Confidential



Table Agendas for

39th GST Council Meeting

14 March 2020

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

TABLE OF CONTENTS

Agenda No.	Agenda Item	Page No.
11	Any other agenda item with the permission of the Chairperson	
	i. An incentive scheme for consumers to increase invoice compliance in B to C supply	4
	ii. Issuance of Circular clarifying certain refund related issues	6
	iii. Physical verification and KYC of persons willing to take registration within first six months and corresponding spike rule	12
	iv. Proposed amendments in the CGST Act, 2017	16
	v. Proposal to issue notification and circular clarifying issues related to corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016	23
	vi. Proposal to issue Removal of difficulty order for extending the time limit for revocation of cancellation of registration	31
	vii. Status update on conversion of Goods And Services Tax Network (GSTN) into 100% Government owned Company	34

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (i): An incentive scheme for consumers to increase invoice compliance in B to C supply

In the sale-purchase or supply-receipt transactions, a tax invoice is the only proof of the transaction between the supplier and the recipient. It contains details of the supplies made, transaction value and the amount of tax collected/payable. Once a supplier issues the invoice to the customer, it become difficult, if not impossible, to suppress the supply. For a B2C transaction settled by the customer in cash, chances of suppression and consequent evasion of tax by the supplier are very high if invoice is not issued.

2. It is known practice that in many cases when the customer demands invoice, he may be enticed by the seller to not ask for the invoice by sharing a part of tax saved or by 'enticing' the customer about the money potentially saved if invoice is not issued. Therefore, measures to incentivise consumer as well as supplier need to be urgently taken.

3. Further, Government of India seeks to promote digital payment methods to encourage consumers and merchants to increasingly shift to these payment modes. Promotion of digital payments usage will enhance efficiency of tax collection by bringing the hitherto informal economy into formal economy thereby also potentially enhancing the tax base as well as strengthening tax collection efforts by capturing such transactions.

4. In order to wean the consumers and supplier away from the attraction of saving money (tax) by not asking/issuing invoice, a scheme of periodical lucky draw. The salient features of the proposed scheme will be as follows:

1) In this scheme a B2C invoice for which payment has been done successfully using digital mode- RuPay Cards or UPI a consumer shall be eligible for prize.
2) Financial transactions for Rs. 100 to Rs. 10,000/- to be eligible for the scheme;
3) Credit cards spends will not be covered under scheme;
4) This scheme shall be administered by NPCI.
5) The prizes winner shall be identified by NPCI through a random selection from amongst the Digital transactions IDs generated.
6) There will be a live cast of the draw of prizes.
7) Initially scheme shall be for 1 year.
8) Prizes will be as follows:
    a) 1 Bumper Prize of Rs. 1 Cr./month;
    b) 100 prizes of Rs. 1 lakh each;
    c) 5000 prizes of Rs. 5000 each.
9) Bumper Prize will be disbursed in Public function;
10) Reward will be shared between Consumer and Supplier in ratio 3:1;
11) Winner will be informed via SMS and e-mail to mobile no. and email address linked to the bank account;
12) Prize money will be credited directly in bank account of the winner by NPCI only;

13) Winner consumer willbe eligible for prize in subsequent months too- except the bumper prize;
14) Officers of NPCI and GST Department along with their immediate family members will not be eligible for scheme.

5. It is proposed to meet the expenditure for the scheme of Rs. 54 Crore, out of the Consumer Welfare Fund of the Centre as well of the States. It is further proposed that half of the amount will be contributed by Centre and remaining half by all the States conjointly.

6. The issue is placed for approval of GST Council.

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (ii): Issuance of Circular clarifying certain refund related issues

Master Circular on refunds was issued vide Circular No. 125/44/2019-GST dated 18.11.2019. However, due to changes in the GST Acts and Rules subsequent to issuance of aforesaid circular, there is a need to align the provision of the said circular with the amended provisions of the Acts and Rules. Further, various references have been received from the field formations and the people of trade/ industry to clarify certain issues relating to the refunds.

2. Thus, to discuss all the issues pertaining to refund together, a consolidated agenda on refund related issues was placed before the Law Committee in the meeting held on 02.03.2020 wherein the Law Committee has recommended for issuance of circular to clarify the following issues:

i. **No Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate**
ii. **Refund of unutilized ITC to be restricted to the ITC available in GSTR-2A of the relevant period**
iii. **Provision for providing HSN/SAC code in the statement of invoices to be furnished with the refund of unutilized ITC, wherever applicable**
iv. **Clubbing of Financial Years for filing refund**
v. **Manner of calculation of refund, in cases of refund of tax provided at S. No. (i) to (l) of para 3 of Circular No. 125/44/2019-GST dated 18.11.2019.**

3. Accordingly, a draft circular, prepared as per the recommendations of the Law Committee, is placed before the GST Council as Annexure for consideration and approval. To ensure uniformity and consistency in implementation of these provisions, states would also be required to issue similar circular.

Draft Circular
CBEC-20/01/06/2019-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the …., 2020

To,

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

The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarification on refund related issues – Reg.

Various representations have been received seeking clarification on issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues detailed hereunder:

2. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate

2.1 It has been brought to the notice of the Board that various applicants are seeking refund of unutilized ITC on account of inverted duty due to change in the GST rate on goods. The same can be explained through an illustration. An applicant trading in goods has purchased, say goods "X" at 18%. Subsequently, the rate of GST on "X" has reduced to, say 12%. Accordingly, there has been accumulation of ITC in respect of goods lying in stock. Such applicants have sought refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act.

2.2 Refund of accumulated ITC in terms clause (ii) of sub-section (3) of section 54 of the CGST Act is applicable where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is hereby clarified that refund of unutilized ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act is not permitted when ITC has been accumulated on account of reduction in the rate of tax. It is further clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are classified under the same Tariff Heading.

3. Guidelines for refunds of unutilized Input Tax Credit

3.1 As per para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in **FORM GSTR-2A** was admissible. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the **FORM GSTR-2A** of the applicant

3.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC available in the **FORM GSTR-2A** of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to above extent.

4.1 References have also been received from the field formations that HSN wise details of goods and services are not available in **FORM GSTR-2A** and therefore it is very difficult to distinguish ITC on capital goods or input services out of total ITC for a relevant tax period. It is recommended for inclusion of a column relating to HSN Code in the statement of invoices relating to inward supply as provided in **Annexure–B** of the circular No. 125/44/2019-GST dated 18.11.2019 so as to easily identify between the supplies of goods and services.

4.2 The issue has been examined and accordingly, a modified statement format is attached for applicants to upload the details of invoices reflecting in their **FORM GSTR-2A**. Accordingly, **Annexure-B** of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to above extent. It is further clarified that the applicant is required to mention the HSN/SAC code which is mentioned on the invoice pertaining to input supply. In case where the supplier is not mandated to mention HSN/SAC code on the invoice, the applicant shall refrain from mentioning HSN/SAC code against that supply.

5. **Clubbing of Financial Years for filing refund**

5.1 Hon'ble Delhi High Court in Order dated 21.01.2020, in the case of M/s Pitambra Books Pvt Ltd., vide the para 13 of the said order has stayed the rigour of paragraph 8 of Circular No. 125/44/2019-GST dated 18.11.2019 and has also directed the Government to either open the online portal so as to enable the petitioner to file the tax refund electronically, or to accept the same manually within 4 weeks from the order.

5.2 The restriction on clubbing of tax periods across different financial years was put in vide para 11.2 of the Circular No. 37/11/2018-GST dated 15.03.2018. The said circular was rescinded by the Master Circular on Refunds No. 125/44/2019-GST dated 18.11.2019 and the said restriction on the clubbing of tax periods across financial years for claiming refund has been continued vide Paragraph 8 of the Circular No. 125/44/2019-GST dated 18.11.2019, which is reproduced as under:

"8. The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. ***The period for which refund claim has been filed, however, cannot spread across different financial years.*** *Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under*

categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier."

5.3 Hon'ble Delhi High Court vide para 12 of the aforesaid order dated 21.01.2020 has observed that the **Circulars can supplant but not supplement the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute, however, Central Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law**.

5.4 On perusal of the provisions under Section 16(3) of the IGST Act 2017 and Section 54(3) of CGST Act 2017, there appears no bar in claiming refund by clubbing different months across successive Financial Years. The said restriction has been placed vide the above-mentioned Circular only.

5.5 Further, same issue has been raised in other representations, especially those received from the merchant exporters wherein merchant exporters have received the supplies of goods in the month of March and have made exports in the next Financial Year i.e. from April onwards. The restriction imposed vide para 8 of the master refund circular prohibits the refund of ITC accrued in such cases as well.

5.6. The issue has been examined and it is decided that to remove the restriction on clubbing of tax periods across financial years. Accordingly, the circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent.

6. **Manner of calculation of refund**

6.1 Circular No. 125/44/2019-GST dated 18.11.2019 in para 3 of the said circular has classified the refunds to be filed in FORM GST RFD-01 in the following types:

a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
b. Refund of tax paid on export of services with payment of tax;
c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
f. Refund to supplier of tax paid on deemed export supplies;
g. Refund to recipient of tax paid on deemed export supplies;
h. Refund of excess balance in the electronic cash ledger;
i. Refund of excess payment of tax;
j. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;
k. Refund on account of assessment/provisional assessment/appeal/any other order;

l. Refund on account of "any other" ground or reason.

6.2 For the refunds specified at S. No. (i) to (l) above, no separate debit of ITC from electronic credit ledger is made by the applicant for claiming refund. Further, the total tax would have been paid by the applicant by debiting amount from both electronic credit ledger and electronic cash ledger. At present, in these cases, the amount of refund, if admissible, is paid in cash even when such payment of tax has been made through ITC and any amount, if rejected, lapses unlike in cases of refund on account of zero-rated supplies or deemed exports or inverted duty structure where the amount so rejected is automatically re-credited to the electronic credit ledger.

6.3 However, in wake of amendment of CGST Rules 2017 vide Notification No. _____ dated ___ to provide for re-credit of ITC in the electronic credit ledger by way of issuance of Form GST PMT-03 by the proper officer in cases where the payment of tax has been made by the way of debit of ITC from the electronic credit ledger, it has been decided that in the cases involving refund of tax, the refund shall be calculated in the following manner:

In cases of refund where the tax to be refunded has been paid by debiting by both electronic cash and credit ledgers, the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which refund has been filed. Such amount, if admissible, to be paid in Cash shall be sanctioned vide issuance of order in GST RFD-06 and for the remaining amount FORM GST PMT-03 shall be issued to re-credit the amount as ITC in the electronic credit ledger.

7. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

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

(Yogendra Garg)
Principal Commissioner (GST)

Annexure-B

Statement of invoices to be submitted with application for refund of unutilized ITC

Sr. No.	GSTIN of the Supplier	Name of the Supplier	Invoice Details			Type	HSN/SAC	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Eligible for ITC	Amount of eligible ITC
			Invoice No.	**Date**	**Value**	Inputs/Input Services/capital goods						Yes/No/Partially	
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (iii): Physical verification and KYC of persons willing to take registration within first six months and corresponding spike rule

At present, registration is deemed to be granted in three days. Further, the same is granted without getting any physical verification done. It has been observed that the instances of fake invoicing and fraudulent passing of ITC have been unearthed by tax authorities and in many such cases the registered persons are either untraceable or dummy operators. This has led to revenue losses due to wrongful monetization of fake ITC through refunds.

2.1 As one of the methods to curb such a menace, it is proposed that physical verification of premises and Financial KYC of persons willing to obtain registration may be done. The same may be required to be completed before obtaining the registration or within six months of obtaining the registration. In case a person opts to get his verification done within six months of obtaining the registration, it is proposed to put restriction in the quantum of ITC that can be passed by him to the extent of rupees 3 lakhs per month. Facility would be provided to him to pass on the additional ITC, beyond the limit set, on deposit of 20% of additional amount in cash ledger. Further, no refund would be allowed to taxpayers for the period during which the verification / KYC has not been completed.

2.2 It is pertinent to note that in FY 2018-2019, a total of 12,67,893 new registrations were granted of which only 20,302 **(about 2%)** taxpayers were such whose liability of tax was greater than Rs. 3 lacs on an average per month in the first 6 months from registration. The limit of Rs. 3 Lacs of passing ITC per month translates into a turnover of approx Rs. 3 Crores in B2B transaction only while B2C transaction remain unaffected.

2.3 It is also important to note that the taxpayer on his own may also opt for a full financial KYC and physical verification of premises and such restrictions and limitations shall cease to apply after positive verification.

3. The proposal above would ensure that GST registration process complies with the EODB provisions and a comprehensive check is done for the high risk (owing to large volume) businesses which push and/ or avail high levels of ITC. The issue has been deliberated in the Law Committee on 09.03.20 and the Law Committee has recommended amendment in the provisions of the CGST Rules to enable the implementation of above recommendation. Draft rule amendment is placed as **Annexure A** to this agenda.

4. The issue is placed before the GST Council for deliberation and in principal approval and the modalities and process of implementation and the consequent changes in law may be deliberated by GST Policy Wing in consultation with GSTN.

Annexure-A

Amendment in CGST Rules in order to operationalize Spike Rule

Step 1 – Registration is possible only for someone who has undergone physical verification and submitted (and got verified by the proper officer) documents for physical and financial KYC as per a prescribed FORM. Suggested amendment in Rule 8 with powers derived under section 25 (1).

8. Application for registration.-(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration,-

(a) declare his Permanent Account Number, mobile number, e-mail address, State or Union territory in **Part A** of **FORM GST REG-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner;

(b) undergo physical verification of his premises from where he intends to make a taxable supply of goods or services or both; and

(c) submit such details and such documents, and get them verified by the proper officer, for undergoing a general and financial KYC, which the Government may, on the recommendations of the Council, prescribe in this behalf, in **FORM GST KYC- 1**:

[~~Provided that a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from his other units located outside the Special Economic Zone:~~][1]

Provided [~~further~~][2] that every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor:

Provided further that applicants shall have the option to obtain registration without furnishing the details in **FORM GST KYC-1** and undergoing a physical verification, subject to the following conditions and restrictions, -

(a) such registered persons shall, within six months of grant of his registration -

(i) undergo his physical verification of the registered premises; and

(ii) submit details and documents in **FORM GST KYC-1**,

(b) such registered persons after grant of registration, for the first six months or till the time physical verification of registered premises is completed along with furnishing of **FORM GST KYC-1**, whichever is earlier,

(i) shall not be allowed to pass on the input tax credit beyond a value of rupees three lakhs per month in respect of supplies made by him, except where he deposits in his electronic cash ledger an

[1] Omitted vide Notf no. 03/2019-CT dt. 29.01.2019 wef 01.02.2019

[2] Omitted vide Notf no. 03/2019-CT dt. 29.01.2019 wef 01.02.2019

amount equivalent to 20 per cent. of additional input tax credit, he intends to pass, in blocks of rupees one lakh, and

(ii) shall not be eligible for any refund for the said period.

Step 2 – Refund for zero rated supplies not eligible to any person who has not undergone physical verification (possible for existing taxpayers) or who has been granted preferential registration (by opting to not get physical verification and KYC done but agreeing to not take refunds and pass on limited amount of ITC). Suggested insertion of Rule 97B with powers derived under section 16 (2) of the IGST Act.

97B. Non-eligibility of refunds.- Notwithstanding anything contained in this Chapter, for any process or procedure prescribed herein, a registered person who has obtained registration under second proviso to sub-rule (1) of rule 8 making zero rated supply shall not be eligible to claim refund for the first six months of registration or till the time physical verification of registered premises is completed along with furnishing of **FORM GST KYC-1**, whichever is earlier .

Step 3 – ITC beyond rupees three lakhs and such additional amounts as deposited in the electronic cash ledger by a person obtaining preferential registration (by opting to not get physical verification and KYC done but agreeing to not take refunds and pass on limited amount of ITC) to be barred by law. Suggested amendment in Rule 59(3) and 36(4) with powers derived under section 41 (1).

59 (3) Subject to the restrictions contained in sub-rule (1) of rule 8, the details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in **Part A** of **FORM GSTR-2A,** in **FORM GSTR-4A** and in **FORM GSTR-6A** through the common portal after the due date of filing of **FORM GSTR-1**:

36 (4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded, by the suppliers under sub-section (1) of section 37.

Step 4 – Dormant taxpayers, or taxpayers whose registration is liable to be cancelled, are potentially risky and may be suspended automatically, and if such taxpayers ask for revocation of suspension before subsequent cancellation, the criteria to be followed for new registration to be applied on them before revoking the suspension. Suggested amendment in Rule 21A, 22(4) and 23(2)(a) with powers derived under section 30 (1).

21(A) (2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, or the registered person has not furnished returns under section 39 for more than four months or has furnished nil return for more than six months, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

22 (4) Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in **FORM GST REG –20:**

[Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of sub-section (2) of section 29, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in **FORM GST-REG 20]**[3]

Provided further that the proper officer shall, before dropping the proceedings under this sub-rule, ensure that the registered person, shall,-

a) undergo physical verification of his premises from where he intends to make a taxable supply of goods or services or both; and

b) submit such details and such documents, and get them verified by the proper officer, for undergoing a general and financial KYC, which the Government may, on the recommendations of the Council, prescribe in this behalf, in **FORM GST KYC- 1.**

23 (2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in **FORM GST REG-22** within a period of thirty days from the date of the receipt of the application and communicate the same to the applicant:

Provided that the proper officer shall, before revocation of cancellation under this sub-rule, ensure that the registered person, shall,-

(a) undergo physical verification of his premises from where he intends to make a taxable supply of goods or services or both; and

(b) submit such details and such documents, and get them verified by the proper officer, for undergoing a general and financial KYC, which the Government may, on the recommendations of the Council, prescribe in this behalf, in **FORM GST KYC- 1**.

[3] Inserted vide Notf no. 39/2018-CT dt. 04.09.2018

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (iv): Proposed amendments in the CGST 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 meeting held on 09.03.2020 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 are for Revenue Augmentation measures and Enforcement measures.

2. Following sections are proposed to be amended.

Sl. No.	Sections to be amended	Purpose
1	CGST - 83	Enforcement measures
2	CGST – 129/130	Revenue Augmentation and Enforcement measures
3	CGST – 74/107	Consequential to amendment in sections 129 / 130

3. 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.	**83**	Reference has also been received from the state of Gujarat drawing attention towards Order dated 17.12.2019 of the Hon'ble High Court of Gujarat on SCA No. 19533 of 2019 filed by M/s Kushal Ltd quashing and setting aside the provisional attachment of the bank account on the ground that "*the proceedings under section 67 of the GST Acts are no longer pending and pursuant to the search, proceedings under any of the other sections mentioned in section 83 have not been initiated. Under the circumstances, on the date when the orders of provisional attachment came to be made, the basic requirement for exercise of powers under section 83 of*	The issue of an amendment by insertion of an explanation in section 83 has been examined and it is observed that section 83 needs to be substantially amended to make it more comprehensive. In addition to the draft proposal as shown in next column, it was also deliberated as to **whether Commissioner should exercise the power of provisional attachment or it should be given to an officer not below the rank of Joint Commissioner**. There were differing views on this. Few members opined that the power to be assigned to Joint Commissioner, mainly on the ground that it may	**Draft as recommended by Law Committee** **83. Provisional attachment to protect revenue in certain cases.-**(1) Where any proceedings has been initiated under chapter XII, Chapter XIV or Chapter XV, ~~during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74 of assessment or determination of tax on supplies escaping levy of tax,~~ and the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of Section 122 in such manner as may be prescribed." (2) Every such provisional attachment shall cease to have effect after the expiry of one year from the date of the order made under sub-section (1). **Draft as circulated to Law Committee**	

		the GST Acts was not satisfied".	not be possible for Commissioner in geographically large State to exercise this power expeditiously. **It may also be deliberated whether provisional attachment of property is to be restricted to taxable person or it should be done for beneficial owner also**.	**83. Provisional attachment to protect revenue in certain cases.-**(1) Where during the pendency of any proceedings ~~under section 62 or section 63 or section 64 or section 67 or section 73 or section 74~~ of assessment or determination of tax on supplies escaping levy of tax, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed." (2) Every such provisional attachment shall cease to have effect after the expiry of one year from the date of the order made under sub-section (1).	
2.	**129 / 130 / 74**	1. Section 129 is for detention, seizure and release of goods and conveyances in transit. Section 67 covers all other cases of seizure. Section 130 covers is for confiscation of goods or conveyances and levy of penalty. However, both section 129 and 130 starts with a non-obstante clause	1. It is proposed to de-link section 130 from the proceedings under section 129 by amending the sub-section (6) of section 129. Similar provision existed in many State VAT Acts. 2. The words "Notwithstanding anything contained in this Act" in	129. Detention, seizure and release of goods and conveyances in transit (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or	**130.** (1) ~~Notwithstanding anything contained in this Act, if~~ If any person— (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or (ii) does not account for any goods on which he is liable to pay tax under this Act; or (iii) supplies any goods liable to tax under this Act without having applied for registration; or

		which creates confusion whether confiscation can be done without seizure. 2. Explanation to section 74 prescribes that proceedings under section 129 and 130 are deemed to be concluded in case the person liable to pay tax under section 73/74 concludes the proceedings by paying tax, interest and applicable penalty. ii. Section 131 provides that confiscation or penalty not to interfere with other punishments. 3.i. Section 129 (1) (a) and (b) states that detention and seizure shall be released on payment of the applicable tax and penalty. When the applicable tax and amount is not paid, confiscation proceedings under section 130 would be initiated. ii. Penalty and fine is detailed in section 130 (1) and 130(2). However,	section 130 may be omitted. 3. Section 129 and 130 to be omitted from Explanation to section 74 so as to allow seizure and confiscation a separate proceeding from recovery of tax under section 73/74 4. i. The words "on payment of the applicable tax and" may be omitted from 129(1)(a) and (b). Related changes would be required in other clauses of section 129 so as to allow demand of only penalty and fine. ii. Sub-section (3) of section 130 may be omitted.	seizure and after detention or seizure, shall be released,— (a) on payment of the ~~applicable tax and~~ penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such ~~tax and~~ penalty; (b) on payment of the ~~applicable tax and~~ penalty equal to the fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher ~~reduced by the tax amount paid payable thereon~~ and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such ~~tax and~~ penalty; (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed: Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods. (2) ~~The provisions of sub-section (6) of section 67 shall,~~	(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122. (2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit: Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon: Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

		section 130(3) again speaks about demand of tax, in addition to fine and penalty. 4. Doubts have been raised as to whether "penalty equivalent to the tax specified in the notice" as per section 74(1) is independent of the penalty under section 122; to say that whether officer can impose penalty equivalent to tax under section 74(1) and penalty under section 122 equivalent to tax one more time. It is proposed to clarify point 4 through a Circular.		~~mutatis mutandis, apply for detention and seizure of goods and conveyances.~~ (3) The proper officer detaining or seizing goods or conveyances shall issue a notice, within seven days of the detention or seizure, as the case may be, specifying the ~~tax and~~ penalty payable and thereafter, pass an order, within a period of seven days from the date of service of such notice, for payment of ~~tax and~~ penalty under clause (a) or clause (b) ~~or clause (c).~~: (4) No ~~tax, interest or~~ penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard. (5) On payment of amount referred to in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded. (6) Where the person transporting any goods or the owner of the goods fails to pay the amount of ~~tax and~~ penalty as provided in sub-section (1) within ~~fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:~~ fifteen days from the date of the receipt of the copy of the order passed under sub-section (3), the goods so detained or seized shall be liable to be sold or disposed off	Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon. ~~(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance~~. (4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard. (5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government. (6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

				otherwise, in the manner and within the time prescribed, to recover the penalty per the order passed under sub-section (3): Provided that, the conveyance shall be released in such cases on payment of penalty under sub-section (3) or one lakh rupees, whichever is less, by the transporter: Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of ~~fourteen~~ fifteen days may be reduced by the proper officer~~.~~	(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government. **74.** . . Explanation 1.—For the purposes of section 73 and this section,— (i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132; (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122~~,~~ and 125, ~~129 and 130~~ are deemed to be concluded.

					107. (6) No appeal shall be filed under sub-section (1), unless the appellant has paid— (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed. or (c) a sum equal to twenty-five per cent. of the penalty arising out of sub-section (3) of section 129 of the Act.

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (v): Proposal to issue notification and circular clarifying issues related to corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016

Various representations seeking clarification on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016 have been received. The IBC, 2016 and provisions of GST Act, 2017 as summarised below which need to be harmoniously read and a method be prescribed for collection of GST during the resolution period.

i. As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution process (CIRP) gets triggered and the management of such entity (Corporate Debtor) and its assets vest with a Resolution Professional (RP). IT continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over.

ii. As per the IBC code, once CIRP is initiated with respect to a Corporate Debtor, the RP is required to make public announcement calling for financial and operational claims for the dues pending from debtor till the insolvency commencement date.

iii. As per the provisions of IBC and regulations made thereunder, the RP is duty bound for compliance of all laws that are applicable to the corporate debtor. Therefore, the RP is required to deposit all the statutory dues including GST for the period post the insolvency commencement date.

iv. Section 14 provides for a declaration of moratorium by the NCLT. It states-

*"**14. Moratorium.** -*

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority……

v. During CIRP period, the existing GST law does not allow for filing returns by RP. It may be noted that as per section 2 (77) of the CGST Act, a return furnished under section 39 (1) shall be valid once self-assessed tax is paid in full. Further as per section 16 of the CGST Act, any service recipient can not avail the credit unless the supplier has paid the entire self-assessed tax. Therefore, during CIRP, the Resolution Professional cannot file a return on GSTN portal, since the GST dues for the pre- CIRP period has not been paid by the corporate debtor.

vi. It may be noted that RP are willing to deposit the GST dues for the CIRP period and file monthly return thereafter. However, since return cannot be filed by RP pending clearance of all dues by the corporate debtor for pre- CIRP period, they are not able to comply the laws as applicable to them.

vii. All the stages starting from default stages to post insolvency resolution, the events can be divided into following three states as per the table under.

Default stage: pre - CIRP	Corporate Insolvency Resolution process (CIRP)	Post CIRP
• Corporate debtor defaults in payment of statutory dues and breaches threshold limit. • It applies insolvency resolution process.	• Admission of proceeding by NCLT. (insolvency commencement date) • Resolution Professional takes over the business and operation of corporate debtor as going concern. • RP is responsible for compiling all statutory law applicable to corporate debtor.	• New entity takes over as per the outcome of the CIRP proceedings.

viii. NCLT order dated 25.10.2019 in the matter of Axis Bank vs Prius Commercial projects Pvt. Ltd has held that:

a. GST authorities should not take any coercive action against the corporate debtor with respect to dues for period prior to insolvency commencement date

b. GST authorities shall allow the RP to deposit the GST dues for the CIRP period and allow filing of returns so that appropriate GST credit can be passed on to the customers of the corporate debtor.

ix. Similarly, NCLT, Chennai Bench vide its order dated 05.12.2019 in the matter of Kiran Global Chem Limited VS. Asst. Commissioner (ST) has directed the GST authorities to allow the corporate debtor to have access to GSTN portal, permit the applicant to file GST returns generated after the commencement of CIRP period without insisting upon payment of past dues of GST arisen during pre-admission period.

x. At present RPs are not paying tax. As per the date provided by NCLT, total 19,771 cases were pending with NCLT benches as on 30.09.2019 which includes 10,860 cases under IBC, 2016 proceedings. Some of the cases pertain to big corporate houses involving huge revenue.

xi. It may be noted that for recovery of dues or compliance in the Post CIRP period would be as per the directions of the Tribunal.

xii. The legal and practical challenges for each of the stages above pertain to: -

a) Filing of Returns

b) Claiming of credit by the recipient who received supplies from the corporate debtor during the CIRP period.

c) Issues arising out of the demands being raised by the GST authorities for the period prior to Insolvency Commencement Date.

d) Issues due to cancellation of registration of a corporate debtor.

2. On examination and analysis of the above, it is proposed to issue a notification (**Annexure-A**) specifying the special procedure for such taxpayers stipulating the process of registration, filing of the statement of outward supplies and filing of returns under GST for the period when an interim resolution professional / resolution professional has been appointed. Further, a circular (**Annexure-B**) clarifying several issues related to corporate debtors undergoing corporate insolvency process under the provisions of the Insolvency and Bankruptcy Code, 2016 is also proposed to be issued.

3. The above proposals for issuance of notification and circular, as recommended by the Law Committee, are 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. __/2020 – Central Tax

New Delhi, the __th 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) (hereafter in this notification referred to as the CGST Act), the Government, on the recommendations of the Council, hereby notifies those registered persons (hereinafter referred to as erstwhile registered person), who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), undergoing the corporate insolvency resolution process (hereafter in this notification referred to as the CIRP) and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period it undergoes the corporate insolvency resolution process (hereafter in this notification referred to as the CIRP period), as mentioned below.

2. **Registration**: The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP;

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days of issuance of this notification, with effect from date of his appointment as IRP/RP.

3. **Return**: The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

4. **Input tax credit :** (1) The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules;

(2) Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-rule (4) of rule 36 of the CGST Rules;

(5) Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

4. For the purposes of this notification, unless the context otherwise requires, the terms "corporate debtor", "corporate insolvency resolution professional", "interim resolution professional", and "resolution professional" etc. shall have the same meaning as assigned to them under the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

[F.No.20/06/09/2019-GST]

(Pramod Kumar)
Director, Government of India

Annexure-B

CBEC-20/16/04 /2018 -GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, dated February, 2019

To,
The Principal 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 issues under GST law for companies under Insolvency and Bankruptcy Code, 2016-Reg.

Various representations have been received from the trade and industry seeking clarification on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC, 2016").

2. As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution process (hereafter referred to as "CIRP") gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as "IRP") or resolution professional (hereafter referred to as "RP"). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the "NCLT")

3. To address the aforementioned problems, notification No…./2020- Central Tax dated …. has been issued by the Government prescribing special procedure under section 148 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") for the corporate debtors who are undergoing CIRP under the provisions of IBC, 2016 and the management of whose affairs are being undertaken by IRP/RP. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in the table below:-

S.No.	Issue	Clarification
1.	**How are dues under GST for pre-CIRP period be dealt?**	In accordance with the provisions of the IBC, 2016 and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the

		commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC, 2016. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.
2	**Should the GST registration of corporate debtor be cancelled?**	It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.
3	**Is IRP/RP liable to file returns of pre-CIRP period?**	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements **for period after the Insolvency Commencement Date**. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.
<u>During CIRP period</u>		
5	**Should a new registration be taken by the corporate debtor during the CIRP period?**	The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No…., dated……, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP.
6	**How to file First Return after obtaining new registration?**	The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.

7	**How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No…., dated….. and no return has been filed by the IRP during the CIRP ?**	The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40. The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules. In terms of the special procedure under section 148 of the CGST Act issued vide notification no….., dated….T**his exception is made only for the first return filed under section 40 of the CGST Act.**
8.	**How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the** notification no….., dated….**?**	Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of sub-rule (4) of rule 36 of the CGST Rules.
9	**Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?**	Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant **FORM GSTR-3B/GSTR-1** are not filed for the said period. The Circular No. 125/44/2019-GST dt. 18.11.2019 is modified to this extent.

4. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

5. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Yogendra Garg)
Principal Commissioner(GST)

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (vi): Proposal to issue Removal of difficulty order for extending the time limit for revocation of cancellation of registration

Reference is invited to letter from Commissioner of Commercial Tax, Government of Tamil Nadu, wherein request has been made to issue Removal of Difficulties Order (RoD) so that application for revocation may be made for order passed for cancellation of registration. In this regard, it is pertinent to mention that Tamil Nadu like other State / Central Government Tax authorities have cancelled registration as per the provisions of Section 29 of the CGST Act, particularly, for not furnishing returns for six consecutive months. Further, the time-period for making application for revocation of order of cancellation of registration for such taxpayers have already been over. They have also crossed the time-period for making appeal under Section 107 of the CGST Act. Hence, the law does not permit revocation of such cancellation orders. Tamil Nadu has informed that based on the data analysis, they have found that there are 66,977 persons whose registration have been cancelled and are still continuing their business operation. Now, since revocation of cancellation of registration cannot be done for most of such taxpayers, their ITC will lapse in case these taxpayers take a new registration. Tamil Nadu has said that such arrangement is not conducive for efficient tax administration. In view of the same, request has been made to issue RoD to allow for such revocation. The same was agreed in the meeting of Committee of Officers for revenue augmentation in its meeting held on 26.02.2020.

2. It is noteworthy that such one-time relaxation was provided vide RoD No. 5/2020- GST dated 23.04.2019, wherein the order of cancellation of registration passed till 31.03.2019 was allowed to be revoked if application for revocation was made till 22.07.2019. Further, rules were amended to enable furnishing of return by such taxpayers vide amendment of rule 23(1) through Notification No. 20/2019-Central Tax dated 23.04.2019. A Circular was also issued for clarification in order to have smooth implementation of the same.

3. In the past few months, concentrated drive has been made to weed out dormant registrations which have not been furnished returns for past six months. Since, taxpayers are still getting acquainted with this new 'complete online system', it is desirable to allow one-time amnesty to taxpayers and to allow revocation of such cancellation orders. It is noteworthy that CGST Act is being amended (Finance Bill,2020) to provide power to Joint /Additional Commissioner to allow period of application for revocation to be extended by 30 days which can be further extended by 30 days by the Commissioner.

4. In view of the above, it is proposed that a RoD on lines similar to the earlier said RoD may be issued wherein all the cancellation order passed up to 14.03.2020 may be allowed to file application for revocation of cancellation till 30.06.2020. The proposed RoD order is enclosed as **Annexure A.**

5.Accordingly, the proposal to issue the RoD order 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 (ii)]

Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs

Removal of Difficulty Order No. -Central Tax

New Delhi, the March, 2020

S.O. (E). —WHEREAS, sub-section (2) of section 29 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') provides for cancellation of registration by proper officer in situations described in clause (a) to clause (e) as under: -

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

AND WHEREAS, sub-section (1) of section 169 of the CGST Act provides for service of notice (opportunity of being heard); clause (c) and (d) of said sub-section are as under: -

…….

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

……

AND WHEREAS, sub-section (1) of Section 30 provides for revocation of cancellation of the registration within thirty days from the date of service of the cancellation order.

AND WHEREAS, sub-section (1) of section 107 of the CGST Act provides for filing appeal by any person aggrieved by any decision or order passed by an adjudicating authority within three months from the date on which the said decision or order is communicated to such person and sub-section (4) of section 107 of the CGST Act empowers the Appellate Authority that it may, if he is satisfied that the appellant was

prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of one month.

AND WHEREAS a large number of registrations have been cancelled under sub-section (2) of section 29 of the CGST Act by the proper officer by serving notices as per clause (c) and clause (d) of sub-section (1) of section 169 of the CGST Act and the period of thirty days provided for revocation of cancellation order in sub-section (1) of section 30 of the CGST Act, the period for filing appeal under section (1) of section 107 of the CGST Act and also the period of condoning the delay provided in sub-section (4) of Section 107 of the CGST Act has elapsed; the registered persons whose registration have been cancelled under sub-section (2) of section 29 of the CGST Act are unable to get their cancellation of registration revoked despite having fulfilled all the requirements for revocation of cancellation of registration. GST being a new Act, these taxpayers were not familiar with the manner of service of notice by e-mail or making available at portal in comparison to earlier regime where manual service of notice was provided, as a result whereof certain difficulties have arisen in giving effects to the provisions of sub-section (1) of section 30 of the CGST Act;

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely: —

Short title—This Order may be called the Central Goods and Services Tax (First Removal of Difficulties) Order, 2020.-

In sub-section (1) of section 30 of the said Act, after the first proviso, the following proviso shall be inserted, namely: -

“Provided further that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 14.03.2020, shall be allowed to file application for revocation of cancellation of the registration till 30.06.2020.”.

[F. No.]

( )
Under Secretary to the Government of India.

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (vii): Status update on conversion of Goods And Services Tax Network (GSTN) into 100% Government owned Company

The GST Council in its 27th Meeting held on 4th May, 2018 decided that GSTN will be converted into a 100% Government-owned entity by transferring 51% equity shares held by the Non-Government institutions to the Centre and states equally. The Union Cabinet in its Meeting held on 26th September, 2018 approved the proposal to convert GSTN into a fully-owned Government Company with 50% equity of the Company to be held by the Central Government and the balance 50% to be held by States and Union Territories.

2. Further, the GST Council in its 31st Meeting held on 22nd December, 2018 and the Department of Revenue (DOR), Government of India vide its Letter No

3. S-31011/5/2018-ST-1-DoR dated 17th January, 2019 both have approved the revised shareholding pattern of GSTN as per (**Annexure-1**).

4. In order to facilitate the above decision and consequent to the approval as accorded by the shareholders of GSTN in their Extra-Ordinary General Meeting (EGM) held on 21st June, 2019, the Empowered Committee of State Finance Ministers (EC) & all Non- Government Institutions have already offered their entire existing shareholding in GSTN through Share Transfer Notice for Sale/Transfer to Centre, State Governments & Union Territories accordingly in order to convert GSTN into a 100% Government-owned entity as per (**Annexure-2**) and hence this will result into change of share capital/ownership structure of GSTN.

5. Pursuant to Share Transfer Notices issued by the Empowered Committee & Non- Government Institutions, the respective Transferees (Centre and States) are required to acknowledge the receipt of the above Share Transfer Notice and communicate their acceptance through Purchase Notice to the respective Transferor(s) within 30 days from the receipt of Share Transfer Notice. Post acceptance of the offer to purchase the share, Centre, State Governments & Union Territories are required to pay share purchase consideration to them accordingly.

6. The State Governments of Tamil Nadu, Sikkim and Chhattisgarh have not yet communicated their acceptance till date and thereafter need to make the payment for share transfer in their favour as well.

7. The following Governments have accepted the proposal; however, the payment is still pending from them:

S No.	Governments	S No.	Governments
1	Government of India	10	Government of Uttarakhand
2	Government of Gujarat	11	Government of Assam
3	Government of Tamil Nadu	12	Government of Kerala
4	Government of Rajasthan	13	Government of Jharkhand
5	Government of Sikkim	14	Government of Uttar Pradesh
6	Government of Andhra Pradesh	15	Government of Chhattisgarh
7	Government of Bihar	16	Government of Arunachal Pradesh
8	Government of Nagaland	17	Government of Telangana
9	Government of Mizoram		

8. Accordingly, it is proposed that:

a. State Governments of Tamil Nadu, Sikkim and Chhattisgarh may accept the above offer; and

b. Centre and 16 other State Governments as listed above may be requested to make payment of their respective share purchase consideration and execute necessary documentations including Shareholders' Agreement (**Annexure-3**) and send the same to GSTN in order to expedite the matter of conversion of GSTN.

9. The Council may take note of the above and issue necessary advisory/directions to all concerned in order to complete the above transaction at the earliest.

Annexure 1

GOODS AND SERVICES TAX NETWORK
PROPOSED NEW SHAREHOLDING STRUCTURE

Annexure

Sl. No	Name of Subscribers	Ledger Folio Number	No. of shares allotted	Paid-up Capital
1	2	3	4	5
1	Member (System) (on behalf of President of India)	E-001	50,00,000	5,00,00,000
2	Govt. of Punjab	E-008	1,61,290	16,12,900
3	Govt. of Gujarat	E-009	1,61,290	16,12,900
4	Govt. of Odisha	E-010	1,61,290	16,12,900
5	Govt. of Tamil Nadu	E-011	1,61,290	16,12,900
6	Govt. of Jammu & Kashmir	E-012	1,61,290	16,12,900
7	Govt. of Maharashtra	E-013	1,61,300*	16,13,000
8	Govt. of Rajasthan	E-014	1,61,290	16,12,900
9	Govt. of Sikkim	E-015	1,61,290	16,12,900
10	Govt. of Karnataka	E-016	1,61,290	16,12,900
11	Govt. of Andhra Pradesh	E-017	1,61,290	16,12,900
12	Govt. of Meghalaya	E-018	1,61,290	16,12,900
13	Govt. of Bihar	E-019	1,61,290	16,12,900
14	Govt. of Nagaland	E-020	1,61,290	16,12,900
15	Govt. of Himachal Pradesh	E-021	1,61,290	16,12,900
16	Union Territory of Puducherry	E-022	1,61,290	16,12,900
17	Govt. of Mizoram	E-023	1,61,290	16,12,900
18	Govt. of Uttarakhand	E-024	1,61,290	16,12,900
19	Govt. of Haryana	E-025	1,61,290	16,12,900

20	Govt. of Assam	E-026	1,61,290	16,12,900
21	Govt. of Goa	E-027	1,61,290	16,12,900
22	Govt. of Kerala	E-028	1,61,290	16,12,900
23	Govt. of Manipur	E-029	1,61,290	16,12,900
24	Govt. of Tripura	E-030	1,61,290	16,12,900
25	Govt. of West Bengal	E-031	1,61,290	16,12,900
26	Govt. of Delhi	E-032	1,61,290	16,12,900
27	Govt. of Jharkhand	E-033	1,61,290	16,12,900
28	Govt. of Uttar Pradesh	E-034	1,61,290	16,12,900
29	Govt. of Chhattisgarh	E-035	1,61,290	16,12,900
30	Govt. of Madhya Pradesh	E-036	1,61,290	16,12,900
31	Govt. of Arunachal Pradesh	E-037	1,61,290	16,12,900
32	Govt. of Telangana		1,61,290	16,12,900
	Total		**1,00,00,000**	**10,00,00,000**

** The State of Maharashtra has been given additionally 10 shares extra, being on top amongst states in GST collection.*

****

Annexure 2

S. No.	Transferee	Transferor's Share certificate Number	Distinctive Number of Shares to be transferred (Lower Limit)	Distinctive Number of Shares to be transferred (Upper Limit)	Non Government Institution/EC (Transferor)	Nos. of shares to be acquired	New Share certificate number	Consideration payable for shares @ Rs. 10 each to Non-Government Institutions	Aggregate consideration payable for shares @ Rs. 10 each to Non-Government Institutions	Transfer Duty to afixed on share transfer form (SH-4) by Government @ 0.25%	Aggregate Transfer Duty to afixed on share transfer form (SH-4) by Government
1	Government of India	7	2,92,501	3,25,000	NSE Investments Limited	32,500	NA	3,25,000		812.50	
		16	9,06,787	9,71,429		64,643	NA	6,46,430		1,616.08	
		38	56,14,694	61,30,611		5,15,918	NA	51,59,180		12,897.95	
		44	86,65,062	90,52,000		3,86,939	NA	38,69,390	**1,00,00,000**	9,673.48	**25,000.00**
		5	2,24,251	2,60,000	LIC Housing Finance Limited	35,750	NA	3,57,500		893.75	
		14	7,71,037	8,42,143		71,107	NA	7,11,070		1,777.68	
		36	45,31,266	50,98,775		5,67,510	NA	56,75,100		14,187.75	
		40	70,78,612	75,04,244		4,25,633	NA	42,56,330	**1,10,00,000**	10,640.83	**27,500.00**
		3	1,59,251	1,91,750	HDFC Limited	32,500	NA	3,25,000		812.50	
		12	6,41,751	7,06,393		64,643	NA	6,46,430		1,616.08	
		34	34,99,430	38,52,286		3,52,857	57	35,28,570	**45,00,000**	8,821.43	**11,250.00**
2	Government of Punjab	34	38,52,287	39,34,576		82,290	58	8,22,900	**8,22,900**	2,057.25	2057.25
3	Government of Gujarat	34	39,34,577	40,15,347		80,771	59	8,07,710	8,07,710	2,019.28	2019.28
		41	75,04,245	75,05,763		1,519	60	15,190	15,190	37.98	37.98
4	Government of Odissa	41	75,05,764	75,88,053		82,290	61	8,22,900	8,22,900	2,057.25	2057.25
5	Government of Tamil Nadu	41	75,88,054	76,70,343		82,290	62	8,22,900	8,22,900	2,057.25	2057.25
6	Government of Jammu & Kashmir	41	76,70,344	77,52,633		82,290	63	8,22,900	8,22,900	2,057.25	2057.25
7	Government of Maharastra	41	77,52,634	78,34,933		82,300	64	8,23,000	8,23,000	2,057.50	2057.50
8	Government of Rajasthan	41	78,34,934	78,91,183		56,250	65	5,62,500	5,62,500	1,406.25	1406.25
		4	1,91,751	2,17,790	HDFC Bank Limited	26,040	66	2,60,400	2,60,400	651.00	651.00
9	Government of Sikkim	4	2,17,791	2,24,250		6,460	67	64,600	64,600	161.50	161.50
		13	7,06,394	7,71,036		64,643	68	6,46,430	6,46,430	1,616.08	1616.08
		35	40,15,348	40,26,534		11,187	69	1,11,870	1,11,870	279.68	279.68
10	Government of Karnataka	35	40,26,535	41,08,824		82,290	70	8,22,900	8,22,900	2,057.25	2057.25
11	Government of Andra Pradesh	35	41,08,825	41,91,114		82,290	71	8,22,900	8,22,900	2,057.25	2057.25
12	Government of Meghalya	35	41,91,115	42,73,404		82,290	72	8,22,900	8,22,900	2,057.25	2057.25
13	Government of Bihar	35	42,73,405	43,55,694		82,290	73	8,22,900	8,22,900	2,057.25	2057.25
14	Government of Nagaland	35	43,55,695	44,37,984		82,290	74	8,22,900	8,22,900	2,057.25	2057.25
15	Government of Himanchal Pradesh	35	44,37,985	45,20,274		82,290	75	8,22,900	8,22,900	2,057.25	2057.25
16	Union Territory of Puducherry	35	45,20,275	45,31,265		10,991	76	1,09,910	1,09,910	274.78	274.78
		42	78,91,184	79,62,482		71,299	77	7,12,990	7,12,990	1,782.48	1782.48
17	Government of Mizoram	42	79,62,483	80,44,772		82,290	78	8,22,900	8,22,900	2,057.25	2057.25
18	Government of Uttarakhand	42	80,44,773	81,27,062		82,290	79	8,22,900	8,22,900	2,057.25	2057.25
19	Government of Haryana	42	81,27,063	82,09,352		82,290	80	8,22,900	8,22,900	2,057.25	2057.25
20	Government of Assam	42	82,09,353	82,78,122		68,770	81	6,87,700	6,87,700	1,719.25	1719.25
		6	2,60,001	2,73,520	ICICI Bank Limited	13,520	82	1,35,200	1,35,200	338.00	338.00
21	Government of Goa	6	2,73,521	2,92,500		18,980	83	1,89,800	1,89,800	474.50	474.50
		15	8,42,144	9,05,453		63,310	84	6,33,100	6,33,100	1,582.75	1582.75
22	Government of Kerala	15	9,05,454	9,06,786		1,333	85	13,330	13,330	33.33	33.33
		37	50,98,776	51,79,732		80,957	86	8,09,570	8,09,570	2,023.93	2023.93
23	Government of Manipur	37	51,79,733	52,62,022		82,290	87	8,22,900	8,22,900	2,057.25	2057.25
24	Government of Tripura	37	52,62,023	53,44,312		82,290	88	8,22,900	8,22,900	2,057.25	2057.25
25	Government of West Bengal	37	53,44,313	54,26,602		82,290	89	8,22,900	8,22,900	2,057.25	2057.25
26	Government of Delhi	37	54,26,603	55,08,892		82,290	90	8,22,900	8,22,900	2,057.25	2057.25
27	Government of Jharkhand	37	55,08,893	55,91,182		82,290	91	8,22,900	8,22,900	2,057.25	2057.25
28	Government of Uttar Pradesh	37	55,91,183	56,14,693		23,511	92	2,35,110	2,35,110	587.78	587.78
		43	82,78,123	83,36,901		58,779	93	5,87,790	5,87,790	1,469.48	1469.48
29	Government of Chhattisgarh	43	83,36,902	84,19,191		82,290	94	8,22,900	8,22,900	2,057.25	2057.25
30	Government of Madhya Pradesh	43	84,19,192	85,01,481		82,290	95	8,22,900	8,22,900	2,057.25	2057.25
31	Government of Arunachal Pradesh	43	85,01,482	85,83,771		82,290	96	8,22,900	8,22,900	2,057.25	2057.25
32	Government of Telangana	43	85,83,772	86,65,061		81,290	97	8,12,900	8,12,900	2,032.25	2032.25
	TOTAL					**51,00,000**		**5,10,00,000.00**	**5,10,00,000**	**1,27,500.00**	**1,27,500.00**
33	Government of Telangana	2	79,626	1,59,250	Empowered Committee	**79,625**	NA	**7,96,250.00**	**79,625.00**	**1,990.63**	
34	Government of Telangana	9	4,83,376	4,83,750	Empowered Committee	**375**	NA	**3,750.00**	**3,750.00**	**9.38**	**2,000.00**

Annexure 3

Annexure A as referred in Articles of Association

SHAREHOLDERS' AGREEMENT

This Shareholders Agreement is made on this _____day of _____, 2019 ("**Agreement"**)

BY AND BETWEEN

1. The **Government of India** (hereinafter referred to as "**Central Government**") acting through and represented by the_____, Department of Revenue, Ministry of Finance, Government of India (which expression shall include its successors in office) of the one part; and

2. [The **Governments of States in the Union of India listed in Schedule 1 hereto** (hereinafter individually referred to as "**State Government**" and collectively referred to as "**State Governments**"), acting through and represented by the person mentioned in **Schedule 1** of the second part]; and

3. **Empowered Committee of State Finance Ministers** (hereinafter referred to as "**EC**") a society registered under the Societies Registration Act, 1860, having its registered office at [ ] acting through and represented by the _____, (which expression shall include its successors in office) of the third part; and

4. [The **Parties listed in Schedule 2 hereto** (hereinafter individually referred to as "**Private Participant**" and collectively referred to as "**Private Participants**") (which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include their respective nominees, legal representatives and successors) of the fourth part]

The Central Government, the EC, [the State Governments] and the Private Participants, are hereinafter collectively referred to as the "**Parties**" and individually as the "**Party**".

WHEREAS:

A. The **GOODS AND SERVICES TAX NETWORK** is a private limited not-for-profit company incorporated and existing under the provisions of the (Indian) Companies Act, with its registered office at [ ] (hereinafter referred to as the "**Company**", which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assign);

B. The Company has been incorporated to, amongst others, promote trade and commerce by providing easily accessible, quick and efficient information technology and communications related services to the public and Government;

C. According to the Articles of Association of the Company, every entity which intends to be a shareholder in the Company is required to execute a Shareholders' Agreement in order to be entitled to receive Shares of the Company;

D. The Central Government is the beneficial and legal owner of 24.5% of the issued, subscribed and paid up equity share capital of the Company as on date of this Agreement.

E. The State Governments and the EC are collectively the beneficial and legal owners of 24.5% of the issued, subscribed and paid up equity share capital of the Company as on date of this Agreement.

F. Private Participants are collectively the beneficial and legal owners of 51% of the issued, subscribed and paid up equity share capital of the Company as on date of this Agreement.

G. The Parties hereby intend to set forth and record the terms and conditions to govern the relationships in their mutual capacity as the Member or shareholders of the Company once shares are issued to them and to record their respective rights and obligations in relation to the management and functioning of the Company and other matters incidental thereto.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

(a) "**Articles of Association**" **or "AOA"** means the articles of association of the Company;

(b) "**Business Day**" means a day (other than a Saturday or Sunday) on which public sector banks are open for business in New Delhi;

(c) "**Charter Documents**" means the Memorandum of Association and Articles of Association of the Company incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement;

(d) "**Deed of Adherence**" means the Deed of Adherence to be executed in accordance with Clause 5 hereof.

1.1. **In this Agreement, except to the extent that the context otherwise requires**:

i. Capitalized terms used but not defined herein shall have the same meaning as ascribed to them under the Articles of Association.

ii. References to Clauses are to clauses of this Agreement;

iii. Headings to Clauses are for convenience only and are to be ignored in construing this Agreement;

iv. References to a "entity" are to be construed so as to include any firm, company, Government, or any joint venture, association or partnership (whether or not having a separate legal personality);

v. References to a "company", are to be construed so as to include any company, corporation, or other body corporate, wherever and however established;

vi. References to any statute or statutory provisions are to be construed as a reference to the same as it may have been, or may from time to time, amended modified or reenacted;

vii. Words denoting the singular include the plural and vice versa and words importing the masculine gender include feminine and neuter genders and vice versa;

viii. References to Annexures, Schedules and Recitals are to annexures, schedules and recitals to this Agreement and shall be taken, read and construed as essential parts of this Agreement but headings and the table of contents are for ease of reference and shall be ignored in construing this Agreement;

ix. The word "month" wherever used shall mean the period of time which ends on the same date as it commenced in the previous month but if there is no numerically corresponding date in the following month then the period shall end on the last day of the month;

x. Time being the essence of this Agreement; and

xi. References to "Rs." or "Rupees" or "INR" are references to lawful currency of India.

2. CAPITAL STRUCTURE

The paid up share capital of the Company shall at all times be owned and maintained in the proportion mentioned in Table I of Article 6 of the Articles of Association (**Agreed Proportion**).

3. FUTURE CAPITALIZATION

3.1 In order to ensure that percentage of Shares held by each shareholder is maintained as per the Agreed Proportion, all parties to this Agreement (including the Parties) hereby agree that each party (including the Parties) shall be allotted Shares against its total investment in the Company in such proportion only as may be required to maintain the Agreed Proportion. The remaining part of the total investment of each party (including the Parties) shall be allocated towards share application money (**Pending Share Application Money**) and further shares against such **Pending Share Application Money** shall be issued in accordance with the AOA and this Agreement in a manner that Agreed Proportion is maintained.

3.2 Subscription of the Shares by any party other than the Parties hereto (**New Shareholder(s)**) shall be in

accordance with the AOA. Allotment of Shares to the New Shareholder shall take place in accordance with the AOA and the directions of the Board thereafter. Where applicable, shareholders having the Pending Share Application Money with the Company will be issued Shares against such Pending Share Application Money simultaneously with the Shares issued to any New Shareholder in proportion and in a manner that ensures that the aggregate shareholding of each shareholder of the Company at all times remains in accordance with the Agreed Proportion.

3.3 If the authorized share capital of the Company is further increased, the Members of Group A and Group B shall proportionately subscribe to the Shares in order to maintain the overall Agreed Proportion

4. TRANFER OF SHARES

All matters including matters related to the transfer or transmission of Shares and the management of the Company shall be governed by the AOA in addition to this Agreement.

5. DEED OF ADHERENCE

Any entity (other than the Parties) that intends to subscribe to the Shares of the Company shall have to execute the deed of adherence in the form specified in **Annexure 1** hereof ("**Deed of Adherence**") and undertake and be bound by the terms and conditions of the Agreement before being eligible to be a shareholder in the Company. Any entity that executes the Deed of Adherence shall be deemed to be a party to this Agreement.

6. RESERVED MATTERS- SHAREHOLDER'S MEETINGS

6.1 The shareholders shall take all the needful steps to ensure that Company is doing the business in accordance with the provisions of this Agreement and Charter Documents.

6.2 The matters set forth in **Schedule 3** hereof shall only be decided in accordance with the procedure set out in Article 38 and 39 of the AOA.

7. OBLIGATIONS OF PARTIES

7.1 Each shareholder shall share with the Company, free of cost, all relevant information, knowledge and data, whether confidential or not (except any trade secrets), that is required and necessary for the smooth functioning of the Company.

7.2 Each shareholder shall transfer to the Company, free of cost, such of its knowledge as is required and necessary for the smooth functioning of the Company.

7.3 For the purpose of this Clause, the shareholders may decide upon the information, data and knowledge

that is required and necessary for the smooth functioning of the Company.

7.4 Each shareholder shall provide to the Company, and keep update, its address for the purpose of serving the notice by the Company.

8. REPRESENTATIONS AND WARRANTIES

8.1 Each of the Non-Government Institutions that become party to this Agreement hereby warrants and represents to other parties of the Agreement that:

(i) it is duly organized and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;

(ii) the execution and delivery by the such parties to this Agreement has been duly authorized by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;

(iii) this Agreement will constitute following the execution and delivery thereof valid and legally binding obligations of such parties, enforceable against it in accordance with its respective terms in accordance with the applicable laws;

(iv) it is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it and it shall forthwith give notice to the other parties to this Agreement and to the Company upon knowing of any such proceedings being instituted or threatened to be instituted against such party;

(v) except those disclosed to the Company and shareholders at the date of execution of this Agreement or Deed of Adherence, there are no actions, suits, claims, proceedings or investigations pending or, to the best of the knowledge of such parties, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or Governmental Authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement;

8.2 Each of the parties to this Agreement [including the EC] that are not Non-Government Institutions hereby represents and warrants to the other parties of this Agreement that:

(i) it has the power and authority to enter into and perform its obligations under this Agreement;

(ii) this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms;

(iii) to the best of its knowledge, neither the execution and delivery of this Agreement by it nor the performance of its obligations will violate, adversely affect, contravene or breach or create any default under any agreement, instrument, judgment of the applicable law.

9. CONFIDENTIALITY

9.1 Each of the Non-Government Institutions that are party to this Agreement agrees that it shall not, at any time or under any circumstances, without the prior written consent of the Company and the Central Government, [EC] or the State Governments as may be applicable, directly or indirectly communicate or disclose to any entity or person any knowledge, data or information, irrespective of form, howsoever acquired by them including the information relating to the consumers, technology, trade secrets, systems, operations or other confidential information regarding the property, business and affairs of the Company or the Central Government, the EC or the State Governments("**Confidential Information**").

9.2 Provided however that the confidentiality obligation under this Clause 9 shall be subject to the following exceptions:

(i) Disclosure to the employees and auditors requiring the information for the purposes of this Agreement subject to the execution of a confidentiality agreement by them; or

(ii) Disclosure to legal advisors and professional consultants subject to the execution of a confidentiality agreement by them; or

(iii) If the information is, prior to the execution of this Agreement lawfully in the possession of the Investor through sources other than the Party(ies); or

(iv) If such information has been released or disclosed by requirement of law; or

(v) If the information is or becomes generally and publicly available, other than due to reason of breach of this Agreement.

9.3 The Private Participants shall maintain and cause to be maintained all Confidential Information, as secret and confidential using the same degree of care as they use for their own confidential information of similar nature, but in any event no less than reasonable care, as per this Clause 9 even after the termination of this Agreement for any reason whatsoever.

10. Termination

10.1 This Agreement shall terminate:

i. With respect to all parties of this Agreement, upon the dissolution or winding up of the Company; or

ii. With respect to any one or more parties to this Agreement, upon such one or more of such parties ceasing to be a shareholder of the Company;

iii. With respect to any one or more parties to this Agreement, upon any material breach by such one or more parties ("**Defaulting Party**") of any of its representations, warranties, covenant and/or undertakings herein and/or the Articles of Association.

10.2 In case of termination of this Agreement under Clause 10.1 (iii) due to any material breach by any Non-Government Institution, such Non-Government Institution shall, if decided by the Board, transfer its entire shareholding in the Company in the manner as may be directed by the Board in accordance with the AOA.

11. EFFECTIVE DATE

11.1 For the Parties, this Agreement shall be effective from the date of execution of this Agreement.

11.2 For the parties to this Agreement other than the Parties, this Agreement shall be effective from the date of issuance of Shares to such parties.

12. MISCELLANEOUS

12.1 Notices

12.1.1 Any notice to be given under this Agreement shall be deemed to have been duly given upon receipt when in writing and delivered in person, by facsimile transmission, by telex, email or by courier, addressed as follows:-

i.If to Central Government

Address: Ministry of Finance (MoF)
Department of Revenue (DoR)
State Taxes Section-1, Government of India
275, North Block
New Delhi- 110001.
Attention: Under Secretary to Government of India

ii.If to Empowered Committee

Address: B-603, Delhi Secretariat IP Estate, New Delhi- 110002.
Attention: Advisor (EC)

iii.If to State Government

- Name: Andhra Pradesh

Address: D.No.5-59, R. K. Spring Valley Apartments,Bandar Road,Eedupugallu Village, Kankipadu Mandal, Vijayawada, Krishna District, Pin-521144
Attention: Commissioner (CT)

- Name: Goa

Address: Commissioner of Commercial Taxes,
Government of Goa,
Vikrikar Bhavan,
Panaji – 400301
Attention: Commissioner (CT)

- Name: Haryana

Address: Excise & Taxation Commissioner, Govt. of Haryana, Vanijya Bhawan, Plot No. I-3, Sector-

5,
Panchkula - 134151
Attention: Commissioner (CT)

- Name: Karnataka

Address: Commissioner (Commercial Taxes), Govt. of Karnataka, 1st Floor, Vanijya Therigi Karyalay, First Main Road,
Gandhinagar, Bangalore – 560009
Attention: Commissioner (CT)

- Name: Kerala

Address: Commissioner, Commercial Taxes, State GST Department, Government of Kerala,
Tax Tower, 9th Floor, Killipalam,
Karamana P.O.,
Thiruvananthapuram-695002
Attention: Commissioner (CT)

- Name: Maharastra

Address: Commissioner of Sales Tax,
Govt. of Maharashtra, Vikrikar Bhawan, 8th Floor, Mazgaon, Mumbai – 400010
Attention: Commissioner (CT)

- Name: Meghalaya

Address: Commissioner of Taxes, Govt. of Meghalaya, Main Secretariat Building,
Shillong – 793001
Attention: Commissioner (CT)

- Name: Sikkim

Address: Spl. Commissioner Cum Commissioner Commercial Tax
Commercial Tax Division
Finance, Revenue & Expenditure
Department, Govt. of Sikkim,
Deorali, Gangtok - 737101
Attention: Commissioner (CT)

- Name: Tamil Nadu

Address: Commissioner, Commercial Commercial Taxes,
Govt. of Tamil Nadu,
Ezhilagam, Chepauk, Channai-600005"
Attention: Commissioner (CT)

- Name: Arunachal Pradesh

Address: Commissioner,
Tax & Excise, Govt. of Arunachal Pradesh, Kar Bhawan, Itanagar – 791111
Attention: Commissioner (CT)

- Name: Assam

Address: Commissioner of Taxes,
Govt. of Assam, Kar Bhawan, DISPUR, Guwahati – 781006"
Attention: Commissioner (CT)

- Name: Bihar

Address: Commissioner Commercial Tax,
Commercial Taxes, Govt. of Bihar,
Vikas Bhawan, Patna – 800015
Attention: Commissioner (CT)

- Name: Chhattisgarh

Address: Commissioner, Commercial Tax,
Govt. of Chhattisgarh,
Mantralaya, Dau Kalyan Singh Bhawan,
Raipur-492001
160001
Attention: Commissioner (CT)

- Name: Delhi

Address: Commissioner, Trade Tax,
Govt. of NCT Delhi, Bikrikar Bhawan, I.T.O., Indraprastha Estate,
New Delhi – 110002
Attention: Commissioner (CT)

- Name: Gujarat

Address: Commissioner, Commercial Tax,
Govt. of Gujarat, Rajya Kar Bhavan, Ashram Road, Ahmedabad – 380009
Attention: Commissioner (CT)

- Name: Himachal Pradesh

Address: Excise & Taxation Commissioner, Govt. of Himachal Pradesh
Block No. 30, SDA Complex,
Shimla – 171009
Attention: Commissioner (CT)

- Name: Jammu & Kashmir

Address: Commissioner of Commercial Taxes,
Department of Commercial Tax,
Government of Jammu & Kashmir,
Excise & Taxation Complex,
Solina, Rambagh,
Srinagar – 190001 (from May to Oct.)

OR

Address: Commissioner of Commercial Taxes,
Excise & Taxation Complex,
Rail Head Complex, Panama Chowk, Jammu-180001 (from Nov. to Apr.)
Attention: Commissioner (CT)

- Name: Jharkhand

Address: Principal Secretary-cum-Commissioner,
Commercial Taxes Department,
Government of Jharkhand,
Project Building, Dhurwa, Ranchi
Attention: Commissioner (CT)

- Name: Madhya Pradesh

Address: Commissioner (Commercial Tax),
Govt. of Madhya Pradesh,
Moti Bangla Compound, M.G. Road, Indore - 452007
Attention: Commissioner (CT)

- Name: Manipur

Address: Government of Manipur,
Directorate Complex,
Near 2nd MR Gate,
Imphal - 795001,
Manipur, India
Attention: Commissioner (CT)

- Name: Mizoram

Address: Office of Commissioner of State Tax, Taxation Department, Government of Mizoram, New Capital Complex, Taxation Building, Aizawl - 796001
Attention: Commissioner (CT)

- Name: Nagaland

Address: Office of the Commissioner of Taxes
Opposite DC court
Dimapur-797112(Nagaland)
Attention: Commissioner (CT)

- Name: Odisha

Address: Commissioner, Commercial Taxes,
Govt. of Odisha,
Vanjiya Kar Bhawan, Old Secretariat Cmapus, Buxi Bazar
Cuttack– 753001
Attention: Commissioner (CT)

- Name: Puducherry

Address: First Floor, 100 feet Road, Ellapillaichavady, Pondicherry-605005
Attention: Commissioner (CT)

- Name: Punjab

Address: Excise & Taxation Commissioner,
Excise & Taxation Bhawan, Sector 69, Mohali - 160067
Attention: Commissioner (CT)

- Name: Rajasthan

Address Commissioner (Commercial Taxes),
Govt. of Rajasthan, Kar Bhawan, Bhawani Singh Road, JAIPUR – 302005
Attention: Commissioner (CT)

- Name: Tripura

Address: Commissioner of Taxes & Excise,
3rd Floor, Pundit Nehru Complex,
Gurkhabasti, Post Office Kunjaban,
Agartala 799006
Attention: Commissioner (CT)

- Name: Uttar Pradesh

Address: Commissioner, Commercial Taxes,
Govt. of Uttar Pradesh,
Vibhuti Khand, Gaumati Nagar,
Lucknow - 226010

Attention: Commissioner (CT)

- Name: Uttarakhand

Address: Commissioner, Commercial Tax,
Government of Uttarakhand,
Commercial Tax Headquarter,
Mussooriee by pass Road, Jogiwala Nathanpur (near pulia no. 6),
Dehradun- 248001
Attention: Commissioner (CT)

- Name: West Bengal

Address: Commissioner of Commercial Taxes, Govt. of West Bengal,
14, Beliaghata Road, Kolkata – 700015
Attention: Commissioner (CT)

iv.If to Private Participants

- Name: LIC Housing Finance Ltd

Address: 131, Maker Tower "F" Premises,
13th Floor, Cuffe Parade,
Mumbai-400005
Attention: Director

- Name: NSE Strategic Investment Corporation Ltd

Address: Exchange Plaza,
C-1, Block-G, Bandra Kurla Complex,
Bandra East, Mumbai-4000051.
Attention: Director

- Name: HDFC Ltd

Address: HDFC House, HT Parekh Marg, 165-166, Backbay, Reclamation, Church Gate,
Mumbai- 400020
Attention: Director

- Name: HDFC Bank Ltd

Address: Country Head, Wholesale Banking Operations &
Cash Management Products,
HDFC Bank Ltd., HDFC Bank House,
5th Floor, Senapati Bapat Marg,
Lower Parel Marg, Mumbai- 400013.

Attention: Director

- Name: ICICI Bank Ltd

Address: Senior General Manager,
ICICI Bank Ltd., ICICI Bank Towers,
Bandra- Kurla Complex,
Mumbai-400051
Attention: Director

12.1.2 Any Party may change its address provided above for the purpose of this Agreement by giving written notice to the shareholders of such change forthwith in the manner hereinabove provided.

12.2 Governing Law

This Agreement shall be governed and interpreted by and construed in accordance with the laws of India without giving effect to the principles of conflict of laws there under. Courts at New Delhi shall have the exclusive jurisdiction.

12.3 Entire Agreement

Subject to the AOA, this Agreement, together with all Annexures, Schedules, Exhibits and attachments hereto, represents the entire agreement and understanding between the parties to this Agreement with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the parties to this Agreement may have had.

12.4 Amendments

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorized representative of each party to this Agreement except consequent upon conversion of company into 100% Government company the EC and Private Participants shall from the date of conversion be no longer parties to this agreement and this agreement shall remain in force amongst the remaining parities and shall stand modified to this extent and governed accordingly as per the amended AOA of the company.

12.5 Severability

If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future applicable laws, then it is the intention of the parties to this Agreement that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any party in which case the parties shall negotiate in good faith such changes to the Agreement

as will best preserve for the parties the benefits and obligations under such provision.

12.6 Counterparts

This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

12.7 Waivers

No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

12.8 No Agency

This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

12.9 No Third Party Beneficiaries

Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any entity other than the Parties hereto (and their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

12.10 Survival

The obligations of confidentiality mentioned in Clause 9 shall survive indefinitely irrespective of any termination of this Agreement for whatever reasons or without reasons what so ever

IN WITNESS WHEREOF the Parties have hereunto set their respective hands the day and year first above written.

SIGNED AND DELIVERED by .....

for and on behalf of the **Government of India**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Empowered Committee of State FinanceMinisters**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Andhra Pradesh**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Goa**

Witnessed by::
Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of Government of Haryana

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Karnataka**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Kerala**

Witnessed by::
Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Maharashtra**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Meghalaya**

Witnessed by::
Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Sikkim:**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Tamil Nadu**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Arunachal Pradesh**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Assam**

Witnessed by::
Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Bihar**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Chhattisgarh**

Witnessed by::

Name:
Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Delhi**

Witnessed by::
Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Gujarat**

Witnessed by::
Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Himachal Pradesh**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Jammu & Kashmir**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Jharkhand**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Madhya Pradesh**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Manipur**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **State Government of Mizoram**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **Government of Nagaland**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **Government of Odisha**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **Government of Puducherry**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **Government of Punjab**

Witnessed by:

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **Government of Rajasthan**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **Government of Tripura**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **Government of Uttar Pradesh**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by .....

for and on behalf of **Government of Uttarakhand**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **Government of West Bengal**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **LIC Housing Finance Corporation Ltd**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **NSE Strategic Investment Corporation Ltd**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **HDFC Ltd**

Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **HDFC Bank Ltd**
Witnessed by::

Name:

Address:

SIGNED AND DELIVERED by.....

for and on behalf of **ICICI Bank Ltd**

Witnessed by::

Name:

Address:

SCHEDULE 1

List of State Governments

(i) Government of Andhra Pradesh acting through and represented by [_____] (which expression shall include its successors in office)

(ii) Government of Goa acting through and represented by [_____] (which expression shall include its successors in office)

(iii) Government of Haryana acting through and represented by [_____] (which expression shall include its successors in office)

(iv) Government of Karnataka acting through and represented by [_____] (which expression shall include its successors in office)

(v) Government of Kerala acting through and represented by [_____] (which expression shall include its successors in office)

(vi) Government of Maharashtra acting through and represented by [_____] (which expression shall include its successors in office)

(vii) Government of Meghalaya acting through and represented by [_____] (which expression shall include its successors in office)

(viii) Government of Sikkim acting through and represented by [_____] (which expression shall include its successors in office)

(ix) Government of Tamil Nadu acting through and represented by [_____] (which expression shall include its successors in office)

(x) Government of Arunachal Pradesh acting through and represented by [_____] (which expression shall include its successors in office)

(xi) Government of Assam acting through and represented by [_____] (which expression shall include its successors in office)

(xii) Government of Bihar acting through and represented by [_____] (which expression shall include its successors in office)

(xiii) Government of Chhattisgarh acting through and represented by [_____] (which expression shall include its successors in office)

(xiv) Government of Delhi acting through and represented by [_____] (which expression shall include its successors in office)

(xv) Government of Gujarat acting through and represented by [_____] (which expression shall include its successors in office)

(xvi) Government of Himachal Pradesh acting through and represented by [_____] (which expression shall include its successors in office)

(xvii) Government of Jammu & Kashmir acting through and represented by [_____] (which expression shall include its successors in office)

(xviii) Government of Jharkhand acting through and represented by [_____] (which expression shall include its successors in office)

(xix) Government of Madhya Pradesh acting through and represented by [_____] (which expression shall include its successors in office)

(xx) Government of Manipur acting through and represented by [_____] (which expression shall include its successors in office)

(xxi) Government of Mizoram acting through and represented by [_____] (which expression shall include its successors in office)

(xxii) Government of Nagaland acting through and represented by [_____] (which expression shall include its successors in office)

(xxiii) Government of Odisha acting through and represented by [_____] (which expression shall include its successors in office)

(xxiv) Union Territory of Puducherry acting through and represented by [_____] (which expression shall include its successors in office)

(xxv) Government of Punjab acting through and represented by [_____] (which expression shall include its successors in office)

(xxvi) Government of Rajasthan acting through and represented by [_____] (which expression shall include its successors in office)

(xxvii) Government of Tripura acting through and represented by [_____] (which expression shall include its successors in office)

(xxviii) Government of Uttar Pradesh acting through and represented by [_____] (which expression shall include its successors in office)

(xxix) Government of Uttarakhand acting through and represented by [_____] (which expression shall include its successors in office)

(xxx) Government of West Bengal acting through and represented by [_____] (which expression shall include its successors in office)

SCHEDULE 2

List of Private Participants

(i) LIC Housing Finance Corporation Ltd

(ii) NSE Strategic Investment Corporation Ltd

(iii) Housing Development Finance Corporation Ltd

(iv) HDFC Bank Ltd

(v) ICICI Bank Ltd

SCHEDULE 3

RESERVED SHAREHOLDERS MATTERS

(a) Rescinding of any contract, memorandum of understanding, agreement etc. entered into with the Government;

(b) Formation of a policy for disclosure of the confidential and sensitive information to any person outside the Company and Government;

(c) Amendment of the Memorandum of Association or Articles of Association of the Company;

(d) Any reorganization or change in the nature of the business or scope of business or the activities undertaken pursuant to the Memorandum of Association of the Company;

(e) Purchasing or taking on lease or otherwise acquire for the Company, property right or privilege which Company is authorized to acquire in excess of a sum to be previously specified by the Ordinary Resolution;

(f) Appointment or change in the auditors, except as contemplated by these Articles; (Consequent upon the conversion of company into Government Company, the provisions mentioned in Article No. 90 will be operative)

(g) Formation of subsidiary companies;

(h) Any merger, restructuring, sale, divestment, amalgamation, demerger, reorganization or consolidation of the Company or any of the subsidiaries;

(i) Any liquidation, winding up, deregistration or dissolution;

(j) Change in name of the Company;

(k) Change in status of the Company from private limited company to public limited company or vice-versa or from not for profit to for profit company;

(l) Redemption of capital and/or any buy back of shares;

(m) Change in capital structure, ownership or debt structure of the Company;

(n) Any transfer of shares by any Shareholder;

(o) Divestment or sale of assets of the Company; and

(p) Any license, transfer, assignment, sale or grant of all or any of the intellectual property rights of the Company.

Annexure 1

DEED OF ADHERENCE

I,[Insert name of the interested party to be the New Shareholder/Transferee], a company incorporated and existing under the laws of [__], having its registered office at [_____] (hereinafter referred to as ["_"], which expression shall include my successors and permitted assigns), is interested in subscribing to the shares of the Goods and Services Tax Network (the "**Company**") and therefore undertakes the following:

(a) That I have received a copy of the Shareholders' Agreement dated [ ] (the "**Shareholders' Agreement**") and that I understand the implications of all provisions relating to the rights, duties and obligations of any nature whatsoever under the Shareholders' Agreement

(b) That I shall abide by all the terms and conditions of the Shareholders' Agreement from the date of issue of shares of the Company to me;

(c) That the Shareholders' Agreement shall be binding on me;

(d) That I represent and warrant to all parties to the Shareholders' Agreement the undertakings given in Clause 8 of the Shareholders' Agreement

(e) That I shall not undertake any act of omission or commission, which is or may be contrary to the provisions of the Shareholders' Agreement, prejudicial to any of the rights or interests of parties to the Shareholders' Agreement or which may impede or render ineffective any action undertaken by any of the parties of the Shareholders' Agreement in exercise of their rights under the Shareholders' Agreement.

IN WITNESS WHEREOF, I execute this Deed on the [_____] day of [____], [____].

SIGNED AND DELIVERED by .....

for and on behalf of the **……**

Witnessed by:

Name :

Address:

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (viii): Judgment of Hon'ble Supreme Court of India in Chief Commissioner of Central Excise and Service Tax &Ors. Vs. M/s Ranchi Club Ltd. and State of West Bengal vs. Calcutta Club Limited laying down that from 2005 onwards, Finance Act, 1994 does not purport to levy service tax on member clubs in incorporated form

The Hon'ble Supreme Court of India in the case of *Chief Commissioner of Central Excise and Service Tax & Ors. Vs. M/s Ranchi Club Ltd.* and *State of West Bengal vs. Calcutta Club Limited* laid down the following ratio decidendi:

a. From 2005 onwards, the Finance Act of 1994 does not purport to levy Service Tax on member clubs in the incorporated form. (Para 84)
b. The doctrine of mutuality continues to be applicable and that there cannot be a sale transaction between a club and its members. Clubs or associations in law have no separate existence from that of the members. (Para 49)

2. The judgment covers two aspects: a) leviability of sales tax on supply of food and drinks by a member club to its members; and b) leviability of service tax on the services provided by a member club to its members.

3. Regarding leviability of sales tax, the Hon'ble Supreme Court laid down that there cannot be a sale transaction between an *incorporated and unincorporated* members' club and its members. The Court drew a distinction between 'members' clubs' and 'proprietary clubs' stating that in case of the latter, the owner of club would not be the members themselves, but somebody else. Members' clubs or associations in law have no separate existence from that of the members. In case of members' clubs, there is no sale by one person to another for consideration as one cannot sell something to oneself. The Court further observed that the *Young Mens Indian Association* and other judgments which applied the doctrine of mutuality continue to hold even after the 46th Amendment adding Article 366(29-A) to the Constitution of India. In support of this analysis, the Court also placed reliance on the last part of Article 366(29-A), which states that supply of such goods shall be deemed to be sale of those goods by the person making the supply, and the purchase of those goods by the person to whom such supply is made. As the Young Men's Indian Association (supra) case and the doctrine of mutuality state, there is no sale transaction between a club and its members. As has been pointed out above, there cannot be a sale of goods to oneself. Thus, the Court concluded that it is clear that the ratio of Young Men's Indian Association (supra) has not been done away with by the limited fiction introduced by Article 366(29-A)(e).

4. Regarding the leviability of service tax, the Court restricted its ruling stating that from 2005 onwards, service tax is not leviable on services provided only by *incorporated* member clubs to its members. The Court took cognizance of the Explanation to Section 65 (inserted in 2006) which provided that services provided by any *unincorporated* association or body of persons to a member thereof shall be a taxable service and particularly Explanation 3 inserted to the definition of 'service' in the post negative list regime under which unincorporated associations or body of persons and their members are statutorily treated as distinct persons. It appears that the Court appreciated the fact that as per Service Tax law, an artificial distinction between an *unincorporated* association and its members was created and this provided a legal basis for taxing services provided by an unincorporated association or body of persons to its members. Due to this explicit distinction between an unincorporated

association and its members (but not in case of incorporated associations or body of persons), the Court restricted its adverse observations only in respect of incorporated member clubs.

Judgment of Hon'ble Supreme Court in ITO Mumbai vs. Venkatesh Premises dated 12.3.2018:

5.1 In this judgment, the question of law that arose was whether certain receipts by cooperative societies, from its members i.e. non-occupancy charges, transfer charges etc. are exempt from income tax based on the doctrine of mutuality.

5.2 As per clause (vii) of sub-section 24 of Section 2 (Definitions), income includes,-

"*(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of the provisions contained in the First Schedule."*

5.3 The Court held that the essence of the principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries. A person cannot make a profit from himself. An income received from oneself, therefore, cannot be regarded as income and taxable.

5.4 Hon'ble Supreme Court noted that Section 2(24) of the Income Tax Act, 1961 defines 'income' and that the income of a co-operative society from business is taxable under Section 2(24)(vii) and will stand excluded from the principle of mutuality. The judgment also cited the Supreme Court judgment in the *Bangalore Club* case that "*8….. The principle relates to the notion that a person cannot make a profit from himself. An amount received from oneself is not regarded as income and is therefore not subject to tax; only the income which comes within the definition of Section 2(24) of the Act is subject to tax [income from business involving the doctrine of mutuality is denied exemption only in special cases covered under clause (vii) of Section 2(24) of the Act]. The concept of mutuality has been extended to defined groups of people who contribute to a common fund, controlled by the group, for a common benefit. Any amount surplus to that needed to pursue the common purpose is said to be simply an increase of the common fund and as such neither considered income not taxable…. A common feature of mutual organisations in general and of licensed clubs in particular, is that participants usually do not have property rights to their share in the common fund, nor can they sell their share. And when they cease to be members, they lose their right to participate without receiving a financial benefit from the surrender of their membership…"*

5.5 Receipts by co-operative societies from their members in the form of non-occupancy charges, transfer charges etc., not being covered by clause (vii) of Section 2(24), the Hon'ble Supreme Court held that such receipts were not taxable in view of doctrine of mutuality.

5.6 This judgment, like the judgment of the Supreme Court in *Calcutta Club* case, clearly shows that in order to tax any supply by an Association – of – persons (AoP) to its members, the doctrine of mutuality needs to be overcome by express provisions to that effect in the taxing statute.

Legal provisions in Service Tax:

Positive Tax Regime (Pre 1.7.2012):

6.1 In the positive tax regime, all services were not taxable. Only specified services were listed as taxable services in Section 65(105) of the Finance Act, 1994. One such taxable service, w.e.f. 16.6.2005 was the service provided or to be provided to its members by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount [Section 65(105)(zzze) refers].

6.2 Club or association was defined in Section 65(25a) as under:
"Club or Association means providing services, facilities or advantages, for a subscription or any other amount, to its member, but does not include –

(i) any body established or constituted by or under any law for the time being in force; or
(ii) any person or body of persons engaged in the activities of trade unions, promotion of agriculture, horticulture or animal husbandry; or
(iii) any person or body of persons engaged in any activity having objectives which are in the nature of public service and are of a charitable , religious or political nature; or
(iv) any person or body of persons associated with press of media;

Note: The Hon'ble Supreme Court held that an ***incorporated*** club or association having been constituted under a law, will not fall in this definition.

6.3 Following explanation was inserted to Section 65 of the Finance Act, 1994 vide Finance Act, 2006, -

"*Explanation:* For the purposes of this section, taxable service includes any taxable service provided or to be provided by any unincorporated association or body of persons to a member thereof, for cash, deferred payment or any other valuable consideration."

6.4 Explanation to Section 65 (above) is identical to Article 366 29(A) of the Constitution inserted by the 46th Amendment, which the Hon'ble Supreme Court has held, does not do away with the doctrine of mutuality. Thus, what appears to have saved the levy of Service Tax on the supply of service by an unincorporated club/AoP to its members during this period was the fact that such service had specifically been declared as a taxable service in the Finance Act, 1994.

6.5 In the positive list tax regime, there was no definition of 'service'. In the negative list regime, all services became taxable except those in the negative list. 'Service' was defined as ***any activity carried out by a person for another for consideration*** [Section 65B(44) of the Finance Act, 1994 refers].

6.6 Explanation 3(a) to Section 65B(44) stated as under:
"*Explanation 3.* – For the purposes of this chapter, -

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;"

6.7 Definition of person in Section 65B(37) included "*(vii) an association of persons or body of individuals, whether incorporated or not".*

6.8 Explanation 3(a) to Section 65B(44) in the negative list regime was the key to survival of levy of Service Tax on the supply of service by an unincorporated club or AoP to its members as discussed above. The incorporated clubs or AoPs and its members, having been declared as distinct persons by law, the doctrine of mutuality failed to apply to the provision of service by unincorporated club to its members.

Legal Provisions in GST:

7.1 Prior to deletion of clause (d) of sub-section (1) of Section 7, the expression 'supply' included activities specified in Schedule II. Therefore, the following activity listed in Schedule II para 7 was a supply under CGST Act, -

"*Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration*."

7.2 The activity referred to in Schedule II, para 7 is identical to the provisions in Article 366(29A)(e) inserted by 46th Amendment to the Constitution. Since the Hon'ble Supreme Court has ruled in *Calcutta Club* case that 46th Amendment does not take away the doctrine of mutuality, it is doubtful that the said provision in Schedule II para 7 read with sub-clause (d) of Section 7(1), prior to its deletion, would withstand challenge to levy of supply of service by an unincorporated club or association to its members. [Supply by incorporated club or association to their members in any case is out of tax net, like in Service Tax law, in view of the said judgment]. However, the Department could argue that levy has been upheld in Service Tax in view of identical explanation inserted in Section 65(105) in the Finance Act, 2006.

7.3 Even this tenuous ground has been lost after the deletion of clause (d) of Section 7(1) of CGST Act, w.e.f. 1.7.2017 and introduction of sub-section (1A). With deletion of the said clause, including an activity in Schedule II, does not have a bearing on the question whether the activity constitutes a supply or not. For an activity appearing in Schedule II to be taxable, it should first constitute a supply under provisions of Section 7. The supply of goods or services by an incorporated or unincorporated club or association, has in view of the Supreme Court judgment in *Calcutta Club* case, completely gone out of tax net after deletion of clause (d) of sub-section (1) of section 7 of CGST Act, 2017.

7.4 As discussed above, provision in Schedule II para 7 read with omitted Section 7(1)(d) of the CGST Act, 2017, is not enough to counter the judgment of the Hon'ble Supreme Court because they do not lay down a *distinction between an unincorporated or incorporated association and its members*. The only reason why the levy of Service Tax on services by an unincorporated association to its members was not axed by the Supreme Court was because the relevant provisions specifically created a legal distinction between an unincorporated association and its members. The same was not the case in case of levy of Sales Tax, because they did not provide for such a distinction. It has become completely ineffectual after deletion of clause (d) of Section 7(1) and inclusion of Section 7(1A).

7.5 Therefore, GST on supplies of goods or services by an *unincorporated or incorporated* entity to its members may become subject matter of litigation. There is no provision in the CGST Act, 2017 which stipulates that an *unincorporated or incorporated entity* and its *members* shall be distinct persons. In the absence of a provision to this effect, the subject judgment of the Hon'ble Supreme Court becomes squarely applicable. The doctrine of mutuality applies and thus supplies by *unincorporated or incorporated entity* to its *members* is a supply to self and not leviable to GST.

7.6 Therefore it is imperative to amend the CGST Act, 2017 so as to safeguard the levy of GST on supplies by an association or body of persons (whether incorporated or not) to its members. It is proposed that amendment to the CGST Act, 2017 as being proposed below may be carried out to prevent litigation on this count:-

(a) In Section 7(1) of the CGST Act, 2017, after clause (c), new clause (e) followed by an Explanation may be added with retrospective effect:

7. (*1*) For the purposes of this Act, the expression "supply" includes—

(*a*) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
(*b*) import of services for a consideration whether or not in the course or furtherance of business;
(*c*) the activities specified in Schedule I, made or agreed to be made without a consideration; and
(*d*) ***
(e) the supply of goods or services or both, by an association or a body of persons, whether incorporated or not, to its members, for cash, deferred payment or other valuable consideration.
Explanation.- for the purpose of this section, an association or a body of persons, whether incorporated or not, and member thereof shall be treated as distinct persons.

(NOTE: Insertion of the above Explanation is suggested by TRU-II)

(b) Para 7 of Schedule II may be deleted, as the above amendment would more than fulfil its objective. In any case, it serves no purpose after deletion of clause (d) of sub-section (1) of Section 7.

8. The issue is placed before the GST Council for consideration and decision.

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (ix): Order of Hon'ble High Court of Rajasthan in the matter of Rajasthan Tax Consultants Association vs UoI and Ors. (D. B. Civil Writ No. 15239/2017)

Reference is invited to the Order of Hon'ble High Court of Rajasthan dated 01.08.2018 in the matter of Rajasthan Tax Consultants Association vs UoI and Ors. (D. B. Civil Writ No. 15239/2017). Para 3 of the said order is reproduced below:

*"3. In our considered opinion, it will be appropriate that the **GST Council will decide the issue**. However, the question regarding delay in filing of return, registration or late fees will not be changed and the same will be **complied with pursuant to earlier order of this Court.** The return which are filed late because of not proper functioning of the computer will not be attributed to the assess between 01.07.2017 to 30.09.2017."*

2. Para 4 of the previous interim order of the Hon'ble High Court dated 20.09.2017 reads as follows:

*"4. In the meantime, **no coercive action (penal interest, late fees and prosecution)** against any of the client of the petitioners members who are referred in the petition and are informing by email, will be protected. The composition scheme is extended upto 30.09.2017, therefore, desirous assessee can apply.* "

3. A conjoint reading of the above two orders appear to imply that no coercive action (including levy of penal interest due to delay in payment of tax) is to be taken against the petitioners if the delay is on account of system related issues. Further, as per Hon'ble Court Order, it will be appropriate that the GST Council will decide the issue.

4. Since, under GST law there is no provisions for waiver of interest for delayed filing returns and therefore, Misc. Civil application (WMAP-199/2019) was filed before Hon'ble Court with plea to modified order to such extent that the waiver of interest for delayed filing of return may be deleted or modified as per the order of Court. In this regard, Order dated 28.02.2020 of Hon'ble Court is reproduced below:

"List the matter on 18.03.2020 for orders.

In the meantime, learned counsel for the Union of India is directed to obtain instructions as to whether the direction contained in the order dated 01.08.2018 directing the GST Council to decide the issue in para-3 of the order, has in-fact, been considered by the GST Council or not, and if so, what is the decision of the GST Council."

5. Accordingly, the issue is placed before the GST Council for deliberation and decision.

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (x): Agenda Note for refund of ITC of the tax paid on capital goods, in cash, for registered taxpayers with annual aggregate turnover up to 15 crores

In view of the focus of the present Government to increase the India's rank in World Bank Ease of Doing Business Report, the Department of Promotion of Industry and Internal Trade (DPIIT) has provided the time up to 31.03.2020 to this Department to amend GST Act to introduce provision for cash refund of input tax credit (ITC) to the companies (engaged in manufacturing) on account of purchase of capital assets during the year.

2. In this regard, it is informed that the overall ranking of India has improved substantially by 57 ranks in past 4 years. However, the improvement under paying taxes has gone up by only 21 ranks. The different indicators which are used for measuring the score under the head of paying taxes and the score obtained by India against these indicators in 2018 are:

Indicators	**2018**	**Score**
Number of tax payments	11	86.67
Time to comply with the tax system (hours per year)	252	68.64
Total Tax Rate	49.7%	65.80
Post-filing Index	**2018**	**Score**
(A) Time to comply with a VAT refund (Capital Goods)	No refund	0
(B) Time to obtain a VAT refund	No refund	0
(C) Compliance time to correct CIT error (including review time)	3.0 hrs	97.25
(D) Time to complete CIT review, where applicable	Review likelihood <25%	100
Score for post filing index (average of A, B, C & D)		49.31
Overall Paying Taxes Ranking	**115**	**67.63**

3. From the above, it is seen that India has got 0 score against the indicators relating to Time to comply with a VAT refund and time to obtain VAT refund. In this regard, it is submitted that the VAT refund referred under this head relates to refund of tax paid on capital assets/goods procured by the registered taxpayer. In the present regime, the registered taxpayer is eligible to avail the Input Tax Credit (ITC) of the tax paid on capital assets. The ITC so availed can be utilised by the said taxpayer for offsetting its outward tax liability. The said observation was placed before the World Bank for giving score against these indicators. However, it was found that the World Bank does not consider the utilisation of ITC availed on Capital Goods for payment of outward tax liability but only cash refund of tax paid on the capital assets for giving a score against these indicators.

4. Further, it has been learnt that to have uniform calculation across all member countries, World Bank considers investment in Capital Assets as 65 times the per capita income in companies with the annual turnover of 1050 times per capita income. For India, as per these criteria, the size of company comes to Rs. 29.26 crores per annum and Capital assets to the tune of Rs. 1.8 Crores with ITC of Rs. 32.4 lakhs.

5. A study has been conducted by a case study company on the status of VAT for paying taxes. The study included a total of 189 countries. As per the report, there are 107 countries where refund of

VAT is available to the case study company and out of these 107 countries in 26 countries refund of VAT is allowed after a carry forward period which ranges from 1 month in The Bahamas to 1 year in Pakistan. In addition, there are 26 countries where no VAT is charged and 5 countries where no VAT is charged on capital purchases. There are 50 countries including India which does not allow for VAT refund. Further, China has recently started the VAT refund. The domestic companies operating in 19 industries meeting the industry criteria and having an appropriate tax credit rating can avail the cash refund of VAT.

6. From the above, it can be seen that internationally in most of the countries the practise is either to allow refund or not to charge any tax on capital purchases. Further, a case study has been conducted by GSTN to compare the utilization of ITC on Capital assets for payment of Liability Vs Refund of ITC accrued on account of Capital Assets acquisition, in cash. The outcome of the study has shown that the impact on revenue remains the same even if the tax paid on capital assets is refunded in cash. They have found that usually the ITC availed on Capital assets is utilized in 4 months from the date of Purchase whereas the refund would be paid in around 3.5 months from the date of purchase. It is further informed that if cash refund of tax paid on capital goods is given, the estimated impact on India's rank would be as under:

1. Post filing Index: 49.4 → 89
2. Indicator Rank: 115 → 76
3. Overall Rank: 63 → 56

7. In view of the above, it is proposed that refund of ITC of tax paid on capital goods procured may be allowed for the registered taxpayers with the annual aggregate turnover up to Rs. 30 crores (factoring in the exchange rate variations). Further, the following conditions may be imposed for refund of tax paid on capital goods:

a) The facility may be extended to taxpayers registered under GST having annual turnover up to Rs. 30 crores at PAN level.
b) The cash refund to be processed after such verification, as prescribed, to ensure capital assets have been actually acquired and tax has been paid by the supplier.
c) The upper limit on cash refund for capital assets to be fixed as Rs. 90 lakhs a year.
d) The facility may be made available once in 3 years, as capital assets acquired are expected to have a life of 3-4 years.
e) The refund may be paid after a carry forward period of 6 months.

8. It may be noted that as per the data provided by the Income Tax for Firms/Companies for the Assessment Year 2019-20, the expected revenue impact of providing refund of ITC accrued on account of tax paid capital goods after a carry forward period of 6 months is likely to be Rs. 14000 crore per year.

9. Accordingly, it is proposed that the Section 54 of the CGST Act 2017 may be amended as under to provide for the refund of tax paid on capital goods:

I. By inserting the following sub-section (1A):

(1A) The Government may, on the recommendations of the Council, and subject to such conditions, safeguards and procedures as may be prescribed, notify the class of registered persons, who shall be eligible to claim the refund of any balance lying unutilised in the electronic credit ledger in accordance with the provisions of Section 42 on account of tax paid on the procurement of Capital goods.

II. By amending the 1st proviso to sub-section (3) by inserting clause (iii) to 1st proviso of sub-section (3):

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

(iii) where the credit has accumulated on account of procurement of capital goods as specified under sub-section (1A):

10. Further, Rule 89 of the CGST Rules 2017 may be amended as under to provide for the processing of the refund claims:

I. By inserting following clauses under sub-rule (2)

(ha) a statement containing the number and the date of the invoice received during a tax period and the details of payment made by the recipient to supplier, along with the proof thereof, in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of procurement of capital goods;

(n) a certificate issued by a chartered accountant or a cost accountant to the effect that the said capital goods have been installed in the registered premises and the said capital goods are being utilised for furtherance of business, in case where the claim pertains to refund of any unutilised credit accumulated on account of procurement of capital goods.

(o) a copy of income tax statement and other related documents evidencing the capitalization of said capital goods in books of account, in case where the claim pertains to refund of any unutilised credit accumulated on account of procurement of capital goods.

(p) an undertaking to the effect that the tax has been paid to the Government exchequer by the supplier of the said capital goods of which refund of ITC has been claimed and the refund paid shall be liable to be recovered along with applicable interest and penalty in case it is found that the refund has been availed on the basis of false declaration and undertaking.

(q) an undertaking to the effect that no refund of tax paid on capital goods have been availed in preceding 3 years and the refund paid shall be liable to be recovered along with applicable interest and penalty in case it is found that the refund has been availed on the basis of false declaration and undertaking.

II. By inserting the following sub-section (6):

(6) In the case of refund on account of procurement of capital goods, the refund payable to the registered taxpayer shall be equal to the ITC availed on Capital Goods during the relevant period or

ITC remaining unutilised at the end of the tax period or ITC remaining unutilised at the time of filing the refund claim or Rupees Ninety Lakhs, whichever is lower.

11. Further, a notification would be required to be issued for notifying the class of registered taxpayers i.e. the taxpayers with annual aggregate turnover of Rs. 30 crores at (PAN level) eligible to claim refund of tax paid on capital goods.

12. Accordingly, the above issue is placed before the GST Council for deliberation.

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (xi): Time bound disposal of long pending change request arising out of changes made in Law/Rules through one time special measure.

1. **Background:** M/S Infosys was asked to clear the pendency of CRs in the SCOMs (27th March, 2019 and 29th May, 2019) as well as during the Group of Ministers meeting held on 28th June 2019 at Bangalore. Infosys shared a plan on 28th May 2019 for the same, which was also presented to the GoM on 28th June. The said plan was improved and re-submitted by Infosys on 17 July 2019. As per the Plan submitted by M/S Infosys, 85 CRs were to be cleared by March 2020. The gist of CR clearing proposal along with the gist of month-wise UAT drop is given below:

Month	Planned UAT Drop Month wise	Plan to deliver the CRs for clearing backlog
Jul-19	**7**	**85**
Aug-19	**12**	**78**
Sep-19	**13**	**66**
Oct-19	**16**	**53**
Nov-19	**8**	**37**
Dec-19	**15**	**29**
Jan-20	**6**	**14**
Feb-20	**5**	**8**
Mar-20	**3**	**3**
	85	

   a. Since July 2019 till 28th Feb 2020, there has been a significant inflow of Change Requests (CR) due to policy decisions, changes in workflow, feedback received from taxpayers, tax officers and other enhancements. 105 new application changes were raised between Aug 2019 and 28th Feb 2020.

   b. Current status as on 28th Feb 2020 of all the CRs which were deployed is given below. This also include status of 85 CRs (as per plan of M/S Infosys) and new change request raised.

CR Status	Current Status on CRs which were presented by Infosys in CR plan	Current Status of CRs (raised btw July 19 – Feb 2020)	Total
In Production	23	21	44
In Production (Partial)	1	0	01
Awaiting Deployment	1	3	04

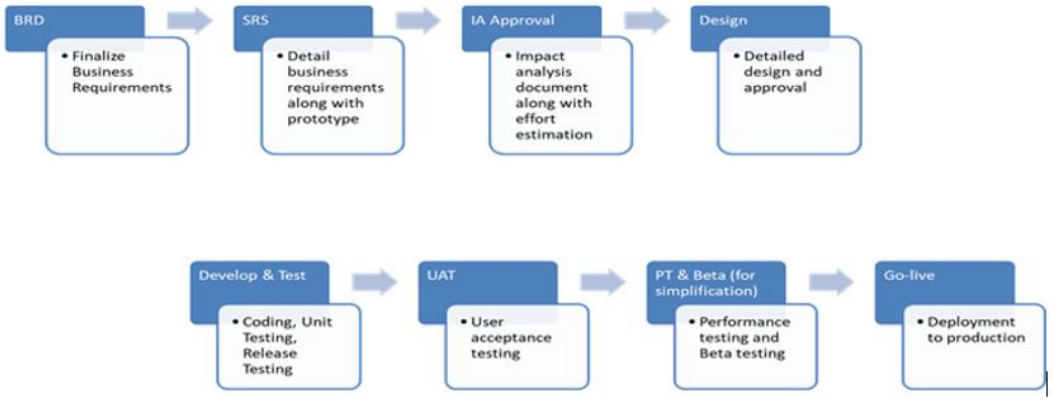
In UAT(User Acceptance Testing)	9	8	17
In RT(Release Testing)	4	2	06
In Development	5	13	18
Pre-Assessment	15	56	71
On Hold	8	2	10
Withdrawn	19	0	19
Grand Total	**85**	**105**	**190**

c. This concern of long delay in clearing the CR backlog was raised again in the meeting held on at DoR on 31st January 2020. Infosys team was asked to expedite the implementation of change request. Infosys team informed that significant time goes into designing of SRS, Tech design document (TDD) and framing of Impact Assessment (IA), which also contains the man-days required for development and deployment of a CR. They further reported that lot of to & fro movement takes place between GSTN and Infosys leading to delay in taking up of CRs.

d. In the said meeting Infosys team proposed that a crack team of 10 to 15 tech personnel may be taken on manpower rates (T&M - *Time & Material* basis), as approved in the contract, to do the solutioning [develop SRS(System req. specification)/IA(Impact Assessment)/TDD(Technical design document)] in CRs, which takes more than 6 to 8 weeks leading to long delay in estimation of efforts to complete the CRs.

e. On March 4th 2020, M/S Infosys submitted the proposal for setting up and operating a dedicated team which will have two dedicated teams namely Solution Team (10 Resources) and Execution Team (50 Resources) as part of its dedicated team. Under this proposal complete change request workflow will go on T&M basis. Key points of this plan as follows:

   i. Solution Team will have 10 resources (domain consultant/Tech Architect)
   ii. Solution team will design Techno-functional document to reduce the time taken in SRS designing/TDD/IA designing. This document easily suffice SRS/TDD/IA and can be easily understood by domain teams, UAT teams and third party teams.
   iii. That Techno functional document will handed over to Execution team (50 resources count) and development /Testing will be done by execution Team.
   iv. Post development and RT, this will be deployed to UAT.



2. It is proposed that the above mentioned methodology of getting the work done on T&M basis, as a departure from existing methodology of development to liquidate long pendency of change request (CR) and to have quick turnaround of development based on policy changes, may kindly be approved. The first set of 5 change request to be undertaken under this methodology (End to end development and testing by Infosys team on T&M basis) is attached as **Annexure- 1**.

3. This approach is placed for in-principle approval of GST Council.

Annexure-1

List of first set of change request to be taken up on T&M basis.

Sl. No.	Change
1	Nil filing of GSTR-3B through SMS For allowing filing of GSTR-3B through SMS if there is no liability to be declared in table-3.1 and no credit to be claimed in table-4 of GSTR-3B.
2	Auto population of liabilities from GSTR-1 into GSTR-3B (System to generate a draft version of GSTR-3B on the basis of the entries made in GSTR-1. Subsequently, the liabilities would also be auto-populated in the corresponding entries of tables 3.1 and 3.2 of GSTR-3B.)
3	Flow of ITC from GSTR 2A to GSTR 3B and from data received from ICEGATE/ SEZ
4	Spike Rule (The Law Committee recommended the proposal of restricting new registrations to pass input tax credit over and above Rs. 3 lakh and the deposit made in the electronic cash ledger. Once the proposal is approved by the GST Council, a CR would be issued to make the corresponding technical changes in the system to implement this decision.)
5	De-linking of credit/debit notes from invoices in GSTR-1 (As of now, the system links every credit/debit note to the original invoice. Necessary changes would be made in GSTR-1 to de-link credit/debit notes from the original invoices against which they were issued, to enable reporting of consolidated credit/debit notes in the system. CR for the same has already been issued.)

Table Agenda

39th GST Council Meeting – 14th March 2020

Agenda Item 11 (xii): Ad-hoc Exemptions Order(s) issued under Section 25 (2) of Customs Act, 1962 to be placed before the GST Council for Information

In the 26th GST Council meeting held on 10th March, 2018, it was decided that all ad-hoc exemption orders issued with the approval of Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014 – Customs dated 19th August, 2014, as was the case prior to the implementation of GST, shall be placed before the GST Council for information. The GST involved is approximately Rs. 93 Lakh

2. The details of the ad-hoc exemption order are as follows:

S. No.	Date	Order No.	Remarks
1.	17th February, 2020	AEO No. 01 of 2020	Request from the Ministry of Defence for Custom Duty exemption for import and re-export of Guns/equipment from Sri Lanka.

3. This is placed for the information of GST Council.