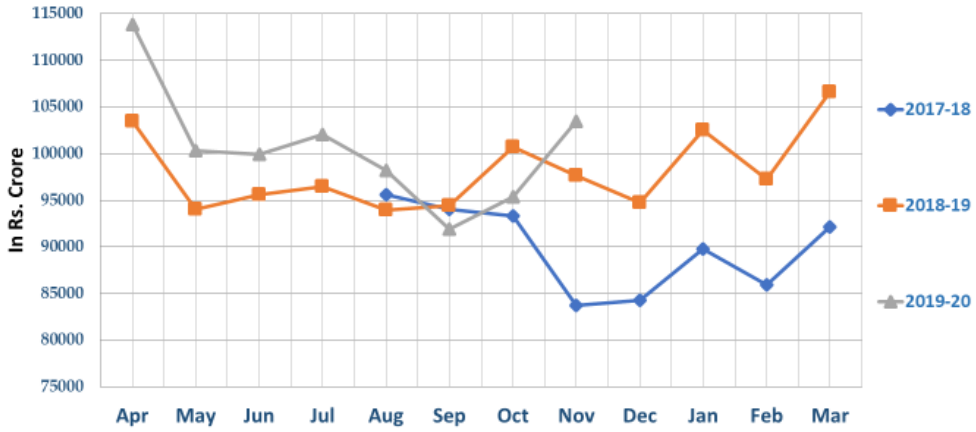
STATES were requested to provide specific suggestions on the following points

- Review of items currently under exemptions
- GST and compensation cess rates on various items
- Rate calibration for addressing the inverted duty structure
- Compliance measures other than those currently under implementation
- Any other measure to augment revenue

The Committee had elaborate discussions on 15th Oct and 12th Dec
Also exchanged views in between through mails

6

GST Gross Revenue Trends



7

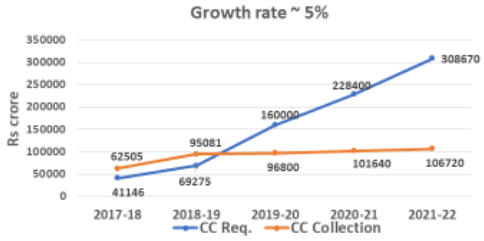
GST Gross Revenue[Centre + State]Trends

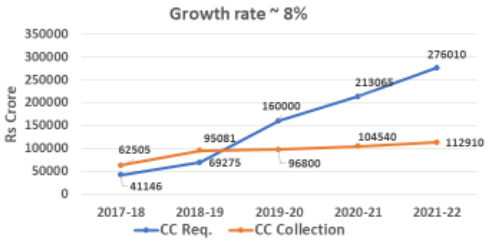
In Rs Crore

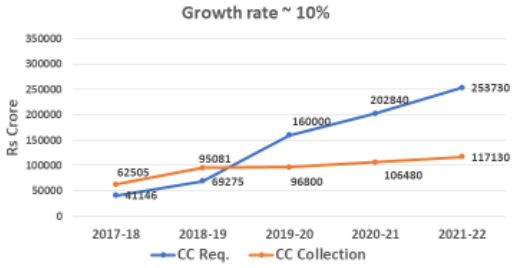
Tax Head	2017-18 (Jul –Mar)	2018-19	2018-19 (Apr –Nov)	2019-20 (Apr –Nov)	Growth (%) 19-20
GST (Dom)	4,83,716	7,89,497	5,14,245	5,56,938	**8.3**
CC (Dom)	56,319	87,289	57,482	57,637	0.3
Total Dom (A)	**5,40,037**	**8,76,786**	**5,71,727**	**6,14,575**	**7.5**
IGST Import	1,94, 414	2,90,504	1,98,043	1,83,700	**-7.2**
CC(Import)	6,201	10,079	6,546	6,891	5.3
Total Import (B)	**2,00,615**	**3,00,583**	**2,04,589**	**1,90,591**	**-6.8**
Total [A+B]	**7,40,652**	**11,77,369**	**7,76,316**	**8,05,166**	**3.7**

8

Compensation Cess requirement gap (different scenarios)







9

GST RATE RATIONALISATION..

10

Evolution of GST rates structure

- GST Rates were initially worked out on RNR basis
- However, lower than RNR rates were prescribed on a number of items
- Items placed under 28% slab had pre-GST incidence in excess of 31%
- Items like tooth paste, mineral water, soap (pre-GST incidence~30%) kept in 18% slab
- Significant post GST rate reduction and other concessions

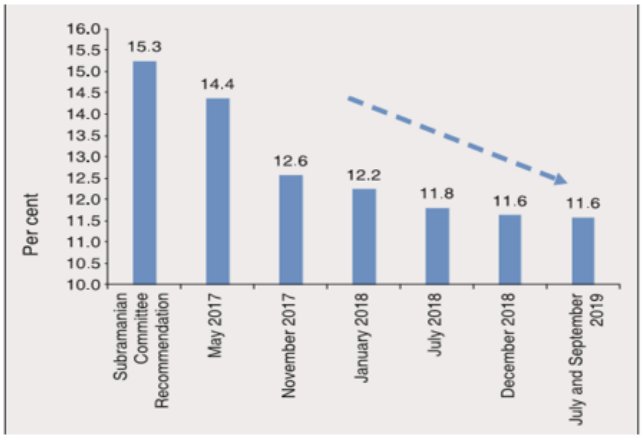
Meeting Date	GST rates reduction [No of goods]
09.09.2017	36
06.10.2017	26
10.11.2017	243
18.01.2018	24
21.7.2018	55
22.12.2018	16
20.9.2019	12
	[about 80 services]

Other concessions
Threshold increased to Rs 40 lakh in goods
Composition limit increase (Rs 75 lakh to Rs 1.5 Crore)
Composition rate lowered from 2% to 1% for manufacturers
Composition Scheme extended to services

Implications has been about Rs 1 lac crore in a year

11

Weighted Average (Effective) GST rate [RBI Report]



RBI's observation:

Enhanced buoyancy has been achieved by widening the tax base and reducing distortions

12

REVENUE NEUTRAL RATE BY THE CEA COMMITTEE

	RNR (%)	Rate on precious metals (%)	"Low" rate (Goods) (%)	"Standard" rate (%)	"High/demrit" rate or Non-GST excise (goods)
Preferred [C efficiency- 0.56]	15	6	12	16.9	40
		4		17.3	
		2		17.7	
Alternative [C-efficiency-0.53]	15.5	6	12	18.0	40
		4		18.4	
		2		18.9	

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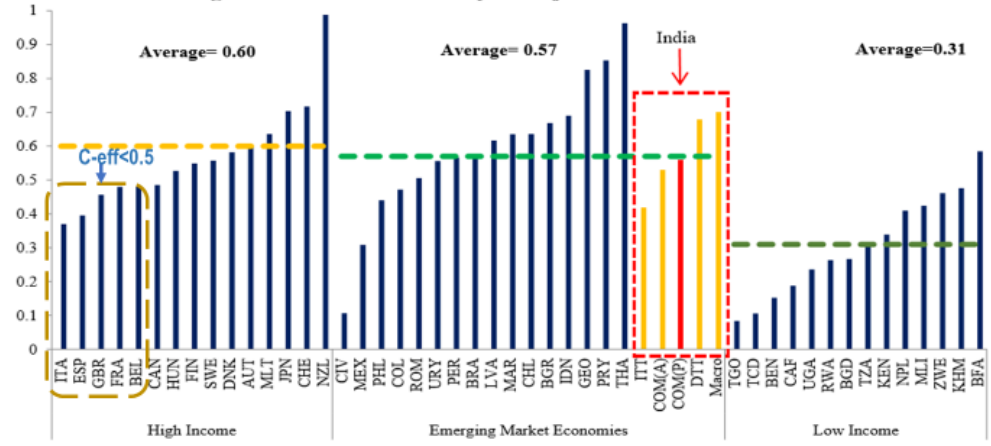
Figure 1: Collection-efficiency in Major VAT/GST Economies

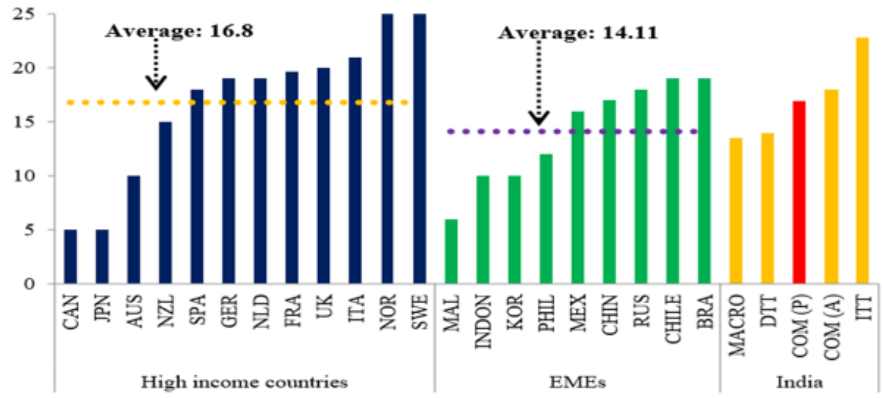


Source-IMF and Committee's calculations

From RNR Committee Report

14

Figure 2: Standard rate of VAT in High and Emerging Market Economies



Source-IMF, Credit Suisse and Committee's own calculation

From RNR Committee Report

15

RNR Committee's observation on lower rate

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

Rate-wise share in GST collection (Excluding cess)

GST rate	Cash+ITC (% share)	Cash (% share)
3%	1.1	0.7
5%	8.0	10.2
12%	11.4	8.4
18%	60.6	63.3
28%	17.9	16.4

Significant base in 5% and 12% slab

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Major items @ 5% slab

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

Major items @ 12% slab

- Mobile
- Manmade Yarns
- Apparel(>Rs1000)
- Carpets
- Paintings
- Handicrafts
- Paper
- Ghee/butter
- Pickle, jam, jellies
- Fruit Juices
- Water (20 Ltr pack)
- Specified bio pesticides
- Misc-tooth powder, candles, hand bags
- Bicycle
- Tractors
- Railway wagons
- Toys
- General pharma
- Agri machinery
- Drip irrigation
- Air travel(Business)
- State Lotteries
- Cinema (upto Rs 100)
- Accommodation (Rs1000 to 7500)

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Exemptions- Major items

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

18

Inverted duty structure

- Manufactured goods in lower rate slabs (5% // 12%) suffer inverted duty structure (IDS)
- IDS has led to
  - demand for refund ITC on services and capital goods.
  - litigation and distortions

- **Estimated refunds on account of IDS ~ Rs 20,000 crore a year**

Items
Fertilizers
Mobile phones
Footwear
Renewable equipment
Man-made yarns
Tractors
Fabrics
Pharma
RMG and Madeups
Generators/inverters
Edible oil
Job work
Aggarbatti

Items
Agri machinery
Utensil
Bicycles
LED light
Milling machines
Ink
Ethyl alcohol
Medical equip
PP_bags
Water pumps
Other Misc items

19

Suggestions received for augmenting revenue (1/2)

- RATE SLAB
  - Two rate structure 10% and 20%
  - Special higher rate on sin and luxury goods
  - Cess on goods like cosmetics, gambling, recreational services etc
  - Increase in the cess rates of existing items. Specific rates to be inflation indexed
  - Rationalisation of exemption
- COMPOSITION
  - Revise composition rate upward for manufacturers
  - Review of coverage under composition scheme
- PLUGGING LEAKAGE
  - ECO may be made principal supplier
  - MRP based levy of certain items like Pharma or goods sold to consumer
  - Capacity based levy

20

Suggestions received for augmenting revenue (2/2)

- **Specific suggestions for base broadening and rationalisation**
  - Withdrawal of exemption on certain items which are presently exempt
  - Education and health~ selective taxation of higher segments
  - Precious metal (3% to 5%)
  - Moving items from 5% /12% to higher slabs (like mobile from 12% to 18%)
  - Revisit rates on certain items which went from 28%to 18%
- **Improving compliance**
  - Suggestions were also received on procedural side, input tax credit, widening of TDS. A number of these, like e-invoice are under implementation.

21

Revenue scenarios if current position continues

Revenue growth rate	Financial year	CESS requirement (Rs Cr)	CESS GAP (Rs Cr)	Extent to which compensation covered (%)
5%	2019-20	1,60,000	63,200	8.5
	2020-21	2,28,400	1,26,760	6.2
	2021-22	3,08,670	2,01,950	4.8
8%	2020-21	2,13,060	1,08,520	6.9
	2021-22	2,76,010	1,63,100	5.7
10%	2020-21	2,02,840	96,360	7.3
	2021-22	2,53,730	1,36,600	6.5

- **Increase in compensation cess rates would not yield any significant revenue to meet this gap**

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Annexure 5

Best Practices in GST

Commercial Tax Department
Uttar Pradesh

1

REGISTRATION PROCESS

Verification of Registration

- Physical Verification of new registration through mobile app
- Aim to physically verify all the Registered dealers, More than 1.1 lakh dealers verified so far.
- Provision of recording discrepancy in the Place of Business vis a vis nature of business declared by dealers.

2

Encouraging New Registrations

- Enumeration of all the business activities in all Urban Local Bodies and big Gram Panchayats.
- Collecting information from various departments of the state and agencies viz. Paytm etc. to create database of business entities eligible for registration.
- Aim to register all eligible dealers.
- Taking help of Vyapari Kalyan Board and local associations in the process
- Awareness campaign through news paper advertisements and seminars.

3

Return Filing

- Return filing alert SMS to eligible dealers on 5th,15th & 18th of every month.

  (More than 86 Lakh sms sent from April 2019 to Nov-2019)
- Online Notice generation for all non-filers on 25th of the month.

  (More than 13 Lakh Notices Issued from April 2019 to Nov-2019)
- Online monitoring system for the disposal of notices.
- Action against the regular non-filers as per the provisions in GST.

4

Return Filing Status (State Dealers)

Tax Period	Filing Percentage	Non Filing Percentage
Apr-19	97.72	2.28
May-19	97.25	2.75
Jun-19	96.62	3.38
Jul-19	95.92	4.08
Aug-19	95.04	4.96
Sep-19	93.56	6.44
Oct-19	90.39	9.61

5

Dealer Risk Profiling

- Dynamic Dealer risk profiling on the basis of compliance and transactional data.
- Dealer Score on the basis of criticality of the parameter for tax evasion.
- Monthly dealer Score for **Scrutiny** and Mean Dealer Assessment Score for **Enforcement purpose**.
- Zone, Region & Sector wise risk Scores available in Officer login.

6

RFID

- RFID system to monitor the vehicle movement in, from & through the State.
- RFID Towers at 41 strategic locations capable of capturing the Fastag and customized State RFID tag.
- More than 3 lakh RFID tags affixed on vehicles
- Through RFID technology, multiple usage of E-Way bill case was caught & Rs. 87.5 Lakh got deposited by single vehicle carrying pan masala.

7

Mobile Management System(MMS)

- Red flagging of Vehicles, Transporter and dealers on the basis of data.
- All the mobile units are equipped with vehicle tracking system.
- Centralized command centre for monitoring of mobile units.
- From online detention memo to Appeal …complete process is online.

8

SIB management System(SMS)

- All functionalities of Investigation & Raids are online
- Case profiles are filled online and monitoring is also online
- Body-worn camera for the Investigating Units during Raids.
- Centralized enforcement units at H.Q. for effective investigation and raids based on data analysis and other information.

9

Weekly monitoring of functional parameters

- **Registration application disposal & verification**
- **Return Filing**
  - Action against Non-Filers
  - Return Scrutiny
  - Red flag dealers scrutiny and follow up
- **Adjudication of SIB cases**
- **Recovery & Collection**
- **Refund Application disposal**

10

Suggestions for Revenue Augmentation

Systemic changes in GST including checks and balances to prevent misuse

- Need to capture B2C transactions.
- Seamless integration between GSTN, DGFT, banks, RBI, STPI and Special Economic Zones (SEZ) for effective monitoring

11

Suggestions for Revenue Augmentation

Measures to improve voluntary compliance

- Regular communication with dealers through SMS and app on weekly basis
- An incentive scheme for dealers involved in B2C supplies may be envisaged.

12

Suggestions for Revenue Augmentation

Policy measures and relevant changes needed in the law

- Enforce the provisions of Rule 138(7).
- Compulsory e-invoicing for sensitive commodities and services.
- Government departments, which are registered as normal tax payer for their outward supplies on forward charge, should not be provided facility of any outward supply on RCM basis.

13

Suggestions for Revenue Augmentation

Improved compliance monitoring and anti-evasion measures using better data analytics

- There should be HSN and SAC wise mapping of commodities and services at time of Registration.
- Real-time data sharing between NHAI, GSTN and State and Centre.

14

Annexure 6

Measures taken by the Government of J&K to improve Revenue Collections

Finance Department Government of J&K

38th Meeting of GST Council ,18th December,2019

1

Revenue Trends in 2019-20

•During the current financial year, the collections for the period April to July stood at 1769 crores against the collection of Rs. 1365 crores for the corresponding period of 2018-19 registering thereby a robust growth of 26%.

•On an average the revenue collections increased to Rs.442 crores per month up to July 2019

•Due to extension in date of filling of returns post August 2019 the average collections have declined to 362 crores per month (ending November,2019)

•The total collection of SGST ending November 2019 is Rs. 2957.28 crores against Rs. 2851.49 crores collected ending November 2018 thereby reducing the percentage of growth from 26% ending July 2019 to 3.71 % ending November 2019

•Importantly, the overall collection still continues to witness growth, despite several challenges . This has been possible due to a number of enabling activities taken up by Government.

2

Revenue trends under GST for the last four months

Comparative Month-wise Revenue Statement under GST

(Rs. in Crore)

Month	Revenue Realized during F.Y. 2019-20					Revenue Realized during F.Y. 2018-19				
	State Goods & Service Tax (SGST)	Provisional Settlement of IGST	Ad-hoc/Advance settlement from IGST	Compensation (Grant-in-aid)	Total (1+2+3+4)	State Goods & Service Tax (SGST)	Provisional Settlement of IGST	Ad-hoc/Advance settlement from IGST	Compensation (Grant-in-aid)	Total (6+7+8+9)
	1	2	3	4	5	6	7	8	9	10
August	111.62	200.02	-30.58	470.00	751.06	129.78	225.78	72.00	0.00	427.56
September	99.02	139.69	-15.47	0.00	223.24	128.93	220.94	0.00	415.00	764.87
October	123.01	155.23	-27.42	0.00	250.82	132.80	226.04	178.80	292.00	829.64
November	160.54	198.83	0.00	0.00	359.37	127.11	265.58	0.00	0.00	392.69

The above chart shows that though there was some decline in SGST collection in the months of August & September, the collections have picked up momentum in October & witnessed growth in November.

Return filling trends

- J&K has a tax base of approximately one lac registered tax payers
- On an average 70 per cent of the taxpayers file their returns in time (some of the dealers may not be required to file returns due to increase in threshold level but may not have cancelled the registration due to connectivity issues)
- Post July 2019, 38304 returns were filed in the month of August, 36212 in the month of September and 31888 in the month of October, which is nearly 50% of the regular returns filed, despite significant constraints
- Return filling percentage in Kashmir Division was particularly impacted for the months of August, September and October and was only 6 Per cent primarily due to constraints in internet connectivity
- Return filling percentage has increased in the month of December as a result of establishment of facilitation centres through out the UT and enabling of machine generated SMS for sending OTPs.

4

Government acted as enabler and facilitator in carrying out the business activities in the UT of J&K

Total banking transactions in UT of J&K made from 01-08-2019 to 26-11-2019 were 79932020 and amount transacted was Rs 297,769.94 crore out of which ATM transactions made were 18654441 and ATM withdrawals amounted to Rs 10243.29 crore.

- The monthly disbursement from the Treasuries of UT of J&K reflected and upward trend thereby increasing liquidity which has in creating momentum in the economy. Timely payments has been the hallmark since August

The comparative monthly details of disbursements for the periods are as under:-

Month	Financial Year 2018–19 (Rs In crore)	Financial Year 2019–20 (Rs In crore)
1	2	3
April	2966.94	3528.16
May	3134.33	4207.02
June	4151.10	3897.24
July	3952.63	4483.84
August	4007.84	4599.88
September	3965.40	4958.60
30th October	3901.77	5179.19
Total	26080.01	30853.93

5

Inward and Outward Supplies in respect of J&K under GST (Comparative) based e-way bill data

Month	Type	No. of EWB 2018	2018 Invoice Value (in Crore)	No. of EWB 2019	2019 Invoice Value (in Crore)
August	Inward	180173	5833.00	107815	4008.00
August	Outward	30376	2737.00	28043	2552.00
Total		210549	8570.00	135858	6560.00
September	Inward	186069	5703.00	147725	6427.00
September	Outward	30149	2339.00	29849	2547.00
Total		216218	8042.00	177574	8974.00
October	Inward	202717	5739.00	199564	5062.00
October	Outward	32807	2334.00	28277	2148.00
Total		235524	8073.00	227841	7210.00
November	Inward	165151	5041.00	176117	5130.00
November	Outward	26704	1891.00	27563	2107.00
Total		191855	6933.00	203680	7237.00

Analysis of the data shows there has been gradual increase in volume of e-way bill generation from August to October indicating the growth in business transactions.

6

Month-wise Toll Tax Collected during 2018-19 & 2019-20 (upto 17/12/2019) in respect of Excise Department, J&K

Rs. In lacs

S.No.	Month	2018-19	2019-20
1	April	7361.31	7683.10
2	May	8349.99	8696.06
3	June	8283.79	8726.34
4	July	7616.35	9148.10
5	August	8543.58	6991.56
6	September	8286.06	7796.91
7	October	8659.17	8388.72
8	November	7282.51	8179.65
	Total	64382.76	65610.44

Analysis of the data indicates that there has been substantial decrease in Imports and Exports in the month of August but the same has registered upward trend from September onwards.

7

Measures taken by the Government to augment revenue collections

- Establishment of over 60 facilitation centres with 118 systems for providing assistance to the tax payers in filling their returns covering all districts and all circles of UT
- Increase in e way bill verifications for both in ward and outward supplies. Presently 66 per cent(approx) of the e way bill generated are verified despite having connectivity issues in the UT
- Increase in the enforcement activities by way of physically verifying the goods
- Verification of the business premises of all the tax payers post approval of registration
- Use of red flag data provided by the GSTN particularly with respect to the return defaulters and mismatch of ITC.

(.....cont)

8

Establishment of Facilitation Centers

1. Kashmir Division

TAX PAYER'S CIRCLE	LOCATION	ADDRESS OF FACILITATION CENTRE
A to R	OFFICE OF THE STATE TAXES OFFICER CIRCLE A to R SRINAGAR	EXCISE AND TAXATION COMPLEX SOLINA RAMBAGH
BUDGAM	OFFICE OF THE STATE TAXES OFFICER CIRCLE BUDGAM	OFFICE OF THE STATE TAXES OFFICER CIRCLE BUDGAM
BARAMULLA I,II,III (Sopore)	OFFICE OF THE STATE TAXES OFFICER CIRCLE BARAMULLA I,II,III (Sopore)	OFFICE OF THE STATE TAXES OFFICER CIRCLE BARAMULLA I,II,III (Sopore)
KUPWARA	OFFICE OF THE STATE TAXES OFFICER CIRCLE KUPWARA	OFFICE OF THE STATE TAXES OFFICER CIRCLE KUPWARA
ANANTNAGI,II,III	OFFICE OF THE STATE TAXES OFFICER CIRCLE ANANTNAG I,II,II	OFFICE OF THE STATE TAXES OFFICER CIRCLE ANANTNAG I,II,II
PULWAMA	OFFICE OF THE STATE TAXES OFFICER CIRCLE PULWAMA	OFFICE OF THE STATE TAXES OFFICER CIRCLE PULAWAMA

DISTRICT	ADDRESS
Bandipore	Office of the District Development Commissioner, Bandipore, Kashmir
Ganderbal	Office of the District Development Commissioner, Ganderbal, Kashmir
Shopian	Office of the District Development Commissioner, Shopian, Kashmir
Kulgam	Office of the District Development Commissioner, Kulgam, Kashmir

9

Establishment of Facilitation Centers

2. Jammu

TAX PAYER'S CIRCLE	LOCATION	ADDRESS OF FACILITATION CENTRE
A to S	GST COMPUTER LAB	FOURTH FLOOR EXCISE AND TAXATION COMPLEX,RAILHEAD,JAMMU
POONCH	OFFICE OF THE STATE TAXES OFFICER CIRCLE POONCH	OFFICE OF THE STATE TAXES OFFICER CIRCLE POONCH
RAJOURI	OFFICE OF THE STATE TAXES OFFICER CIRCLE RAJOURI	OFFICE OF THE STATE TAXES OFFICER CIRCLE RAJOURI
UDHAMPUR I,II	OFFICE OF THE STATE TAXES OFFICER CIRCLE UDHAMPUR I	OFFICE OF THE STATE TAXES OFFICER CIRCLE UDHAMPUR I
SAMBA	OFFICE OF THE STATE TAXES OFFICER CIRCLE SAMBA	OFFICE OF THE STATE TAXES OFFICER CIRCLE SAMBA
KATHUA I	OFFICE OF THE STATE TAXES OFFICER CIRCLE KATHUA I	OFFICE OF THE STATE TAXES OFFICER CIRCLE KATHUA I
KATHUA II	OFFICE OF THE DEPUTY COMMISSIONER STATE TAXES (ENFORCEMENT) LAKHANPUR	OFFICE OF THE DEPUTY COMMISSIONER STATE TAXES (ENFORCEMENT) LAKHANPUR
KISHTWAR	OFFICE OF THE STATE TAXES OFFICER CIRCLE KISHTWAR	OFFICE OF THE STATE TAXES OFFICER CIRCLE KISHTWAR
DODA	OFFICE OF THE STATE TAXES OFFICER CIRCLE DODA	OFFICE OF THE STATE TAXES OFFICER CIRCLE DODA
RAMBAN	OFFICE OF THE STATE TAXES OFFICER CIRCLE RAMBAN	OFFICE OF THE STATE TAXES OFFICER CIRCLE RAMBAN

The tax payers located in District of Reasi can use the facility at the State Taxes Department help desk established in the office of the District Development Commissioner, Reasi, Jammu

10

- Use of ITC verification tools in case of the tax payers who never pay tax in cash
- Creation of enforcement groups for verifying the day wise supplies of the tax payers.
- Regular surveys particularly with respect to the service providers.
- Use of the Back office Intelligence tool for identifying the tax evaders.
- Spot Verification of business premises of all the newly registered tax payers under GST.
- Deployment of the enforcement teams on the unconventional routes so as to prevent the smuggling of goods.
- Monitoring of top 500 tax payers

11

Constraints

- J&K being the end point consumption place face problems particularly with respect to the divisibility of the consignments below the value of rupees fifty thousand in order to avoid the eway bill generation.
- No check on the purchases made by the unregistered persons using Adhar or PAN and invoicing the consignments below fifty thousand.
- Exemption on eway bill generation on the goods supplied through post offices.
- Non availability of auto invoice matching system.

12

Annexure 7



Agenda on Real Estate
GST Council Meeting on 18th December, 2019

1

Pending issues discussed by GoM in its 2nd meeting

- **Punjab:** To exempt GST on long term lease of lands by private/ semi private bodies for setting industrial parks.

- **West Bengal:** To exempt GST on supply of construction services provided by the Co-operative Housing Society to its members
- **Maharashtra**: To provide preferential tax treatment to:
  - redevelopment of old buildings where the residents enter into a JDA with the developer.
  - free houses provided to slum dwellers in a slum rehabilitation/ redevelopment project
- **Maharashtra**: To review the value limit of Rs. 45 lakhs in the definition of affordable residential apartment for a metropolitan region.

2

Issue 1: GST on long term lease of lands by private/ semi private bodies for setting industrial parks.

Present GST rates:

Service	Rate
upfront amount payable for grant of long term lease of land (30 years, or more) of industrial plots or plots for development of infrastructure for financial business, ○ provided by the **State Government** Industrial Development Corporations/ Undertakings or any other entity having **50% or more** ownership of Government ○ to industrial units or developers ○ in any industrial or financial business area	Exempt
upfront amount payable for grant of long term lease of land (30 years, or more) of industrial plots or plots for development of infrastructure for financial business, ○ provided by **private entities** or any other entities where ownership of government is **less than 50%** ○ to industrial units or developers ○ in any industrial or financial business area	18%

3

Issue 1: GST on long term lease of lands by private/ semi private bodies for setting industrial parks.

Recommendation of GoM:

Service	Rate
upfront amount payable for grant of long term lease of land (30 years, or more) of industrial plots or plots for development of infrastructure for financial business, ○ provided by the **State Government** Industrial Development Corporations/ Undertakings or any other entity having **20% or more** ownership of Government ○ to industrial units or developers ○ in any industrial or financial business area	Exempt
upfront amount payable for grant of long term lease of land (30 years, or more) of industrial plots or plots for development of infrastructure for financial business, ○ provided by **private entities** or any other entities where ownership of government is **less than 20%** ○ to industrial units or developers ○ in any industrial or financial business area	5%

4

Safeguards:

- In case of **breach of land use** from industrial use to any other use,
  - the **exemption shall be withdrawn** and
  - **GST with interest and penalty** shall be recovered **jointly and severally** from the entity that has availed the exemption originally and all lessees who have subsequently purchased or entered into lease agreement
- The above condition shall be **monitored and enforced** by the State Government.

5

Issue 2, 3 and 4: Deferred by GoM

Issues	Reasons
Issue 2: GST on supply of construction services provided by the Co-operative Housing Society to its members	State of West Bengal to provide more data and examples
Issue 3: To provide preferential tax treatment to: • redevelopment of old buildings where the residents enter into a JDA with the developer. • free houses provided to slum dwellers in a slum rehabilitation/ redevelopment project	At the time of meeting of GoM; Hon'ble finance Minister of Maharashtra had not been appointed
Issue 4: To review the value limit of Rs. 45 lakhs in the definition of affordable residential apartment for a metropolitan region.	

6

Annexure 8

PPT for 38th GST Council

- **18th December 2019 New Delhi**
- december 2019

1

Agenda 9: Deemed Ratification of Notifications, Circulars, Orders etc. (1/6)

Notifications issued under CGST Act, IGST Act and GST (Compensation to States) Act	
Notification No. 42/2019 - Central Tax dated 24.09.2019	Seeks to bring rules 10, 11, 12 and 26 of the CGST (Fourth Amendment) Rules, 2019 in to force
Notification No. 43/2019 - Central Tax dated 30.09.2019	Seeks to amend notification No 14/2019- Central Tax dated 7.3.2019 so as to exclude manufacturers of aerated waters from the purview of composition scheme
Notification Nos. 44/2019, 45/2019, 46/2019 - Central Tax all dated 09.10.2019	Seeks to prescribe the due date for furnishing of return in FORM GSTR-3B and FORM GSTR-1 (for both above and below 1.5 crore rupees aggregate turnover) for the month(s)/quarter, from October, 2019 to March, 2020
Notification No. 47/2019 - Central Tax dated 09.10.2019	Seeks to make filing of annual return under section 44 (1) of CGST Act for F.Y. 2017-18 and 2018-19 optional for small taxpayers whose aggregate turnover is less than Rs 2 crores and who have not filed the said return before the due date.
Notification No. 48/2019 - Central Tax dated 09.10.2019	Seeks to amend notification No. 41/2019 – Central Tax, dated the 31st August, 2019.
Notification No. 49/2019 - Central Tax dated 09.10.2019	Seeks to carry out changes in the CGST Rules, 2017.
Notification No. 50/2019 - Central Tax dated 24.10.2019	Seeks to extend the last date for filing of FORM GST CMP-08 for the quarter July-September 2019 by four days from 18.10.2019 till 22.10.2019.
Notification No. 51/2019, - Central Tax dated 31.10.2019	Seeks to amend notification No. 2/2017- Central Tax in order to notify jurisdiction of Jammu Commissionerate over UT of J&K and UT of Ladakh

2

Agenda 9: Deemed Ratification of Notifications, Circulars, Orders etc. (2/6)

Notifications under CGST Act, IGST Act and GST (Compensation to States) Act,	
Notification No. 52/2019, 53/2019, 54/2019 and 55/2019 – Central Tax all dated 14.11.2019	Seeks to extend the due date for furnishing FORM GSTR-3B, FORM GSTR-7 and FORM GSTR-1 (for both above and below 1.5 crore rupees aggregate turnover) for registered persons in Jammu and Kashmir for the month(s)/quarter from July, 2019 to September, 2019
Notification No. 56/2019 – Central Tax dated 14.11.2019	Seeks to carry out Seventh amendment (2019) in the CGST Rules, 2017. [Primarily related to Simplification of the Annual Return / Reconciliation Statement]
Notification No. 57/2019, 58/2019, 59/2019, 60/2019 and 61/2019 – Central Tax dated 26.11.2019	Seeks to extend the due date for furnishing of return in FORM GSTR-1, FORM GSTR-3B and FORM GSTR-7 for registered persons in Jammu and Kashmir
Notification No. 62/2019 – Central Tax dated 26.11.2019	Seeks to notify the transition plan with respect to J&K reorganization w.e.f. 31.10.2019
Notification No. 04/2019 - Integrated Tax dated 30.09.2019	Seeks to notify the place of supply of R&D services related to pharmaceutical sector as per Section 13(13) of IGST Act, as recommended by GST Council in its 37th meeting held on 20.09.2019.
Notification No. 02 /2019-Compensation Cess (Rate) dated 30.09.2019	Seeks to amend notification No. 1/2017-Compensation Cess (Rate), dated 28.6.2017 on the recommendations of the GST Council in its 37th meeting dated 20.09.2019.
Notification No. 03 / 2019-Compensation Cess (Rate) dated 30.09.2019	Seeks to disallow the refund of compensation cess in case of inverted duty structure for tobacco and manufactured tobacco substitutes.

3

Agenda 9: Deemed Ratification of Notifications, Circulars, Orders etc. (3/6)

Rate notifications issued under CGST Act, UTGST Act and IGST Act, 2017	
Notification No. 14/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No 1/2017-Central Tax (Rate) dated 28.6.2017 so as to specify effective CGST rates for specified goods, to give effect to the recommendations of the GST Council in its 37th meeting dated 20.09.2019. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 15/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No 2/2017- Central Tax (Rate) dated 28.6.2017 so as to grant exemption to dried tamarind and cups, plates made of leaves, bark and flowers of plants. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 16/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No. 3/2017- Central Tax (Rate) dated 28.6.2017 so as to extend concessional CGST rates to specified projects under HELP/OALP, and other changes. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 17/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No 26/2018- Central Tax (Rate) dated 31.12.2018, so as to exempt CGST on supplies of silver and platinum by nominated agencies to registered persons. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 18/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No 2/2019- Central Tax (Rate) dated 7.3.2019 so as to exclude manufacturers of aerated waters from the purview of composition scheme. [similar rate notification issued under UTGST Act, 2017]
Notification No. 19/2019-Central Tax (Rate) dated 30.09.2019	Seeks to exempt supply of goods for specified projects under FAO. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 20/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by GST Council in its 37th meeting held on 20.09.2019. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]

4

Agenda 9: Deemed Ratification of Notifications, Circulars, Orders etc. (4/6)

Rate notifications issued under CGST Act, UTGST Act and IGST Act, 2017	
Notification No. 21/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No. 12/2017- Central Tax (Rate) to exempt services as recommended by GST Council in its 37th meeting held on 20.09.2019 [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No. 13/2017- Central Tax (Rate) so as to notify services under reverse charge mechanism (RCM) as recommended by GST Council in its 37th meeting held on 20.09.2019 [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 23/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No. 4/2018 - Central Tax (Rate), dated the 25th January, 2018, by adding an explanation on the applicability of provisions related to supply of development rights. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 24/2019-Central Tax (Rate) dated 30.09.2019	Seeks to amend notification No. 7/2019 - Central Tax (Rate), dated the 29th March, 2019 by amending the entry related to cement [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 25/2019-Central Tax (Rate) dated 30.09.2019	Seeks to notify the grant of alcoholic liquor licence neither a supply of goods nor a supply of service as per Section 7(2) of CGST Act, 2017. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]
Notification No. 26/2019-Central Tax (Rate) dated 22.11.2019	Seeks to insert explanation regarding Bus Body Building in Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. [similar rate notification issued under UTGST Act, 2017 and IGST Act, 2017]

5

Agenda 9: Deemed Ratification of Notifications, Circulars, Orders etc. (5/6)

Circulars issued under CGST Act, 2017	
Circular No. 110/29/2019 – GST dated 03.10.2019	Seeks to clarify the eligibility to file a refund application in FORM GST RFD-01 for a period and category.
Circular No. 111/30/2019 – GST dated 03.10.2019	Seeks to clarify procedure to claim refund in FORM GST RFD-01 subsequent to favourable order in appeal or any other forum.
Circular No. 112/31/2019 – GST dated 03.10.2019	Seeks to withdraw Circular No. 105/24/2019-GST dated 28.06.2019 regarding treatment of secondary or post-sales discounts under GST.
Circular No. 113/32/2019 – GST dated 11.10.2019	Clarification regarding GST rates & classification (goods) Circular.
Circular No. 114/33/2019 – GST dated 11.10.2019	Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both
Circular No. 115/34/2019 – GST dated 11.10.2019	Clarification on issue of GST on Airport levies.
Circular No. 116/35/2019 – GST dated 11.10.2019	Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts by individual donors.
Circular No. 117/36/2019 – GST dated 11.10.2019	Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India.
Circular No. 118/37/2019 – GST dated 11.10.2019	Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry.
Circular No. 119/38/2019 – GST dated 11.10.2019	Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997.

6

Agenda 9: Deemed Ratification of Notifications, Circulars, Orders etc. (6/6)

Circulars issued under CGST Act, 2017	
Circular No. 120/39/2019 – GST dated 11.10.2019	Clarification on the effective date of explanation inserted in notification No. 11/2017- Central Tax (Rate) dated 28.06.2017, Sr. No. 3(vi).
Circular No. 121/40/2019 – GST dated 11.10.2019	Clarification related to supply of grant of alcoholic liquor license.
Circular No. 122/41/2019 – GST dated 05.11.2019	Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons- reg.
Circular No. 123/42/2019 – GST dated 11.11.2019	Seeks to clarify restrictions in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017.
Circular No. 124/43/2019 – GST dated 18.11.2019	Seeks to clarify optional filing of annual return under notification No. 47/2019-Central Tax dated 9th October, 2019.
Circular No. 125/44/2019 – GST dated 18.11.2019	Seeks to clarify the fully electronic refund process through FORM GST RFD-01 and single disbursement.
Circular No. 126/45/2019 – GST dated 22.11.2019	Clarification on scope of the notification entry at item (id), related to job work, under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017
Circular No. 127/46/2019 – GST dated 04.12.2019	Seeks to ab-initio withdraw the Circular No. 107/26/2019 dated 18.07.2019.
Removal of Difficulties Order issued under CGST Act, 2017	
Order No.8/2019 - Central Tax dated 14.11.2019	Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31st December, 2019 and for FY 2018-19 till 31st March, 2020
Order No. 9/2019 - Central Tax dated 03.12.2019	Issuance of Removal of Difficulties Order so as to extend the last date for filing of appeals before the GST Appellate Tribunal against orders of Appellate Authority on account of non-constitution of benches of the Appellate Tribunal.

Agenda 9: Deemed Ratification of Notifications issued after Agenda circulation

Notifications under CGST Act, IGST Act and GST (Compensation to States) Act,	
Notification No. 63/2019, 64/2019, 65/2019, 66/2019 and 67/2019 – Central Tax dated 12.12.2019	Seeks to extend the due date for furnishing of return in FORM GSTR-1, FORM GSTR-3B and FORM GSTR-7 for registered persons in Jammu and Kashmir
Notification No. 68/2019 – Central Tax dated 13.12.2019	Seeks to carry out Eighth amendment (2019) in the CGST Rules, 2017. [Primarily related to introducing provisions related to e-Invoicing]
Notification No. 69/2019 – Central Tax dated 13.12.2019	Seeks to notify the common portal for the purpose of e-invoice
Notification No. 70/2019 – Central Tax dated 13.12.2019	Seeks to notify the class of registered person required to issue e-invoice
Notification No. 71/2019 – Central Tax dated 13.12.2019	Seeks to give effect to the provisions of rule 46 of the CGST Rules, 2017
Notification No. 72/2019 – Central Tax dated 13.12.2019	Seeks to notify the class of registered person required to issue invoice having QR Code

Agenda 10 :GIC decisions post 37th GST Council Meeting (1/4)

GIC decision by circulation dated 10th October, 2019

- The proposal regarding the scope the term 'bus body building' and Perceived overlap between entries at item (id) and (iv) under heading 9988

✓ Notification No. 26/2019- Central Tax (Rate) dated 22nd November 2019 and Circular No. 126/45/2019-GST dated 22nd November 2019 issued

32nd GIC meeting dated 16th October 2019

- Issuance of Circular on fully electronic refund process through FORM GST RFD-01 and single disbursement

✓ Circular No. 125/44/2019 – GST dated 18th November 2019 issued.

- Clarification regarding optional filing of annual return under notification No. 47/2019-Central Tax dated 9th October, 2019

✓ Circular No. 124/43/2019 – GST dated 18th November 2019 issued.

- Changes to statements 1A, 2 & 3 in Annexure–1 of FORM GST-RFD-01

✓ Notification No. 56/2019–Central Tax dated 14th November, 2019 issued.

9

Agenda 10 :GIC decisions post 37th GST Council Meeting (2/4)

GIC decision by circulation dated 19th October, 2019

- The proposal for extension of last date for filing FORM CMP-08 for the quarter of July, 2019 to September ,2019 was approved

✓ Notification No. 50/2019- Central Tax dated 24th October 2019

GIC decision by circulation dated 31st October, 2019

- The proposal before the GIC was regarding extension of due dates for filing of FORM GSTR-1, FORM GSTR-7 and FORM GSTR-3B for the months of July, August, September 2019 for the State of Jammu and Kashmir

✓ Notification No. 52/2019-Central Tax, dated 14th November 2019, 53/2019-Central Tax, dated 14th November 2019, 54/2019-Central Tax, dated 14th November 2019, 55/2019-Central Tax, dated 14th November 2019, Notification No. 57/2019-Central Tax, dated 26th November 2019, Notification No. 58/2019-Central Tax, dated 26th November 2019, Notification No. 59/2019-Central Tax, dated 26th November 2019, Notification No. 60/2019-Central Tax, dated 26th November 2019 and Notification No. 61/2019-Central Tax, dated 26th November 2019 & Notification Nos. 63 to 67/2109-Central tax dated 12th December 2019 issued.

10

Agenda 10 :GIC decisions post 37th GST Council Meeting (3/4)

33rd GIC meeting dated 09th November 2019

- Simplification of Annual Return and Reconciliation Statement for FY 201:7-18 and 2018-19

✓ Notification Nos. 56/2019 dated 14th November 2019 and Removal of Difficulties Order No. 8/2019 – Central Tax dated 14th November 2019 were issued.

- Clarifications on restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017

✓ Circular No. 123/42/2019– GST dated 11th November 2019

- Amendment to Notification No. 50/2017-Customs dated 30th June, 2017 with respect to requirement of 'end-use certificates' to be issued by and Bond to be submitted to GST Officers

✓ The GIC agreed that a SOP including the mechanism for recovery of IGST in case of non-fulfilment of certification requirements and imposition of penalty, interest if any, may be prepared and shared. The GIC deferred the agenda item

11

Agenda 10 :GIC decisions post 37th GST Council Meeting (4/4)

Decision by Circulation - 11th November 2019

- Proposal regarding the transition plan for the State of Jammu and Kashmir in view of the reorganization of the erstwhile State of Jammu and Kashmir into two Union territories w.e.f. 31.10.2019 by way of issuance of notification under Section 148 of CGST Act, 2017 as made applicable to the UTGST Act, 2017.

✓ Notification No. 62/2019 – Central Tax dated 26th November 2019 issued.

34th GIC meeting dated 2nd December 2019

- Implementation of e-invoice scheme and QR code

✓ Notification Nos. 68 to 72/2019-Central Tax dated 13.12.2019 issued.

- GIC agreed to rescind the Circular No. 107/26/2019-GST dt. 18.07.2019 ab-initio.

✓ Circular No. 127/46/2019-GST dated 04.12.2019 was issued.

12

Agenda Item 6(i) :SOP on non filers

Issuance of a Circular to clarify Standard Operating Procedure to be followed in case of non-filers of returns

- A system generated message to be sent to all return defaulters immediately after the due date;
- A notice in **FORM GSTR 3A** to be sent by the proper officer five days after the due date of filing;
- In case the return is still not filed, assessment under section 62 and order in **FORM ASMT-13** to be issued and **FORM DRC-07** to be uploaded (after taking into account the **GSTR-1**, supplies auto-populated from GSTR-2A, information available from e-way bills, and information available from any other source, including from inspection;
- In case the return still remains unfurnished within the statutory period of 30 days from issuance of **FORM GST ASMT 13** then recovery proceedings u/s 78 to be initiated;
- In deserving cases action under section 83 may be contemplated before issuance of **FORM GST ASMT 13**;
- In cases where the return has not been filed for 6 consecutive months/three tax periods in case composition taxpayers, action under section 29 for cancellation of registration to be initiated.

13

Agenda Item 6(ii) :Amendments to the CGST Act

Sections	Purpose
Schedule II	Omitting certain supplies without consideration from Schedule II
10	Aligning the Composition Scheme u/s 10(1) & (2) with scheme u/s 10(2A) by restricting provision of inter-State services, etc. in scheme u/s 10 (1 & 2)
16 (4)	Taking the date of issuance of debit note as the date for determining eligibility of ITC to the recipient
29	Allowing taxpayers who have taken voluntary registration to apply for cancellation of registration

14

Agenda Item 6(ii) :Amendments to the CGST Act

Sections	Purpose
31	Necessary provisions in Law to allow prescribing of manner for invoices for provision of services
49	Necessary provision in law to allow Commissioner to restrict utilization of ITC in specified cases*
51	Removal of requirement of TDS certificate, and related late fees, by officers as the facility is now in the system
122 & 132	Necessary provisions to make the person receiving the benefit of a transaction liable for penalty and arrest

*** In view of insertion of Rule 86A as decided in the Officers' Committee on 17.12.2019, the Council may decide whether amendment in section 49 is required.** 15

Agenda Item 6(ii) :Amendments to the CGST Act

Sections	Purpose
140	Enabling provision for prescribing time for availing transitional credit
168	Vesting functions related to job-work extension and remuneration of CA/CS with jurisdictional commissioner
172	Extending the power to issue removal of difficulties order from three years to five years.
17	Making ITC eligible in respect of "vessels and aircrafts"
29(2)(b)	**To allow for cancellation of registration for composition taxpayers if one return (one year) is not filed.**
30	**To extend time for application of cancellation of registration from 30 days to another 30 days (by JC/ ADC) and further 30 days (by Commissioner) (90 days in case of a composition dealer)**

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Agenda Item 7 : Public Grievance Redressal Committee (1/4)

Creation of Grievance Redressal Committee as per order of Hon'ble High Court in the case of Sales Tax Bar Association

- Hon'ble High Court of Delhi, while examining a Writ Petition, filed by Sales Tax Bar Association, desired that a mechanism of handling of individual grievances for IT related issues be made under a retired judge of High Court.
- In a meeting called by Hon'ble High Court on 16.11.2019 with officers of GSTN, GST Policy Wing and GST Council, it was proposed to constitute Grievance Redressal Committees at Zone/ State level.
- Hon'ble High Court in its order on 28.11.2019 desired to know the constitution, structure and mechanism of such Committees through an **affidavit to be filed within two weeks of the order of the Court**.

17

Agenda Item 7 : Public Grievance Redressal Committee (2/4)

- There is presently no formal arrangement under GST regime to address grievances of specific/ general nature at the Zonal/ Commissionerate/ State level.
- It is proposed to constitute a Grievance Redressal Committee (GRC) at Zonal/State level with both CGST and SGTS officers and including representatives of trade and industry and other GST stakeholders (GST practitioners and GSTN etc.).
- Proposed Committee to be co-chaired by Zonal Pr Chief Commissioner/ Chief Commissioner of Central Tax and Chief Commissioner/ Commissioner of State Tax
- The Committee to meet at least once every quarter.

18

Agenda Item 7 : Public Grievance Redressal Committee (3/4)

- **Functions and mandate of the Committee:**
  - Examining and resolving all the grievances and issues being faced by the taxpayers, including procedural difficulties and IT related issues pertaining to GST, both of specific and general nature.
  - Referring any issue requiring a change in Act/Rules/Notification/ Form/Circular/ Instruction, etc., to the GST Council Secretariat and the relevant Policy Wing of the CBIC.
  - Referring any matter related to IT related issue pertaining to GST Portal, to GSTN.

19

Agenda Item 7 : Public Grievance Redressal Committee (4/4)

- GSTN has proposed to develop a portal for recording all such grievances and their disposal.
- The constitution, terms, functions and mandate, periodicity of meetings and mechanism of working of proposed Grievance Redressal Committee at Zonal/ State level are placed for the Council's approval.

20

Table Agenda (1/5)

- GSTR-1 filing has been low and has crossed 60% only once in the last six months
- Late fees for delay in furnishing of **FORM GSTR – 1** by the due date is Rs. 20 per day for NIL filers and Rs. 50 per day for others. The maximum late fee is Rs. 10,000 per month (Rs. 5,000 under the CGST / SGST Act) (Section 47)
- The only way taxpayers can declare outward supplies (admitted liability) is through FORM GSTR-1
- Proposal:
  - A one-time waiver of late fees to file all FORM GSTR-1 from July 2017 to November 2019 may be given to taxpayers
  - E-Way bill generation may be blocked for two consecutive non-filing of FORM GSTR-1 (similar to FORM GSTR-3B)

21

Table Agenda (2/5)

- On analysis , it was found that in FY 2018-19 the total difference in FORM GSTR-2A and FORM GSTR-3B is 13% of total GSTR-2A.
- Approximately 13% of the total credit lies unmatched in the system currently
- Proposal:
  - In the interest of revenue and to increase the proportion of matched credit in the system, Rule 36(4) be amended to restrict input tax credit on missing invoices for any recipient to 10% of the total supplies received in his FORM GSTR-2A from his suppliers

22

Table Agenda (3/5)

- During investigations it has been accepted by the persons / registered persons that the input tax credit that has been passed on is fake credit as the underlying invoices that have been passed on are fake invoices
- In course of the investigation, the recipients who have availed the said input tax credit have also been identified (Rs. 9028 Cr. by Centre and Rs. 2740 Cr. by the States)
- Section 16 requires ineligible credit is required to be reversed in the return. Reversal not happening as the return FORM GSTR-3B are self-assessed and are on a summary basis -not possible to determine the exact reason for reversal
- There is a facility in the portal which allows the tax authorities to block utilization of ITC – being used by State Officers in as many as 25 States/UTs
- Proposal: Rules to be framed to ensure uniformity in protecting interest of revenue

23

Table Agenda (4/5)

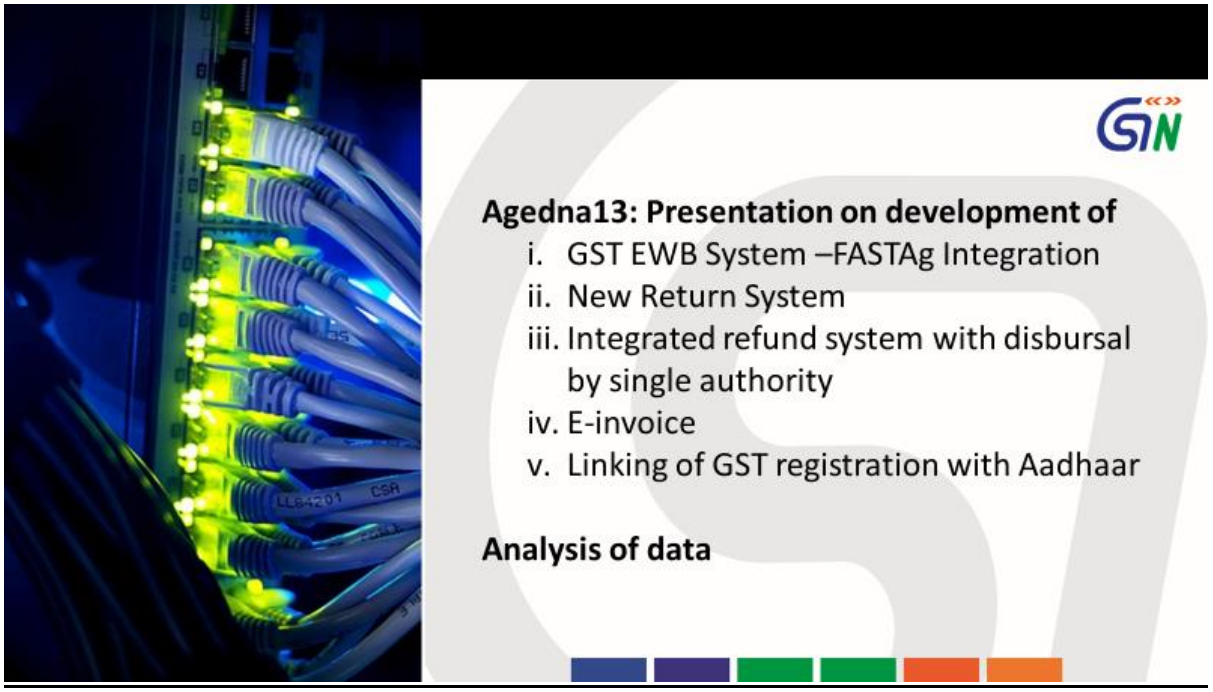
- Notification No. 56/2019 dated 14.11.2019 issued to simplify filing of Annual Return (FORM GSTR-9) and Reconciliation Statement (FORM GSTR-9C) for FY 2017-18 and FY 2018-19
- Certain changes required in the offline utility of FORM GSTR-9C
- It has been informed that the offline utility for filing of FORM GSTR-9C not yet deployed (till 16.12.2019)
- Taxpayers are expressing concern that they will get very little time for compliance
- Proposal: Due date for filing the FORM GSTR-9 and FORM GSTR-9C may be extended from 31.12.2019 to 31.01.2020

24

Table Agenda (5/5)

- Internet has been suspended in many of the North Eastern Areas
- Assam has requested for extension in due dates of FORM GSTR-1, GSTR-7, GSTR-8, GSTR-3B, GSTR-9 and GSTR-9C
- Other North East States may be facing similar issues in internet connectivity
- Proposal:
  - Due date for all forms except GSTR-8, GSTR-9 and GSTR-9C may be extended, as per request by the States (Assam, Tripura and Manipur have already requested)

Annexure 9



Agenda 13(i): Linking of e-way bill with FASTag

Status and Review of EWB integration with FASTag

- ❖ MoU with Indian Highways Management Company Limited (IHMPCL) & GSTN has been signed on 14.10.2019.
- ❖ The MoU is for collaboration and working together for implementation track and trace mechanism to track the goods carrying vehicles through FASTag at the toll plazas across the country.
- ❖ NPCI is extending its NPCINet to E-Way Bill system.
  - ✓ Router at Primary Data Centre (at Delhi) & DR Centre (of Hyderabad has been delivered) of NIC delivered.
  - ✓ Lease line (link) has also been delivered. Installation Process is in Progress.
- NPCI has already extended its network to the EWBS data center. **Network testing and integration is completed**.
  - APIs are ready and available on sandbox. Testing on simulators is completed. Sandbox will be made available by NIC by 15th Jan. Sample data from NETC will be used for testing.
  - Integration is expected to be completed by mid February, 2020.

Agenda 13(ii): New GST Return

State/UT-wise upload : Overall Stat up to 15.12.2019

Unique GSTINs

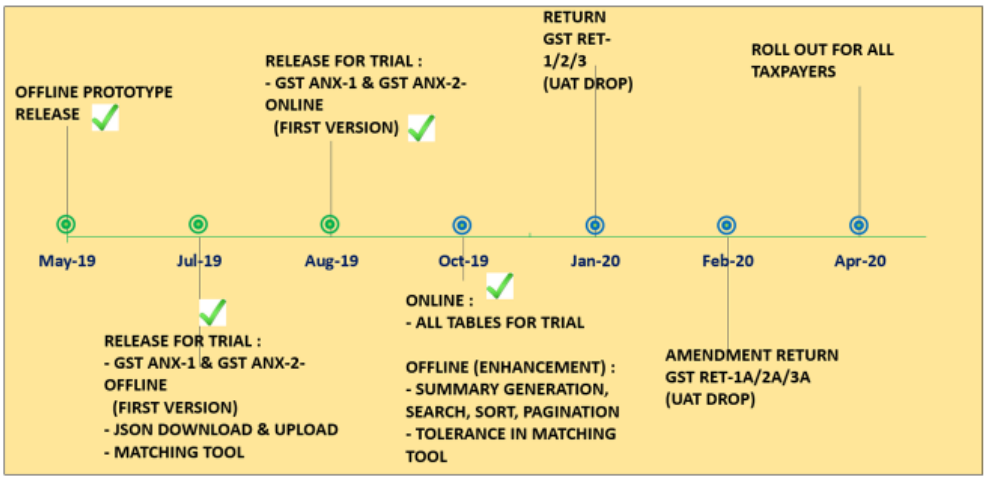
Form	Unique Taxpayers of State	Unique Taxpayers of Centre	Total unique GSTINs	% of State	% of Centre	Normal Taxpayers	Total uploads : Normal taxpayers
ANX-1	60,726	28,544	89,270	68.03%	31.97%	1,03,13,480	0.87%
ANX-2	9,061	3,836	12,897	70.26%	29.74%	1,03,13,480	0.13%
Total	**69,787**	**32,380**	**1,02,167**	**68.31%**	**31.69%**	**1,03,13,480**	**0.99%**

Unique uploads *(Total)*

Form	Unique uploads (State/UT)	Unique uploads (Centre)	Total uploads	% of State	% of Centre
ANX-1	1,60,801	84,494	2,45,295	65.55%	34.45%
ANX-2	12,652	5,641	18,293	69.16%	30.84%
Total	**1,73,453**	**90,135**	**2,63,588**	**65.80%**	**34.20%**

5

Status of Development and Deployment



6

State/UT-wise upload (Unique GSTINs) upto 15.12.2019

State /UT Name	ANX1 assigned to State	ANX-2 Assigned to State	ANX1 assigned to State	ANX2 Assigned to Centre	Total	% of State Tried	% of Centre Tried	Total Taxpayers (Normal)	% of total who tried
Nagaland (13)	900	19	225	3	**1,147**	80.12%	19.88%	6,688	17.15%
Meghalaya (17)	1,548	64	774	36	**2,422**	66.56%	33.44%	26,387	9.18%
Bihar (10)	8,875	4,306	3,373	1,624	**18,178**	72.51%	27.49%	3,32,366	5.47%
Mizoram (15)	208	17	57	6	288	78.13%	21.88%	6,033	4.77%
Chhattisgarh (22)	3,258	132	1,239	50	**4,679**	72.45%	27.55%	1,03,312	4.53%
Tripura (16)	736	19	328	12	1,095	68.95%	31.05%	24,205	4.52%
Karnataka (29)	19,577	2,242	7,265	748	**29,832**	73.14%	26.86%	7,19,151	4.15%
Assam (18)	3,908	342	1,384	129	**5,763**	73.75%	26.25%	1,43,698	4.01%
Puducherry (34)	486	69	151	14	720	77.08%	22.92%	19,948	3.61%
Odisha (21)	4,417	356	1,505	150	**6,428**	74.25%	25.75%	2,21,085	2.91%
Other Territory (97)	-	-	2	-	2	0.00%	100.00%	75	2.67%
Daman and Diu (25)	26	6	48	6	86	37.21%	62.79%	5,745	1.50%
Dadra and Nagar Haveli (26)	34	4	56	11	105	36.19%	63.81%	7,914	1.33%
Manipur (14)	70	9	38	3	120	65.83%	34.17%	10,086	1.19%
Himachal Pradesh (2)	722	18	281	14	1,035	71.50%	28.50%	87,788	1.18%
Telangana (36)	1,352	74	2,145	124	**3,695**	38.59%	61.41%	3,47,869	1.06%
Uttarakhand (5)	884	51	349	36	**1,320**	70.83%	29.17%	1,27,552	1.03%
Goa (30)	177	17	104	6	304	63.82%	36.18%	34,825	0.87%

7

State/UT-wise upload (Unique GSTINs) upto 15.12.2019

State /UT Name	ANX1 assigned to State	ANX-2 Assigned to State	ANX1 assigned to State	ANX2 Assigned to Centre	Total	% of State Tried	% of Centre Tried	Total Taxpayers (Normal)	% of total who tried
Jharkhand (20)	771	25	433	26	**1,255**	63.43%	36.57%	1,45,991	0.86%
Andhra Pradesh (37)	1,298	128	665	57	**2,148**	66.39%	33.61%	2,85,727	0.75%
Rajasthan (8)	1,533	240	1,162	154	**3,089**	57.40%	42.60%	5,40,590	0.57%
Kerala (32)	880	130	573	63	**1,646**	61.36%	38.64%	3,01,671	0.55%
Andaman and Nicobar Islands (35)	9	-	11	-	20	45.00%	55.00%	3,921	0.51%
West Bengal (19)	1,617	140	994	94	**2,845**	61.76%	38.24%	6,10,188	0.47%
Maharashtra (27)	2,561	181	1,732	127	**4,601**	59.60%	40.40%	13,66,536	0.34%
Tamil Nadu (33)	1,457	187	1,164	115	**2,923**	56.24%	43.76%	8,74,255	0.33%
Sikkim (11)	14	-	9	-	23	60.87%	39.13%	7,406	0.31%
Chandigarh (4)	38	-	29	4	71	53.52%	46.48%	26,946	0.26%
Arunachal Pradesh (12)	14	5	11	-	30	63.33%	36.67%	12,430	0.24%
Gujarat (24)	965	85	893	73	**2,016**	52.08%	47.92%	8,73,885	0.23%
Punjab (3)	415	18	148	18	599	72.29%	27.71%	3,08,426	0.19%
Haryana (6)	382	38	235	22	677	62.04%	37.96%	4,23,955	0.16%
Delhi (7)	570	35	446	40	1,091	55.45%	44.55%	7,42,218	0.15%
Uttar Pradesh (9)	783	70	541	53	**1,447**	58.95%	41.05%	11,24,216	0.13%
Jammu and Kashmir (1)	58	8	36	5	107	61.68%	38.32%	91,989	0.12%
Madhya Pradesh (23)	183	26	138	13	360	58.06%	41.94%	3,48,160	0.10%
India	**60,726**	**9,061**	**28,544**	**3,836**	**1,02,167**	**68.31%**	**31.69%**	**1,03,13,480**	**0.99%**

8

Training/Workshops (demo of offline and matching tool of New return)

- e-mails sent to authorized signatories regarding trial of New Returns.
- Workshops conducted on New Return in association with FICCI, PHD Chamber of Commerce, ASSOCHAM, CII & in coordination with Centre & State Tax Administrations.

No of Sessions conducted	No. of Cities covered	No. of Taxpayers participated	No. of Tax Officers participated
69	32	3,513	3,215

- 7 Webinars conducted in New Returns Offline Tool in English, Hindi, Tamil, Malayalam, Telugu and Marathi.
- VC conducted with field formations of CBIC on 22 November, 2019 in two sessions.

Agenda 13(iii): Refund-Statistics & disbursement through PFMS

Online Refunds: Statistics (As on 16th Dec.)

#	STATUS	COUNT	AMOUNT (IN CR.)	EXPLANATION	
1	Total applications received since 26/09/2019 (in RFD-01)	**71254**	**23768.69**		
2	Filed, but yet to be acknowledged (RFD-01)	16114	5979.13	22.61% of receipt (count)	25.16% of receipt (amount)
3	Out of (1-2) above, cases where deficiency memo issued (RFD-03)	20100	7388.88	28.21% of ack. (count)	31.09% of ack (amount)
4	Cases which are at various stages of processing (1-2-3)	35040	10400.68	Percentage of 35040 ↓	Percentage of 10400.68 ↓
5	Out of 4 above, cases which have been acknowledged but no further processing has started	11390	2275.36	32.51%	21.88%
6	Out of 4 above, Complete sanction (RFD-06) but payment advice not issued	16398	4016.75	46.80%	38.62%
7	Out of 4 above, Partial sanction (RFD-06) but payment advice not issued	1371	793.72	3.91%	7.63%
8	Out of 4 above, Found inadmissible (RFD-06)	791	143.21	2.26%	1.38%
9	Out of 4 above, for Consumer Welfare Fund (RFD-06)	41	3.44	0.12%	0.03%
10	Out of 4 above, cases where Provisional Order has been issued (RFD-04)	2537	2498.29	7.24%	24.02%
11	Out of 4 above, cases where SCN has been issued which have not been replied (RFD-08)	1892	409.84	5.40%	3.94%
12	Out of 4 above, cases where SCN has been replied and case under process (RFD-09)	615	259.65	1.76%	2.50%
13	Out of 4 above, cases withheld (RFD-7B)	5	0.42	0.01%	0.00%
14	**Number of Payment Orders Issued in RFD-05**	**16,515**	**5,944.02**		

Online Refunds: Status of RFD-05 (As on 16th Dec.)

#`	STATUS	COUNT	AMOUNT (IN CR.)	EXPLANATION	
1	Total RFD-05 issued since 26/09/2019 (in RFD-01)	**16,515**	**5,944.02**		
2	Out of 1 above, sent to PFMS	16,072	5,844.57	97.32%	98.33%
				Percentage of 16072 ↓	Percentage of 5844.57 ↓
3	Out of (2) above, Accepted by PFMS	7699	2,615.37	47.90%	44.75%
4	Out of (2) above, Rejected by PFMS	61	30.64	0.38%	0.52%
5	Out of (2) above, Disbursed by PFMS	5912	2,503.12	36.78%	42.83%
6	Out of (2) above, balance in under process with PMFS	2400	695.43	14.93%	11.90%
7	Balance Yet to be sent to PFMS (out of 1)	443	99.45	2.68%	1.67%

*: 14/(1-2-3)

Online Refunds : Age analysis (as on 9th Dec. 2019)

STATUS	CENTER					STATE				
	<= 15 days	16 to 30 days	31 to 45 days	46 to 60 days	> 60 days	<= 15 days	16 to 30 days	31 to 45 days	46 to 60 days	> 60 days
Yet to be Acknowledged (RFD-01)	4425	277	101	73	51	6160	2073	804	927	769
Acknowledged but no further process started (RFD-02)	1556	1494	681	378	50	2240	1931	932	978	539
Deficiency Memo Issued (RFD-03)	1236	2417	1681	1962	2038	974	1793	1386	1877	2017
SCN issued (RFD-07)	88	132	138	162	86	153	329	202	258	168
SCN replied (RFD-09)	27	31	52	45	11	21	77	83	56	75
Grand Total	7332	4351	2653	2620	2236	9548	6203	3407	4096	3568

No. of RFD-01 which are yet to be acknowledged and pending more than 60 days (15th Dec)

State	Assigned to		
	CENTER	STATE	TOTAL
Jammu and Kashmir	0	4	4
Himachal Pradesh	0	57	57
Punjab	0	58	58
Chandigarh	0	0	0
Uttarakhand	2	1	3
Haryana	5	69	74
Delhi	3	46	49
Rajasthan	1	83	84
Uttar Pradesh	2	98	100
Bihar	1	5	6
Sikkim	0	3	3
Arunachal Pradesh	0	0	0
Nagaland	0	3	3
Manipur	0	1	1
Mizoram	0	0	0
Tripura	0	3	3
Meghalaya	0	0	0
Assam	0	16	16
West Bengal	3	3	6

State	Assigned to		
	CENTER	STATE	TOTAL
Jharkhand	0	16	16
Odisha	0	0	0
Chhattisgarh	0	4	4
Madhya Pradesh	0	31	31
Gujarat	2	229	231
Daman and Diu	0	0	0
Dadra and Nagar Haveli	2	16	18
Maharashtra	8	86	94
Karnataka	0	13	13
Goa	2	0	2
Lakshadweep	0	0	0
Kerala	7	19	26
Tamil Nadu	0	100	100
Puducherry	0	0	0
Andaman and Nicobar Islands	0	0	0
Telangana	0	39	39
Andhra Pradesh	0	3	3
Total	38	1006	1044

Agenda 13(v): Linking of Aadhaar for GST registration

Aadhaar Integration with Registration Process

S. No	Activity /Challenges	Date
1.	Business Requirement Document submitted to Infosys team.	4th Sept 2019
2	Approved SRS shared to Infosys team	30th Sept 2019
3	Meeting on Technical gap analysis done by Infosys on security and Aadhaar compliance requirement	14th Oct 2019
4	Technical Comments shared with Infosys- Infra and security related matters by GSTN	18th Oct 2019
5	For requirement freezing meeting with NIC team. Aadhaar authentication traffic will be routed through NIC	31st Oct 2019
6	Infra team of Infosys has provided hosting server IP address for Pre-Prod	7th Nov 2019
7	IA resubmitted and approval given by GSTN	**28th Nov 2019**
8	TDD submitted by Infosys. Review completed and Infosys has to resubmit the efforts again to GSTN	**9th Dec 2019**
9	**Expected roll out date**	**1st Feb 2020**

Infosys has completed Proof of concept (POC) and has also completed the Prototypes.

Agenda 13(iv): Reporting of electronic Invoice to GST System

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Positioning e-Invoice?

- Is e-invoice taken into buyer's billing/accounting system directly? NO
- If not, how is the data entered? Manually (even if received electronically)

- Transcription errors
- Wrong entries

- Need for standards to ensure complete inter-operability
- Elimination of need of manual data entry and transcription errors

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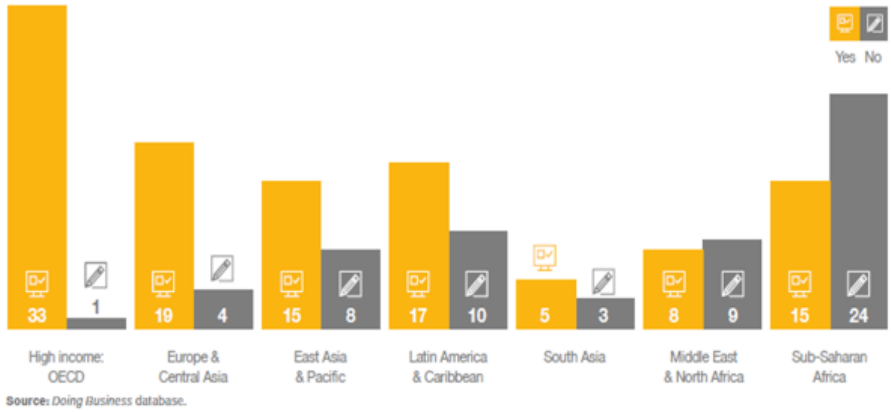
Economies in the OECD high-income group are at the forefront of invoice digitization

Number of economies offering e-invoices



112: Yes
59: No

Source: World Bank Group

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Advantages of e-Invoice



Generation of invoice and its reporting will become part of business process.

Also, no further reporting to GST portal or e-way bill portal.

Reporting to GST is a by-product. Auto of Return by GSTN

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Benefits of e-invoice system

Case Study from France

Items	Paper invoice (pre e-invoice period)	After introduction of e-invoice	Change
Cost of handling of one invoice	7 Euros	0.3 Euros	**96% saving**
Number of invoices handled by an employee in a year	6,000 paper invoices	90,000 e-invoices	**15 times efficiency improvement**
Time saving	15 days for paper invoice	3 days for e-invoice	**80% saving of time**
52% businesses view the cost reduction as the principal advantage of digital transformation			

Source: EY Study 2016

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E-invoice: Generation and Reporting

- e-invoice does not mean generation of electronic invoice on GST Portal **but reporting of electronic-Invoice**?
- What will change for users/taxpayers? **Nothing**
- The taxpayer will **NOT be required to make any change** in his ERP?
- **Change?**: Reporting of invoice data generated in a particular format which can be understood by government portal as well as by buyers.
- **The aim** is to make it part of business process of taxpayer and eliminate all reporting
- Reporting in near real time. ➔ Return generation by GST System.



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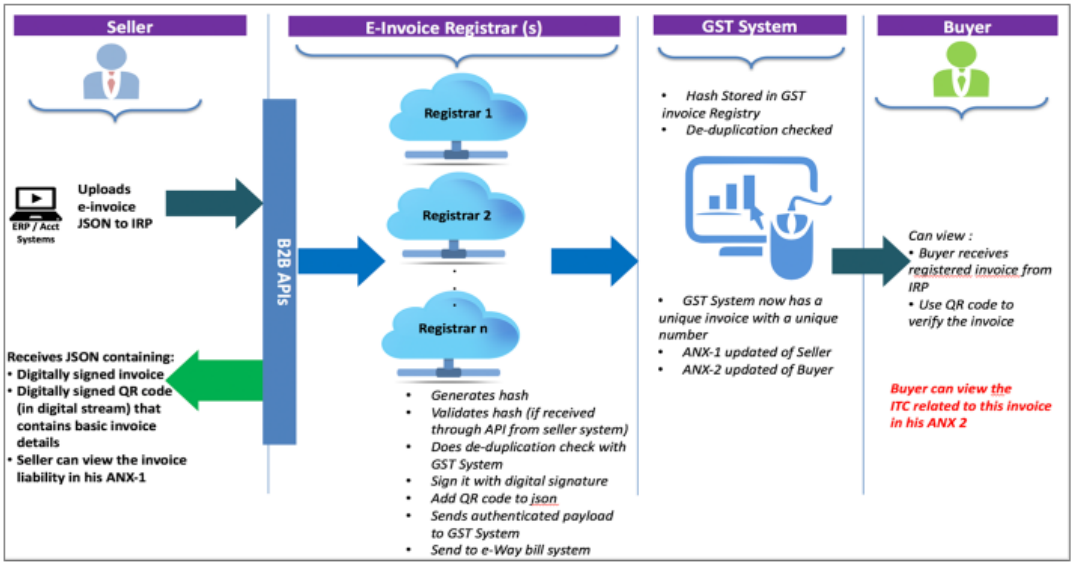
Flow of the E-Invoice Registration System



Solutions already demonstrated:

1. Thru a GSP.



As you generate you invoice today

GSP will convert the payload as per e-Inv schema and upload

2. ERP vendor to make changes in the software to enable taxpayers to generate e-invoice payload as per approved schema.

3. Mobile Apps for e-invoice generation by micro/small taxpayers. 4 out 8 companies which are providing free accounting software have demonstrated it.

E-invoice – Stakeholder/IT Companies Interactions

1. Session with major ASP/GSP & Accounting Software companies – conducted on **04.12.2019**

2. Sessions planned across India :

#	City	Industry Body Partner	Tentative Dates
1.	Delhi	NASSCOM, ASSOCHAM, CII, PHDCI, FICCI	06th Dec 2019 3 to 5 pm
2.	Chennai	CII	11th Dec 2019 3 to 5 pm
3.	Hyderabad	FICCI	12th Dec 2019
4.	Jaipur	PHDCCI	17th Dec 2019 3 to 5 pm
5.	Bangalore	ASSOCHAM	19th Dec 2019
6.	Pune	CII	20th Dec 2019 3 to 5 pm
7.	Mumbai	CII	*(to be decided)*

e-invoice : Steps Taken and Timelines

Steps	Status/Timeline
Sharing of approved e-invoice schema and concept with Billing and Accounting eco-system (GSP, ASP and eight Accounting and Billing software providers providing free basic accounting/billing software).	Completed in October
Rollout	
On voluntary basis for taxpayers having turnover above Rs 500 Crores.	from 1st Jan 2020
On voluntary basis for taxpayers having turnover above Rs 100 Crores.	from 1st Feb 2020
Based on lessons learnt, mandatory rollout for the same taxpayers	from 1st April 2020
Others: Gradual reduction of Turnover limit	Based on experience
Interaction with SAP and Oracle (as most of them use these ERPs)	Three Rounds completed
Development of software by NIC: E-invoice will be rolled out on e-way bill hardware to start with.	On track

Note: Data from e-invoice will be taken to e-way bill (from 1st Jan) and ANX-1 (from 1st April) so that they do not have to report the same again.



Status of Pending Payment of Advance User Charges and Interest thereon as on 16.12.2019

- Rs. In Crores

Sl. No.	CENTRE/STATE/ UT	User Charges for FY 2018-19 (1st Instalment)	User Charges for FY 2018-19 (2nd Instalment)	User Charges for FY 2019-20	Total User Charges to be collected	Total Interest Liability
	CBIC		87.15	83.84	171	4.78
1	Andhra Pradesh		3.78	6.74	10.52	0.29
2	Andaman & Nicobar			0.09	0.09	0.01
3	Arunachal Pradesh			0.26	0.26	0.01
4	Assam			3.04	3.04	0.08
5	Bihar		2.58	-	2.58	0.06
6	Chandigarh					
7	Chhattisgarh			0.71	0.71	0.02
8	Dadra & Nagar Haveli		0.11	0.06	0.17	0.01
9	Daman and Diu					
10	Delhi					
11	Goa					
12	Gujarat					
13	Haryana			3.49	3.49	0.09
14	Himachal Pradesh					
15	J&K					
16	Jharkhand					
17	Karnataka					
18	Kerala		2.96	-	2.96	0.07
19	Lakshadweep		0.01	0.01	0.01	0.01

Status of Pending Payment of Advance User Charges and Interest thereon as on 16.12.2019

• Rs. In Crores

Sl. No.	CENTRE/STATE/ UT	User Charges for FY 2018-19 (1st Instalment)	User Charges for FY 2018-19 (2nd Instalment)	User Charges for FY 2019-20	Total User Charges to be collected	Total Interest Liability
	CBIC		87.15	83.84	171	4.78
20	Madhya Pradesh					
21	Maharashtra					
22	Manipur			0.26	0.26	0.01
23	Meghalaya			0.01	0.01	0.01
24	Mizoram					
25	Nagaland			0.05	0.05	0.01
26	Odisha		3.07	2.98	6.05	0.15
27	Puducherry					
28	Punjab	5.29	4.24	-	9.53	0.25
29	Rajasthan			0.57	0.57	0.01
30	Sikkim			0.07	0.07	0.01
31	Tamil Nadu			5.07	5.07	0.13
32	Telangana		4.81	7.61	12.42	0.56
33	Tripura					
34	Uttar Pradesh			16.08	16.08	0.4
35	Uttrakhand					
36	West Bengal					
	Total	5.29	108.71	130.94	244.93	6.98

Agenda Item 2: Update by Infosys (through GSTN)

Agenda Item 3: Review of Revenue position under Goods and Services Tax

1. The Table 1 below gives the details of revenue collected as Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST), Integrated Goods and Services Tax (IGST) and Cess for the FYs 2017-18, 2018-19 and 2019-2020.

Table 1*: GST revenue during 2017-18, 2018-19 and 2019-20

(In ₹ Crore)	2017-18	2018-19	2019-20 (Apr-Feb)
CGST	1,18,876	2,02,444	2,08,261
SGST	1,71,803	2,78,817	2,83,632
IGST	3,87,356	5,98,739	5,42,193
Domestic	1,93,093	3,08,243	2,92,972
Imports	1,94,263	2,90,495	2,49,221
Comp Cess	62,614	97,369	90,440
Domestic	56,319	87,290	80,839
Imports	6,295	10,080	9,601
Total	**7,40,650**	**11,77,369**	**11,24,526**

*Figures rounded to nearest whole number

2. The Table 2 below shows the IGST collected, refunded and settled/apportioned during the period

Table 2: IGST Collection/Settlement/Apportionment/Refund from April'19-Feb'20

(Figures in Rs. Crore)

IGST Collection/Settlement/Apportionment/Refund from April'19-Feb'20

		Amount
1	Collections(+)	542193
2	Recovery from IGST Ad-hoc apportionment(+)	29000
3	Refunds (-)	88138
4	Settlement (-)	455830
(i)	CGST	261,773
(ii)	SGST	194,057
5	CGST ad hoc	13,500
6	SGST ad hoc	13,500
7	**Net (1+2-3-4-5-6)**	**225**

Figures rounded to nearest whole number

Compensation Fund

3. As per provision of GST (Compensation to States) Act, 2017 the Compensation Cess collected since implementation of GST w.e.f. 01.07.2017 till 29th February, 2020 and the compensation released are shown in the table below:

Table 3: Compensation Cess collected and compensation released

(Figures in Rs. Crore)

	2017-18	2018-19	2019-20	Total
Compensation Cess collected	62,612	95,081	79,000 (till Jan'20)	2,36,693
Compensation released	41,146	69,275	1,20,498 (till Nov'19)	2,30,919
Balance	21,466	25,806	-41,498*	5,774

* Taking into account un-utilized cess of FY 2017-18 & FY 2018-19, despite the collection of Rs. 79,000 cr in current FY, excess amount of compensation has been released to States/ UTs.

4. In the current financial year, the GST compensation has been provisionally calculated and released fully for April to September, 2019 and partly for Oct-Nov, 2019. Resultantly, the GST compensation balance of Rs. 14,036 crore for Oct-Nov, 2019 is still to be released. Further, it is submitted that GST compensation for Dec, 2019-January, 2020 cycle has also become due in the month of February, 2020 as per GST (Compensation to States) Act, 2017. Therefore, the total amount required in current FY to meet the compensation for Dec, 2019-Jan, 2020 & the balance for Oct-Nov, 2019 is approximately Rs. 48,000 crore.

Trends in Monthly Revenue

5. Figure 1 shows the trends in the gross GST revenues since introduction of GST. Figure 2 shows the month-on-month growth rate for each month since March, 2019 till February, 2020.

Figure 1: Trends in gross GST Revenues (₹ crore)

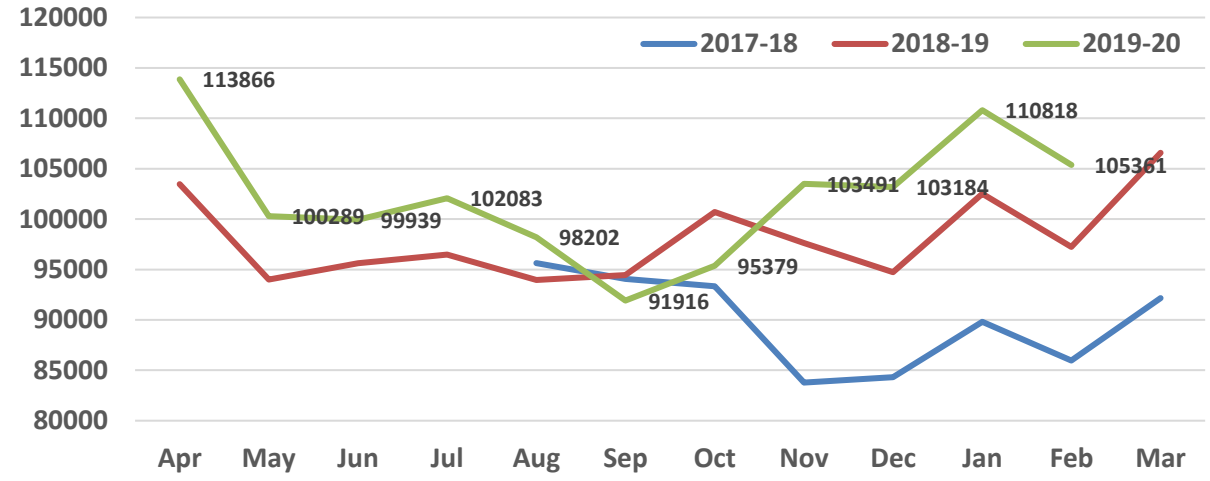
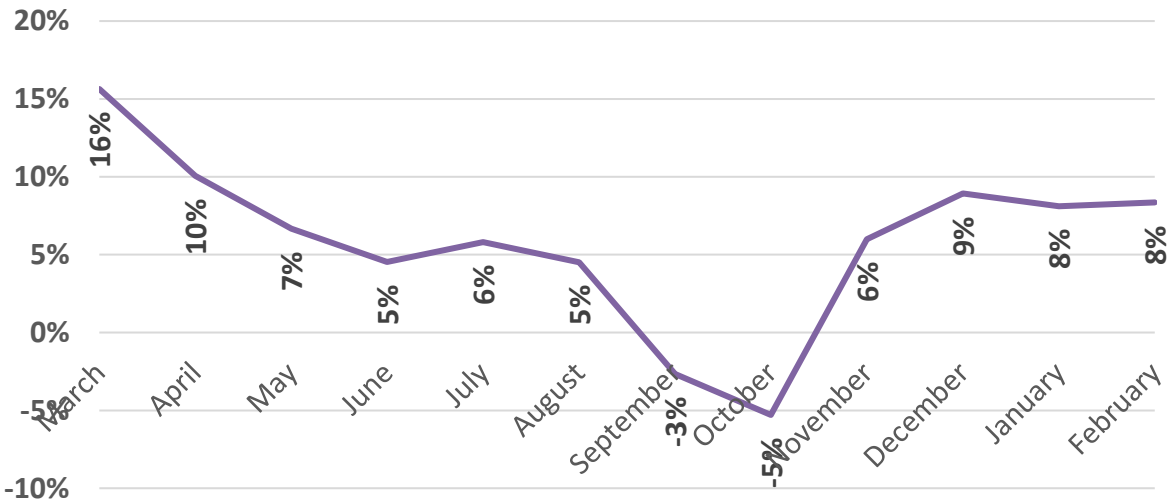


Figure 2: Month-on-Month growth in gross GST Revenues



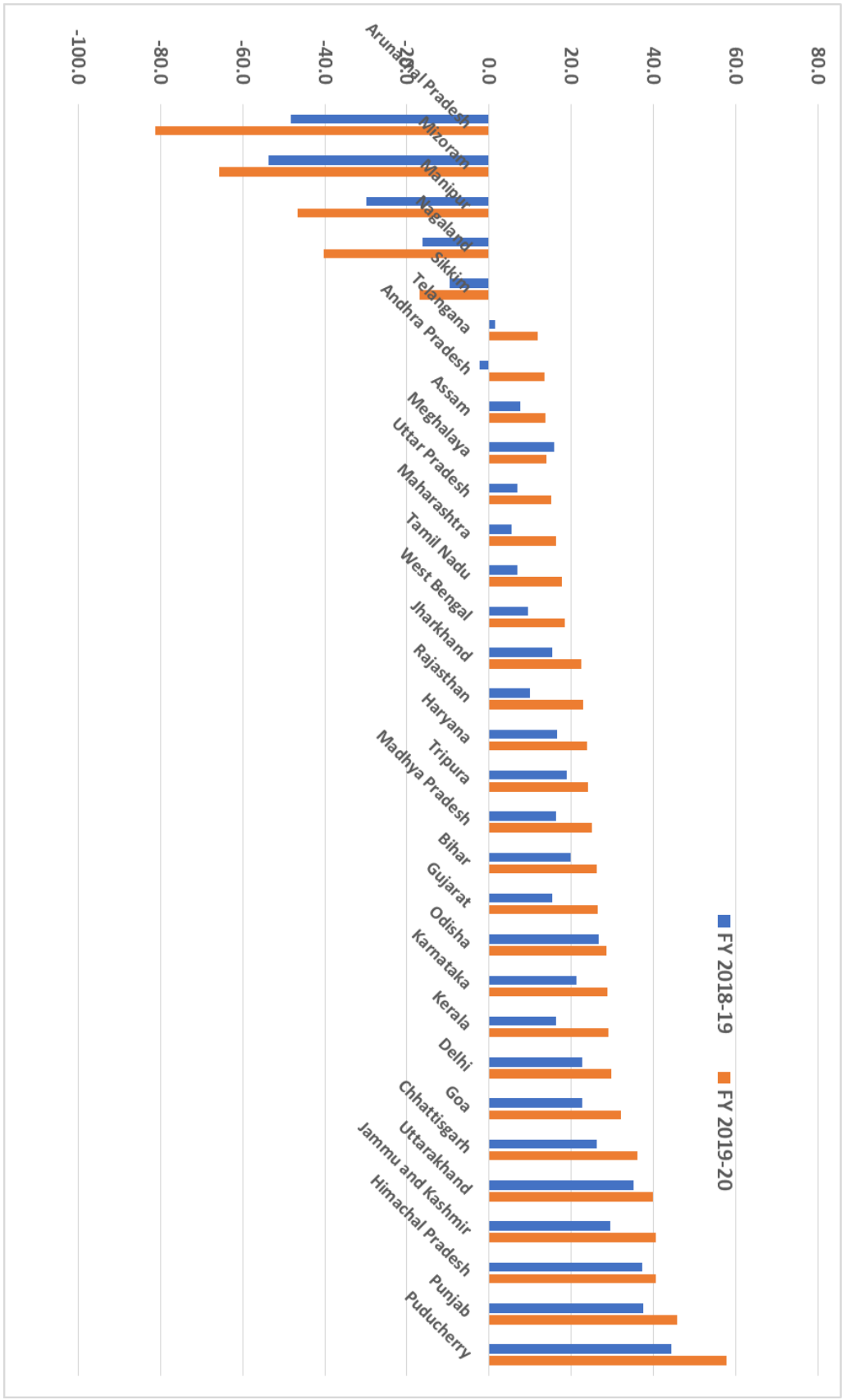
Gap with respect to base Revenue

6. The State-wise details of gap between the protected revenue and the post settlement gross SGST revenue (including ad-hoc settlement) for the period April-Feb in the current year as compared to the same period in the previous year may be seen in the Table 4. This information is also depicted in the graph placed at Figure 3.

Table 4: Revenue Gap during the period April-Feb

State/UT	2018-19	2019-20
Arunachal Pradesh	-48	-81
Mizoram	-54	-66
Manipur	-30	-47
Nagaland	-16	-40
Sikkim	-10	-17
Telangana	1	12
Andhra Pradesh	-2	13
Assam	8	14
Meghalaya	16	14
Uttar Pradesh	7	15
Maharashtra	6	16
Tamil Nadu	7	18
West Bengal	10	18
Jharkhand	15	22
Rajasthan	10	23
Haryana	17	24
Tripura	19	24
Madhya Pradesh	16	25
Bihar	20	26
Gujarat	15	26
Odisha	27	29
Karnataka	21	29
Kerala	16	29
Delhi	23	30
Goa	23	32
Chhattisgarh	26	36
Uttarakhand	35	40
Jammu and Kashmir	29	41
Himachal Pradesh	37	41
Punjab	38	46
Puducherry	44	58
Average	**14**	**23**

Figure 3: Revenue Gap during the period April-Feb



Trends in Return filing

7. The table below shows the trend in return filing in FORM GSTR-3B till due date and till date for return periods upto Jan, 2020.

Table 5: Return filing (GSTR-3B) till due date and till date

Return Period	Till due date		Till 31st Jan, 2020	
	Filed	%	Filed	%
Apr'19	6017388	61%	8627066	87%
May'19	6481965	65%	8676361	86%
Jun'19	6655120	66%	8702655	86%
Jul'19	7047881	69%	8741093	86%
Aug'19	6540650	64%	8763292	85%
Sep'19	5967642	58%	8776265	85%
Oct'19	6463266	62%	8763520	84%
Nov'19	7091985	68%	8694417	83%
Dec'19	6550743	63%	8307922	80%

Figure 4: GSTR-3B Filling

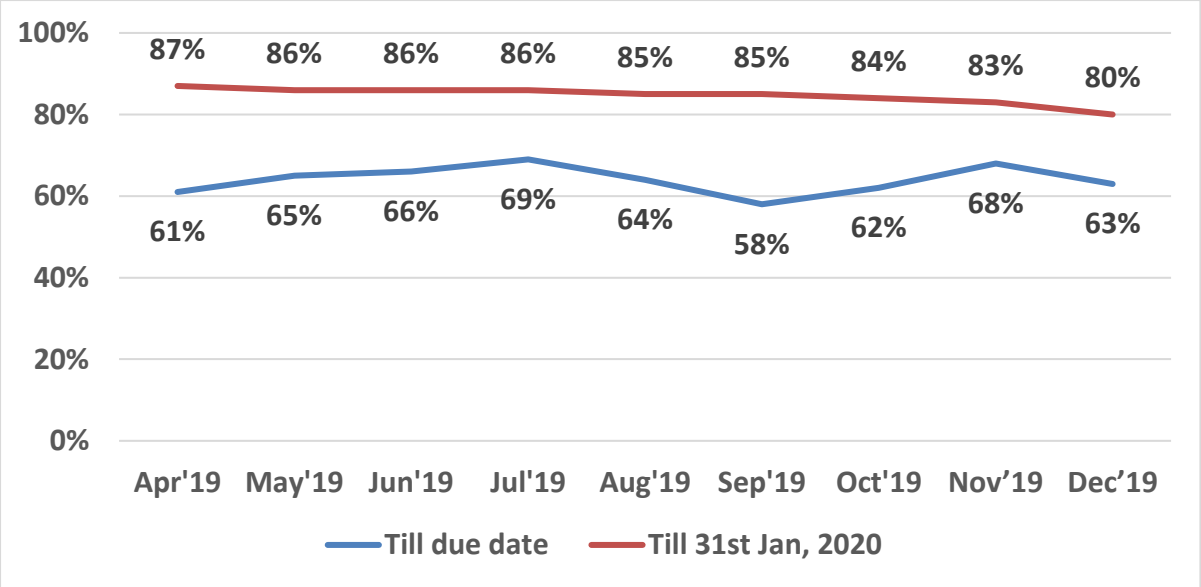


Table 6: State-wise Return filing (GSTR-3B) till due date (2019)

STATE	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Jammu and Kashmir	60%	62%	64%	26%	24%	22%	24%	46%	45%
Himachal Pradesh	64%	67%	67%	71%	66%	59%	65%	72%	65%
Punjab	74%	78%	78%	81%	76%	67%	72%	80%	72%
Chandigarh	73%	76%	76%	80%	75%	69%	74%	79%	74%
Uttarakhand	59%	61%	63%	66%	61%	56%	61%	68%	62%
Haryana	65%	69%	70%	74%	69%	61%	66%	72%	65%
Delhi	59%	62%	63%	66%	61%	54%	59%	64%	61%
Rajasthan	65%	68%	69%	73%	68%	61%	65%	73%	66%
Uttar Pradesh	65%	68%	69%	73%	68%	62%	66%	65%	64%
Bihar	50%	53%	55%	60%	54%	50%	53%	60%	55%
Sikkim	50%	52%	53%	58%	52%	47%	51%	56%	49%
Arunachal Pradesh	27%	30%	33%	37%	35%	32%	36%	36%	35%
Nagaland	36%	39%	42%	46%	42%	38%	42%	45%	42%
Manipur	34%	34%	37%	43%	38%	34%	37%	42%	40%
Mizoram	45%	46%	46%	52%	47%	45%	46%	52%	44%
Tripura	55%	59%	61%	65%	58%	55%	61%	63%	57%
Meghalaya	52%	55%	55%	59%	56%	52%	55%	47%	49%
Assam	39%	43%	44%	48%	43%	38%	43%	36%	48%
West Bengal	61%	65%	66%	69%	63%	59%	64%	66%	63%
Jharkhand	53%	57%	58%	63%	56%	52%	57%	66%	61%
Odisha	29%	57%	60%	66%	59%	57%	62%	69%	61%
Chhattisgarh	48%	54%	56%	62%	55%	49%	54%	63%	58%
Madhya Pradesh	58%	63%	65%	69%	63%	55%	61%	70%	65%
Gujrat	71%	75%	76%	79%	74%	69%	71%	78%	72%
Daman and Diu	59%	64%	65%	69%	64%	58%	61%	67%	62%
Dadra and Nagar Haveli	58%	61%	63%	66%	61%	56%	58%	67%	61%
Maharashtra	61%	64%	66%	68%	63%	57%	61%	68%	62%
Karnataka	62%	66%	67%	71%	67%	61%	65%	72%	65%
Goa	52%	55%	56%	59%	54%	49%	53%	56%	53%
Lakshadweep	37%	36%	40%	41%	39%	36%	35%	42%	36%
Kerala	56%	60%	62%	65%	55%	51%	58%	65%	57%
Tamil Nadu	60%	63%	64%	69%	63%	57%	63%	70%	62%
Puducherry	59%	62%	63%	67%	61%	56%	60%	68%	59%
Andaman and Nicobar Island	32%	32%	33%	35%	32%	30%	30%	39%	35%
Telangana	52%	56%	58%	61%	56%	49%	53%	60%	53%
Andhra Pradesh	58%	62%	64%	69%	62%	53%	60%	67%	60%
Other Territory	72%	74%	71%	70%	67%	68%	66%	72%	53%
	61%	**65%**	**66%**	**69%**	**64%**	**58%**	**62%**	**68%**	**63%**

Table 7: State-wise Return filing (GSTR-3B) till 31st Jan, 2020

STATE	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Jammu and Kashmir	84%	83%	82%	76%	75%	75%	74%	73%	66%
Himachal Pradesh	86%	85%	85%	85%	84%	84%	84%	83%	81%
Punjab	92%	92%	92%	92%	91%	91%	91%	91%	88%
Chandigarh	94%	94%	94%	94%	93%	93%	93%	93%	89%
Uttarakhand	83%	83%	84%	83%	83%	83%	83%	83%	79%
Haryana	89%	89%	89%	89%	89%	88%	88%	87%	83%
Delhi	84%	83%	83%	82%	81%	81%	81%	80%	77%
Rajasthan	88%	87%	87%	86%	86%	86%	86%	85%	84%
Uttar Pradesh	87%	87%	87%	86%	86%	86%	86%	85%	82%
Bihar	78%	78%	77%	77%	76%	76%	75%	74%	70%
Sikkim	80%	78%	77%	76%	76%	76%	75%	72%	64%
Arunachal Pradesh	64%	63%	62%	61%	60%	58%	57%	54%	47%
Nagaland	71%	70%	70%	70%	69%	68%	67%	65%	57%
Manipur	64%	63%	63%	64%	63%	63%	63%	60%	56%
Mizoram	76%	75%	74%	74%	72%	71%	69%	67%	59%
Tripura	80%	79%	79%	78%	77%	77%	77%	75%	72%
Meghalaya	74%	74%	73%	73%	72%	71%	70%	67%	62%
Assam	70%	69%	69%	68%	67%	67%	65%	64%	65%
West Bengal	85%	84%	84%	83%	83%	82%	81%	80%	76%
Jharkhand	83%	82%	82%	82%	81%	81%	81%	82%	78%
Odisha	83%	83%	83%	84%	84%	84%	84%	83%	78%
Chhattisgarh	87%	87%	87%	86%	86%	85%	84%	83%	78%
Madhya Pradesh	89%	89%	89%	88%	88%	88%	87%	86%	84%
Gujrat	93%	93%	93%	92%	92%	91%	91%	90%	87%
Daman and Diu	88%	90%	90%	89%	89%	88%	87%	85%	80%
Dadra and Nagar Haveli	87%	87%	86%	86%	85%	85%	84%	84%	79%
Maharashtra	90%	90%	89%	88%	88%	87%	85%	83%	79%
Karnataka	87%	86%	86%	86%	87%	87%	86%	85%	81%
Goa	80%	80%	79%	78%	77%	76%	75%	73%	67%
Lakshadweep	61%	61%	60%	60%	58%	57%	56%	53%	47%
Kerala	90%	90%	89%	89%	88%	88%	87%	85%	79%
Tamil Nadu	86%	85%	85%	85%	85%	84%	84%	84%	80%
Puducherry	88%	87%	87%	87%	86%	85%	85%	83%	79%
Andaman and Nicobar Island	74%	73%	72%	70%	69%	67%	65%	61%	52%
Telangana	82%	81%	81%	80%	79%	78%	77%	76%	71%
Andhra Pradesh	87%	87%	87%	86%	85%	85%	84%	82%	78%
Other Territory	83%	83%	84%	83%	83%	82%	81%	80%	72%
	87%	**86%**	**86%**	**86%**	**85%**	**85%**	**84%**	**83%**	**80%**

Agenda Item 5A: Issues recommended by Law committee for the consideration of the Council.

Agenda Item 5A(i): Taxability of 'economic surplus' earned by brand owners of alcoholic liquor for human consumption – reg.

Various representations have been received from entities engaged in the manufacture of alcoholic liquor for human consumption on the captioned subject. In this regard, a brief description of the various business models being followed in the industry for manufacturing of alcoholic beverage (AlcoBev) for human consumption is presented below.

2. Companies which are holder of registered brands in relation to IMFL (Indian Made Foreign Liquor) are commonly known in the industry as "Brand Owners (BO)". BOs, who have the technical know-how for manufacture of alcoholic beverages (AlcoBev), have exclusive right to exploit the brands, including by way of sale of IMFL under those brands. The whole process of procurement, manufacture and sale of AlcoBev is governed by each State's Excise laws which vary across States. Certain State Excise laws mandate that manufacture and sale of IMFL, as well as the procurement of Extra Neutral Alcohol ("ENA") required for the manufacture of IMFL can only be undertaken by the parties, who have been duly licensed by the State Excise authorities. In order to meet the requirements under State Excise laws, BOs approach various Contract Bottling Units (CBUs) or Third Party Manufacturing Units (TMUs) who hold the requisite licence under the State Excise laws to source the ENA and carry out the manufacture and bottling of IMFL. Broadly, there are two types of arrangements between the BO and CBU for manufacture and sale of AlcoBev, as follows:

a) Transfer of right to manufacturer for commercially exploiting brand of the BO in exchange for a consideration ('franchise fee' or any other name).
b) Contract manufacturing by CBUs without any transfer of right to CBUs to commercially exploit the brand of BO.

3. In respect of the arrangement discussed at para 2(a) above, the BO is clearly engaged in the supply of a taxable service to the CBU which is in the nature of transfer of intellectual property rights (IPR) to the CBU in lieu of an agreed consideration. Thus, GST is payable on such supplies by the BO as supplier of service in the nature of "permitting the use or enjoyment of any intellectual property right" (S. No. 5(c) of Schedule II under section 7 of the CGST Act). This arrangement is not being discussed in this Agenda as the law is already settled in this regard and clarification has not been sought.

4. In context of the arrangement discussed at para 2(b), doubts have been raised regarding its taxability under GST. Therefore, the present discussion is regarding cases where the BO does not transfer right of commercial exploitation of the brand to CBU and the risks and rewards relating to such supplies remain vested with the BO. Given the variation in Excise law provisions across States, different business models are being followed in different States. An illustrative list of the prevalent business models is as follows:

a) Lease/rent of licensed premises by CBU/TMU to BO: The entity (CBU/TMU) has the licence from the State Government to manufacture AlcoBev. It leases/rents out the licensed premises as well as the license for manufacture to the BO. The owner of the licensed premises, besides renting out the licensed manufacturing facility, also manufactures AlcoBev for the BO. Raw material is purchased and supplied by the BO. The BO directly sells AlcoBev so manufactured. TMU/CBU charges the BO 'rent' for renting of factory with licence and 'conversion charge' for converting raw material (ENA, flavors etc.) to liquor. The current practice is that CBU charges GST on both rent and conversion charges. In this model, the BO has beneficial

ownership of all raw materials and the manufactured liquor. The property in and the risk and reward associated with the liquor manufactured by CBU vests with the BO. Essentially, the CBU manufactures AlcoBev on behalf of the BO.

b) CBU/TMU manufactures and sells liquor on behalf of the BO: This is the most prevalent model. In many States, there is a State Beverages Corporation, which alone is authorized to sell AlcoBev. The State Corporation buys liquor from the licensed manufacturers. Then there are States where State Beverage Corporation does not exist but law requires liquor to be sold only by licensed manufacturers. In such States, the BO cannot sell liquor. As per this arrangement, BO enters into contractual agreement with the CBUs on a non-exclusive basis (BO can enter into multiple contracts with other CBUs as well) under which CBUs receive payment for bottling charges and certain other agreed upon reimbursements from the BO, such as taxes and expenses borne by the CBU. The CBU procures all raw materials and packing materials from a list of approved/identified vendors at a price fixed by the BO. CBU is required to follow the process parameters and specifications provided by BO for manufacture of AlcoBev under the supervision and control of BO. CBU sells and delivers the manufactured products as per the direction of the BO at the price informed by the BO. Sale proceeds go into a bank account of TMU/CBU, which is controlled by the BO, through authorized signatories solely and exclusively nominated by the BO. The BO funds purchase of raw materials and other expenses for manufacture, packaging, sale and distribution of AlcoBev from the sale proceeds deposited in this bank account. In this model too, the property in and the risk and reward associated with the liquor manufactured by the CBU vests with the BO. Upon termination of the contract, CBU is obligated to cease and desist from using the trademark of the BO and dispose of the unsold stock at ex-brewery price. Further, CBU is also required to sell at cost the raw materials, labels, packing material etc. to the BO. In some cases, the BO also arranges working capital for the operations of the CBU, either directly or through institutional finance. The revenue sharing agreement stipulates that after deducting the cost of the raw material, bottling charges and other reimbursements (including taxes borne by CBU) paid to the CBU from the total sale proceeds of AlcoBev, the remaining amount is retained by the BO, commonly known as '**economic surplus**' or profit of the BO.

> **Economic Surplus of the BO** = (Total Sale proceeds of the AlcoBev) – (Bottling charges + cost of raw materials + cost of packing materials + Taxes borne by the CBU + Other reimbursements paid to the CBU by BO)

5. The main issue in contention is whether the '**economic surplus**' retained by the BO is taxable under GST or not. It is noteworthy that under service tax regime, this issue was clarified vide ***Letter F. No. 332/17/2009-TRU dated 30.10.2009*** (**Annexure - A**) wherein it was stated that service Tax would be payable on the bottling/job charges, distribution costs and other reimbursements and that the surplus/profit earned by the BO being in the nature of business profit (which falls within the purview of direct taxes), will not be chargeable to service tax. In light of the above clarification, the Delhi CESTAT in the case of BDA Limited ruled that the surplus earned under contract manufacturing arrangement by the BO represents business profit and are accordingly not exigible to Service Tax. The stand was upheld by the Hon'ble Supreme Court (**Annexure - B**). Furthermore, a similar decision was delivered in the case of M/s Skol Breweries and M/s Skol Breweries and M/s Diageo India Pvt. Ltd. In the latter case, it was observed that the CBU has no right to use the IPR of the BO and there is no transfer of the same to the CBU. It was also held that there is no representational right provided to the CBU and the brand name is being used by the brand owner in their own account. For the said reason, it was observed that the **surplus amount is in the nature of profits and not liable to service tax under**

IPR or Franchise services. It can be said that the economic surplus was not taxable under the Service tax regime since there was no service being provided by the BO to the CBU.

6. The BOs have in their representations that the treatment of '**economic surplus**' should be the same under GST as was during the Service Tax regime, on the following grounds:

a) There is no significant departure in the legal provisions under GST regime from the legal position as existed during service tax regime. Therefore, the treatment of 'economic surplus' should be the same in both regimes.
b) The nature of contractual arrangement between the BO and CBU remains the same under GST.
c) BO cannot be considered to be a supplier to CBU in the same transaction where CBU is supplying service to the BO by way of manufacture or bottling of alcoholic beverage for human consumption.
d) The 'economic surplus' has already suffered State Excise and VAT (as applicable) as part of the overall sale price of AlcoBev.

7. However, it has been informed that the divergent Advance ruling has been given on the issue by the Karnataka and Maharashtra and accordingly, divergent practices are being followed in the field formations. It is a fact that the advance rulings are private rulings and thus are not universally applicable and are limited to the specific case in the concerned jurisdiction only. It doesn't provide a rule. However, given the divergence of views in these rulings and the confusion it might create in field formations/investigating agencies, it is imperative that the issue is analyzed in detail in light of the legal provisions under GST. Further, the issue was settled in the pre-GST regime and the divergent ruling has created confusion in the trade and industry. Therefore, it is imperative to clarify the issue in totality. Accordingly, an examination of the issue is presented below.

8. Whether CBU is providing taxable service to the BO: It may be noted that the supply chain arrangement in AlcoBev sector is different from other consumer durable companies due to restriction under State Excise legislations. The contractual arrangement between the BO and CBU has evolved as a result of the intersection of the commercial requirements of the BO (to exploit the brands under its ownership through manufacture and sale of IMFL) and the licensing requirements under the State Excise laws (viz. only a licence holder can source ENA for such manufacture, carry out manufacture of IMFL and sell the alcoholic beverages). In order to comply with the State excise provisions, it is the CBU which raises invoice for the goods and receives the sale proceeds. However, the amount that CBU actually receives (as per his agreement with the BO) is much lower. In essence, the true commercial nature of the arrangement between the CBU and BO is one in which the CBU provides services to the BO as per the agreement entered into, and is remunerated in the form of bottling charges. Some of the features of the contract agreement clearly indicate that the CBU is supplying service to the BO and not *vice versa*. For example – the price of AlcoBev sold by CBU is determined by the BO, the list of vendors from which the CBU can procure inputs is also decided by the CBU, working capital is financed by the BO in some cases. Further, the contract clearly stipulates that the BO shall pay bottling charges to the CBU. Thus, it can be said that the CBU is engaged in supply of service to the BO and the entire 'risk and reward' is that of the BO as in any other contract manufacturing where such manufacturing is not regulated or even in the pharmaceutical industry where the regulator allows 'loan licencing' where the entire licences facility is officially shown on loan to the brand owner.

9. The ruling of Karnataka AAR, stating that CBU is not supplying any service to the BO appears to be misplaced. As per the ruling, since the activity of CBU cannot be classified under Heading 9988 and 9989 of notification No. 11/2017-Central Tax (Rate), it has been concluded that there is no

provision of service from CBU to BO. Whereas the agreement between BO and CBU clearly states that the CBU is supplying service to the BO. Mere inability to classify the supply under a particular category cannot take it outside the ambit of 'supply'. According to section 7 of the CGST Act, there are two essential parameters for an activity to qualify as 'supply' – (i) consideration, and (ii) course or furtherance of business. In the instant case, CBU undertakes manufacturing in the course of his business in lieu of a consideration (bottling charges) from the BO. Thus, CBU is clearly engaged in supply of service to the BO.

10. Whether 'economic surplus' retained by the BO is taxable under GST: The BO is not engaged in the supply of any service to the CBU. The arrangement between CBU and BO does not envisage any transfer of right to use the IPR of BO. As per the terms of the agreement, it is the CBU which supplies service to the BO and not *vice versa.* The ruling of Karnataka AAR treats the 'economic surplus' retained by the BO as a consideration for supply of service from the BO to the CBU. The amount transferred as 'economic surplus' to the BO is not for providing any service but a surplus inasmuch as the contract envisages consideration for the bottling done by CBU. Therefore, when the contract does not envisage any other transaction in the nature of service to be provided by the BO to CBU, assuming that the surplus is because of service provided by BO to CBU is without any basis. As there is no supply of service from the BO to the CBU, the 'economic surplus' cannot be treated as consideration. Further, there is no difference in the legal position on this issue under service tax regime and GST. Even the terms of agreement between the BO and CBU have not changed under GST. Therefore, there should be similarity of treatment between the two regimes. Accordingly, it can be construed that **'economic surplus'** is in the nature of business profit for the BO, therefore, not taxable under GST.

11. Based on the discussion in the above paras, a draft Circular was placed before the Law Committee in its meeting held on 28.01.2020. The Law Committee approved the said Circular and recommended it to be placed before the GST Council during its next meeting. The draft Circular clarifies the following:

a. Brief description of the salient features of the various models of manufacture of AlcoBev on job work basis.
b. The activity undertaken by CBU is in the nature of supply of service from the CBU to the BO, therefore, taxable under GST.
c. 'Economic surplus' retained by the BO, being in the nature of profit of the BO, is not taxable under GST.

12. Accordingly, the draft Circular (**Annexure-C**) is placed before the GST Council for discussion and decision.

Annexure-A

F.No.332/17/2009 –TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit
*****

Room No.147-A, North Block
New Delhi, dated the 30th October, 2009

To

The Director General of Service Tax,
9th Floor, Piramal Chambers,
Jijibhoy Lane, Parel, Lalbaug,
Mumbai- 400012.

Sir,

Subject: Service tax on manufacture of alcoholic beverages on job work basis

It may be recalled that vide Finance (No. 2) Act, 2009, the definition of taxable service, namely, Business Auxiliary Service (BAS) was suitably amended so as to include the manufacture of alcoholic beverages on job work basis. In practice, the brand owners (BO) of alcoholic beverages get the products (Indian Made Foreign Liquor) manufactured on job work basis under a contract manufacturing arrangement with distilleries having facility to manufacture such beverages. In trade parlance, such job workers/distilleries are called as 'contract bottling units' (CBU). The aforesaid arrangement has come under tax net w.e.f. 01.09.2009.

2. Under section 67 of the Finance Act, 1994, service tax is chargeable on the 'gross amount charged' by the service provider for providing taxable services. As per CIABC, the gross value of sales, as per invoice, includes the following elements:

1) Bottling/job charges – paid to CBU
2) Distribution costs including freight, transit insurance etc. – paid to CBU
3) Other reimbursables – paid to CBU
4) Cost of raw materials – paid to CBU
5) Cost of packaging materials – paid to CBU
6) State excise duty and VAT – paid to State Government
7) Surplus/profit – retained by BO

It was their plea that if the entire amount charged by CBU is subject to service tax, it would amount to charging tax on goods. The CIABC, therefore, requested that the service tax should be charged on the amount representing the charges for service alone. Accepting their plea, Notification No. 39/2009-ST dated 23.09.2009 was issued wherein exemption from service tax has been provided on the value which represents the value of inputs i.e. raw materials and packaging materials used in the manufacture of such alcoholic beverages.

3. The CIABC has now sought clarifications on the tax base on which the service tax would be chargeable after allowing the deduction provided in the notification. In

short, they want to know as to how many of the above 7 elements (para 2 above) would be includible in the value for the purpose of charging service tax.

4. For removal of doubts and with a view to avoid disputes on valuation, it is clarified that,-

(a) Service tax would be payable on the bottling/job charges, distribution costs and other reimbursables.

(b) So far as inputs i.e. raw materials and packaging materials are concerned, one of the conditions of exemption notification No. 39/2009-ST is that there should be documentary proof specifically indicating the value of these inputs. Therefore, service tax on the value of raw materials and packaging materials would be exempt only when such charges are specifically mentioned in the invoice raised/documents maintained by the CBU.

(c) As regards the statutory levies, namely, excise duty/VAT, they do not represent any 'consideration' for rendering the service. Whether such amount is paid by BO or by CBU, they have no nexus with the provision of service. As such, these levies will not be included for charging service tax.

(d) Similarly, the surplus/profit earned by the BO being in the nature of business profit (which falls within the purview of direct taxes), will not be chargeable to service tax.

5. This position may be clarified suitably to the field formations.

Yours faithfully,

30/x/09

(Gautam Bhattacharya)
Joint Secretary (TRU-II)
Tel: 2309 3027

Copy to Shri Pramod Krishna, Director General, Confederation of Indian Alcoholic Beverages Companies, Z-27, Hauz Khas, New Delhi – 110016.

30/x/09

(Gautam Bhattacharya)
Joint Secretary (TRU-II)

Annexure-B

Annexure – B

Supreme Court Order

Commissioner v. BDA Pvt. Ltd. - 2016 (42) S.T.R. J143 (S.C.)

The Supreme Court Bench comprising Hon'ble Mr. Chief Justice H.L. Dattu and Hon'ble Mr. Justice Amitava Roy on 30-11-2015 after condoning the delay **dismissed** the Civil Appeal No. 14001 of 2015 (C.A. Diary No. 37295 of 2015) filed by Commissioner of Central Excise, Meerut against the CESTAT Final Order No. A/51870/2015-Cus(Br), dated 12-6-2015 as reported in **2015 (40) S.T.R. 352 (Tri.-Del.)** *(BDA Pvt. Ltd. v. Commissioner)*. While dismissing the appeal, the Supreme Court passed the following order :

"Delay condoned.

2. This appeal is directed against the judgment and order passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Order No. FO/51870/2015-Cus(Br) in Service Tax Appeal No. 636 of 2009, dated 12-6-2015.

3. We have heard learned counsel for the appellant.

4. Having carefully gone through the records and hearing learned counsel for the appellant, we are of the considered opinion that the appeal, being devoid of any merit, deserves to be dismissed and is dismissed accordingly."

The Appellate Tribunal in its impugned order had held that profit earned brand owner of Indian Made Foreign Liquor (IMFL) for getting its products manufactured on job work and sale by such job worker cannot be taxed as royalty under Intellectual Property service as job worker has not been given right to use assessee's brand name. As per agreement, cost of raw material and other expenses either paid or reimbursed by assessee. Further State levies such as Excise or VAT reimbursed to job workers as IMFL sold by or as per direction of assessee. Profit/loss on account of manufacturing and sale of IMFL entirely on assessee's account holding property risk and reward of product. Job worker receiving consideration for undertaking manufacture on job work done basis - In view of C.B.E. & C. Letter F. No. 332/17/2009-TRU, dated 30-10-2009, surplus and profit earned by manufacturing company or brand owner is not chargeable to Service Tax.

It was further held that issue relating to liability to Service Tax on profit retained by brand owners on goods manufactured and sold by job workers under Intellectual Property Right service is in dispute till the issue was clarified by C.B.E. & C. Extended period of limitation is not invocable in such cases.

7

In the Customs Excise and Service Tax Appellate Tribunal, New Delhi

Principal Bench

(BEFORE ASHOK JINDAL, MEMBER (JUDICIAL) AND R.K. SINGH, MEMBER (TECHNICAL))

M/s. BDA Pvt. Ltd. ... Appellants;

Versus

Commissioner of Central Excise, Meerut ... Respondent.

[Arising out of Order-In-Original No. 12/Commr/Mrt-I/2009 dated 31.03.2009 passed by Commissioner of Central Excise Meerut]

Service Tax Appeal No. 636 of 2009 and Service Tax Misc Application No. 55738 of 2013

Decided on June 12, 2015. [Date of Hearing: 29.5.2015/Date of decision: 12.6.2015]

Appearance:

Shri L.P. Asthana with Shri Vishal Agarwal, Advocate for the Appellants

Ms. Suchitra Sharma, AR for the Respondent

ORDER NO. FO/51870/2015-Cus(Br)

ASHOK JINDAL:— The appellant is in appeal against the impugned order confirming the demand of Service Tax under the category of Intellectual Property service along with interest and penalties under section 77 and 78 of the finance Act, 1994.

2. The brief facts of the case are that the appellant is owner of brand name "Officers Choice" They are engaged in manufacture and sale of Indian Made Foreign Liquor (IMFL). As the appellant was not having manufacturing facility to produce IMFL in the State of Uttar Pradesh, they entered into agreement dated 19.8.2000 with M/s. Pilkhani Distilllary and Chemical Works (hereinafter referred to as M/s. Pilkhani). The Revenue is of the view that M/s. Pilkhani is using the brand name and technical knowhow of the appellant and paying consideration in terms of royalty for use of brand name and technical knowhow of the brand owner i.e. the appellant, but the appellant is not paying service tax thereon on the belief that the permission to use the brand name by the appellant is not a taxable service under the category of Intellectual Property Service under Section 65(65A) of the Finance Act, 1994. Therefore, the show cause notice dated 12.2.2008 was issued by invoking extended period of limitation for the period 10.9.04 to 31.3.06 to demand Service Tax under the category of Intellectual Property service. The said show cause notice was adjudicated. The demand of service tax was confirmed against the appellant along with interest and penalties under section 77 and 78 of the Finance Act, were imposed. Aggrieved from the said order, the appellant is before us.

3. Shri L.P. Asthana, learned advocate along with Shri Vishal Agarwal, Advocate appeared before us and submits that appellant was the brand owner of IMFL and marketing also. They got manufactured IMFL through M/s. Pilkhani and the same was delivered/sold by them and earned profit

as per difference in market rate/price and cost price as per the agreement with M/s. Pilkhani. Therefore, they are not liable to pay service tax as M/s. Pilkhani is their job worker. It is further submitted that the issue of taxability of the service was clarified by the CBEC Circular No. 249/I/2006-CX.4 dated 27.10.2008 wherein it has been clarified that the agreement and activity undertaken by the appellant and M/s. Pilkhani, no service tax is payable by the appellant. Therefore, they are not liable to pay the service tax. He further, submits that the issue was again examined by the CBEC and it further clarified by Ministry of Finance letter vide F. No. 332/17/2009-TRU dated 30.10.2009 clarifying that the profit earned by the brand owner being in the nature of business profit, no service tax is payable. Therefore, appellants are not liable to pay the service tax. He also relied on the decision of this Tribunal in the case of *Diageo India Pvt. Ltd.* v. *CCE, Thane II* [2013-TIOL-790-CESTAT-MUM] and *Skoll Breweries Ltd. Sab Miller India Ltd.* v. *CCE & ST, Aurangabad* [2014-TIOL-588-CESTAT-Mum]

4. They further, submitted that the Commissioner of Central Excise, Meerut have no jurisdiction to issue show cause notice to the appellant as the appellant is not having any registered office in its jurisdiction as held by the Tribunal in the case of *CCE, BBSR* v. *Ores India (P) Ltd.* [2008 (12) STR 513 (Tri-Kolkatta)]. They further submit that show cause notice have been issued by invoking the extended period of limitation. It is therefore stated that demand of service tax is barred by limitation as the issue whether the appellant is liable to pay service tax or not or under which category was not clarified and having no clarification thereof, same has been clarified by CBEC through a circular dated 27.10.08. Therefore, the demands are hit by limitation.

5. On the other hand, Shri Amresh Jain and Ms. Suchitra Sharma, AR's opposed the contention of learned Counsels and submit that on merits the appellants are receiving royalty as per the terms of agreement clause no. 22 and they are having their office in the jurisdiction of Meerut Commissionerate. Moreover, the applicant has suppressed the fact that they are receiving royalty from M/s. Pilkhani. In these circumstances, they are liable to pay Service Tax. Shri Jain also drew our attention to the CBEC circular dated 27.10.08 and submits that the appellant has given their license for use/have taken their Brand name to M/s. Pilkhani, therefore the learned Commissioner has correctly confirmed the demand of Service Tax under the category of Intellectual Property services as per clause 2 of CBEC Circular dated 27.10.08.

6. Heard the parties. Considered the submissions.

7. In this case, we find that the appellant has entered into two agreements dated 19.8.2000, one for manufacture and sale and another for usership with M/s. Pilkhani. For proper appropriation of facts of the case. The terms of agreement are reproduced as under:—

Agreement for Manufacture and Sale.

"2. The sale of IMFL under this agreement shall be by Pilkhani through BDA and shall come into force with effect from 19th August, 2000 and shall subject to the provisions for earlier determination/termination herein contained continue initially for a period of four years. After

expiration of the initial terms of four year this agreement may be renewed for such further period upon such terms and conditions as may be mutually agreed upon. Provided, however that notice of intention to renew this agreement shall be received by the other party 3 months prior to the expiration of this Agreement.

3. Pilkhani will be free to bottle its own brands including CSD Rum and as long as the requirement of BDA is complied in full under this agreement Pilkhani can also enter into other separate arrangement with any other party/parties but with separate blending and bottling facilities.

5. BDA will provide a sample of spirit normally used by BDA in the manufacture of its products conforming to the specifications as appearing in Annexure 1 and shall manufacture/procure and distill spirit which shall conform to such sample within tolerances as given by BDA.

6. Quality Observer:

(a) BDA will have absolute right to post its representatives at the Distillery for the following purposes.viz:

i) To check the quality of spirit used in manufacturing of BDA's brands by Pilkhani so that the same is in line with the requirement of BDA.

ii) To test and record the quality of such spirit, batch or batches quality of which is acceptable to BDA.

iii) To check and approve the quality of finished product prior to dispatch.

(b) If the quality of the spirit manufactured/procured by Pilkhani is not found acceptable by BDA's Representatives, Pilkhani undertakes not to use such spirit for the manufacture of IMFL brands for them. Pilkhani undertakes to use the spirit of quality only as per the specifications and tolerances given by BDA and that the opinion of BDA's Representative will be binding in so far as the quality of spirit is concerned.

(c) If the quality of the finished product manufactured by Pilkhani is not found acceptable or not conforming to quality requirements by BDA's representatives then and in that event, BDA shall have the right to reject the same.

(d) In case of any reason, whatsoever, the Representatives of BDA are not allowed to enter the distillery or perform the duties as specified above. BDA has the absolute authority to terminate this Agreement without any notice and Pilkhani will immediately cease to produce all IMFL brands authorized for production under this Agreement.

(e) Notwithstanding anything contained herein, the risk property or interest in possession of and title or ownership to spirit manufactured by Pilkhani always remain with Pilkhani.

7. Pilkhani will provide free of charge suitable office accommodation to the satisfaction of BDA for the Representatives of BDA to be posted at the said distillery.

10. Pilkhani shall obtain at its cost such licences as may be necessary from time to time for the manufacture, blending bottling, storage, sale and delivery of IMFL products. However, in case of sale in Utter Pradesh bonded warehouse FL-2 license is required, the License Fee etc. will be borne by BDA Ltd.

11. The risk, property of interest in possession of land title or ownership to the IMFL shall pass from Pilkhani to the buyers only upon delivery of IMFL by Pilkhani to the common carrier from Pilkhani or from its Godown/Depot under operation, Pilkhani will not be responsible for any transit losses due to accident or any other reason the amount paid along with incidental expenses shall be the liability of the buyer itself.

However, the risk, property or interest in possession of and title or ownership to the IMFL manufactured by Pilkhani shall remain with Pilkhani when such IMFL is delivered to the common carrier for dispatches to its own depots located in and outside the State of Uttar Pradesh by way of stock transfer in compliance with state excise formalities.

12. All excise formalities required for the distillery shall be the responsibility of Pilkhani, BDA will obtain or cause to be obtained at its cost such excise permits/asses as may be necessary for the purpose of dispatches of IMFL products manufactured by Pilkhani under this agreement.

13. (a) Pilkhani shall obtain at its cost all raw materials required for the manufacture, distillation, blending and bottling of IMFL products, except such materials as agreed to be provided by BDA.

(b) BDA assures a minimum lifting of 3 lakh cases of IMFL per annum for which Pilkhani has assured BDA that their existing capacity is adequate to produce and supply such quantities.

(c) In case of any short fall in the lifting of the minimum quantity as mentioned in para 13(b) above BDA will pay to Pilkhani 50% of the bottling charges on such short fall.

14. IMFL manufactured by Pilkhani shall be bottled, sealed, labeled, packed etc. in the packing materials such as bottles, seals, capsules, labels, mono-cartons, corrugated boxes, etc. as may be specified by and procured from sources identified by BDA, since BDA has permitted Pilkhani the user of the trade mark owned by it.

16. The trade marks brand names and the get up in which the IMFL products will be sold, supplied and delivered by Pilkhani to the buyers, shall be the sole property of BDA (which Pilkhani hereby acknowledges), and Pilkhani neither had nor has any right, title, or interest therein and shall not at any time claim any right whatsoever, to the ownership and/or the use of the labels, brand name, trade marks and/or get up.

17. Pilkhani hereby agrees that it will keep a minimum stock of 15 days IMFL products requirement of BDA at any point of time. BDA shall endeavour to send to Pilkhani sufficient permit/passes in time to ensure that the stock level does not exceed this limit.

18. The prices at which Pilkhani will sell and deliver IMFL products under this agreement are detailed in a separate writing signed by the parties on the date of this agreement for each size and each brand. Such separate writing shall be and shall always be deemed to be part of this Agreement. These prices are all inclusive ex-factory and include storage and other expenses including the cost of packing materials such as bottles, labels, seals, mono-cartone, corrugated boxes and wire netting expenses etc., incurred by Pilkhani including wastages thereon as per annexure. The prices are however, exclusive of sales tax, excise duty, bottling fees, export fees, octroi, transit insurance, excise escort charges and any other taxes, duties or fees as may be leviable at the relevant time including any additional levies of any nature whatsoever.

19. The price per case of ENA based and RS based brands of IMFL have been agreed to and are confirmed as provided in clause 18 hereof by a separate writing as on the date of this Agreement. These prices are subject to change from time to time as may be mutually agreed upon and will be evidenced from time to time by separate similar writings only relating to the change of prices between the parties. Such separate writing or writings relating to change of prices will without anything more to be done by and between the parties be and shall always be deemed to be a part of this agreement or a modification of this agreement from the date of such writing and this agreement shall stand modified from time to time to the extent of such writing or writings relating to change of prices only.

The cost element referable to the packaging material will be reviewed and revised from time to time on actual basis and the change in respect thereof shall also be incorporated as part of this agreement by separate writings as aforesaid from time to time and this agreement shall stand altered and/or amended or modified from the date of such writing relating to the cost of packaging materials only. However, the price, otherwise agreed to will remain firm for the period of six months from the date hereof.

22. Royalty is payable by Pilkhani to BDA for the permitted use of the said trade marks or brand names at the rate and in the manner as provided in clause 25(a), such royalty may vary from time to time depending on market conditions.

25. (a) BDA will be responsible for obtaining orders, excise permits/passes etc. from parties to whom the IMFL products are to be sold directly be Pilkhani (referred to as Direct indentors). The indent for the purchase of IMFL products shall be placed on Pilkhani by such Direct indentors.

Pilkhani, on the instructions of BDA will, after completing the excise and other formalities, dispatch the IMFL products to the Direct indentors and will bill the Direct Indentors at the rate approved by BDA from time to time after deducting any discounts or rebates authorized by BDA. BDA will be responsible to and shall arrange for the collection of sale proceeds and declaration forms required for Sales Tax.

The payment shall be made by the Direct indentors by way of cheque or demand draft drawn in the name of Pilkhani. Pilkhani after retaining the value of each product at the rate agreed from time to time in accordance with clauses 18 and 19 of this agreement by separate writing and the amounts representing the statutory dues such as Sales Tax, Excise duties, fees etc. will pay to BDA the balance amount (which represents royalty) due and payable to BDA within seven days from money being received in their accounts. However, BDA will not withdraw any amount as royalty or otherwise till the investment in the working capital of the Pilkhani is completely repaid.

(b) Pilkhani will invest upto the maximum of Rs. 50.00 lacs towards working capital to carry out bottling arrangements. Any investment over and above this amount will have to be invested by BDA. The amount invested by Pilkhani will carry additional interest of 24% calculated on daily average basis. This facility of finance will be reviewed from time to time at the discretion of Pilkhani."

Usership Agreement

A. The Proprietors have been carrying on business as manufacturers of and dealers in all kinds of wines, spirits and liquor as also the goods set out in the Schedule "A" (hereinafter called "the said trade mark").

B. The users have entered into a Manufacturing Agreement with the Proprietors dated 19th August, 2000 (hereinafter called the Manufacturing Agreement) whereunder the users will be undertaking the manufacture of contract products at the distillery as per the specification to be provided by the proprietors will be undertaking the sale of the contract product so manufactured to the proprietors or as per the directions of the proprietors.

C. In terms of the Manufacturing Agreement including for the consideration mentioned herein, the Proprietors have agreed to grant to the users and users are desirous of having a License to the said trade marks for the contract products upon the terms hereinafter contained and not otherwise.

5. Royalty is payable by the Users to the Proprietors for the permitted use of the said trade marks in the mode and manner as specified in the Manufacturing Agreement."

From the tenor of the agreements, we find that the appellant is a brand owner of the IMFL and was having own arrangement with M/s. Pilkhani for manufacture of IMFL at their distillery as per the specification to be provided and will be undertaking the sale of the IMFL so manufactured. As the appellants were not having any manufacturing license, the appellant have allowed M/s. Pilkhani to manufacture as license holder and who can sell the same, therefore the arrangement between the parties is like that M/s. Pilkhani shall manufacture the IMFL and sell the manufactured IMFL as per the direction of the appellant on the price fixed by the appellant. Therefore, sale proceeds of the goods shall be relevant to the said account and then out of the said amount M/s. Pilkhani shall retain the cost of manufacture of the products and statutory dues such as sales tax, excise duty

etc. and the balance amount shall be remitted to them. Apart form the tax and price payable to the Government were to be paid by the manufacturer to the Government directly and balance amount shall be given to the appellant who shall not withdraw any amount till release of the cost of the job work expenses incurred by M/s. Pilkhani. From these facts and from the tenor of the agreement, it is clear that the appellants are brand owners and engaged in the activity of manufacture of alcoholic beverage. The cost of raw material and other expenses were reimbursed to M/s. Pilkhani. State Levy such as State Excise duty and other tax were reimbursed to M/s. Pilkhani and alcoholic beverages were sold as per the direction of the appellant. Therefore on analyzing the agreements between the appellant and M/s. Pilkani, we observe as under:—

M/s. Pilkhani is receiving consideration for job work charges indicating manufacturing activity. Merely the clause of royalty mentioned in the agreement does not mean that the appellant has given the right to use their brand name to M/s. Pilkhani for their use.

Same view has been taken by the Hon'ble Apex Court in the case of Panipat Woollen and General Mills Co. Ltd. [1978 3 SCR 186] wherein the Hon'ble Apex Court has held as under:—

> "It is well settled that the Court in order to construe an agreement has to look to the substance or the essence of it rather than to its form. A party cannot escape the consequences of law merely by describing an agreement in a particular form though in essence and in substance it may be a different transaction."

Further, the Larger Bench of this Tribunal in the case of Pagariya Auto Center v. CCE, Aurangabad [2014 (33) STR 506 (LB)] has also observed as under:—

20. On a consideration of the apparent conflict of opinion in the decisions mentioned in the order of reference and the other decisions which were cited at bar, it is clear that no uniform principle emerges as would guide determination of whether a particular transaction involving an interface between an automobile, dealer and bank or financial institution would per se amount to BAS. The identification of the transaction and its appropriate classification as the taxable BAS or otherwise must clearly depend upon a careful analysis of the relevant transactional documents. Only such scrutiny and analysis would ensure rational classification of the transaction.

Further, we find that the appellant has relied on CBEC Circular dated 27.10.2008 wherein the issue has been examined. For better appreciation of the issue, the said circular is reproduced herein as under:—

1. Brief Background

Issues relating to taxable services provided during the course of production of alcoholic beverages (such as Indian Made Foreign Liquors, Branded Country liquors and similar products) are matters of dispute for a considerable period. In this regard, a draft Circular F. No. 249/1/2006-CX.9, dated November, 2006 [2006 (4) STR C7] (on applicability of service tax on taxable services provided in certain cases during the course of production of alcoholic beverages) was placed on

the official website for eliciting responses from the stakeholders. The responses received from various stakeholders were carefully examined. It was noticed that in certain cases such alcoholic beverages are produced by the distillers who also own the brandnames affixed on such beverages. Such beverages are cleared on payment of State Excise Duty and there are no known disputes as regards the liability to pay service tax. In other cases, the owners of the brand name and the manufacturers may be two different entities and issues have been raised regarding provision of taxable services in such situations. There are several types of arrangements between the brand owners and the maker of the alcoholic beverages, which are as follows.

2. The Brand Licensing Arrangement

2.1 Many alcoholic beverages bear brand names. The Brand Owners (herein after called the BO), which includes Indian subsidiaries of International brand owners, hold the intellectual property rights over such brand names. The Licences (who holds the licence by the State government to manufacture such alcoholic beverages) manufactures alcoholic beverages under authority to use such brand name granted by the BO. The BO may also provide technical staff/assistance to maintain required quality. The alcoholic beverages, so manufactured are directly sold (after paying State excise duty) by licencee/manufacturer. Property, risk and reward of the products so manufactured rest with the licencee/manufacturer and not with the BO, who is paid an agreed sum for grant of permission to use such brand name and the technical know how. In such cases the BO provides taxable service, namely 'Intellectual Property Service' to the licencee/manufacturer. The tax is chargeable on the gross amount charged by the BO from the licencee/manufacturer.

3. Contract Manufacturing Arrangement

3.1 Under such arrangement the BO gets alcoholic beverages manufactured by the licencee/manufacturer, the latter holding the required State Licences for manufacture of the alcoholic beverages. In trade, such licencees/manufacturers are called the Contract Bottling Units or CBUs. The cost of raw materials (and in some cases, even capital goods) and other expenses are either paid by the BO or reimbursed by the BO. Statutory levies (i.e. State Excise Duty) are also reimbursed to the CBU by the BO. The alcoholic beverages are sold by or as per the directions of the BO and profit or loss on account of manufacturing and sale of alcoholic beverages is entirely on account of BO, who thus holds the property, risk and reward of the products. The CBU receives consideration (i.e. job charges) for undertaking the manufacturing activity on job work basis. There is no doubt that under such an arrangement, CBU is a service provider providing services to BO. A doubt has arisen, whether or not the CBU provides a taxable service namely the Business Auxiliary Service (BAS) to BO. This taxable service includes 'any service provided or to be provided in relation to production or processing of goods for, or on behalf of, the client' This taxable service however, by definition excludes 'any activity that amounts to "manufacture" within the meaning of

clause (f) of Section 2 of the Central Excise Act, 1944 from its ambit. The issue in dispute is whether such activity would be hit by the exclusion clause mentioned above.

3.2 In the draft circular dated November, 2006, it was mentioned that as alcoholic beverages are not covered under central excise law, the production of beverages would not fall within the meaning of manufacture within the meaning of clause (f) of Section 2 of the Central Excise Act. Thus, the exclusion clause would not apply to production of non-excisable goods, resulting in its coverage under Business Auxiliary Service (BAS). However, the matter was re-examined in detail by the Board after receipt of the responses and it has now been concluded that the exclusion would be applicable in the instant case for the following reasons:

(a) Plain reading of Section 3 of the Central Excise Act, 1944 shows that for levy and collection of central excise duty, the following conditions must be satisfied;

The process undertaken must amount to manufacture as defined under Section 2(f); and

The result of such process should be emergence of excisable goods, which as per Section 2(d) are the goods specified in the First and the Second schedule of the Central Excise Tariff Act, 1985 as being subjected to duty of excise.

Therefore, 'manufacture' and 'excisable goods' are two independent concepts and that it is not necessary that a process amounting to manufacture within the meaning of Section 2(f) should always result in emergence of an excisable goods and vice versa. Whether a process would amount to manufacture within the meaning of Section 2(f) has to be seen independently, based on the criteria evolved through various judgments of the Apex Court. There may be a case, when a process may amount to manufacture under Section 2(f) but it may not result in emergence of an excisable product. If that be so, then the exclusion clause under BAS, which refers only to the activity amounting to manufacture within the meaning of Section 2(f), would still apply to such processes, whether or not the resultant product are excisable goods. Such is the case of production of alcoholic beverages, which qualifies to be a process amounting to manufacture within the meaning of Section 2(f), when read with the relevant judicial pronouncements, because a new product, with a distinct name, character or use; and capable of being marketable, emerges; and

(b) In the instant case the exclusion provision under the definition of Business Auxiliary Service (under the Finance Act, 1994) makes a reference to a definition of the word 'manufacture') figuring under another Act (i.e. The Central Excise Act, 1944). It is a settled law that when a definition from an Act is transposed into another Act, it is as if the said definition is physically written into the borrowing Act without any reference to the context of such definition in the Act from which it is being borrowed. It is the words of that definition, which is imported into the borrowing Act and not the scope of the first Act and the context in which such definition is used in the first Act. Admittedly the scope of the two Acts would be distinct and if the definition is borrowed from the first Act into the second Act having different scope, the same would get disturbed/distorted if the context and

scope of the earlier Act is also imported. Thus just because Central Excise Act does not extend to the manufacture or production of alcoholic beverages meant for human consumption, it cannot be said that the term 'manufacture' used in Business Auxiliary Service would also not cover the process of making the said product, namely alcoholic beverages.

3.3 In view of the foregoing, it was decided that if the CBU undertakes complete process of manufacture of alcoholic beverage under the 'contract bottling arrangement' as described above then such activity would not fall under the taxable service, namely the BAS. However, in case the activity undertaken by the CBU falls short of the definition of manufacture (such as activity of 'packing' or 'labelling' alone) then such activity would fall within its ambit and would be charged to service tax."

8. On going through the above circular, we find that the arrangement between the appellant and Pilkhani is squarely covered under clause 3 of said Circular wherein the appellant gets IMFL manufactured by Pilkhani who is holding the State license of manufacture of alcoholic beverages. In particular M/s. Pilkhani is owner as contract bottling i.e. CBU. As per the agreement, cost of raw material and other expenses were either paid by the appellant or reimbursed by the appellant. The State levies such as excise levy or taxes were also reimbursed to Pilkhani by the appellant. The IMFL was sold by or as per the direction of the appellant on profit/loss on account of the manufacturing and sale of IMFL is entirely on account of appellant who holds the property risk and reward of the product. Pilkhani received consideration for undertaking the manufacture of job work done basis. In these circumstances, the appellant is not required to pay service tax at all.

9. The arrangement was further examined by CBEC and by TRU letter dated 30.10.2009 again it has been clarified as under-

"2. Under section 67 of the Finance Act, 1994, service tax is chargeable on the 'gross amount charged' by the service provider for providing taxable services. As per CIABC the gross value of sales, as per invoices, includes the following elements:—

1) Bottling/job charges paid to CBU

2) Distribution costs including freight, transit insurance etc. paid to CBU

3) Other reimbursable paid to the CBU

4) Cost of raw material paid to the CBU

5) Cost of packaging materials paid to the CBU

6) State excise duty and VAT paid to State Government

7) Surplus/profit retained by BO

It was their plea that if the entire amount charged by CBU is subject to service tax, it would amount to charging tax on goods. The CIABC, therefore, requested that the service tax should be charged on the

amount representing the charges for service alone. Accepting their plea, Notification No. 39/2009-ST dated 23.9.2009 was issued wherein exemption from service tax has been provided on the value which represents the value of inputs i.e. raw materials and packaging materials used in the manufacture of such alcoholic beverages.

3. The CIABC has now sought clarifications on the tax base on which the service tax would be chargeable after allowing the deduction provided in the notification. In short, they want to know as to how many of the above 7 elements would be includible in the value for the purpose of charging service tax.

4. For removal of doubts and with a view to avoid disputes on valuation, it is clarified that—

(a) Service tax would be payable on the bottling/job charges, distribution costs and other reimbursible.

(b) So far as inputs i.e. raw materials and packing materials are concerned, one of the conditions of exemption Notification No. 39/2009-S.T. is that there should be documentary proof specifically indicating the value of these inputs. Therefore, service tax on the value of raw materials and packaging materials would be exempt only when such charges are specifically mentioned in the invoice raised/documents maintained by the CBU.

(c) As regards the statutory levies, namely, excise duty/VAT, they do not present any 'consideration' for rendering the service. Whether such amount is paid by BO or by CBU, they have no nexus with the provision of service. As such, these levies will not be included for charging service tax.

(d) Similarly, the surplus/profit earned by the BO being in the nature of business profit (which falls within the purview of direct taxes), will not be chargeable to service tax.

10. On going through the said TRU Circular, we find that the arrangement is executed by the parties is as per para 2 of the said circular and in that circular it has been clarified that the surplus and profit earned by the manufacturing company or brand owner is not chargeable to service tax.

11. This issue again came up before this Tribunal in the case of Diago India Pvt. Ltd. (supra) wherein this Tribunal after examining the agreement has observed as under:

"9. The terms of the Agreement, CBUs to manufacture the products for and on behalf of the appellant at the plant of CBU using the appelaint's equipment. The Agreement clearly states that the CBU has no right to use the intellectual property of the appellant and there is no transfer of any IPR to the CBU from the appellant. The CBU has no claim whatsoever on the rights of the appellant. The nature of transaction between the appellant and CBU indicates that the appellant to use the brand on his own account and there is no representational right given to the bottling unit for the brand name. The commercial interest of the bottling unit is to earn the consideration for bottling or manufacturing the alcoholic beverages. The appellant uses the bottling units for

producing the said beverages in their brand names for sale in profit. The said activity has been dealt with by the CBEC in their Circular No. 332/17/09 TRU dated 30.10.2009.

10. After going through the Board's Circular dated 30.10.2009 deals with the situation in this matter and the activity exactly undertaken by the appellant. In the light of the said Circular it was held that the brand owner/appellants are not required to pay service tax as the surplus/profit earned by the CBU being in the nature of profit. Therefore, as clarified by the CBEC through two Circulars, the appellants are not liable to pay service tax."

12. This issue further came up before this tribunal in the case of Skol Breweries Ltd. (supra) wherein this tribunal has observed as under:

"6. After taking through the agreements, the appellant argues that FIPL is only a Contract Bottling Unit (CBU), manufacturing and supplying beer as per specifications and formulation including freight and escort to the appellant. Further, the sale is also being made to the appellant or to its Indenters as per the direction of the appellant. Thus, the appellant has neither provided any Franchise Service nor any Intellectual Property Right Service to FIPL and thus, the impugned demand of tax and penalty are fit to be set aside.

6.1 The appellant also draws our attention to Circular F. No. 249/1/2006-CX.4, dated 27-10-2008 which was issued in respect of production of alcoholic beverages on job-work basis and classification of Service Tax liability. Clause 2.1 of the Circular provided that the BrandOwners (BO) of the Alcoholic Beverages which includes Indian subsidiaries of International brand owners, hold the intellectual property rights over such brand names. The Licencee (who holds the licence by the State government to manufacture such alcoholic beverages) manufactures alcoholic beverages under authority to use such brand name granted by the BO. The BO may also provide technical staff/assistance to maintain required quality. The alcoholic beverages, so manufactured are directly sold (after paying State excise duty) by licencee/manufacturer. Property, risk and reward of the products so manufactured rest with the licencee/manufacturer and not with the BO, who is paid an agreed sum for grant of permission to use such brand name and the technical know-how. In such cases the BO provides taxable service, namely 'Intellectual Property Service' to the licensee/manufacturer. The tax is chargeable on the gross amount charged by the BO from the licencee/manufacturer.

6.2 The Circular further in para 3.1 recognizes Contract Manufacturing Arrangement where the BO gets alcoholic beverages manufactured by the licensee/manufacturer, the latter holding the required State Licenses for manufacture of the alcoholic beverages. In trade, such licensees/manufacturers are called the Contract Bottling Units or CBUs. The cost of raw materials (and in some cases, even capital goods) and other expenses are either paid by the BO or reimbursed by the BO. Statutory levies (i.e. State Excise Duty) are also reimbursed to the CBU by the BO. The alcoholic beverages are sold by or as per the directions of the BO and profit or loss on account of manufacturing and sale of alcoholic beverages is entirely on account of BO, who

thus holds the property, risk and reward of the products. The CBU receives consideration (i.e. job charges) for undertaking the manufacturing activity on job work basis. There is no doubt that under such an arrangement, CBU is a service provider providing services to BO. A doubt has arisen, whether or not the CBU provides a taxable service namely the Business Auxiliary Service (BAS) to BO. This taxable service includes 'any service provided or to be provided in relation to production or processing of goods for, or on behalf of, the client' This taxable service however, by definition excludes 'any activity that amounts to "manufacture" within the meaning of clause (f) of section 2 of the Central Excise Act, 1944' from its ambit. The issue in dispute is whether such activity would be hit by the exclusion clause mentioned above.

6.3 On examining the scope of manufacture in para 3.3 of the Circular, it is revealed that if the CBU undertakes complete process of manufacture of alcoholic beverage under the 'contract bottling arrangement' as described above then such activity would not fall under the taxable service, namely the BAS. However, in case the activity undertaken by the CBU falls short of the definition of manufacture (such as activity of 'packing' or 'labelling' alone) then such activity would fall within its ambit and would be charged to service tax.

6.4 Further, the appellant drew our attention to notification/clarification issued by CBE&C vide F. No. 332/17/2009-TRU, dated 30-10-2009 on value of taxable services under the category of Business Auxiliary Services for manufacture of liquor on job-work basis. It is mentioned in the Circular that Service Tax has been imposed by Finance (No. 2) Act, 2009 under Business Auxiliary Services to include the manufacture of alcoholic beverages on job-work basis. In this connection, in the earlier Notification No. 39/2009-S.T., dated 23-9-2009, it was clarified that the Government exempts the taxable service specified in sub-clause (zzb) of Section 65(105), provided by a person (service provider) to any other person (service receiver) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, from so much of value which is equivalent to the value of inputs, excluding capital goods, used for providing the said service, subject to the condition that no Cenvat credit has been taken under the provisions of Cenvat Credit Rules, 2004, there is documentary proof specifically indicating the value of such inputs, and where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, dispatches of goods as well as financial transactions relating thereto.

6.5 Further, the Circular dated 30-10-2009 clarified that:—

(a) Service tax would be payable on the bottling/job charges, distribution costs and other reimbursible.

(b) So far as inputs i.e. raw materials and packing materials are concerned, one of the conditions of exemption Notification No. 39/2009-S.T. is that there should be documentary proof specifically indicating the value of these inputs. Therefore, service tax on the value

of raw materials and packaging materials would be exempt only when such charges are specifically mentioned in the invoice raised/documents maintained by the CBU.

(c) As regards the statutory levies, namely, excise duty/VAT, they do not present any 'consideration' for rendering the service. Whether such amount is paid by BO or by CBU, they have no nexus with the provision of service. As such, these levies will not be included for charging service tax.

(d) Similarly, the surplus/profit earned by the BO being in the nature of business profit (which falls within the purview of direct taxes), will not be chargeable to service tax.

6.6 Thus, the appellant claims that in view of the amendment brought in 2009 w.e.f. 1-9-2009, the bringing into tax net, the activity of job-work provided by the Bottling Unit (service provider) to the service receiver-Brand Owners, there is no exigibility of Service Tax in the appellant's case prior to 1-9-2009. Further, reliance is placed on the ruling of Coordinate Bench of this Tribunal in the case of Diageo India Pvt. Ltd. v. Commissioner of Central Excise, Thane-II-2013-TIOL-790-CESTAT-MUM : 2013 (32) S.T.R. 254 (Tri.-Bom.) where in a similar arrangement between the parties, it was held that Brand Owner is not required to pay any Service Tax under the category of Franchise Service taking the notice of clarification vide Board's Circular dated 30-10-2009.

6.7 The appellant also drew our attention to the distinction between the user agreement, licensed user agreement, registered user agreement and a manufacturing agreement. As per the book of P. Narayanan, Sixth Edition-Ordinarily in a user agreement, licensed user agreement or a registered user agreement, the licensee gets the right to sell the goods manufactured under the agreement on its own. In a manufacturing agreement the owner of a trade mark gets the goods manufactured by a manufacturer on the basis of something like a job work and for the specific purpose authorizes the manufacturer to apply the mark on the goods, on condition that the whole of the goods so manufactured bearing the trade mark should be sold to the owner of the mark. The manufacturer is not given the right to sell the goods on his own. In such an agreement the owner of the trade mark is the actual user of the mark in a trade mark sense and obviously the benefit of such user goes to him. The name of the manufacturer may or may not appear on the labels. It would be advisable not to mention the name of the manufacturer on the goods or on the labels or in any trade literature. This may not be possible in the case of certain goods like drugs and cosmetics where the relevant statute imposes a condition that the name of the manufacturer should appear on the labels. In such cases to safeguard the ownership of the trade mark it should be clearly indicated on the labels and other material where the trade mark appears as to who is the owner of the trade mark and that the goods are manufactured solely for the owner of the mark. It is further advisable that the agreement for the manufacture should be entered into only after making an application for registration of the mark.

6.8 Thus, the appellant vehemently argues that that neither the provisions of Franchise Service are attracted nor the provisions of Intellectual Property Right are attracted.

7. The learned Addl. Commissioner (AR) appearing for the Revenue supports the Order-in-Original and the appellate order. Further, referring to the various clauses of the contract particular clause 2.1 and 3.2 where it is provided that local license fee/tax to be incurred under the agreement shall be borne by FIPL. Further, SKOL (appellant) shall not bear the cost of Annual Brewery Licence Fee. Thus, it is amply clear that essential element of contract of CBU is not satisfied. Further reference is made to clause 2.7 of the agreement which provides that FIPL should be solely responsible for manufacturing appropriate quality standards of Skol beer and packaging as per applicable law. In the event of any claims or complaints being made by any third party in relation to the quality of Skol Beer or packaging to Skol Beer manufactured and bottled by FIPL, FIPL, at its cost, shall arrange to collect such stocks and drain the same in the presence of Skol representative. In any event, FIPL shall indemnify Skol against all claims, proceedings, losses, damages, charges, expenses etc., if any, which may be made against or suffered by Skol with respect to the Skol Beer manufactured by FIPL. Further, FIPL shall also be liable to bear all costs, claims or losses arising on account of any inordinate delay or loss in production or deterioration in the quality of the Skol Beer manufactured by FIPL. Further, the appellant is entitled to collect an amount of Rs. 27/- per case of beer bottle out of the sale proceeds collected by FIPL. Thus, the risk of profit/losses is borne by FIPL. It is not a pure bottling arrangement between parties and thus, Service Tax is attracted as Franchise Service and/or Intellectual Property Right Service.

8. Having considered the rival submissions, we find that as per the agreement between the parties, the risk of manufacture and sale lies with the appellant in respect of the Foster Brandbeer got manufactured by it from FIPL. It is evident from the contract that FIPL is only responsible for bottling, packing and dispatch as per the specification, terms, formula etc. as laid down by the appellant. Further, FIPL is bound to charge the price from the notified Indenter of the appellant as fixed by the appellant. Only for the risks associated with the manufacturing process fastened on FIPL (CBU), it cannot be said that as FIPL is responsible for proper quality, quantity and timely production, they are providing Franchise Service and/or IPR Service. Further, taking notice of the definitions which are reproduced below:—

> "47. "franchise" means an agreement by which the franchisee is granted representational right to sell or manufacture goods or to provide service or undertake any process identified with franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol, as the case may be, is involved]
>
> 48. "franchisor" any person who enters in to franchise with a franchisee and includes any associates of franchisor or a person designated by franchisor to enter into franchise on his behalf and the term "franchisee" shall be construed accordingly."

From the aforementioned definitions, it is crystal clear that in the facts and circumstances, no services have been provided by the appellant to FIPL under the classification of "Franchise Service" and "IPR Service"

13. We are also in agreement with the case law relied upon by the appellant.

14. We also find that as per the clarifications issued by CBEC circulars discussed hereinabove, we are of the considered opinion that the appellant are the Brand Owner of IFML and M/s. Pilkhani is a job worker manufacturing IMFL on behalf of the appellant and the amount retained by the appellant is the business profit not liable to be taxed under the Finance Act, 1994 under the category of Intellectual Property service. Therefore on merits, we hold that appellant are not required to pay Service Tax under the category of Intellectual Property Right service.

15. As on merits we held that appellant is not liable to pay service tax under the category of IPRS and we also examined that the show cause notice has been issued to the appellant by invoking extended period of limitation as there is an issue whether the appellant is liable to pay service tax during the impugned period was in dispute and same has been clarified by CBEC Circular dated 27.10.2008 and Ministry of Finance letter dated 30.10.2009. In these circumstances, we hold that the extended period of limitation is also not invokable in the present case. With these observations, we hold that appellant succeeds on merit as well as on limitation. Therefore, we are not deciding the issue of jurisdiction of the adjudicating authority as contested by the appellant.

16. With these terms, impugned order is set aside. Appeal is allowed with consequential relief, if any.

ANNEXURE-C

Draft Circular

CBEC-20/06/23/2019-GST

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

(GST Policy Wing)

*****

New Delhi, the March, 2020

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)

The Principal Director Generals / Director Generals (All)

Madam / Sir,

Subject: Taxability of 'economic surplus' earned by brand owners of alcoholic liquor for human consumption and services provided by contract manufacturers to the brand owners – reg.

Various representations have been received from entities engaged in the manufacture of alcoholic liquor for human consumption on the captioned subject. The various activities/transactions in relation to manufacture of alcoholic liquor have been analyzed in light of the provisions of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act"). In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the CGST Act clarifies the issues involved in following paragraphs: -

2. Companies which are holder of registered brands in relation to IMFL (Indian Made Foreign Liquor) or alcoholic liquor for human consumption are commonly known in the industry as "Brand Owners (BO)". BOs, who have the technical know-how for manufacture of alcoholic liquor, have exclusive right to exploit the brands, including by way of sale of alcoholic liquor under those brands. The whole process of procurement, manufacture and sale of alcoholic liquor is governed by each State's Excise laws which vary across States. Certain State Excise laws mandate that manufacture and sale of alcoholic liquor, as well as the procurement of Extra Neutral Alcohol ("ENA") required for the manufacture of alcoholic liquor can only be undertaken by the parties, who have been duly licensed by the State Excise authorities. In order to meet the requirements under State Excise laws, BOs approach various Contract Bottling Units (CBUs) or Third Party Manufacturing Units (TMUs) who hold the requisite licence under the State Excise laws to carry out the manufacture and bottling of IMFL and

procure ENA for the purpose. Broadly, there are two types of arrangements between the BO and CBU for manufacture and sale of alcoholic liquor, as follows:

c) Transfer of right to TMUs for commercially exploiting brand of the BO in exchange for a consideration ('franchise fee' or any other name).
d) Contract manufacturing by CBUs without any transfer of right to CBUs to commercially exploit the brand of BO.

3. In respect of the arrangement discussed at para 2(a) above, the BO is clearly engaged in the supply of a taxable service to the CBU which is in the nature of transfer of intellectual property rights (IPR) to the CBU in lieu of an agreed consideration. Thus, GST is payable on such supplies by the BO as supplier of service in the nature of "permitting the use or enjoyment of any intellectual property right" (S. No. 5(c) of Schedule II under section 7 of the CGST Act). This arrangement is not being discussed in this circular as the law is already settled in this regard and clarification has not been sought.

4. In context of the arrangement discussed at para 2(b), doubts have been raised regarding its taxability under GST. **Therefore, this Circular concerns only such cases where the BO does not transfer right of commercial exploitation of the brand to CBU and the risks and rewards relating to supply of** alcoholic liquor **under the brand name of BO remain vested with the BO**. Given the variation in Excise law provisions across States, different business models are being followed in different States. An '**illustrative list**' (not exhaustive list) of the prevalent business models is as follows:

c) Lease/rent of licensed premises by CBU/TMU to BO:

The entity (CBU/TMU) has the licence from the State Government to manufacture alcoholic liquor. It leases/rents out the licensed premises as well as the license for manufacture to the BO. The owner of the licensed premises, besides renting out the licensed manufacturing facility, also manufactures alcoholic liquor for the BO. Raw material is purchased and supplied by the BO. The BO directly sells alcoholic liquor so manufactured. The prevalent practice is that TMU/CBU charges the BO 'rent' for renting of factory with licence and 'conversion charge' for converting raw material (ENA, flavors etc.) to liquor. The current practice is that CBU charges GST on both rent and conversion charges. In this model, the BO has beneficial ownership of all raw materials and the manufactured liquor. The property in and the risk and reward associated with the liquor manufactured by CBU vest with the BO. Essentially, the CBU manufactures alcoholic liquor on behalf of the BO.

It is clarified that in this model, GST is payable on both the rent and conversion charges paid by the BO to the CBU/ TMU.

d) CBU/TMU manufactures and sells liquor on behalf of the BO:

i. This is the most prevalent model. In many States, there is a State Beverages Corporation, which alone is authorized to sell alcoholic liquor. The State Corporation buys liquor from the licensed manufacturers. Then there are States where State Beverage Corporation does not exist but law requires liquor to be sold only by licensed manufacturers. In such States, the BO cannot sell liquor. As per this arrangement, BO enters into contractual agreement with the CBUs on a non-exclusive basis (BO can enter into multiple contracts with other CBUs as well). In this model, the brand owner enters into a contract with TMU under which TMU buys raw material from venders at prices specified by the brand owner. Purchase of raw material is financed/funded by brand owner. TMU sells liquor to customers specified by the brand owner. The sale price

is also decided by the BO. Sale proceeds go into a bank account of TMU, which is controlled by the BO, through authorized signatories solely and exclusively nominated by the brand owner. The BO funds the purchase of raw material and other expenses for manufacture, packaging, sale and distribution of liquor from the sale proceeds deposited in this bank account. In this model too, the property in and the risk and reward associated with the liquor manufactured by the CBU vests with the BO. Upon termination of the contract, CBU is obligated to cease and desist from using the trademark of the BO and dispose of the unsold stock at ex-brewery price as directed by BO. Further, CBU is also required to sell at cost the raw materials, labels, packing material etc. to the BO. The amount that remains after meeting the cost of the raw material, bottling charges and other reimbursements (including taxes borne by CBU) paid to the CBU from the total sale proceeds of alcoholic liquor, is retained by the BO, and the same is commonly known as '**economic surplus**' or profit of the BO.

Economic Surplus of the BO = (Total Sale proceeds of the alcoholic liquor) – (Bottling charges + cost of raw materials + cost of packing materials + Taxes borne by the CBU + Other reimbursements paid to the CBU by BO)

ii. Another variant of this model has been discussed in the Hon'ble Supreme Court order dated 30.11.2015 and in the case of M/s BDA Private Limited where the essential features of the contract are as discussed above but the TMU pays a certain amount of royalty to the brand owner. However, the most interesting and crucial point is that this payment of royalty by TMU to the brand owner is also financed/funded by the brand owner to the TMU from the sale proceeds of liquor sold by TMU on behalf of the brand owner and deposited in the bank account controlled exclusively by the nominees of the brand owner. Therefore, effectively there is no payment of royalty by TMU to the brand owner.

Hon'ble Supreme Court in the case of BDA Private Limited has held that in such cases BO does not give any right to the TMU to use his brand. TMU manufactures for BO. Hon'ble Supreme Court has upheld the following observations of CESTAT in this case,-

> *4 …"Profit earned by brand owner of Indian Made foreign Liquor (IMFL) for getting its products manufactured on job work and sale by such worker cannot be taxed as royalty under Intellectual property service as job worker has not been given right to use assessee's brand name. As per agreement, cost of raw material and other expenses either paid or reimbursed by assesse. Further State levies such as Excise or VAT reimbursed to job workers as IMFL sold by or as per direction of assesse. Profit/ loss on account of manufacturing and sale of IMFL entirely on assessee's account holding property risk and reward of product. Job worker receiving consideration for undertaking manufacture on jobwork done basis."*

iii. In this model, including its variants discussed above, raw material though purchased by and invoiced to the TMU is paid for or reimbursed by the brand owner. A person working on the raw material purchased at the direction of and paid for or reimbursed by another, cannot be said to be working on raw material belong to himself. The beneficial ownership of the raw material in such cases though purchased by the TMU lies with the brand owner. The brand owner has the lien on the raw material so purchased by the TMU. Therefore, it would be incorrect to say that the raw material belongs to TMU and not the brand owner or that the TMU processes the raw material belonging to himself and not to the brand owner.

iv. The surplus that remains with the brand owner after meeting all expenses towards raw material, marketing, distribution costs and the royalty paid by CBU/TMU to brand owner is not a consideration that the brand owner receives from the . The fact is that sells liquor on behalf of the brand owner, the sale proceeds of the liquor belong to the brand owner and are deposited in bank account which is controlled by the brand owner. The amount that remains with the brand owner after meeting all the expenses involved in manufacture and sale of liquor by on his behalf belongs to him and is his profit.

v. In view of the above, it is clarified that in this model, where the CBU/TMU undertakes manufacture of liquor for the brand owner, including the variants discussed above; the BO holds the property in and risks and rewards associated with the product manufactured by the TMU/CBU. TMU/CBU receives consideration for the service of undertaking manufacture for the brand owner. Therefore, surplus retained by BO is not taxable. Even in the service tax regime, it was clarified vide Letter F. No. 332/17/2009- TRU dated 30.10.2009 that 'economic surplus' is not taxable. However, the consideration received by TMU/CBU for undertaking manufacture of liquor for and on behalf of BO, in the form of bottling charges, conversion charges or in any other name or form is taxable.

vi. It is further clarified that the said service supplied by CBU/ TMU to BO shall be classified as 'manufacturing services on physical inputs (goods) owned by others' under heading 9988 of scheme of classification of services annexed to the notification No. 11/ 2017- Central Tax (Rate) dated 28.06.2017 which currently attracts GST rate of 18% under Sl. No. 26(iv) of the said notification

5. It is reiterated that the business models discussed at para 4 are not exhaustive. For other business models, the taxability under GST may be decided on a case-to-case basis.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Hindi version will follow.

(Yogendra Garg)
Principal Commissioner (GST)

Agenda Item 5A(ii): Challenges faced in apportionment of ITC in cases of business 'reorganization under section 18(3) of CGST Act read with rule 41(1) of CGST Rules:

Representations have been received from certain companies highlighting the challenges faced in the implementation of provisions under section 18(3) of CGST Act, 2017 read with rule 41(1) of CGST Rules which provides for apportionment of ITC on account of change in constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities.

2. Sub-section (3) of section 18 provides as under:

> "*Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.*"

Further, proviso to rule 41(1) provides that the value of assets transferred to the transferee needs to be considered to calculate the value of transferable ITC. Sub-rule (1) of rule 41 provides as under:

> *"(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in* ***FORM GST ITC-02****, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:*
>
> ***Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.***
>
> *Explanation:- For the purpose of this sub-rule, it is hereby clarified that the* ***"value of assets" means the value of the entire assets of the business****, whether or not input tax credit has been availed thereon."*

3. Sub-rule (1) of rule 41 does not clarify the manner of computation of value of assets for the purposes of apportioning input tax credit. Accordingly, clarification has been sought in respect of the following issues concerning business reorganization under GST:

a) There is confusion whether the value of assets under rule 41(1) of CGST Rules should be considered at State level or at an entity level (all-India level).
b) The apportionment formula based on the value of assets has been provided only for the scheme of demerger. It is not clear as to whether the allocation needs to be adopted for other forms of business reorganization that results in partial transfer of business assets along with liabilities.
c) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess.
d) Calculation of the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of **FORM GST ITC–02** by the transferor.
e) In order to calculate the amount of transferable ITC under proviso to rule 41(1) of CGST, which date shall be relevant to determine the unutilized ITC balance of transferor?

f) Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?

4. In order to clarify the above mentioned issues, an Agenda was placed before the Law Committee in its meeting held on 07.11.2019. The Law Committee recommended issuance of a Circular on this issue. Accordingly, a draft Circular was prepared and placed before the Law Committee in its meeting held on 27.12.2019 wherein certain changes were recommended. Subsequently, the draft Circular was amended and placed before the Law Committee in its next meeting held on 20.01.2020. The draft Circular was approved by the Law Committee with certain modifications.

5. Accordingly, the said Circular has been amended (**Annexure-A**) and is placed before the GST Council for discussion and decision.

Annexure-A

Draft Circular

F.No. CBEC-20/06/13/2019-GST

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes & Customs

GST Policy Wing

****

New Delhi, dated the March, 2020

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Sub: Clarification in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules - reg.

Representations have been received from various taxpayers seeking clarification in respect of apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ownership of business. Certain doubts have been raised regarding the interpretation of sub-section (3) of section 18 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) and sub-rule (1) of rule 41of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) in the context of business reorganization.

2. According to sub-section (3) of section 18 of the CGST Act,

"Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."

Further, according to sub-rule (1) of rule 41 of the CGST Rules:

"*A registered person shall, in the event of sale, merger, de-merger**,** amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in **FORM GST ITC-02,** electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:*

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Explanation:- *For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon*.

3. The issues raised in various representations have been analyzed in the light of various legal provisions under GST. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the CGST Act clarifies the issues involved in the Table below.

S. No.	Issue / Question	Clarification
a.	(i) In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets is to be considered at State level or at an entity level (across India).	Proviso to sub-rule (1) of rule 41 of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to sub-rule (1) of rule 41 of the CGST Rules states that "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under sub-rule (1) of rule 41 of the CGST Rules, the value of assets is to be taken at the State level (at the level of distinct person) and not at the entity (all-India) level.
	(ii) Is the transferor required to file **FORM GST ITC – 02** in all States where it is registered?	No. The transferor is required to file **FORM GST ITC-02** only in those States where both transferor and transferee are registered.
b.	The proviso to rule 41 (1) of the CGST Rules explicitly mentions 'demerger'. Other forms of business reorganization where part of business is hived off or business in transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the	Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.

<table>
<tr><td></td><td>proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?</td><td></td></tr>
<tr><td>c.</td><td>(i) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?</td><td>No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.

Illustration A: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.</td></tr>
<tr><td></td><td>(ii) How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC–02 by the transferor?</td><td>The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under sub-rule (1) of rule 41 of the CGST Rules [refer 3 (c) (i) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head. This is shown in the illustration below:

<table>
<tr><th>(1)</th><th>(2)</th><th>(3)</th><th>(4)</th><th>(5)</th><th>(6)</th></tr>
<tr><td>State</td><td>Asset Ratio of Transferee</td><td>Tax Heads</td><td>ITC balance of Transferor (pre-apportionment) as on the date of filing FORM GST ITC–02)</td><td>Total amount of ITC transferred to the Transferee under FORM GST ITC-02</td><td>ITC balance of Transferor (post-apportionment) after filing of FORM GST ITC–02)</td></tr>
</table>
</td></tr>
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<table>
<tr><td></td><td></td><td><table>
<tr><td></td><td></td><td></td><td></td><td></td><td>[Col (4) – Col (5)]</td></tr>
<tr><td rowspan="4">Delhi</td><td rowspan="4">70%</td><td>CGST</td><td>10,00,000</td><td>10,00,000</td><td>0</td></tr>
<tr><td>SGST</td><td>10,00,000</td><td>10,00,000</td><td>0</td></tr>
<tr><td>IGST</td><td>30,00,000</td><td>15,00,000</td><td>15,00,000</td></tr>
<tr><td>Total</td><td>50,00,000</td><td>35,00,000</td><td>15,00,000</td></tr>
<tr><td rowspan="4">Haryana</td><td rowspan="4">40%</td><td>CGST</td><td>25,00,000</td><td>3,00,000</td><td>22,00,000</td></tr>
<tr><td>SGST</td><td>25,00,000</td><td>5,00,000</td><td>20,00,000</td></tr>
<tr><td>IGST</td><td>20,00,000</td><td>20,00,000</td><td>0</td></tr>
<tr><td>Total</td><td>70,00,000</td><td>28,00,000</td><td>42,00,000</td></tr>
</table></td></tr>
<tr><td>d.</td><td>(i) In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.</td><td>According to sub-section (3) of section 18 of the CGST Act, "Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit <u>which remains unutilized in his electronic credit ledger</u> to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed." Further, sub-rule (1) of rule 41 of the CGST Rules prescribes that the registered person shall file the details in FORM GST ITC-02 for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.

A conjoint reading of sub-section (3) of section 18 of the CGST Act along with sub-rule (1) of rule 41 of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor.</td></tr>
</table>

	(ii) Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?	According to s**ection 232 (6) of the Companies Act, 2013,** *"The scheme under this section shall clearly indicate an* ***appointed date*** *from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date".* The said legal provision appears to indicate that the "**appointed date of demerger**" is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "**appointed date of demerger**". In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC balance of the transferor on the date of filing **FORM GST ITC - 02** to calculate the amount to transferable ITC.

4. Difficulty, if any, in implementation of the Circular may be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner

Agenda Item 5A(iii): Issue regarding waiver of penalty and interest on previous period due to removal of pre-import condition under Advance Authorisation scheme

During the meeting of Committee on exports (CoE) held on 18.07.2019, issue regarding giving retrospective effect to the concerned notification by deletion of pre-import condition to cover the period 13.10.2017 to 09.10.2019 was discussed. In view of the same a request has been made to exempt interest and penalty for the period 13.10.2017 to 09.10.2019.

2. Although CoE decided that the proposal giving retrospective effect to removal of pre-import condition for Advance Authorisation (AA) cannot be considered.

3. Further, Drawback division had submitted that since Hon'ble Supreme Court vide order dated 23.09.2019 had stayed the operation and implementation of judgement dated 04.02.2019 of the Hon'ble High Court of Gujrat at Ahmedabad for removing pre-import condition with retrospective effect. In view of the same, Drawback division had suggested that action regarding proposal to consider waiver of penalty and interest may not be appropriate at this stage and may be kept in abeyance.

4. The issue was deliberated by the Law Committee in its meeting held on 02.03.2020, wherein the Committee has recommended that the law does not provide for any waiver of interest. The only way is to waive the condition retrospectively. Further, since the issue is sub-judice and the period during which this condition is to apply is long (13.10.2017 to 09.10.2019), it would prudent to maintain status quo.

5. Furthermore, during a meeting held between Hon'ble Finance Minister and Hon'ble Commerce and Industry Minister, on the captioned issue, FM has directed that the above matter may be examined and placed before the GST Council. Thus, the same is placed before the GST Council for further deliberation and discussion.

Agenda Item 5A(iv): Levy of interest under the provisions of section 50 of the CGST Act, 2017 for delay in payment of tax

It has been observed that the issue of whether the interest on delayed payment of tax under GST is to be paid on the gross tax liability or the net tax liability, is getting widely litigated in various High Courts.

2. Conflicting decisions have been given by the various High courts on this issue. E.g. in the Telangana High Court in the case of case of M/s. Megha Engineering & Infrastructures Ltd. Vs the Commissioner of Central Tax, vide a detailed final order in Writ Petition No.44517 of **2018 holding that interest was payable on the gross amount of the goods and services tax (GST) liability**. However, in a **contrary** judgement in the Hon'ble Delhi High Court *interim order* in the case of M/s. Landmark Lifestyle Vs. Union of India & Ors. wherein Hon'ble Court has **granted stay from recovery of interest demanded on gross GST liability**. Similarly, the High Court of Madras in the case of M/s. Refex Industries Limited held that **interest should be levied in net liability**.

3. In this regard reference is invited to section 100 of the Finance (No. 2) Act, 2019. The said section intends to amend the section 50 of the CGST Act, 2017 by insertion of a proviso to sub-section (1) of section 50 of the said act. The revised section reads as below:

> "(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:
>
> ***Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.***"

4. Accordingly, in cases of delayed payment of taxes, interest may be charged only on the net cash liability (i.e. that portion of the tax that is paid by debiting the electronic cash ledger) except in cases where proceedings under section 73 or 74 have been initiated in respect of the said period. **However, it may be noted that the said provision has not been notified till date.** Prior to the said amendment, interest was to be paid by the taxpayers on the tax payable, irrespective of whether it was to be paid in cash or by utilization of input tax credit.

5. Moreover, the GST Council, in its 35th meeting held on 21st June, 2019, had not recommended to amend the provision of section 50 retrospectively and accordingly, the provisions of section 100 of the Finance (No. 2) Act, 2019, amending section 50 of the CGST Act, provide for amendment from a prospective date. It may also be noted that such interest is directly recoverable under sub-section (12) of Section 75 of the CGST Act. Further, a standard procedure for calculation of interest is required to be formulated as the amount of cash to be paid is decided only upon the filing of return, as the interest to be calculated is dependent on the amount of input tax credit that is being claimed in the return.

6. The matter was deliberated in the Law Committee in its meeting on 2nd March, 2020, and it was recommended that the amendment should be done prospectively only. Further, it was also

recommended to notify the said amendment only when all the States have passed their corresponding SGST Amendment Act.

7. Accordingly, the issue is placed before the GST Council for further decision on the following aspects:

(a) Whether interest is to be recovered on the gross tax payable or on the net cash tax liability;

(b) If the interest is to be recovered on the net cash tax liability,–

(i) whether it is to be from a prospective or retrospective date;

(ii) and if from a prospective date, whether the credit available as closing balance of the tax period will be taken or subsequent credit will also be allowed to be utilised.

Agenda Item 5A(v): Agenda note for GST Council regarding waiver of filing of FORM GSTR-1 by taxpayers who have availed the special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019

The GST Council in its 32nd meeting held on 10th January, 2019 had recommended that a composition scheme shall be made available w.e.f. 01.04.2019, for suppliers of services (or mixed suppliers) with a tax rate of 6% (3% CGST + 3% SGST) having an annual turnover in preceding financial year upto Rs 50 lakhs. Accordingly, the same was implemented vide notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 (hereinafter referred to as the said notification), as amended vide notification No. 9/2019-Central Tax (Rate) dated 29.03.2019. The amending notification dated 29.03.2019 specified, by way of Explanation, that all the provisions of the Central Goods and Services Tax Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, *mutatis mutandis*, apply to a person paying tax under this notification; meaning thereby the registered person may not shift from a normal taxpayer to a person opting to pay tax under the said notification if not opted for from the beginning of the financial year.

2. Subsequently, Circular No. 97/16/2019-GST issued on 05.04.2019 was issued for clarification regarding exercise of option to pay tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019. It was clarified, *inter-alia* that the registered person who wants to opt to pay tax by availing the benefit of the said notification shall file an intimation in **FORM GST CMP-02** latest by 30.04.2019. The date for filing the intimation was later extended to 31.07.2019 and then up to 30.09.2019. Thereafter, **FORM GST CMP-02** was made available on the common portal only w.e.f. 11.09.2019.

3. Thereafter, representations have been received from taxpayers regarding the difficulties being faced for opting to pay tax under the said notification. These taxpayers have availed the benefit of the notification No. 2/2019-Central Tax (Rate) dated 07.03.2019. Accordingly, they have not charged any tax from their recipients. Further, as the **FORM GST CMP-02** was not available on the common portal during the period 01.04.2019-11.09.2019, the said registered person has paid 6% GST on his outward supplies by filing returns in **FORM GSTR-3B** and has not filed the intimation in **FORM GST CMP-02**. Thereafter, validations build into the common portal are not allowing these taxpayers to now opt to pay tax under the said notification. The benefit can now only be claimed from the beginning of the next Financial Year.

4. Such taxpayers, who have opted to avail the benefit of the said notification and have not been able to opt for the same in the common portal, and who have also deposited the amount as per the requirement of the said notification by furnishing **FORM GSTR-3B** are facing hurdles related to filing of **FORM GSTR-1** in the common portal. The said rate slab of 6% (3% CGST + 3% SGST) is not available in the common portal while furnishing **FORM GSTR-1**. Moreover, it may be noted that the **FORM GSTR-2A** of the taxpayers is an indicator of the amount of the amount of ITC that may be availed by the taxpayers. Therefore, there is a concern that the details of the said invoices for such supplies under the special composition scheme, uploaded by the said taxpayers in the common portal in **FORM GSTR-1**, may be availed by the recipients as input tax credit, even if the recipients are not eligible to avail input tax credit in respect of such invoices.

5. In order to address the issue, it is proposed to create a special procedure for such taxpayers to continue payments in the **FORM GSTR-3B** for the financial year 2019-20 along with a waiver of the requirement of furnishing details of outward supplies in **FORM GSTR-1** for such taxpayers. This will ensure the appropriate payments are made and no ineligible input tax credit gets reflected in the **FORM**

GSR-2A of the recipients of such supplies. This would require issuance of notification under section 148 of the CGST Act, 2017 and corresponding notification under the respective SGST Acts of the States.

6. The matter was deliberated in the Law Committee in its meeting on 17th February, 2020, and recommended that such class of taxpayers may be exempted from filing of the **FORM GSTR-1** for the tax periods in the financial year 2019-20. The same would be implemented through a notification under section 148 of the CGST Act, 2017 (special procedure).

7. Accordingly, the issue is placed before the GST Council for approval.

Agenda Item 5A(vi): Filing of GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement)

Various representations have been received by taxpayers regarding the IT challenges faced by them in filing their GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement). Many taxpayers have reported that their GSTR-9 / 9C has not been generated or Table 8A etc. are being generated as blank. Considering these representations, the law committee reviewed the purpose and cost-benefit of the annual return & reconciliation statement (GSTR-9 and GSTR-9C) in its current form.

2. The GST Council in its 37th meeting had recommended for relaxation in filing of annual returns for MSMEs for FY 2017-18 and FY 2018-19 as under:

2.2 waiver of the requirement of filing FORM GSTR-9A for Composition Taxpayers for the said tax periods; and

2.3 filing of FORM GSTR-9 for those taxpayers who (are required to file the said return but) have aggregate turnover up to Rs. 2 crores made optional for the said tax periods.

2.4 These changes were made effective by 47/2019-Central Tax dt. 09-10-2019

3. Further, the GST council recommended that a Committee of Officers to be constituted to examine the simplification of Forms for Annual Return and reconciliation statement. On the recommendation of this committee, Annual Return / Reconciliation Statement were simplified and Notified vide 56/2019-Central Tax dt. 14-11-2019.

4. Current, filing of Annual Return / Reconciliation Statement:

Sl. No.	**Category**	**Cumulative Figure as on 12th Feb 2020**
1.	Taxpayers required to file GSTR-9 (Aggregate Turnover > Rs. 2 Crore	12.42 lakhs
2.	Out of 1, taxpayers who have filed both GSTR-1 and 3B and thus eligible to file GSTR-9	9.98 lakhs (80.3%)
3.	Out of 2, who actually filed GSTR-9	9.11 lakhs (91.3%)
4.	Out of 3, taxpayers who filed GSTR-9C	8.42 lakhs (92.3%)

5. Number of extensions given to Annual Return / Reconciliation Statement: It is noteworthy that the due date for Annual Return and Reconciliation statement for FY 2017-18 has been extended 7 times.

6. Total Revenue collected from Annual Return and Reconciliation Statement for 2017-18:

PAYMENT MADE THROUGH DRC-03 AGAINST ANNUAL RETURN

SOURCE : DRC-03 -- Annual Return

(RS. IN CRORE)

	CGST	SGST	IGST	CESS	TOTAL	FEES	INTEREST	OTHER	PENLATY
Liability	1105.90	1122.14	892.20	56.13	3176.36	0.00	575.76	0.31	0.49
Paid by cash	735.47	737.52	585.37	20.46	2078.82	0.00	575.76	0.31	0.49
Paid by ITC	370.43	384.61	306.83	35.67	1097.54	0.00	0.00	0.00	0.00

PAYMENT MADE THROUGH DRC-03 AGAINST RECONCILATION STATEMENT (GSTR-9C)

SOURCE : DRC-03 against RECONCILATION STATEMENT

(RS. IN CRORE)

	CGST	SGST	IGST	CESS	TOTAL	FEES	INTEREST	OTHER	PENLATY
LIABILITY	135.31	135.95	96.67	24.87	392.79	0.00	81.16	0.04	0.09
Paid by Cash	98.50	93.17	67.68	1.62	260.97	0.00	81.16	0.04	0.09
Paid by ITC	36.81	42.78	28.99	23.25	131.83	0.00	0.00	0.00	0.00

6.2 It is seen that revenue of about Rs. 3176 Crores (Rs. 2079 Cr. in cash) additional tax and Rs. 575.76 Cr interest thereon got collected from Annual Return. Further, additional revenue from GSTR-9C, based on the Auditor's recommendations has been relatively low at Rs. 392 Cr. (Rs. 261 Cr. in cash) and Rs. 81.16 Cr as interest.

6.3 It may be noted that the cost of compliance for filing of Annual Return and Reconciliation has been high especially for smaller taxpayers. It is relevant that this process requires engagement of a tax professional (Chartered Accountant or Cost Accountant) who reportedly insist that they should be engaged for the entire compliance management process throughout the year thus pushing the cost of compliance, which has been one of the major complaints of the taxpayers in GST regime.

FOR GSTR-9 (FY 2017-18)

Exemption upto	DRC-03	Exempted (Upto 2 Cr)	Net	% of total contribution	After exemption (%)	Number of taxpayers	% of total taxpayer base
At 5 Cr	1140	580	560	**15%**	**85%**	6.87	**7%**
At 10 Cr	1552	580	972	**26%**	**74%**	3.78	**3.85%**
Total Revenue (All taxpayers)	**4324**	**580**	**3744**				

FOR GSTR-9-C (FY 2017-18)

Exemption upto	DRC-03	Exempted (Upto 2 Cr)	Net	% of total contribution	After exemption (%)	Number of taxpayers	% of total taxpayer base
At 5 Cr	113	47	66	**13%**	**87%**	6.87	**7%**
At 10 Cr	164	47	117	**23%**	**77%**	3.78	**3.85%**
Total Revenue (All taxpayers)	**553**	**47**	**506**				

6.4 It may be noted that since GST has incrementally stabilized in FY 2018-19, the expectation of additional revenue from Annual Return and Reconciliation Statement for 2018-19 will be relatively low.

6.5 The law committee observed that even if the turnover exemption is increased to Rs. 5 Cr for filing GSTR-9 and GSTR-9C for 2018-19, 85% of the tax paid by such taxpayers through DRC-03 will still be collected. Further, the compliance of filing these returns will reduce from 12,42,000 taxpayers to 6,87,000 taxpayers. Lower numbers will ensure that ease of filing improves on the common portal and extra compliance (and related costs) are not levied on smaller taxpayers.

6.6 The law committee also observed that after the relaxation in filing of the return vide Notification No. 56/2019-Central Tax dt. 14-11-2019, the requirement of most of the important data that was being collected through GSTR-9 and GSTR-9C has been waived. The basic purpose of the return is limited to payment of extra liability through FORM DRC-03. Therefore, FORM GSTR-9 and GSTR-9C in its current form is additional compliance for the taxpayer with little benefit.

6.7 In view of the hardship faced by the taxpayer and the above, the law committee recommended that for the year 2018-19, the requirement of filing GSTR-9 and GSTR-9C may be enhanced to taxpayers having aggregate turnover exceeding Rs. 5 Cr. However, certain States expressed their reservation with the decision.

7. As the utility for GSTR-9 and 9C has not been made available on the common portal till 29.02.2020 and even those taxpayers to whom the utility has been made available, many of the fields such as Table 8A are blank or not visible, the law committee recommended that the date of filing Annual Return (GSTR-9) / Reconciliation Statement (GSTR-9C) may be extended to 30.06.2020.

8. Notification No. 47/2019 dated 09.10.2019 has been issued exempting small taxpayers with turnover less than Rs. 2 Cr to file Annual Return / Reconciliation Statement. However, the same has not been blocked online. Therefore, even after 09.10.2019, many taxpayers with turnover less than Rs. 2 Cr have been filing their returns. Since, all such returns are deemed furnished on the due date (5th or 7th Jan 2020), the law committee recommended that GSTN may be requested to not apply late fee in cases for annual return / reconciliation return filed for 2017-18 and 2018-19.

9. The agenda note is placed before the GST Council for deliberation and approval of the recommendations of the Law Committee.

Agenda Item 5A(vii): Proposal for amendment in CGST Rules, 2017

Law Committee, in its various meetings had deliberated upon several issues and recommended changes in various provisions of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules"). In addition to the changes in the CGST Rules, changes in the FORMS have also been recommended by the Law Committee. In view of recommendations of the Law Committee, the changes are discussed below:

I. Amendment to rule 43:

Various doubts have been raised by the field formations regarding determination of reversal of input tax credit in respect of capital goods partly used for affecting taxable supplies and partly for exempt supplies under rule 43 (1)(c). The issue was deliberated by the Law Committee and the Law Committee has recommended amendment in rule 43 and has proposed that these changes **be implemented prospectively w.e.f. 01.04.2020.** Accordingly rule 43 of CGST Rules may be amended as follows (shown in red):

Rule 43
43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases. (1) … (a) … (b) … (c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods: Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital good denoted as ~~the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount~~ 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital good was covered by clause (a),denoted as 'T_{ie}', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed ; Provided further that the amount 'T_{ie}' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**. *Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.* (d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'Tc', shall be the common credit in respect of such capital goods ~~for a tax period~~:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) ~~the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof~~ shall be added to arrive at the aggregate value 'Tc';

(e) the amount of **common** input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'Tm' and calculated as-

Tm= Tc÷60

Explanation:

For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

~~(f) the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_t' and shall be the aggregate of 'T_m' for all such capital goods;~~

(g) …

(2) .....

II. Amendment to rule 86:

2.1. Various representations have been received highlighting the difficulty in re-credit of ITC in the electronic credit ledger of the taxpayer on account other than those where the debit has been made from the credit ledger for claiming refund on account of zero-rated supplies/deemed export wherein the rejection of refund entails auto re-credit of rejected refund in credit ledger. One such example is excess payment of tax or tax wrongly paid. In these scenarios, the taxpayer discharges the liability through ITC or Cash or both. However, under the present refund system the whole excess paid tax is refunded to the taxpayer in cash as there is no provision under rules which allows tax authorities to re-credit the ITC in the electronic credit ledger of the taxpayer. This has resulted in easy monetisation of ITC by certain taxpayers by making excess payment of tax through ITC and then availing the refund in cash. Further, in certain cases the refund filed by the taxpayer on this account was rejected by the tax payers stating as the amount has been paid by ITC, it cannot be sanctioned in cash and as no option was available for re-credit of the said amount, resulting in lapsing of said ITC.

2.2. Therefore, to curb the misuse of the said provision, it is proposed to provide for a provision in CGST Rules to allow for re-credit of wrongly paid/excess tax paid through ITC in the electronic credit ledger. Further, it is proposed that the **FORM GST PMT-03** may be used for the purpose of re-credit of the amount debited from the credit ledger.

2.3 Accordingly it is proposed to amend rule 86 in the CGST Rules as follows (shown in red):

Rule 86
86A. Conditions of use of amount available in electronic credit ledger.- … (4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03**.

III. Amendment to rule 89:

3.1 It is observed that there is possibility for taking undue benefit by inflating the value of the zero-rated supply of goods. As the intent of the refund is to offset the tax paid on the inward supplies, it is proposed that a ceiling may be fixed for the value of the export supply only for the purpose of calculation of refund.

3.2 In this regard, it is further submitted that this ceiling limit is only for the purpose of calculating the refund payable and in no way, it would alter the taxable value /FOB value declared by the exporter in any manner.

3.3 Accordingly it is proposed to amend rule 89 in the CGST Rules as follows (shown in red):

Rule 89
89. Application for refund of tax, interest, penalty, fees or any other amount.- **…** (4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula – Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover Where, - (A) "Refund amount" means the maximum refund that is admissible; (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; (C) Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both; …

IV. Amendment to rule 92:

4.1 In view of the amendments proposed to be made to rule 86, it is proposed that the amount of refund sanctioned is proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period.

4.2 Accordingly it is proposed to amend rule 92 in the CGST Rules as follows (shown in red):

Rule 92
92. Order sanctioning refund.- (1)… (1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies/deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which have been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger. (2) … (3) … (4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1A) or sub-rule (2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue a payment order in FORM GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund [on the basis of a consolidated payment advice: (5) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1A) or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue a payment order in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.

V. Amendment to rule 96(10):

5.1. On perusal of sub-rule (10) of the Rule 96 of the CGST Rules 2017, it is observed that the registered person receiving imported/domestic capital goods under EPCG authorisation is allowed to export goods on payment of IGST and then claim refund of such tax paid. However, the registered person availing similar benefits on the imported / domestic inputs under EOU and Advance Authorization scheme are restricted from availing the refund under IGST route. The reason behind the said differentiation is that in case of imports of Capital Goods, it is not possible to have one to one correlation with the outward supplies whereas in case of import of inputs it is possible to have one to one correlation and it was felt that if the registered taxpayer availing benefit of exemption of IGST and compensation cess is allowed to claim refund of IGST paid on exports, it would result in monetisation of ITC not attributable to the export supplies as all the inputs utilised in manufacturing of export supplies have been procured without payment of IGST and Compensation Cess. Further, various references have been received from the field formations and trade/industry wherein clarification has been sought whether the exporter under Advance Authorization and EOU scheme can claim refund of IGST paid on exports when he has paid IGST and Compensation Cess while importing the inputs under Notification No. 78/2017-Customs dated 13.10.2017 and Notification No. 79/2017-Customs dated 13.10.2017.

5.2 Therefore, in view of the above, it is proposed that rule 96(10) of the CGST Rules may be amended by way of insertion of an explanation clarifying that where the registered person has paid IGST and compensation cess on the inputs, the said restriction would not be applicable on them.

5.3 Accordingly, sub-rule (10) of Rule 96 of CGST rules 2017 **may be amended retrospectively w.e.f. 23.10.2017** by inserting an explanation (shown in red):

Rule 96
96. Refund of integrated tax paid on goods or services exported out of India.- (1) … … (10) The persons claiming refund of integrated tax paid on exports of goods or services should not have - (a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or (b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme. Explanation: For the purpose of said sub-rule, the benefit of the notifications mentioned therein would not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.

VI. Insertion of rule 96B:

6.1. Committee of Officers on Risk Based Management of Taxpayers under GST Regime (CoO) has been constituted by the GST Council Secretariat vide OM dated 15.07.2019. The term of reference of the CoO, inter-alia, includes to study, examine and suggest reasonable restrictions/interventions to be imposed on taxpayers based on risk parameters to regulate refunds. The 4th Meeting of the CoO was held on 16.01.2019 and has suggested various measures for the same.

6.2 The relevant extract of the record of discussion relating to the policy intervention for refund is as below:

"5.1. Subsequent to the discussions pertaining to refunds on account of inverted duty structure, the Committee deliberated upon two major issues related to exports i.e., (a). value of exports and (b). linkage of foreign remittance with eligibility for a refund. Pr. Commissioner, GST, in this regard, informed that if the value of exported products is inflated this would also lead to easy monetization and there is need for linkage to normal value (market value) of the such exported products. He further added that refund is to neutralise the input taxes which are linked to cost of manufacture/procurement and not the export transaction value or quantum of foreign remittance received. He proposed that therefore there is a need to fix a ceiling limit on the value of export, say a multiplier of a market value (or any other base value which may be finalized), for exported goods in order to check fraudulent refund claims. He further added that the issue may be deliberated upon at length in the Law Committee."

6.3 In central excise regime, an advisory was issued to the field formation for verifying the BRCs post sanction of rebate on export of goods. Further, similar provision exists under Rule 18 of the Customs and Central Excise Duties Drawback Rules, 2017 which provides for the recovery for amount of drawback where foreign remittances are not realised under the said rules. Therefore, it is proposed to insert provision for submission of foreign exchange remittances in case of export of goods, post refund of unutilized Input Tax Credit or IGST. Accordingly, it is proposed to insert rule 96B in the CGST Rules as follows (shown in red):

Rule 96B
96B. Recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds not realised. – (1) Where any refund of unutilized input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realized, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within 30 days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50. Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered. (2) Where the sale proceeds are realized by the applicant, in full or part, after the amount of refund has been recovered from him under sub-section (1) and the applicant produces evidence about such realization within a period of three months from the date of realization of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realization of sale proceeds, provided the sale proceeds have been realized within such extended period as permitted by the Reserve Bank of India.

VII. Amendment to rule 141:

Section 67(8) as well as proviso of rule 147(7) empowers the proper officer for the disposal of goods of perishable or hazardous nature; while Rule 141(2) empowers the Commissioner for the disposal of seized goods or things perishable or hazardous in nature. This creates inconsistency between sec 67(8) and Rule 141(2) as the proper officer is generally subordinate to the Commissioner. Accordingly rule 141(2) of CGST Rules may be amended as follows (shown in red):

Rule 141
141. Procedure in respect of seized goods.-(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in **FORM GST INS-05**, on proof of payment. (2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the ~~Commissioner~~ proper officer may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

VIII. Amendment to FORM GST-RFD-01:

8.1. In view of the proposed insertion of rule 96B above, which provides for recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds not realized, it is proposed to insert an undertaking in **FORM GST RFD-01.**

8.2. The proposed undertaking to be inserted in **FORM GST RFD-01** is as follows

(shown in red):

FORM GST RFD-01
UNDERTAKING ***I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to Section 16 of the IGST Act 2017 read with Rule 96B of the CGST Rules 2017*** ***Signature-*** ***Name –*** ***Designation / Status***

2. The above proposal for amendments is placed before the GST Council for consideration and approval. The notification will be issued after consultation with Union Ministry of Law and Justice. States would also be required to made similar changes in rules or forms, as case may be.

Agenda Item 5A(viii): Proposed amendments in the CGST Act, 2017 and IGST Act, 2017

Various representations, suggestions received and other feedbacks brought to notice through social, electronic and print media regarding issues / difficulties in the GST regime faced by trade and industry. On examination and analysis of the above, it was felt that certain amendments in the GST laws may be carried out.

2. The Law Committee in its various meetings held on 02.03.2020, 17-18.02.2020 and 28.01.2020 and 20-21.01.2020 has recommended some of the amendments in the GST law. **The rationale and the proposed amendment is annexed to this Agenda Note**. The proposed amendments can broadly be classified under Revenue Augmentation measures, Trade facilitation and Simplification measures; and Enforcement measures.

3. Following sections are proposed to be amended.

Sl. No.	**Sections to be amended**	**Purpose**
1.	CGST - 16 (2)	Revenue Augmentation and Enforcement measures
2.	CGST - 35 / 44	Revenue Augmentation and Enforcement measures
3.	CGST - 75(12)	Revenue Augmentation and Enforcement measures
4.	CGST – 109 / 110	Trade facilitation measures
5.	CGST - 151	Revenue Augmentation and Enforcement measures
6.	CGST - 152	Revenue Augmentation and Enforcement measures
7.	CGST - 168	Consequential to amendment in section 151
8.	IGST - 16	Revenue Augmentation and Enforcement measures

4. The above proposals for amendment in the CGST Act, 2017, as recommended by the Law Committee is placed before the GST Council for approval. The exact wordings of the amendments shall be finalised in consultation with the Union Law Ministry. Similar amendments in law would have to be made in the respective SGST Acts as well.

Enclosed: Annexure A

Annexure A

LAW AMENDMENT PROPOSALS – CGST Act, 2017

Sl. No.	Section	Gist of issue	Proposal	Suggested formulation	Consequential changes
1.	**16**	One of the key objectives of the GSTR-1/2/3 system was to provide for matching of invoices between the supplier and the recipient i.e. there shall be no credit existing in the system which has not been declared in the respective returns of the supplier and recipient as per section 16 (2) c and 16(2) d of the CGST Act 2017. 2. Available data suggests that the percentage of filing of return in **FORM GSTR-1** (details of outward supplies) is far lesser as compared to filing of return in **FORM GSTR-3B**, through which input tax credit is availed. Further, due to poor filing of **FORM GSTR-1**, there are large gaps between credit available under **FORM GSTR-2A** and self-assessed credit under **FORM GSTR-3B**. 3. A number of cases have been booked by the Central / State authorities where high amount of input tax credit is pumped into the system through fake invoices and the same being availed by many taxpayers.	The Law Committee examined the matter and felt that credit may be allowed that reasonable restriction may be imposed on self-assessed input tax credit availed in **FORM GSTR-3B** on the basis of credit reflected in **FORM GSTR-2A**. Accordingly, the Law Committee recommended **to amend the provisions of section 16(2)(a) to mandate that ITC on invoices or debit notes may be availed only when the details of such invoices are specified in the details of outward supplies by the supplier.**	**16.** . "(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,— (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed and the details of such invoices or debit note ~~in respect of such supplies~~ have been furnished by the supplier in the statement of outward supplies as specified under section 37; "	

		4. It may be noted that in the 38th GSTC meeting, a one-time amnesty for filing of FORM GSTR-1 was given in order to encourage taxpayers to file their missing FORM GSTR-1s. 5. It is proposed that reasonable restriction may be imposed on self-assessed input tax credit availed in FORM GSTR-3B on the basis of credit reflected in FORM GSTR-2A. Further, Rule 36(4) was notified which stated that credit availed in GSTR3B cannot exceed the credit reflected in GSTR-2A by 20%, from the months of October onwards; and which was further reduced to 10% from December 2019 onwards. 6. Section 16 of the CGST Act provides for conditions and restrictions subject to which the input tax credit shall be credited to the electronic credit ledger. It would be logical to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in **FORM GSTR-3B** to that reflected in the GSTR2A of the recipient, subject to the additional amount available under rule 36(4).			

2.	**35 / 44**	Currently, there is a requirement (under section 35 of the CGST Act), for taxpayers beyond a turnover limit to get his accounts audited and submit a reconciliation certificate by a chartered accountant or a cost accountant. It is felt that the said requirement may not be imposed on all taxpayers above a prescribed turnover limit, but may be imposed selectively, based on risk parameters. Moreover, under provisions of section 66 of the CGST Act, the Commissioner is empowered to get a special audit conducted for a particular assesse. Therefore, it is felt that the said provision may not be necessary in future.	Accordingly, the Law Committee has recommended 1. Omission of sub-section (5) of section 35 2. Omission of sub-section (2) of section 44 3. Insertion of section 44A to empower the Commissioner to seek reconciliation statement in specific cases as prescribed.	35. . . ~~(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.~~	44. (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year. Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing the returns under this sub-section; ~~(2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35~~

					~~shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.~~ 44A. The Commissioner or any officer authorised by him, by way of a general or a specific order, may for reasons to be recorded in writing, direct a registered person, in writing to furnish a reconciliation statement reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as

					may be specified in that order. Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.
3.	**75(12)**	It has been observed that the red flag reports suggest that for a number of GSTINs, the GSTR-1 details are considerably larger than GSTR-3B. Furthermore, a lot of cases have been noticed where GSTR-1 has been filed without filing the corresponding GSTR-3B. 2. A perusal of the present sub-section (12) of section 75 appears to restrict recovery under section 79 to only those cases where the returns are filed under section 39 in **FORM GSTR-3B**. However, it is felt that	Accordingly, the Law Committee has recommended making an explanatory amendment in sub-section (12) of section 75 of the CGST Act, 2017.	75. . . (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79. Explanation.- For the purpose of this sub-section, the expression "self-assessed tax" shall include the tax payable	

		the statement of the outward supplies is the building block on which outward liability of a taxpayer is based, and is therefore most certainly his outward liability. Being a self-declared outward liability, tax appears to be collectible on the supplies declared in the statement of outward supplies under section 37. 3. In this regard, reference is also invited to the judgement of the Madhya Pradesh High Court at Indore Bench in *Kabeer Reality Private Limited vs Union of India (Writ no 15645/2019)*, wherein it has been held that FORM GSTR-1 liability can be recovered under section 79. 4. It is felt that the above judgement captures the intent of law, which is also evident from the provisions of sub-section (5) of section 43A, which are proposed to be notified along with the new return system. Section 43A reads as under: *Section 43A: Procedure for furnishing return and availing input tax credit* *(1) Notwithstanding anything contained in sub-section*		in respect of the details of such outward supplies furnished under section 37, the tax on which has not been paid, and the same shall be recovered under the provisions of section 79.	

		(2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers. *(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.* *(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.*			

		(4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section. *(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3)* ***shall be deemed to be the tax payable by him under the provisions of the Act.*** .			

		. 5. However, there is still a confusion regarding the current provisions of the CGST Act, as to whether the applicable tax amount as per the self-declared statement of outward supplies under section 37 is recoverable, if tax on the same has not been paid in the return under section 39.			
4.	**109 / 110**	The Madras High Court in its judgement in Revenue Bar Association Vs Union of India has ruled that the constitution of GST Appellate Tribunal (GSTAT) is unconstitutional. 2. The issues that were deliberated are as below: (i) whether the exclusion of advocates from being considered for appointment as a Judicial Member in GST Appellate Tribunal, is violative of Article 14 of the Constitution of India. (ii) Whether Section 110 (b)(iii) which makes a member of the Indian Legal Service, eligible to be appointed as a Judicial Member of the appellate tribunal, contrary to the law laid down by the Hon'ble Supreme Court in Union of India Vs. R.Gandhi reported in 2010(11) SCC 1. (iii) whether the composition of the National Bench, Regional Benches, State Bench and Area	Accordingly, the Law Committee has deliberated on the matter and recommended making necessary amendments in section 109 and 110 of the CGST Act, 2017.	**109. Constitution of Appellate Tribunal and Benches thereof** (1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. / (2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereafter in this Chapter referred to as "Regional Benches"), State Bench and Benches thereof (hereafter in this Chapter referred to as "Area Benches"). (3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided	

		Benches of the GST Appellate Tribunal, which consists of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), by which the administrative members outnumber the judicial member is violative of Articles 14 and 50 of the Constitution of India and the judgments of the Hon'ble Supreme Court of India. 3. The judgement was examined in detail by the Department of Revenue and accordingly amendments in the provisions of Sections 109 and 110 of the Central Goods and Services Tax (CGST) Act 2017 have been suggested.		over by the President and shall consist of ~~one~~ a Technical Member (Centre) or ~~and one~~ Technical Member (State). (4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member and a ~~one~~ Technical Member (Centre) or ~~and one~~ Technical Member (State). (5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply. (6) The Government shall, by notification, specify for each State or Union territory a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory: **Provided** that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that	

				State, as may be recommended by the Council: **Provided** further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed. (7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5). (8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State. (9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member and a ~~one~~ Technical Member (Centre) or ~~and one~~ Technical Member (State) and the State Government may designate the senior most Judicial Member in	

				a State as the State President. (10) ~~In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:~~ ~~**Provided** that any appeal w~~Where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member. (11) If the Members of ~~the National Bench, Regional Benches, State Bench or Area Benches~~ a bench differ in opinion on any point or points, ~~it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided,~~ they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one ~~or more of the~~ other Member~~s of the National~~	

				~~Bench, Regional Benches, State Bench or Area Benches~~ and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it. (12) The Government, in consultation with the President may, for the administrative convenience, transfer Members from one bench to the other. — ~~(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or~~ ~~(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.~~ ~~(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State~~. (14) No act or proceedings of the	

				Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal. **110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc** (1) A person shall not be qualified for appointment as— (a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court~~, or is or has been a Judge of a High Court for a period not less than five years~~; (b) a Judicial Member, unless he – (i) has been a Judge of the High Court; or (ii) is or has been a District Judge qualifie	

				d to be appointed as a Judge of a High Court; ~~or~~ ~~(iii) _____ is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years~~; (c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least ~~fifteen~~ twenty years of service in Group A; (d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank	

				of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council and has completed twenty-five years of service with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation. ~~(2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:~~ (2) The President, Judicial Members, the Technical Member (Centre) and Technical Member (State) shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such	

				manner as may be prescribed: **Provided** that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office: **Provided** further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties. ~~(3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.~~ ~~(4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High~~	

				~~Court of the State or his nominee.~~ ~~(5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.~~ (6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee. ~~(7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.~~ (8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed: **Provided** that neither salary and allowances nor other terms and conditions of	

				service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment. (9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for re-appointment (10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment. (11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment. (12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State	

				Government resign from his office: **Provided** that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest. (13) The Central Government may, on the recommendation of the Selection Committee, ~~after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may~~ remove from the office ~~such~~ the President or a Member, who— (a) has been adjudged an insolvent; or (b) has been convicted of an offence	

				which~~, in the opinion of the such Government~~ involves moral turpitude; or (c) has become physically or mentally incapable of acting as such President, State President or Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest: **Provided** that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard. ~~(14) Without prejudice to the provisions of sub-section (13),~~ ~~(a) the President or a~~	

				~~Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;~~ ~~(b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of~~	

				~~proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.~~ (15) The Central Government, on the recommendations of the Selection Committee ~~with the concurrence of the Chief Justice of India~~, may suspend from office, the President or a Judicial or Technical Members in respect of whom proceedings have been initiated under sub-section (13) ~~of the National Bench or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches reference has been made to the Judge of the Supreme Court under sub-section (14)~~. ~~(16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has~~	

				~~been made to the Judge of the High Court under sub-section (14).~~ (17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.	
5.	**151**	Section 151 empowers the Commissioner to collect statistics. This would be used on a case to case basis and accordingly, FORM /return may not be prescribed for the same. For the efficacy of the collection of statistics, it may be ensured that information may be sought as per requirements on a case to case basis.	1. Sub-section (2) of section 151 may be amended.	151. Power to ~~collect statistics~~ call for information ~~(1)~~ The Commissioner, or an officer authorised by him, may, by order ~~if he considers that it is necessary so to do, by notification, direct that statistics may be collected~~ direct any person to furnish to him any information relating to any matter dealt with by or in connection with this Act, within such time, in such form and manner as may be specified in the said order. ~~(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which~~	**Consequential amendment in section 168 required (in red colour):** **168. Power to issue instructions or directions.-** (1)… (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, ~~sub-section (5) of section 66,~~ sub-section (1) of section 143, except the second proviso

				~~statistics is to be collected.~~	to sub-section (1) of section 143, ~~sub-section (1) of section 151,~~ clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.
6.	**152**	It is felt that the tax authorities may seek information under section 150 and 151 for various purposes, including for investigation, audit or preventive purposes. It may be noted that in some cases, some action may get initiated after processing of this information. Presently there is a restriction under sub-section (1) of section 151 that such information may not be used for any proceedings under this Act. Accordingly, this restriction may be removed from law. Further, such information may also be allowed to be seen by the tax authorities	1. Omitting of the condition that "no such information shall be used for the purpose of any proceedings under this Act" from sub-section (1) of section 152 2. Amendment in sub-section (2) to allow tax authority involved in the proceedings to have access to such information.	152. Bar on disclosure of information (1) No information ~~of any individual return or part thereof~~ with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act without giving an opportunity of being heard to the person concerned. ~~(2) Except for the purposes of prosecution~~	

		engaged in the said proceedings		~~under this Act or any other law for the time being in force, and for the purpose of any proceedings under this Act, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151~~.	

LAW AMENDMENT PROPOSALS – IGST Act, 2017

Sl. No.	Section	Gist of issue	Proposal	Suggested formulation	Consequential changes
1.	**16**	Various instances, especially in export of few specific commodities of frauds have come to notice, wherein refunds on payment of IGST have been availed using fraudulent credit. It may be noted that section 16 of the IGST Act, 2017 provides that a person making zero-rated supplies can avail two modes of refund (LUT / IGST), and this appears to be the real reason creating distortions. 2. Further, it has been observed that internationally, zero-rated supplies are taxed at zero-rate and credit of inputs in respect of such supplies are refunded. The refund of IGST paid on export is not available internationally, and it is felt that the process can also be implemented under the GST laws in India. This is expected to remove distortions and bring uniformity. 3. Further, in erstwhile indirect taxation laws the practise was to zero-rate the supplies made to	The Law Committee examined the matter and felt that the government should be empowered to certain classes of supplies as export on payment of IGST and refund of input taxes thereon. Accordingly, the Law Committee recommended **to amend the provisions of the IGST Act to make the export of goods and services the default route for exports and to take an enabling power under section 16 to empower the Commissioner to notify the specific supplies of goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, that may be made eligible for supply on payment of integrated tax. Moreover, the Law Committee proposed to amend the clause (b) of sub-section (1) of section 16 of IGST Act 2017 by inserting the words "for authorized operations"**	**16.** (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:— (a) export of goods or services or both; or (b) supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit. (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. (3) A registered person making zero rated supply shall be eligible to claim refund ~~under either of the following options, namely: —~~ ~~(a) he may~~ on supply of goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and, claim refund of unutilised input tax credit~~; or~~ ~~(b) he may supply goods or services or~~	

		SEZ Unit/Developer meant for authorized operations and all other supplies to SEZ Unit/Developer were taxed at normal rate. However, it is observed that the under sub-section (1) of Section 16 of IGST, all the supplies made to SEZ Unit/Developer have been classified as zero-rated supplies. Thus, the said provision is not in consonance with the intent of the law. 4. In addition to the above, **linking of foreign exchange remittance with refund** is being envisaged, in lines with the earlier central excise regime. In the central excise regime, an advisory was issued to the field formation for verifying the BRCs post sanction of rebate on export of goods. Further, similar provision exists under Rule 18 of the Customs and Central Excise Duties Drawback Rules, 2017 which provides for the recovery for amount of drawback in cases	**The Law Committee further recommended insertion of provision for submission of foreign exchange remittances in case of export of goods, post refund of unutilized Input Tax Credit or IGST with the time period prescribed under Foreign Exchange Management Act (FEMA), 1999.**	~~both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied~~, in accordance with the provisions of section 54 of the Central Goods and Services Tax Actor the rules made thereunder. Provided that the registered person making zero rated supply of goods, in case of non-realisation of sale proceeds, shall be liable to deposit the refund paid under the provisions of sub-section (3) along with the applicable interest under Section 50 within 30 days after expiry of time limit prescribed under Foreign Exchange Management Act 1999 for receipt of foreign exchange remittances. (3A) The Government may, on the recommendations of the Council, and subject to such conditions, safeguards and procedures as may be prescribed, notify a class of suppliers or class of supplies of goods, or services, or both where the supplies in the course of export may be	

		where foreign remittances are not realised under the said rules.		made on payment of integrated tax and the supplier shall, subject to such conditions and restrictions as may be specified in the said notification, be eligible to claim refund of the integrated tax paid on such supplies of goods or services or both.	

Agenda Item 5A(ix): Scheme of 'Know Your Supplier'

Reference is invited to rule 36(4) of the CGST Rules, 2017 wherein restriction in availment of input tax credit (ITC) has been imposed on the recipient. As per the rule, a registered person can avail ITC not exceeding 110% of the supply reflected in his FORM GSTR-2A. In other words, the suppliers of the registered person must furnish their FORM GSTR-1 on time in order for availment of ITC by this registered person subject to ten percent flexibility provided by the rule. In this context, there is a felt need to enable every registered person to have some basic information about the suppliers with whom they propose to conduct business. This would help them to identify the probable non-compliant suppliers and take business decision accordingly. The relevant provisions which provides for a compliance rating for registered persons as contained in Section 149 of the CGST Act, 2017 read as follows: -

149. (1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.

(2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.

(3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

2. In this context, it is for consideration that instead of giving a 'number' as compliance rating score, merely the performance of the supplier on chosen relevant parameters is displayed to any registered person. Law Committee in its meeting held on 02.03.2020 proposed that in order to enable 'Know your Supplier' scheme a new rule may be inserted in the CGST Rules, 2017 providing for display of following parameters in respect of a given GSTIN: -

(a) Month and Year of registration Under GST
(b) Whether a Composition dealer or normal dealer
(c) Aggregate Turnover (Slab) (0 to 40 lakhs, 40 lakhs to 1.5 crores, 1.5 crores to 5 crores, 5 Cr to 25, 25 and above)
(d) Percentage of tax payment in cash (Slab) (% cash set-off i.e. percentage of liability discharged through cash, in totality; 0 to 2%, 2 to 5%, 5 to 10%, 10 to 20%, 20% and above)
(e) Details of **last twenty returns** furnished (AS AVAILABLE ON PORTAL- **to be increased from ten to twenty**)
(f) e-way bill blocking history
(g) Gross Total Incomes (slab same as point no. (c) above)

Further, based on the feasibility as per GSTN analysis, following parameters may be included: -

(h) Number of months or quarters, as the case may be, for which FORM GSTR-1 not submitted
(i) Number of months in which FORM GSTR-3B not submitted on time
(j) Any default in furnishing FORM GSTR-3B for more than three months
(k) Any default in furnishing FORM GSTR-1 for more than three months or two quarters, as the case may be.

3. Accordingly, the agenda is placed before the Council for approval.

Agenda item 5A(x): Notifying NPCI, Transunion CIBIL Ltd. and Association of Mutual fund of India under section 150(1)(p) and Banking Information return under Section 150(1)(e)

Reference is invited to the Section 150(1)(p) of the CGST Act, 2017 wherein power is provided to seek information from any specified person. The said sub-section reads as follows: -

> *"150. (1) Any person, being—*
> *(a)….*
> *(b)….*
> *…….*
> *(p)* ***any other person as may be specified, on the recommendations of the Council, by the Government****,*
>
> *who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed."*

Law Committee in its meeting held on 20.01.2020 recommended that information using power provided in the said sub-section may be sought from the following three agencies: -

(i) *National payment corporation of India (NPCI)*
(ii) *TRANSUNION CIBIL LTD and*
(iii) *Association of Mutual Funds of India (AMFI);*

Accordingly, it is requested that GST Council may approve the proposal of notifying above mentioned three agencies under section 150(1) (p) of the CGST Act, 2017.

2. Reference is also invited to deliberation in the 2nd National Conference held on 07.01.2020 on seeking information return from Banks under Section 150(1) (e). It was deliberated that the data may be helpful in identifying risky taxpayers as well as in recovery under existing tax laws or GST Acts. A format for seeking such information was deliberated by the members present in the conference. The same is enclosed as **Annexure I**. Accordingly, it is requested that GST Council may approve the proposal of seeking Information Return from Bank in the said enclosed format.

3. Accordingly, the issues mentioned above viz. 'notifying of agencies under Section 150(1)(p)' and 'seeking Bank Information Return under Section 150(1)(e)' are placed before the GST Council for approval please.

Information Return for Bank
(Section 150(1)(e)of CGST Act,2017)

Name of the Bank:

Month:

PAN :
*Details of all accounts linked to PAN to be provided

1. Details of Accounts held linked to PAN concerned:

Sr. No.	Account Number	IFSC Code	Name of the Account Holder (company / firm/ person):	Address	Aadhar Number (if available on records)	Name of authorized signatory(ies)	Mobile number (linked to the Account)	Email id linked to the account	Phone number if any
(1)	(2)	(3)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.									
2.									
3.									

Type of Account (Saving/ Current) (10)	Date of opening the account (11)	IFSC Code (12)	Details of KYC documents*	
			Document Type (13)	Document No. (14)

- Copy of the KYC documents to be provided/ uploaded with the return

2.Details of transactions in the Primary account(s)-as provided by GSTN during the month (details of the month to be provided)**

S. No. (1)	Bank Account Number (2)	Cash transactions more than Rs. 50,000/- from the account during the month				Transactions to and from other accounts from the account more than Rs. 10,00,000/-during the month				Details of top 10 recipient bank accounts from the account during the month (13)	Details of top 10 payer bank accounts to the account during the month (14)
		Number of Cash Withdrawls (5)	Amount of Cash Withdrawls (6)	Number of cash deposits (7)	Amount of cash deposits (8)	Number of transactions of transfer to other accounts (9)	Total Amount in transactions of transfer to other accounts (10)	Number of transactions of transfer from other accounts (11)	Total Amount in transactions of transfer from other accounts (12)		

3. Details of transactions in the account during the month (details of the month to be provided)**

S. No. (1)	Bank Account Number (2)	Total transactions during the month		Cash transactions more than Rs. 50,000/- from the account during the month				Details of top 10 recipient bank accounts from the account during the month (13)	Details of top 10 payer bank accounts to the account during the month (14)
		Number of transactions (3)	Amount in transactions (4)	Number of Cash Withdrawls (5)	Amount of Cash Withdrawls (6)	Number of cash deposits (7)	Amount of cash deposits (8)		

**The bank statements for all the bank accounts of the company/ firm/ person for the month to be provided/ uploaded with the return

It is certified that all the information provided above is correct as per the records of the Bank.

( )
Signature of the Authorized person of the Bank
Name:…….
Designation: ……
Phone Number……
e-mail id:……..

Agenda Item 5A(xi): Proposal for Notification / Rule change for enabling AADHAAR based authentication in GST

In the Finance Bill, 2019, the section 25 was of the CGST Act,2017 was amended to insert AADHAAR based authentication for existing taxpayers and new registrations in the GST Law.

> ***Section 25 (6A)*** *Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:*
>
> ***Provided*** *that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:*
>
> ***Provided*** *further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.*
>
> ***(6B)*** *On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:*
>
> ***Provided*** *that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.*
>
> ***(6C)*** *On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:*
>
> ***Provided*** *that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.*
>
> ***(6D)*** *The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.*
>
> *Explanation.—For the purposes of this section, the expression "Aadhaar number" shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016)*

2. This section was made effective from 1st January 2020. Further, the GST Council in its 37th meeting held in Goa, approved the following presentation made by GSTN, for operationalizing AADHAAR authentication in GST.

Category of persons are covered under Aadhaar Authentication in Phase-1

- Authorized signatory for all types, Proprietor, Managing/Authorized partner (in case of partnership) and Karta in case of HUF.
- For the categories of taxpayers, who are not covered in first phase, the e-KYC authentication will be implemented in second phase,

Aadhaar will not be required in case of

- the person who is not resident/citizen of India,

For existing registrant persons of the above category covered in Phase-1, a screen will be provided for e-KYC authentication from Aadhaar

Where Aadhaar is provided

- To maintain privacy of promoters, GST System shall send "link" to the concerned persons at their e-mail and mobile to enter Aadhaar and OTP, if the promoter is not willing to share Aadhaar with Auth Signatory.
- On successful authentication, demographic data of the persons shall be fetched from Aadhaar to GST System,
- Registration process thereafter, will remain the same as it is today

In cases where promoters decline to provide Aadhaar details:

- Site survey will be done and identification documents will be verified.
- In such cases, 3 working days upper cap will not be applicable (no deemed registration).

3. The law committee in its meeting held between 20th and 21st January 2020, approved the amendment of the CGST Rules, 2017 for operationalizing AADHAAR based authentication. The Law Committee noted that that refund to existing registered persons may be granted only after authentication as specified above. The draft approved by the Law Committee was vetted by the Ministry of Law and Justice and is placed as **Annexure A**.

4. The Law Committee further opined that notification under Section 6B and 6C of the CGST Act,2017 shall be issued specifying the date from which AADHAAR authentication for these categories shall be made applicable. Further, since AADHAAR authentication has not been made applicable to all taxpayers, a notification under Section 6D shall also be issued exempting categories of persons registered under section 51, 52, OIDAR, non-resident taxable person, Company, Association of persons, anybody of Individuals or a Society, or a Trust from the provisions of Aadhar authentication. The draft approved by the Law Committee was vetted by the Ministry of Law and Justice and is placed as **Annexure B**.

Annexure A

Draft Rules for AADHAAR authentication in GST

Insertion of sub-rule 4A to rule 8

(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in **Part B** of **FORM GST REG-01**, duly signed or verified through electronic verification code, along with the documents specified in the said Form at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

(4A) The applicant shall, while submitting an application under sub-rule (4), undergo authentication of Aadhaar number for grant of registration.

Insertion of proviso to Rule 9(1)

9. Verification of the application and approval.-(1)The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of three working days from the date of submission of the application.

"Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.".

Amendment of Rules 25

Physical verification of business premises in certain cases.-Where the proper officer is satisfied that the physical verification of the place of business of a ~~registered~~person is required **before or** after the grant of registration, he may get such verification **of the premises, in the presence of the said person,**done and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the common portal within a period of fifteen working days following the date of such verification.

Insertion of new Rule 25A :

25A. Aadhaar authentication for registered person:- Every registered person who has been issued a certificate of registration under rule 10 shall, before filing of any refund application or within thirty days of the order issued by the Commissioner in the Board, on the recommendations of the Council, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of the partner or managing partner, in the case of a partnership firm, or of the karta, in the case of a Hindu Undivided Family, or of the Managing Director or whole time Director, in the case of a company, or of any of the Members of the Managing Committee of any Association of persons or any body of Individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorised signatory:

Provided that till the time Aadhaar number is assigned to the person required to furnish Aadhaar number, such person shall continue as a registered person, subject to the production of the following identification documents, namely: –

(a) if he has enrolled, his Aadhaar Enrolment ID slip or a copy of his request made for Aadhaar enrolment; and

(b) any of the following documents, namely:

(i) Voter identity card issued by the Election Commission of India; or

(ii) Ration Card; or

(iii) Passport; or

(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that where the document referred to in clause(a) of the first proviso has been furnished, the Aadhaar number shall be furnished within ninety days of the date of furnishing of the said document, failing which proceedings under rule 22 may be initiated."

Annexure B

Draft Notification for AADHAAR authentication in GST

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
Notification No. __ /2020 – Central Tax

New Delhi, the __ February, 2020

G.S.R….(E).- In exercise of the powers conferred by sub-section (6B) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which an individual shall undergo authentication, of Aadhaar number, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in order to be eligible for registration:

Provided that if Aadhaar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

2. This notification shall come into effect from the __th day of February, 2020.

[F. No. __]

(__)
Under Secretary to the Government of India

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

Notification No. __ /2020 – Central Tax

New Delhi, the __ February, 2020

G.S.R….(E).- In exercise of the powers conferred by sub-section (6C) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017) , the Central Government, on the recommendations of the Council, hereby notifies the date of coming into force of this notification as the date, from which the -

(a) authorised signatory of all types;

(b) Managing and Authorised partners of a partnership firm; and

(c) Karta of an Hindu undivided family,

shall undergo authentication of possession of Aadhaar number, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017(hereinafter referred to as the said rules), in order to be eligible for registration under GST:

Provided that if Aadhaar number is not assigned to the said persons, they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

2. This notification shall come into effect from the __th day of February, 2020.

[F. No. __]

(__)
Under Secretary to the Government of India

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Indirect Taxes and Customs

Notification No. __ /2020 – Central Tax

New Delhi, the __ February, 2020

G.S.R….(E).- In exercise of the powers conferred by sub-section (6D) of section 25 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the persons other than the following class of persons, namely:–

(a) Individual;

(b) authorised signatory of all types;

(c) Managing and Authorised partner;

(d) Karta of an Hindu undivided family; and

(e) not a citizen of India,

to whom the provisions of sub-section (6B) or sub-section (6C) shall not apply.

2. This notification shall come into effect from the __th day of February, 2020.

[F. No. __]

(__)
Under Secretary to the Government of India

Agenda Item 5A(xii): Clarification in respect of appeal in regard to non-constitution of Appeallate Tribunal

Various representations have been received wherein the issue has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. It has been gathered that the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed. Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in absence of appellate tribunal for appeal to be made under section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act").

2. In this regard, rule 109A of Central Goods and Services Tax Rules, 2017 may kindly be referred as per which if the order has been passed by Deputy or Assistant Commissioner or Superintendent, appeal has to be made to the appellate authority appointed who would not be an officer below the rank of Joint Commissioner. Further, if the order has been passed by Additional or Joint Commissioner, appeal has to be made to the Commissioner (Appeal) appointed for the said function. Further appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal and any person aggrieved by an order passed against him under section 107 or section 108 (order of the revisionary authority) of CGST Act can appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person referring the appeal.

3. Since the appellate tribunals have not been constituted yet in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India. As such the appeal against the order of the first appellate authority cannot be filed within three months (six months for the appeal by the Government) from the date on which the order sought to be appealed against is communicated.

4. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council has issued **the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019**. It has been clarified that appeal to tribunal can be made within three months from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later. Hence, there will be no difficulty faced by the aggrieved registered person or the Government as appeal to the tribunal in terms of section 112 of the CGST Act would not get time barred and will be valid if filed within three months (six months in case of appeal by the Government) from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal within three months from the President or the State President enters office.

5. In order to ensure uniformity across field formations and to avoid confusion in this respect Law Committee in its meeting held on 02.03.2020 recommended that a Circular may be issued for all appellate authorities. Accordingly, a draft Circular in this respect (Annexure A) is placed before the GST Council for approval.

Annexure A

Circular No. xx/xx/2020 - GST

CBEC-20/16/15/2018-GST

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

GST Policy Wing

****

New Delhi, Dated the February, 2020

To,

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)

The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal – reg.

Various representations have been received wherein the issue has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. It has been gathered that the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed. Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in absence of appellate tribunal for appeal to be made under section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act").

2. The matter has been examined in detail. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.

3.1 Appeal against an adjudicating authority is to be made as per the provisions of Section 107 of the CGST Act. The sub-section (1) of the section reads as follows: -

"107. (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person."

3.2 Relevant rules have been prescribed for implementation of the above Section. The relevant rule for the same is rule 109A of Central Goods and Services Tax Rules, 2017 which reads as follows

"109A. Appointment of Appellate Authority.- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent,

within three months from the date on which the said decision or order is communicated to such person."

3.3 Hence, if the order has been passed by Deputy or Assistant Commissioner or Superintendent, appeal has to be made to the appellate authority appointed who would not be an officer below the rank of Joint Commissioner. Further, if the order has been passed by Additional or Joint Commissioner, appeal has to be made to the Commissioner (Appeal) appointed for the same.

4. 1 The appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the CGST Act which reads as follows: -

"112 (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal."

4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the

recommendations of the Council, has issued **the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019**. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order **or** date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, **whichever is later**.

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted and within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

6. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)

Principal Commissioner (GST)

Agenda Item 5A(xiii): Exemption for certain class of registered persons from having e-invoicing along with extension of dates for implementation of e-invoicing

Vide Notification No.70/2019-Central Tax dated 13th December, 2019 a class of registered person whose aggregate turnover in a financial year exceeds one hundred crore rupees, has been notified as a class of taxpayers who shall prepare invoice in terms of sub-rule (4) of rule 48 of the CGST Rules, 2017 in respect of B2B supply of goods or services or both from 01st April, 2020.

2. The implementation of the said notification has incurred few hiccups. They are listed below along with the proposal for solution to the said issues:

2.1. The e-invoice schema provided by GSTN was notified vide Notification no. 02/2020-Central Tax dated 01st January, 2020. However, during the Law Committee meeting held on 17th and 18th February, 2020, GSTN has informed there are certain issues regarding that schema, therefore, scheme need to be amended. Hence the new schema for e-invoicing is also need to be notified. Law Committee has recommended the new schema of e-invoices.

2.2. Certain class of taxpayers like an insurance or a banking company, a financial institutions, non-banking financial institution, GTA, passenger transportation service providers as IRCTC referred in sub rule (2), (3), (4) and (4A) of rule 54 of CGST Rules, 2017 may find it very unfeasible and difficult to generate an Invoice Reference Number, as mandated under sub-rule(4) of rule 48 of CGST Rules 2017 due to the nature and the frequency of the invoice or a document issued in lieu of the invoice.

2.3. Sub-rule (4) of rule 48 of CGST rules provides that invoice shall be issued only after obtaining Invoice Reference Number. However, this rule doesn't cover debit note, credit note, export invoice, self-invoice in case of RCM supplies under section 31(3)(f) of CGST Act, 2017, invoice issued by an ISD and other documents. During the Law Committee meeting this issue was discussed and committee has recommended the amendment of rule 48 of CGST rules, 2017 to this effect.

2.4. Further During the discussion in Core group meeting, held on 10th February, 2020 GSTN has expressed inability to launch the e-invoice scheme for all taxpayers having aggregate turnover exceeding 100 Cr. from 01st April, 2020 on account of hardware capacity constraints. GSTN has proposed to roll out e-invoicing in a staggered manner for the taxpayers based on their aggregate turnover. This plausible solution may have less constraint on the hardware. GSTN proposed that initially e-invoicing may be introduced for the taxpayers whose aggregate turnover in preceding financial year exceeds five hundred crore rupees only. Subsequently, after the successful roll out of first phase, this e-invoicing may be made mandatory for taxpayers whose aggregate turnover in a financial year exceeds one hundred crore rupees.

2.5. The above issues were discussed in Law Committee in its meeting held on 2nd March, 2020, in view of the above Committee has recommended for deferring the date of implementation of e-invoice along with exemptions to aforesaid suppliers and invoices. Further, as the new rule provisions are proposed for the deferment for 6 month, it is proposed that e-invoicing also may be deferred by 6 months, and hence date of implementation of e-invoicing may be extended till 01st October, 2020 for the taxpayers whose aggregate turnover in a financial year exceeds one hundred crore rupees only.

3. In view of the above, on account of e-invoicing following proposals are proposed:

a. Certain class of taxpayers like an insurance company or a banking company, a financial institution, non-banking financial institution, GTA, passenger transportation service providers as IRCTC referred in sub rule (2), (3), (4) and (4A) of rule 54 of CGST Rules, 2017 may be exempted from e-invoicing;

b. Amendment of rule 48 to include credit note, debit note, export invoice, ISD, self-invoice under section 31(3)(f) of CGST Act, 2017 in case of RCM supplies etc for the purpose of IRN;

c. Date of implementation of e-invoicing may be extended to 1st October, 2020 for the taxpayers whose aggregate turnover in a financial year exceeds one hundred crore rupees only.

4. Therefore, Notification No.70/2019 dated 13th December, 2019 may be amended. Accordingly, amended draft notification **(Annexure-A)** is placed before GST Council for its approval.

Annexure-A

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i)]
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
Notification No. XX/2020– Central Tax

New Delhi, the …March, 2020

G.S.R. …..(E).— In exercise of the powers conferred by sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017(hereinafter referred as said rules), the Government on the recommendations of the Council, and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 70/2019 – Central Tax, dated the 13th December, 2019 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 926 (E), dated the 13th December, 2019, except as respects things done or omitted to be done before such supersession, hereby notifies registered person, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of said rules, whose aggregate turnover in a financial year exceeds **one hundred crore** rupees, as a class of registered person who shall prepare **invoice and other prescribed documents**, in terms of sub-rule (4) of rule 48 of the said rules in respect of supply of goods or services or both to a registered person.

2. This notification shall come into force from the 01st October, 2020.

[F. No. -GST]

(XXXXXXXXXXX)
Under Secretary to the Government of India

Agenda Item 5A(xiv): Exemption for certain class of registered persons from capturing dynamic QR code along with deferment of implementation of QR Code

Vide Notification No. 72/2019-Central Tax dated 13.12.2019 every registered person whose aggregate turnover exceeds ₹500 Crores in a financial year, is mandatorily required to capture a Quick Response ('QR') code on every tax invoice issued to unregistered customers i.e. for B2C supplies, along with other mandatory fields required on such tax invoices with effect from 1st April, 2020.

2. The implementation of the said notification has incurred few hiccups. They are listed below along with the proposal for solution to the said issues:

2.1. Certain class of taxpayers like an insurance or a banking company, a financial institutions, non-banking financial institution, GTA, passenger transportation service providers and various other taxpayers referred in sub rule (2), (3), (4) and (4A) of rule 54 of CGST Rules, 2017 who have been authorized to issue a document in lieu of invoice, may find it very unfeasible and difficult to capture dynamic QR code on their B2C invoices or on other document issued in lieu of invoice.

2.2. Further, National Payment Corporation of India (NPCI) was required to come up with detailed guidelines for QR code generation. NPCI was also mandated to create awareness among the trade about the implementation of QR code in B2C invoices. It has been bought to the notice that NPCI hasn't conducted any workshops/ awareness program in the trade on the said issue. In view of the above, it is also proposed that an invitation to NPCI for the upcoming meeting of GST Council may be sent to attend the meeting on the issue, so that they can present their roadmap for introducing the QR code for B2C invoices.

2.3. The above issues were placed before Law Committee in its meeting held on 2nd March, 2020, wherein committee has recommended for deferring the date of implementation of QR code along with exemptions to aforesaid taxpayers from the requirement of having QR Code. Law Committee also recommended for exemption of OIDAR from capturing dynamic QR code on their invoices.

3. In view of the above discussion, the following are proposed:

a) Exemption from the requirement of QR Code referred in sub rule (2), (3), (4) and (4A) of rule 54 of CGST Rules, 2017
b) An invitation to NPCI for the upcoming meeting of GST Council, so that they can present their roadmap for introducing the QR code for B2C invoices.
c) Exemption of OIDAR from capturing dynamic QR code on their invoices.
d) Deferring the date of implementation of QR code on B2C invoices to **1st October, 2020** now instead of 1st April,2020

4. Therefore, the agenda for requisite amendment of Notification No.70/2019 dated 13th December, 2019 (Annexure A) in order to implement the proposals at para 3 above is placed before GST Council for its approval.

Annexure-A

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section(i)]

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

Notification No. XX/2020– Central Tax

New Delhi, the …March, 2020

G.S.R. …..(E).— In exercise of the powers conferred under sixth proviso to rule 46 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), the Government, on the recommendations of the Council, and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 72/2019 – Central Tax, dated the 13th December, 2019 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R…..(E), dated the 13th December, 2019, except as respects things done or omitted to be done before such supersession, hereby notifies that an invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, other than registered person referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of said rules, and registered person referred under section 14 of the Integrated Goods and Services Tax Act, 2017, to an unregistered person (hereinafter referred to as B2C invoice), shall have Dynamic Quick Response code (QR):

(i)

(ii) Provided further that where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

2. This notification shall come into force from the 1st day of October, 2020.

[F. No. -GST]

( )
Under Secretary to the Government of India

Agenda Item 5A(xv): Agenda note for GST Council regarding extension of date of GSTR 3B filing for the month of Jan, 2020 till 31st March 2020

It may be recalled that the Union Territory of Ladakh has been created under Jammu and Kashmir Reorganisation Act, 2019 and a separate State Code "38" has been assigned to it in the common portal. Accordingly, existing GSTINs in the erstwhile State of J&K having State Code "01" located in Ladakh have been assigned new GSTINs having State Code "38" with effect from 1st Jan, 2020.

2. It was informed by GSTN that the data migration activity took time and first batch was processed successfully on 7th Feb, 2020 and 14th Feb, 2020. In these two phases, only 1768 GSTINs were processed. Remaining 1305 GSTINs of normal taxpayers and GSTINs of deductors could not be processed due to failure of Batch. These GSTINs could be processed successfully on 28th Feb, 2020. Subsequent to processing of all GSTINs, return filing functionality for GSTR- 3B has been enabled on 29th Feb, 2020.

3. As the due date for return filing for the tax period of Jan, 2020 is already over, the extension of the due dates for the filing of returns is required to be given for the taxpayers of Ladakh to avoid levy of late fee. The date may be extended to 20th March, 2020. Similar extension will be required for **FORM GSTR-1** and **FORM GSTR-7**.

4. The matter was deliberated in the Law Committee in its meeting on 2nd March, 2020, and it was recommended that the due dates may be extended, as requested by GSTN. Implementation of the decision would require issuance of notifications for extension of due dates for **FORM GSTR-1, FORM GSTR-3B** and **FORM GSTR-7** for the month of **January, 2020**.

5. Accordingly, the issue is placed before the GST Council for approval.

Agenda Item 5A(xvi): Agenda note for GST Council regarding continuation of the existing system of furnishing FORM GSTR-1 and FORM GSTR-3B till the month of September, 2020

Reference is invited to notification Nos. 44-46/2019-Central Tax, all dated 09.10.2019, vide which the due dates for furnishing of details of outwards supplies under section 37 in **FORM GSTR-1** has been extended and the return in **FORM GSTR-3B** has been prescribed for the period October, 2019 to March, 2020. Subsequently, notification Nos. 07/2020-Central Tax, dated 03.02.2020 was issued to stagger the date of filing of return in **FORM GSTR-3B** for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year to the 22nd and the 24th of the succeeding month for the months of January to March, 2020. The Law Committee, in its meeting held on 2nd March, 2020, has deliberated on the issues arising out of the perceived delay in the implementation of the new return system and accordingly, has recommended that the present return system of GSTR-1 / 3B may be extended for 6 more months.

2. It is pertinent to mention here that, as per the provisions of sub-rule (5) of rule 61 of the CGST Rules, 2017, the due date of **FORM GSTR-1** is required to be extended for prescribing the furnishing of **FORM GSTR-3B.** Accordingly, in order to prescribe the return under section 39 in **FORM GSTR-3B**, the following notifications are required to be issued under the CGST Act:

- **FORM GSTR-3B** may continue to be filed monthly by all tax payers for the months April, 2020 onwards on or before the 20th of the month succeeding such month or in such staggered manner as notified. Draft notification is enclosed as **Annexure A**.

- The due date for furnishing of details of outwards supplies in **FORM GSTR-1** under section 37 may be extended to 11th of succeeding month or such other date as may be recommended for all the taxpayers or for specific class of taxpayers.

3. Accordingly, the issue is placed before the GST Council for further deliberation.

Annexure A

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. __/2019 – Central Tax

New Delhi, the __ March, 2020

G.S.R...(E).- In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017 (hereafter in this notification referred to as the said rules), the Commissioner, on the recommendations of the Council, hereby specifies that the return in **FORM GSTR-3B** of the said rules for each of the months from April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month:

Provided that, for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep, the return in **FORM GSTR-3B** of the said rules for the months of April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:

Provided further that, for taxpayers having an aggregate turnover of up to rupees five Crore in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi, the return in **FORM GSTR-3B** of the said rules for the months of April, 2020 to September, 2020 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month.

2. **Payment of taxes for discharge of tax liability as per FORM GSTR-3B.** – Every registered person furnishing the return in **FORM GSTR-3B** of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.

[F. No. 20/06__/__/2020-GST]

(_____ _____)
Under Secretary to the Government of India

Agenda Item 5A(xvii): Transition Plan in view of merger of Union Territories of Dadra & Nagar Haveli and Daman & Diu

The Ministry of Home Affairs (MHA), Government of India (GoI) proposed merger of the existing UTs of Daman & Diu (hereinafter referred to as DD) and Dadra & Nagar Haveli (hereinafter referred to as DNH) into a single Union Territory. Accordingly, the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019, was passed by both houses of Parliament of India and assented to by the President of India on 09.12.2019 and was notified as Act No. 44 of 2019. Further, vide Notification No. 01/2020 dated 24th January, 2020, Govt. of India notified the appointed date for merger of the UT of DNH and UT of DD as 26th January, 2020.

2. Following are the changes that are required in view of the merger of UTs:

(a) Migration of old GSTINs which are getting merged with new UT code 26,
(b) Payment, Cash Ledger, Settlement Ledger, Return Dashboard and other changes,
(c) Back Office related changes under Scrutiny, Assessment, Refund, Appeal, Adjudication, Enforcement, Recovery, BO login etc.
(d) Offline Templates/ Utilities related changes,
(e) Changes on account of other Stakeholders like Accounting Authorities, Banks, Pr. CCA etc.

3. In view of the above, it is proposed that a special procedure is required to be formulated and the same has to be notified under section 148 of the Act to address the aforesaid difficulties faced by the taxpayers of merged UT of DNH & DD. A proposed special procedure has been drawn up in lines with the special procedure formulated earlier for the reorganization of Jammu and Kashmir, and the same is placed below:

- There shall be a transition date to be decided in consultation with GSTN - tentatively 01.04.2020. The state code of DNH shall continue to remain the state code for the combined UT of DDDNH. The period between 26.01.2020 to the transition date shall be called the intervening period.
- Tax period for January will be 01.01.2020 to 26.01.2020
- Tax period for February will be 27.01.2020 to 29.02.2020
- On the transition date, all the registrations in the erstwhile UT of Daman and Diu be functionally limited to undertake compliance only till the month of March, 2020.
- Taxpayers who want to get registered separately in DD (i.e. those who want to have multiple registrations in the new UT or those who did not have registration in the erstwhile UT of DNH) are required to take a registration under the new code (which shall be the code of erstwhile DNH). Those having registration in both the UTs before the transition date may choose not to take a registration under DDDNH
- All new registrations in the intervening period to be given in the UT code of DDDNH
- In the intervening period, all transactions from erstwhile UT of DD to DNH, and vice-versa shall be leviable to CGST/UTGST. However, such transactions were earlier leviable to IGST, and in the absence of GSTIN under a separate code, the system would not allow showing of CGST/UTGST. Therefore, irrespective of what is charged on the invoices, while filing the returns, tax is to be paid in the correct head.
- For those in erstwhile choosing to take a new registration in DDDNH, after filing of the return for Jan, 2020, the ITC balance shall be passed on to the new registration (automatically in the backend system).

- For those having separate registrations in both the erstwhile UTs of DD and DNH, upon intimation to the jurisdictional officers of both the erstwhile UTs, and upon filing of the return for the period of January, 2020 for the erstwhile UT of DD, the balance in the electronic credit ledger shall be allowed to be moved to the registration in erstwhile DNH.

5. In order to address the issue, it is proposed to create a special procedure for such taxpayers in consultation with all the various stakeholders. The matter was deliberated in the Law Committee in its meeting on 02.03.2020, and the Law Committee recommended that the system may be devised by GSTN in consultation with all the stake holders. Implementation of the special procedure would require issuance of notification under section 148 of the CGST Act, 2017 and corresponding notification under the respective SGST Acts of the States.

6. Accordingly, the Agenda Note has been prepared along with a draft notification to implement the special procedure (**Annexure - A**).

7. Accordingly, the issue is placed before the GST Council for approval.

Annexure A

To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Notification No. xx/2019 – Central Tax

New Delhi, the xxth February, 2020

G.S.R.....(E). - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), read with sub-section (2) of section 23 of the said Act, the Government, on the recommendations of the Council, hereby notifies those persons whose principal place of business or place of business lies in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2020; and lies in merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th day of January, 2020 onwards, as the class of persons who shall follow the following special procedure till the 31st day of March, 2020 (hereinafter referred to as the transition date), as mentioned below.

2. The said registered person shall,:–

(i) ascertain the tax period as per sub-clause (106) of section 2 of the said Act for the purposes of any of the provisions of the said Act for the month of January, 2020 and February, 2020 as below:
    (a) January, 2020: 1st January, 2020 to 26th January, 2020;
    (b) February, 2020: 27th January, 2020 to 29th February, 2020;

(ii) irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from 27th January, 2020 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act;

(iii) taxpayers who have registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu and the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2019 shall have an option to transfer the balance of input tax credit (ITC) after the filing of the return for January, 2020, from the registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu to the registered GSTIN in the new Union territory of Daman and Diu and Dadra and Nagar Haveli by following the procedure as below:
    (a) the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within one month of obtaining new registration;
    (b) the ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile Union territory of Daman and Diu, for the tax period immediately before the transition date;
    (c) the transfer of ITC shall be carried out through the return under section 39 of the said Act for the tax period immediately before the transition date and the transferor GSTIN would be debiting the said ITC from its electronic credit ledger in Table 4(B)(2) of **FORM GSTR-3B** and the transferee GSTIN would be crediting the equal amount of ITC in its electronic credit ledger in Table 4(A)(5) of **FORM GSTR-3B**.

3. The balance of Union territory taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Daman and Diu from the 26th day of January, 2020, shall be transferred as balance of Union territory tax in the electronic credit ledger.

4. The provisions of clause (i) of section 24 of the said Act shall not apply on the said class of persons making inter-State supplies between the erstwhile Union territories of Daman and Diu and the erstwhile Union territories of Daman and Diu from the 27th day of January, 2020, till the transition date.

[F. No. 20/06__/__/2020-GST]

(_____ _____)
Under Secretary to the Government of India

Agenda Item 5A(xviii) Deferring e-Wallet scheme and extending duty exemption for exporters.

GST Council in its 22nd Meeting held on 06.10.2017 had approved proposals to prevent cash blockage of exporters due to upfront payment of GST on inputs, raw materials etc. One component of the solution was to exempt upto 31.03.2018 the IGST and Compensation Cess payable on the imports made by the holders of Advance Authorization holders (AA)/ Export Promotion Capital Goods (EPCG) licenses and EOUs. It was also decided that the long term permanent solution was to implement an 'e-Wallet' scheme so that exporters could pay the GST by using the 'amounts' in their e-Wallets. An 'e-Wallet Group' chaired by Chairman, GSTN and including officers of the Central and State Governments was constituted on 16.12.2017 to recommend an e-Wallet scheme. While work was going on the proposed e-Wallet scheme, the aforementioned exemptions were extended from time to time and are presently available upto 31.03.2020.

2. The e-Wallet group has identified various inter-dependencies between the e-wallet scheme and new return system which is to be introduced w.e.f. 01.04.2020. Once implemented, the Returns will take time to stabilize. An additional system burden by way of superimposition of e-wallet architecture on the same may lead to further destabilization of the new return implementation. Thus, the proposed e-Wallet scheme would need to be deferred till then. At the same time, tax exemptions on imports under AA/EPCG and EOU scheme are expiring on 31.03.2020, which is causing uncertainty to exporters. In this background the present agenda note is placed before the GST Council for deliberation and approval of following proposals:

(a) Extension of the time to finalize the e-Wallet scheme upto 31.03.2021, and

(b) Extension of the present exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU schemes upto 31.03.2021.

Agenda Item 5B: Deliberations of the Law Committee in the matter of the representation by Construction Federation of India on the orders of the Hon'ble High Court of Delhi

On the basis of the Order dated 31.5.19 of the Hon'ble High Court of Delhi (enclosed as A**nnexure A**) in Writ Petition No. 6536 of 2019 by M/s Hindustan Construction Company Limited, the Law Committee in its meeting held on 20th – 21st January 2020 has deliberated on the contents of the representation dated 06.11.18 of Construction Federation of India. The recommendations of the Law Committee are placed before the Council (enclosed as **Annexure B**).

2. The Hon'ble High Court of Delhi has directed that representation dated 06.11.18 made by Construction Federation of India may be considered by the GST Council and a decision be taken thereon. The Hon'ble High Court of Delhi has directed that a copy of the decision of the GST Council be placed before the Court on the next date of the Court.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 6536/2019**

HINDUSTAN CONSTRUCTION COMPANY LIMITED..... Petitioner

Through: Mr. A.R. Madhav Rao with Mr. Onkar Sharma, Mr. Toshin Bishnoi, Mr. Harsh Makhija and Mr. Shashank Shekhar, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Amit Bansal and Mr. Aman Rewaria for R-2 and R-3.
Counsel for respondent No.1 (name not given)

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE ASHA MENON

ORDER

% **31.05.2019**

CM APPL 27690/2019 & 27691/2019(exemption)

1. Allowed subject to just exceptions.

W.P.(C) 6536/2019 & CM APPL 27689/2019(stay)

2. Notice. Mr. Amit Bansal, learned counsel for respondents accepts notice for Respondents 2 and 3.

3. In the meanwhile, the representation made by the Construction Federation of India to the GST Council on 6th November, 2018 to be considered by the GST Council and a decision be taken thereon. It may be noted that points 5 and 6 of the said representation form the subject matter of the present

petition. A copy of the decision of the GST Council be placed before the Court on the next date.

4. List the matter before the Registrar on 3rd September, 2019 for completion of pleadings.

5. List before Court on 13th November, 2019.

6. *Dasti*.

S. MURALIDHAR, J.

ASHA MENON, J.

MAY 31, 2019
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Annexure B

1. **Issue: -** Restricting reversal of Input Tax Credit with interest in case of non-payment within 180 days only for MSME Vendors (Section 16(2) of CGST Act)
   Decision of the Law Committee: - The matter was reconsidered in detail and it was felt that this restriction should be maintained in its present form and should not be relaxed for any particular class of taxpayers.

2. **Issue:** - Inter-state movement of construction equipment other than on the wheels from one branch to another to be treated as non-supply in lines with Circular no. 21/21/2017- GST dated 22.11.2017. CFI has represented that equipment like concrete mix plant, cable cranes, crawler cranes, generators, transformers, tunnel-boring machines, piling rigs, etc. are also construction equipments but have been overlooked as they are not equipments on wheels. It has been represented that these equipments are required to be moved from one state to another for executing projects and that these equipments need to be treated at par with rigs, tools and spares and all goods on wheels (like cranes). They have also enclosed a detailed list of such equipments along with their representation.
   Decision of the Law Committee: - Law Committee was of the view that the previous decision was taken in the context of "goods" which are largely in the nature of mode of conveyances and all capital equipments are not of this nature. It was further felt that it is difficult to distinguish capital equipments from other goods that may be moved by such construction companies and trying to create an artificial distinction may lead to disputes as also misuse potential. Therefore, this proposal may not be agreed to.

3. **Issue:** - CFI has requested to allow refund of input tax credit of input services also in case of inverted duty structure by making amendments in section 54(3)(ii) of CGST Act, 2017 and rule 89(5) of CGST Rules, 2017.
   Decision of the Law Committee: - The matter was reconsidered in detail and it was felt that this restriction should be maintained in its present form since the refund concept and its details built in the GST Law was the outcome of a conscious decision taken after due deliberations in the Council.

4. **Issue:** - Request has been made to notify effective date for applicability to sub-contractors retrospectively from 22.08.2017 instead of 25.01.2018 for the notification no. 20/2012-Integrated Tax (Rate) dated 22.01.2018 wherein rate was reduced to 12% for composite supply of works contract.
   Decision of the Law Committee: - It has been the consistent stand of the Council that no retrospective amendments in rates may be made, except in the rarest of rare circumstances.

5. **Issue:** - Request has been made that GST may not to be payable on Advance received for supply of Services. Request has been made that the provisions should be made similar to that applicable for Goods (notification no. 66/2017-Central Tax dated 15.11.2017) in order to maintain equity, avoid financial burden and unwarranted disputes. Alternatively, request has been that the recipient may be allowed to take ITC against receipt voucher.
   Decision of the Law Committee: - The matter was deliberated in all its aspects and it was felt that the concept of tax on advance payment is among the best practices in GST internationally

and it should not be abandoned. It was further observed that payment was an important landmark at least in the case of services which testifies to the actual supply of the service.

6. **Issue:** - To allow JVs formed by construction companies to treat advances received from project authorities as 'transaction in money' and not liable to GST.
   Decision of the Law Committee: - From the facts available to the Committee it was felt that in the instant case there is a supply of services by the different members of the JV to the JV and vice versa since the members and the JV are distinct legal entities. Therefore, the impugned further distribution of advance is not a transaction in money but is to be treated at par with receipt of advance in the normal case of business of supply of services.

7. **Issue:** - To include adequate provisions in the IGST Act so that the benefit of zero rated supply be extended to sub-contractors providing supply of goods/services to SEZ Units/ Developers, and to enable sub-contractor to supply goods/services without payment of GST, the LUT issued in favour of the principal contractor be allowed to be utilized by sub-contractor for the exemption goods/services.
   Decision of the Law Committee: - In terms of the proviso to the section 16 of the IGST Act, only supplies to SEZ units and developers are zero rated and such zero rating does not extend to their contractors/sub-contractors.

Agenda Item 6: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh

The Chapter XVIII of the CGST Act,2017 provides for the Appeal and Review Mechanism for dispute resolution under the GST Regime. Section 109 of this Chapter under CGST Act empowers the Central Government to constitute, on the recommendation of Council, by notification, with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against orders passed by the Appellate Authority or by the Revisional Authority. The law envisages constitution of National Bench/Regional Benches and the State Bench/Area Benches.

2. Sub section (6) of section 109 of the CGST Act reads as under:

(6) The Government shall, by notification, specify for each State or Union territory except for the State of Jammu and Kashmir, a Bench of the appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017:

Provided further that the Government shall on receipt of a request from any State Government, constitute such number of Area Bunches in that State, as may be recommended by the Council:

Provided also that the Government shall, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

3. While the proposal of states and UTs for creation of State and Area Benches of Goods and Services Tax Appellate Tribunal was considered in the 35th and 37th meeting of the GST Council, the proposal for the State of Uttar Pradesh could not be considered as the Hon'ble High Court of Allahabad, Lucknow Bench had quashed the proposal of State Government for setting up of State Bench in Allahabad and 4 Area benches in Ghaziabad, Lucknow, Varanasi and Agra. The Department of Revenue has proposed to file SLP against the said judgment of the Allahabad high Court, Lucknow Bench.

4. Hon'ble High Court of Allahabad vide its judgement dated 16.01,2020 in Writ Tax No. 942 of 2018 has inter-alia directed that the issue of creation of GSTAT Benches for the state of Uttar Pradesh be taken up by the Central Government as well as the GST Council, as expeditiously as possible.

5. Accordingly, proposal for creating State Bench of Good and Services Tax Appellate Tribunal for the State of Uttar Pradesh in Allahabad and 4 Area Benches in Ghaziabad, Lucknow, Varanasi and Agra is placed before GST Council for consideration.

Enclosed: Annexure A (for reference**)**

Annexure A

The details of GSTAT benches at National/Regional and State/Area level

The GST Council has considered and recommended creation of GSTAT benches at National/Regional and State/Area level in its different meetings, which are briefed as below:

I. 28th meeting of the GST Council on 21.07.2018:

(i) Constitution of Goods and Services Tax Appellate Tribunal (GSTAT); and

(ii) Creation of National Bench of GST Appellate Tribunal at New Delhi and three Regional Benches at Mumbai, Chennai and Kolkata.

(iii) Union Cabinet approved creation of National Bench of the GST Appellate Tribunal at New Delhi. Subsequently, National Bench at New Delhi was notified vide Notification No. **S.O. 1359(E)—**[No. 1/2019, [F.No. A.50050/99/2018-Ad.1C(CESTAT)] dated 13-03-2019 issued by Department of Revenue.

(iv) The Rules for the GSTAT, namely, The Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019 were notified by Central Government vide notification No. G.S.R. 584(E)- [F.No. A.50050/99/2018-Ad.1C(CESTAT)] dated 21.08.2019.

II. 35th meeting of the GST Council on 21.06.2019:

(i) Creation of State/Area bench as per requests received from States.

(ii) Constitution of Jammu & Kashmir GST Appellate Tribunal in terms of proviso to Section 109(6) of the CGST Act, 2017.

The State and Area bench as per above recommendations, notified vide Notification No. **S.O. 3009(E)—** [F.No. A.50050/150/2018-Ad.1C(CESTAT)] dated 21-08-2019 issued by Department of Revenue, as under:

Sl. No.	Name of States/Union Territory	Location for State Bench	Location for Area Bench
1.	Andhra Pradesh	Vijayawada	Vishakhapatnam and Tirupati
2.	Assam	Guwahati	No bench
3.	Bihar	Patna	-do-
4.	Chhattisgarh	Atal Nagar Raipur	-do-
5.	Delhi	New Delhi	-do-
6.	Goa	Panaji	-do-
7.	Gujarat	Ahmedabad	Surat and Rajkot
8.	Haryana	Hisar	No bench
9.	Himachal Pradesh	Shimla	-do-
10.	Jharkhand	Ranchi	-do-
11.	Karnataka	Bengaluru	-do-
12.	Kerala	Thiruvananthapuram	-do-

13.	Maharashtra	Mumbai	Pune and Nagpur
14.	Odisha	Cuttack	No bench
15.	Puducherry	Pondicherry	-do-
16.	Punjab	Chandigarh	-do-
17.	Tamil Nadu	Chennai	-do-
18.	Telangana	Hyderabad	-do-
19.	Tripura	Agartala	-do-
20.	Uttarakhand	Dehradun	No bench
21.	West Bengal	Kolkata	Two Area Benches at Kolkata
22.	Arunachal Pradesh	Common State Bench of GSTAT at Guwahati, Assam	
23.	Manipur		
24.	Nagaland		
25.	Sikkim		
UTs (without legislature)			
26.	Andaman & Nicobar	State Bench of West Bengal (Kolkata)	
27.	Dadra & Nagar Haveli	State Bench of Maharashtra (Mumbai)	
28.	Daman & Diu	State Bench of Maharashtra (Mumbai)	
29.	Lakshadweep	State Bench of Kerala (Ernakulam)	
30.	Chandigarh	State Bench of Punjab (Chandigarh)	

III. 37th meeting of the GST Council on 20.09.2019:

Creation of State/Area bench for following States as per requests received from States:

Sl. No.	Name of States/ Union Territory	Location for State Bench	Location for Area Bench
1.	Meghalaya	Shillong	No bench
2.	Mizoram	Aizawl	-do-
3.	Rajasthan	Jaipur	Jodhpur
4.	Karnataka		Two Area benches at Bengaluru

IV. 38th meeting of the GST Council on 18.12.2019:

Creation of State/Area bench for following States as per requests received from States:

Sl. No.	Name of States/ Union Territory	Location for State Bench
1.	Madhya Pradesh	Indore
2.	Meghalaya	Guwahati* (*request from the Govt. of Meghalaya to club State Bench of Assam at Guwahati instead of earlier proposal at Shillong)
3.	Punjab	Ludhiana* (* the Govt. of Punjab has requested to change the State Bench of Punjab to Ludhiana instead of Chandigarh)

Agenda Item 7: Quarterly Report of the NAA (National Anti-profiteering Authority) for the quarter October to December 2019 for the information of the Council

In terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017, National Anti-Profiteering Authority (NAA) is required to furnish a performance report to the GST Council by 10th of the closing of each quarter. Anti-profiteering provisions are contained under Section 171 of the CGST Act, 2017 which empowers NAA to determine as to whether benefit of reduced rate of tax or the Input Tax Credit (ITC) has been passed on to the recipient by way of commensurate reduction in the prices and in case of failure, NAA may order reduction in prices, commensurate benefit to recipient, impose penalty and cancel registration, in suitable cases.

2. Anti-profiteering mechanism under GST is a multi-tier mechanism. The methodology of examination of the complaints to determine profiteering is as under:

i. State Level Screening Committee (SLSC) examines State level complaint and recommends to the Standing Committee (SC);
ii. SC, in addition to complaints recommended by SLSC, also receives complaint directly in respect of suppliers having pan India or presence in more than one State/UT;
iii. SC examines and sends recommendation to the DG, Anti-profiteering (DGAP).
iv. DGAP then completes investigation, within a period of 3 months, and furnishes a report of its findings to NAA.
v. Based on the report from DGAP, NAA determines all aspects relating to profiteering, passes its order regarding reduction in prices; return of amount to recipient; imposition of penalty; and cancellation of registration.

3. Accordingly, the performance report of anti-profiteering at various levels for the 3rd quarter ending December, 2019 of Financial Year 2019-20 at various levels, is as under:

3.1. Performance of **National Anti-Profiteering Authority:**

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
84	**36**	**46**	**31**	**02**	**13**	**74**

3.2. Performance of **DG (Anti-profiteering)**:

Opening Balance (No. of cases)	Receipt	Category of cases received					Disposal	Mode of disposal of cases		Closing Balance (No. of cases)
		Construtio n Services	FMC G	Restauran t Services	Cinem a	Others		Report to NAA confirming profiteerin g	Report to NAA for closure action	
61	**55**	**41**	**4**	**3**	**6**	**1**	**25**	**24**	**1**	**91**

3.2 Performance report of the **Standing Committee** on Anti-profiteering:

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
40	**232**	**155**	**117**

3.3 Performance report from the **State Level Screening Committee**:

Opening Balance (No. of cases)	Receipt	Disposal		Closing Balance (No. of cases)
		Cases referred to Standing Committee	Cases Rejected	
81	**226**	**177**	**67**	**63**

Note: A detailed performance of each State Level Screening Committee is enclosed at **Annexure "A"**.

4. During this quarter, Outreach Programmes and Zonal review meetings have been convened by the Chairman and the Technical Members of NAA as follows:

I. Chandigarh on 1st November, 2019
II. Mumbai on 2nd November, 2019
III. Guwahati on 14th November, 2019
IV. Shillong on 16th & 17th November, 2019
V. Kolkata on 18th November, 2019

5. Accordingly, the 3rd quarterly report of the National Anti-profiteering Authority for the period from October to December 2019 is placed before the GST Council.

Annexure A

Performance Report from the State Level Screening Committee -Quarter October - December 2019							
		October to December, 2019					
S.No.	States	R/NR	OB	R	Disposal		CB
					SC	R	
1	Andhra Pradesh	✓	7	4	4	3	4
2	Arunachal Pradesh	✓	0	0	0	0	0
3	Assam	✓	0	0	0	0	0
4	Bihar	✓	3	3	1	5	0
5	Chhattisgarh	✓	0	0	0	0	0
6	Goa	✓	0	0	0	0	0
7	Gujarat	✓	6	2	2	0	6
8	Haryana	✓	0	44	39	5	0
9	Himachal Pradesh	X					
10	Jammu and Kashmir	✓	0	0	0	0	0
11	Jharkhand	✓	4	1	2	3	0
12	Karnataka	✓	7	28	28	5	2
13	Kerala	X					
14	Madhya Pradesh	✓	18	8	0	22	4
15	Maharashtra	✓	9	28	34	0	3
16	Manipur	✓	0	0	0	0	0
17	Meghalaya	✓	0	0	0	0	0
18	Mizoram	✓	0	0	0	0	0
19	Nagaland	✓	0	0	0	0	0
20	NCT of Delhi	✓	10	33	17	19	7
21	Odisha	X					
22	Puducherry	✓	0	0	0	0	0
23	Punjab	X					
24	Rajasthan	✓	5	4	7	1	1
25	Sikkim	✓	0	0	0	0	0
26	Tamil Nadu	✓	4	0	0	0	4
27	Telangana	✓	0	25	7	4	14
28	Tripura	✓	0	0	0	0	0
29	Uttar Pradesh	✓	4	45	36	0	13
30	Uttarakhand	✓	4	1	0	0	5
31	West Bengal	X					
		26	**81**	**226**	**177**	**67**	**63**

	Active SLSCs (where receipt & disposal being done timely)
	Inactive SLSCs (where disposal not commensurate with receipts)
	States giving NIL receipts & disposal
	States from where reports are not received

Agenda Item 8: Deemed ratification of notifications, Circulars and Orders by the GST Council

In the 22nd meeting of the GST Council held at New Delhi on 06th October, 2017, it was decided that the notifications, Circulars and Orders which are being issued by the Central Government with the approval of the competent authority shall be forwarded to the GST Council Secretariat, through email, for information and deemed ratification by the GST Council. Accordingly, in the 38th meeting held on 18th December, 2019, the GST Council had ratified all the notifications, Circulars, and Orders issued before the 14th December, 2019.

2. In this respect, the following notifications, Circulars and Orders issued after 14th December, 2019 till 8th March, 2020 under the GST laws by the Central Government, as available on www.cbic.gov.in, are placed before the Council for information and ratification: -

Act/Rules	Type	Notification/Circular/Order Nos.	Description/Remarks
CGST Act/CGST Rules	Central Tax	1. Notification No. 73/2019 - Central Tax dated 23.12.2019	Seeks to extend the last date for filing of FORM GSTR-3B for the month of November, 2019 by three days from 20.12.2019 till 23.12.2019
		2. Notification No. 74/2019 - Central Tax dated 26.12.2019	Seeks to waive late fees for non- filing of FORM GSTR-1 from July, 2017 to November, 2019
		3. Notification No. 75/2019 - Central Tax dated 26.12.2019	Seeks to carry out changes in the CGST Rules, 2017
		4. Notification No. 76/2019-Central Tax dated 26.12.2019	Seeks to extend the due date for furnishing of return in FORM GSTR-1 for registered persons in Assam, Manipur or Tripura having aggregate turnover more than 1.5 crore rupees for the month of November, 2019
		5. Notification No. 77/2019 - Central Tax dated 26.12.2019	Seeks to extend the due date for furnishing of return in FORM GSTR-3B for registered persons in Assam, Manipur, Meghalaya or Tripura for the month of November, 2019
		6. Notification No. 78/2019 - Central Tax dated 26.12.2019	Seeks to extend the due date for furnishing of return in FORM GSTR-7 for registered persons in Assam, Manipur or Tripura for the month of November, 2019
		7. Notification No. 01/2020-Central Tax dated 01.01.2020	Seeks to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the CGST Act, 2017.

		8. Notification No. 02/2020-Central Tax dated 01.01.2020	Seeks to carry out changes in the CGST Rules, 2017.
		9. Notification No. 03/2020-Central Tax dated 01.01.2020	Seeks to amend the notification No. 62/2019 – Central Tax dated 26.11.2019 to amend the transition plan for the Union Territories of Jammu & Kashmir and Ladakh
		10. Notification No. 04/2020 - Central Tax dated 10.01.2020	Seeks to extend the one-time amnesty scheme to file all FORM GSTR-1 from July 2017 to November, 2019 till 17th January, 2020.
		11. Notification No. 05/2020 - Central Tax dated 13.01.2020	Seeks to appoint Revisional Authority under CGST Act, 2017.
		12. Notification No. 06/2020-Central Tax dated 03.02.2020	Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for the period from 01.07.2017 to 31.03.2018.
		13. Notification No. 07/2020-Central Tax dated 03.02.2020	Notification issued to prescribe due dates for filing of return in FORM GSTR-3B in a staggered manner.
		14. Notification No. 08/2020 - Central Tax dated 02.03.2020	Seeks to amend the CGST Rules, 2017 to prescribe the value of Lottery
	Central Tax (Rate)	1. Notification No. 27/2019 - Central Tax (Rate) dated 30.12.2019	Seeks to further amend notification No. 01/2017 -Central Tax (Rate) to change the rate of GST on goods as per recommendations of the GST Council in its 38th meeting.
		2. Notification No. 28/2019 - Central Tax (Rate) dated 31.12.2019	To amend notification No. 12/ 2017 - Central Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38th meeting held on 18.12.2019.
		3. Notification No. 29/2019 - Central Tax (Rate) dated 31.12.019	To amend notification No. 13/ 2017 - Central Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38th meeting held on 18.12.2019.

		4. Notification No. 01/2020 - Central Tax (Rate) dated 21.02.2020	Seeks to amend notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.
UTGST Act	Union Territory Tax (Rate)	1. Notification No. 27/2019 - Union Territory Tax (Rate), dated 30.12.2019	Seeks to further amend notification No. 01/2017-Union Territory Tax (Rate) to change the rate of GST on goods as per recommendations of the GST Council in its 38th meeting.
		2. Notification No. 28/2019 - Union Territory Tax (Rate), dated 30.12.2019	To amend notification No. 12/2017- Union Territory Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38th meeting held on 18.12.2019.
		3. Notification No. 29/2019 - Union Territory Tax (Rate), dated 30.12.2019	To amend notification No. 13/2017-Union Territory Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38th meeting held on 18.12.2019.
		4. Notification No. 01/2020 - Union Territory Tax (Rate) dated 21.02.2020	Seeks to amend notification No. 1/2017-Union Territory Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.
IGST Act	Integrated Tax	1. Notification No. 01/2020 - Integrated Tax dated 01.01.2020	Seeks to bring into force certain provisions of the Finance (No. 2) Act, 2019 to amend the IGST Act, 2017
	Integrated Tax (Rate)	1. Notification No. 26/2019 - Integrated Tax (Rate) dated 30.12.2019	Seeks to further amend notification No. 01/2017-Integrated Tax (Rate) to change the rate of GST on goods as per recommendations of the GST Council in its 38th meeting.
		2. Notification No. 27/2019 - Integrated Tax (Rate) dated 31.12.2019	To amend notification No. 9/2017- Integrated Tax (Rate) so as to exempt certain services as recommended by GST Council in its 38th meeting held on 18.12.2019.
		3. Notification No. 28/2019 - Integrated Tax (Rate) dated 31.12.2019	To amend notification No. 10/2017 - Integrated Tax (Rate) so as to notify certain services under reverse charge mechanism (RCM) as recommended by GST Council in its 38th meeting held on 18.12.2019.
		4. Notification No. 01/2020 - Integrated	Seeks to amend notification No. 1/2017 - Integrated Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.

		Tax (Rate) dated 21.02.2020	
Circulars	Under CGST Act, 2017	1. Circular No. 128/47/2019 dated 23.12.2019	Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the CBIC to tax payers and other concerned persons.
		2. Circular No. 129/48/2019 dated 24.12.2019	Standard Operating Procedure to be followed in case of non-filers of returns
		3. Circular No. 130/49/2019 dated 31.12.2019	Reverse Charge Mechanism (RCM) on renting of motor vehicles.
		4. Circular No. 131/1/2020 dated 23.01.2020	Standard Operating Procedure (SOP) to be followed by exporters
Removal of Difficulty Order	Under CGST Act, 2017	1. Order No. 10/2019 - Central Tax dated 26.12.2019	Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for F.Y. 2017-18 till 31.01.2020
Order	Under CGST Act, 2017	1. Order No. 01/2020-GST dated 07.02.2020	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117 (1A) of the Central Goods and Service Tax Rules, 2017 in certain cases

3. The GST Council may grant deemed ratification to the notifications, Circulars and Orders as detailed above.

Agenda Item 9: Decisions of the GIC Implementation Committee (GIC) for information of the GST Council

The GST Implementation Committee (GIC) took certain decisions between 19th December 2019 and 13th March 2020. Due to the urgency involved, decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions taken are given below:

Decision by Circulation – 23rd December 2019

2 The proposal before the GIC related to the extension of the last date for filing **FORM GSTR-3B** for month of November, 2019 from 20th December, 2019 to 23rd December 2019.

2.1 It was noticed from media and news reports that the economic activity including **FORM GSTR-3B** filing had got impacted in several States on account of blockage of internet services in view of the prevailing law and order situation.

2.2. It was also informed by CEO GSTN, that several taxpayers from different States, where internet services had been disrupted on 19th & 20th December, 2019 (primarily Rajasthan, Assam and Uttar Pradesh), had been calling up GSTN Helpdesk and enquired about extension of due date for **FORM GSTR-3B** for the month of November 2019.

2.3 In view of the above, it was felt that the due date for filing return in **FORM GSTR-3B** for the month of **November, 2019** for all taxpayers may be extended to 23rd December, 2019. Further, due to the urgency of the situation, the due date was already extended on the common portal to 23.12.2019 on 21.12.2019 (Saturday).

2.4. Accordingly, the agenda note was placed before the GIC for ***post-facto*** approval of the above proposal by the GIC. The GIC approved the proposal to extend the due date for filing of FORM GSTR-3B for the month of November 2019. Accordingly, implementing Notification No. 73/2019–Central Tax dated 23.12.19 was issued.

Decision by Circulation – 30th December 2019

Agenda Item 1 – Issuance of notification to implement the transition plan for J&K under GST: Amendments in notification No. 62/2019– Central Tax dated 26th November, 2019

3. The proposal before the GIC was issuance of notification to implement the transition plan for J&K under GST by amending notification No. 62/2019– Central Tax dated 26.11.19. It was mentioned in the agenda that on the recommendation of the Council, notification No. 62/2019 – Central Tax dated 26th November, 2019 was issued. The said notification specified a special procedure to be followed by taxpayers in the erstwhile State of J&K and UT of Ladakh till the transition date (i.e. 31.12.2019). In the said transition plan notification, it was specified that the registration to be taken by the taxpayers shall be completed by 31.12.2019 and the compliance for November, 2019 shall be under the new registrations.

3.1. However, in a meeting held on 16.12.19, it was brought to notice by GSTN that the registrations under the new State Code would be granted only from 01.01.2020; and meanwhile few of the taxpayers with principal place of business in Ladakh (for whom a new State Code was to be generated) have already filed returns for the month of November, 2019 under the earlier registration code.

3.2. Therefore, a situation had occurred wherein few of the taxpayers who should ideally have filed their returns for the months of November, 2019 under the new registration codes (GSTINs) had filed under the old GSTINs, apparently in the absence of readiness of portal to allot new registration code.

3.3. Accordingly, necessary amendment in the notification No. 62/2019 – Central Tax dated the 26th November, 2019 would be required to ensure that effective date of registration for the class of taxpayer under the said notification may be made as 01.01.2020. This would mean that the return for the months of November, 2019 and December, 2019 would only be filed under the earlier GSTINs under SGST J&K. Accordingly, certain amendments in the notification No. 62/2019 – Central Tax dated the 26th November, 2019 were proposed.

3.4. The GIC approved the proposal to amend the notification No. 62/2019-Central Tax dated 26.11.19. Accordingly, implementing Notification No. 03/2020 – Central Tax dated 01.01.20 was issued.

Agenda Item 2 – Proposal for amendment in CGST Rules, 2017

4. It was mentioned in the agenda that Law Committee in its meeting held on 11th and 12th December, 2019, deliberated upon several issues and recommended changes in various provisions of the Central Goods and Services Tax Rules, 2017. In addition to the changes in the CGST Rules, changes in the FORMS were also recommended by the Law Committee. These are summarized as below:

a. Amendment to Rule 117
b. Amendment of FORM GST REG-01
c. Amendment of FORM GSTR-3A
d. Insertion of FORM GST INV-01

4.1. The GIC approved the proposal to amend the CGST Rules, 2017. It was also decided that the States would also be required to make similar changes in rules or forms, as the case may be. Accordingly, the implementing Notification No. 02/2020 – Central Tax dated 01.01.2020 was issued.

Decision by Circulation – 10 January 2020

5 The proposal before the GIC related to extension of amnesty from late fees on GSTR-1 for July 2017 to November 2019 from 10.01.2020 to 17.01.2020.

5.1 The Council in the 38th GST Council Meeting decided to provide an amnesty from late fee on GSTR-1 for the period from July, 2017 to November, 2019, if filed by 10.01.2020. The response was very encouraging and over 8 lakh GSTR-1s got filed on 09.01.2020 itself. Still over 3 Crore GSTR1s were to be filed (down from 4.24 Crore as on 01.12.2020). Accordingly, with a view to encourage taxpayers to file GSTR-1s and this reduce unmatched credit it was proposed to extend the date from 10.01.2020 to 17.01.2020.

5.2 Accordingly, the agenda note was placed before the GIC for approval. The GIC approved the proposal regarding extension of amnesty from late fees on GSTR-1 for July 2017 to November 2019 from 10.01.2020 to 17.01.2020. Thus, implementing Notification No. 04/2020- Central Tax dated 10th January 2020 was issued.

Decision by Circulation – 14 January 2020

Agenda Item 1 - Amendment to IGST Act, UTGST Act and GST (Compensation to States) Act, consequential to amendment in Section 172 of the CGST Act

6. It was mentioned that Agenda Note No. 6 (ii) placed before the GST Council in its 38th Meeting held on 18.12.2019, inter-alia, amendment to section 172 of the CGST Act, 2017(Removal of difficulties), as recommended by the Law Committee, was approved by the Council. In the said amendment, it was proposed to substitute the word "three" by "five" in the proviso to sub-section (1) of Section 172.

6.1. As a consequence, similar amendments were also required to be made in the corresponding proviso of section 25 of IGST Act, 26 of UTGST Act and 14 of GST (Compensation to States) Act. It was further brought to attention that the sections in each Act are independently applicable exclusively to the provisions of respective Acts, but all the Acts are simultaneously applicable in the respective jurisdictions of the centre and the States. Accordingly, the increase in time for issuance of removal of difficulties order is required to be synchronised with Section 172 of CGST Act in the corresponding sections in each of these allied Acts.

6.2. Accordingly, it was proposed that the word "three" may be substituted with "five" in Section 25(1) of IGST Act, Section 26(1) of UTGST Act and Section 14(1) of GST (Compensation to States) Act.

6.3. The GIC approved the proposal to substitute the word 'three' with 'five' in section 25(1) of IGST Act, Section 26(1) of UTGST Act and Section 14(1) of GST (Compensation to States) Act.

Agenda Item 2 - Amendment in the CGST Act and the UTGST Act, consequential to passing of Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019

7. It was mentioned in the agenda that Union Cabinet had approved the merger of the existing UTs of Daman and Diu and Dadra and Nagar Haveli into a single Union Territory. Accordingly, the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories), Bill, 2019, was passed by both Houses of Parliament of India and assented to by the President of India on **09.12.2019** and was notified as Act No. 44 of 2019

7.1. The Government of India, Ministry of Home Affairs *vide* notification No. S.O. 4542 dated 19.12.2019, had appointed **26th January, 2020** as the date on which the provisions of the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019 will come into force.

7.2. In view of the above, various amendments in the CGST Act, 2017 and the UTGST Act, 2017 were required to be carried out. The details of the amendments are as given below:

CGST Act, 2017: Amendment of Section 2	(11 4) "Union territory" means the territory of— (a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli and Daman and Diu; (d) Daman and Diu; (e) Chandigarh; and (f) other territory.

	Explanation.–For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;
UTGST Act, 2017: Amendment of Section 1	In sub-section (2) of Section 1 of the Union Territory Goods and Services Tax Act, 2017 (No. 14 of 2017) (hereinafter referred to as "the Principal Act" for the sake of brevity), for the words "Dadra and Nagar Haveli, Daman and Diu" the words "Dadra and Nagar Haveli and Daman and Diu" shall be substituted.
UTGST Act, 2017: Amendment of Section 2	(1) In sub-section (8) clause (iii) of the Principal Act, after the words "Dadra and Nagar Haveli", the words "and Daman and Diu" shall be inserted;
	(2) The sub-section (8) clause (iv) of the Principal Act, the words "Daman and Diu" shall be omitted.

7.3. The GIC approved the proposals relating to amendments in the section 2(114) of the CGST Act, 2017, and sections 1 and 2(8) of the UTGST Act, 2017

Decision by Circulation – 23 January 2020

The proposal before the GIC related to staggering of due dates for filing of returns in FORM GSTR-3B.

8.1 There were reports in social media regarding difficulties faced by the taxpayers in filing their returns during the period immediately before the due date. In the past also, such issues had cropped up and to address the same, due date had been extended by 2-3 days on a few occasions. The issue was discussed in detail with the GSTN Officials and considering the difficulties faced by trade and industry in filing of returns, it was felt that the GST taxpayers be allowed to file their **FORM GSTR-3B** returns in a staggered manner, to improve their filing experience.

8.2 In this regard, reference was invited to provisions of sub-section (5) of section 39 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017), which are as under:

"*Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section(1) of section 27, whichever is earlier.*".

As per the said provision, the due date for filing of returns in **FORM GSTR-3B** for every month is the 20th day of the next calendar month. However, it was noted that the taxpayers are free to file their monthly returns anytime during the period 11th of the next month to the 20th of that month. Further, if the taxpayers do not file their returns within the specified timelines, the provisions of late fees and interest become applicable.

8.3 Further, sub-section (6) of section 39 provides that

"*the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein:*

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.".

8.4 As such, different due dates could be provided for different classes of registered persons by exercising powers under provisions of Section 39(6). As per the decision in the 37th Meeting of the GST Council, the new return system was proposed to be implemented from the month of April, 2020 and accordingly, the present GSTR-1/GSTR-3B system was expected to continue till the month of March, 2020. Accordingly, Notification No.44/2019 – Central Tax, dated the 09th October, 2019 had been issued to specify the filing of returns in **FORM GSTR-3B** under the present GSTR-1/GSTR-3B.

8.5 In terms of discussions with GSTN and keeping the revenue concerns the proposal was detailed as below:

(i) the due date for filing of GSTR-3B for the taxpayers having aggregate annual turnover exceeding Rs. 5 crore in the previous financial year be maintained as 20th of the month

(ii) For the taxpayers having an aggregate turnover of up to Rs. 5 Crore in previous financial year, having principal place of business in 15 States and Union Territories viz. Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh, the due date for filing GSTR-3B returns be extended by two days to 22nd of the succeeding month. *(This category would have around 49 lakh GSTR-3B filers)*

(iii) For the taxpayers having an aggregate turnover of up to Rs. 5 Crore in previous financial year, having principal place of business in the 22 States and Union Territories viz. Jammu and Kashmir, Ladakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha, the due date for filing GSTR-3B returns be extended by four days to 24th of the succeeding month. *(This category would have around 46 lakh GSTR-3B filers).*

8.6. Accordingly, the agenda note was placed before the GIC for approval. The GIC approved the proposal to stagger due dates for filing of returns in FORM GSTR-3B. Accordingly, implementing Notification No. 07/2020- Central Tax dated 3rd February 2020 was issued.

Decision by Circulation – 01 February 2020

The proposal before the GIC related to extension of due dates for filing of Annual returns / Reconciliation Statement in FORM GSTR-9 / GSTR-9C for Financial Year 2017-18 in staggered manner because of technical glitches.

9.1 There were reports in social media regarding difficulties faced by the taxpayers in filing their annual returns during the period immediately before the due date of filing of Annual Return / Reconciliation Statement for Financial Year 2017-18 in FORM GSTR-9 / GSTR-9C. In the past also, issues regarding difficulties in filing of returns around the last date had been cropping up, and to address the same, due date was extended on a few occasions. The due date for filing of Annual Return / Reconciliation Statement in FORM GSTR-9 / GSTR-9C for Financial Year 2017-18 was last extended to 31st January, 2020. The issue was discussed in detail with the GSTN Officials and considering the difficulties faced by trade and industry in filing of returns, it was felt that if the GST taxpayers were

allowed to file their Annual Return / Reconciliation Statement in FORM GSTR-9 / GSTR-9C for Financial Year 2017-18 in a staggered manner for taxpayers located in a group of States/Union Territories, their filing experience may improve.

9.2 As such, different due dates could be provided for different classes of registered persons by exercising powers under provisions of sub-section (1) of section 44. In terms of discussions with GSTN and keeping the revenue concerns the proposal for the extension of due dates and staggering was detailed as below:

i. Group 1: Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Puducherry, Telangana, Andhra Pradesh - 3rd February 2020;
ii. Group 2: Jammu and Kashmir, Ladakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Gujarat - 5th February 2020;
iii. Group 3: Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Andaman & Nicobar Islands, Jharkhand, Odisha, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Lakshadweep, Madhya Pradesh, Uttar Pradesh - 7th February 2020.

9.3 Accordingly, the agenda note was placed before the GIC for approval. The GIC approved the proposal to extend due dates for filing of Annual returns / Reconciliation Statement in FORM GSTR-9 / GSTR-9C for Financial Year 2017-18 in staggered manner. Accordingly, implementing Notification No. 06/2020- Central Tax dated 3rd February 2020 was issued.

Decision by Circulation – 12 February 2020

The proposal before the GIC related to issuance of notification to exempt requirement of furnishing reconciliation Statement for some companies (foreign airlines) exempted under Companies Act.

10.1 Law Committee in its meeting held on 20th & 21st January, 2020 deliberated on the representation made by International Air Transport Association (IATA) to exempt the foreign airlines from the requirement of furnishing reconciliation statement on lines similar to exemption given under Companies Act, 2013.

10.2 Section 381 of the Companies Act, 2013 has provisions for the 'Account of Foreign Company' which reads as follows: -

"381. (1) Every foreign company shall, in every calendar year, —

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents as may be prescribed; and

(b) deliver a copy of those documents to the Registrar:

Provided that the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements of clause

(a)shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

(3) Every foreign company shall send to the Registrar along with the documents required to be delivered to him under sub-section (1), a copy of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (1) is made out."

10.3 It was seen from the above provision that the proviso of sub-section (1) empowered the Central Government that, in the case of any foreign company or class of foreign companies, the requirement of profit and loss account statement and balance sheet may be exempted or the requirement may apply subject to such exceptions and modifications as may be notified.

10.4 Further, Government had provided some exemption vide S.O. 2463(E) dated 19.07.2016 to the foreign airlines. As per the notification, requirement of profit and loss account statement and balance sheet had been exempted, if a company submitted to the appropriate Registrar of Companies in India, interalia -

(i) in respect of its Indian Business operations, a statement of receipts and payments for the financial year, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India.

10.5 Law Committee deliberated on the agenda to provide exemption from requirement of furnishing Reconciliation Statement in **FORM GSTR-9C** for all those companies which get exemption under proviso of sub-section (1) of section 381 of the Companies Act, 2013 and instead submit documents laid out in the exemption vide S.O. 2463(E) dated 19.07.2016 to the foreign airlines.

10.6 Law Committee in the said meeting made the following recommendations -

"Accepted the request made in the representation made by International Air Transport Association (IATA) to exempt the foreign airlines from the requirement of furnishing reconciliation statement subject to the condition that they have complied with the requirements of sub-rule (2) of rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014 and the following document are furnished by such entities: -

In respect of its Indian Business operations, a statement of receipts and payments for the financial year, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India."

10.7 Accordingly, recommendations of Law Committee were placed before the GIC for approval. The GIC approved the proposal to exempt requirement of furnishing reconciliation Statement for some companies (foreign airlines) exempted under Companies Act.

Decision by Circulation – 21 February 2020

The proposal before the GIC related to amendment in Rule 31A of the CGST Rules to prescribe the value of supply in case of lottery.

11.1 In the Agenda note reference was invited to the discussion in the 38th GST Council Meeting held on 18.12.2019 wherein the issue of GST rate on lottery was decided. The Council decided to levy a uniform rate of GST@28% on lottery. The existing dual rate of GST on lottery i.e. GST@12% on lottery run by State Government and GST@28% on lottery authorized by State Government would be replaced by a uniform rate of GST@28% on lottery. The Council also decided to notify uniform rate of GST on lottery w.e.f 01.03.2020.

11.2 Consequent to the above decision, Rule 31A of CGST Rules needed amendment, so as to remove the existing provisions relating to valuation of lottery on two types of lottery i.e. lottery run by State Government and lottery authorized by State Government.

11.3 The Law Committee in its meeting on 17th and 18th February, 2020 deliberated and approved the proposed amendments in Rule 31A. In order to implement the decisions of 38th GST Council on GST rates of lottery by 01.03.2020, it was proposed to issue a notification for amendment in the CGST Rules, 2017.

11.4 Accordingly, the agenda note was placed before the GIC for approval. The GIC approved the proposal regarding amendment in Rule 31A of the CGST Rules to prescribe the value of supply in case of lottery. Accordingly, implementing Notification No. 08/2020- Central Tax dated 3rd March 2020 was issued.

12. The decisions of the GIC are placed before the Council for infomration.