



# **Agenda for**

# **42<sup>nd</sup> GST Council Meeting**

**5 October 2020**

**Volume – 1**





**GST Council Secretariat**

Room No.275, North Block, New Delhi

Dated: 11<sup>th</sup> September 2020

**Revised Meeting Notice for the 42<sup>nd</sup> Meeting of the GST Council scheduled on 5<sup>th</sup> October 2020**

The undersigned is directed to refer to the subject cited above and to say that the 42<sup>nd</sup> Meeting of the GST Council will be held on 5<sup>th</sup> October 2020 as follows:

Monday, 5<sup>th</sup> October, 2020 : 1100 hours onwards

2. The agenda items for the 42<sup>nd</sup> Meeting of the GST Council will be communicated in due course of time.
3. Please convey the invitation to the Hon'ble Members of the GST Council to attend the Meeting.

**(-Sd-)**

**(Dr. Ajay Bhushan Pandey)**

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

**Tel: 011 23092653**

Copy to:

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



### **Agenda Items for the 42<sup>nd</sup> Meeting of the GST Council on 5<sup>th</sup> October 2020**

1. Confirmation of the Minutes of GST Council Meetings.
  - i. 40<sup>th</sup> GST Council Meeting held on 12<sup>th</sup> June, 2020
  - ii. 41<sup>st</sup> GST Council Meeting held on 27<sup>th</sup> August, 2020
2. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
3. Decisions of the GST Implementation Committee (GIC) for information of the Council
4. Timelines in respect of TRAN-1/TRAN-2 declarations based on the discussions of 13<sup>th</sup> meeting of IT Grievance Redressal Committee held on 01.09.2020
5. Update on Return Enhancement and Advancement Project (REAP) & in-principle approval of overall architecture
6. Issues recommended by the Law Committee for the consideration of the GST Council
  - i. Extension of the GSTR-1/3B system of return filing and change in due date for quarterly taxpayers upon introduction of the new GSTR-2B functionality
  - ii. Issues related to Annual Return for Financial Year 2019-20
  - iii. Steps taken to improve compliance behavior of taxpayers for making furnishing of GSTR-1 mandatory before furnishing GSTR-3B
  - iv. Amendment to FORM GSTR-1 and notification 12/2017-Central Tax, dated 28.06.2017 for improving data quality to enhance tax administration
  - v. Agenda Note regarding refund to be disbursed in same PAN and Aadhaar linked bank account on which registration has been obtained under GST.
  - vi. Proposal for amendments to CGST Rules, 2017
7. Issues recommended by the Fitment Committee for the consideration of the GST Council
  - i. Agenda Note on the representation received from HADMA seeking GST rate of 12% on Ayurveda/Unani/Siddha' (AUS)-ingredients based sanitizer
8. Issues of Goods and Services Tax Network (GSTN):
  - i. Status of receipt of Advance User Charges (AUC) from States and CBIC and extension of time period by 6 months for payment of AUC for the first half of FY 2020-21 on account of COVID related challenges
  - ii. Need for moving resources from CR model to T&M model for important developments with the approval of CAB
9. Presentation on proposal to extend levy of GST Compensation Cess beyond the transition period to meet the shortfall during the transition period and constitute a Committee of Officers to work out anticipated shortfall, period of extension and other related issues
10. Review of Revenue position
11. GST payment through UPI

12. Status report of creation of GRC Zone-wise (CBIC) and States / UTs as on 04.09.2020
13. Performance Report of the NAA (National Anti-profiteering Authority) for the 1<sup>st</sup> quarter (April to June, 2020) for the information of the Council
14. Any other agenda item with the permission of the Chairperson
15. Date of the next meeting of the GST Council

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# Discussion on Agenda Items

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

### **Agenda Item 1(i): Confirmation of the Minutes of the 40<sup>th</sup> GST Council Meeting held on 12<sup>th</sup> June 2020**

The 40<sup>th</sup> meeting of the GST Council (hereinafter referred to as ‘the Council’) was held on 12<sup>th</sup> June 2020 through video conference under the Chairpersonship of Hon’ble Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon’ble Members/Ministers of the Council who attended the meeting is at **Annexure 1**. A list of officers of the Centre, the States, the GST Council, the Goods and Services Tax Network (GSTN) who attended the meeting is at **Annexure 2**.

2. The following agenda items were listed for the discussion in the 40<sup>th</sup> Meeting of the Council:
  1. Confirmation of the Minutes of 39<sup>th</sup> GST Council Meeting held on 14<sup>th</sup> March 2020
  2. Review of Revenue Position
  3. Issues recommended by the Law Committee for the consideration of the GST Council
    - i. Amendment in CGST Rules to prescribe the rates for Composition Scheme under Section 10(2A)
    - ii. Proposal to issue Removal of difficulty order for extending the time limit for revocation of cancellation of registration
    - iii. Notification of provisions of the Finance Act, 2020 amending various sections of the CGST Act and the IGST Act
    - iv. Reduction of late fees and rate of interest for small taxpayers (taxpayers with aggregate turnover up to Rs. 5 crore) for the tax period May, 2020, June, 2020 and July, 2020
    - v. Reduction in rate of interest for delay in payment of GST for remaining part of Financial Year 2020-21
    - vi. Reduction in late fees for FORM GSTR-3B for months from July, 2017 to January, 2020 - One time amnesty to clean up pendency in return filing in GST regime
  4. Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government
  5. Decisions of the GST Implementation Committee (GIC) for information of the Council
  6. Decisions/Recommendations of the IT Grievance Redressal Committee for information of the Council
  7. Creation of State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh
  8. Quarterly Report of the National Anti-Profiteering Authority (NAA) for the quarter January to March 2020 for the information of the GST Council
  9. Constitution of Grievance Redressal Committee at CBIC Zonal / State level for redressal of grievance of taxpayers on GST related issues
  - 9A. Inverted Rate Structure in GST- Correction of inverted rates on certain key sectors
  10. Any other agenda item with the permission of the Chairperson
    - i. Sharing of GST data with Comptroller and Auditor General of India for the purposes of GST audit
    - ii. Discussion on Compensation to States.
  11. Date of the next meeting of the GST Council

## **Preliminary discussion**

3. The Hon'ble Chairperson invited the Union Revenue Secretary and ex-officio Secretary to the GST Council (hereinafter referred to as the Secretary) to begin the proceedings. The Secretary welcomed everyone to the 40<sup>th</sup> GST Council meeting. He, on behalf of the Council, welcomed Shri Narottam Mishra, Hon'ble Minister for Home and Public Health and Family Welfare, nominated from the State of Madhya Pradesh and Shri James K. Sangma, Hon'ble Minister for Taxation, nominated from the State of Meghalaya.

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

### **Agenda Item 1: Confirmation of the Minutes of the 39<sup>th</sup> GST Council Meeting held on 14<sup>th</sup> March 2020**

4. The Secretary informed that the first Agenda Item was the confirmation of the Minutes of the 39<sup>th</sup> GST Council Meeting (hereinafter referred to as Minutes) held on 14<sup>th</sup> March, 2020 at New Delhi. He stated that the Minutes was circulated to all the States in advance and comments have been received from the States of Gujarat and Puducherry suggesting the following changes.

- i. The State of Puducherry suggested that in paragraph 8.5 of the Minutes, in the second sentence, to replace the presently recorded version (That compensation is a solemn commitment by GST Council to the States and the State budget has been planned keeping in view the 14% cess money) with the following version: "That compensation is a solemn commitment by GST Council to the States and the State budget has been planned keeping in view the 14% growth".
- ii. The State of Gujarat suggested that in paragraph 8.7, to replace the recorded version (The Hon'ble Deputy Chief Minister of Gujarat requested that the wrong use of C forms has resulted in a loss of about 13 to 14% which should not be allowed and this matter be take up as an Agenda Item in the next Council meeting) with the following version: "The Hon'ble Deputy Chief Minister of Gujarat requested that there is need for amendment in the Central Sales Tax Act, 1956. Letter containing detailed note for amendment in the relevant section of the CST Act is already sent to the Govt. of India. Wrong use of C-Forms is causing loss of CST revenue to many states. Other states have also agreed to prevent wrong use of C-FORM and therefore, the Central Government should bring amendment immediately. If need be, the matter may be discussed in the Council meeting."
- iii. The State of Puducherry suggested that in paragraph 13.9, the statement (Commissioner, State tax, Puducherry mentioned that this was debated in the Officer's Meeting on 13.03.2020 and this debate is resulting in delaying the decision and cases are piling up) with the following version: "Chief Commissioner, State tax, Gujarat mentioned that this was debated in the Officer's Meeting on 13.03.2020 and this debate is resulting in delaying the decision and cases are piling up."

4.1 The Hon'ble Minister, Commercial Tax from Chhattisgarh requested that his name in paragraph 4.23 had been wrongly mentioned (Shri K.P. Singh Deo) and should be corrected as "Shri T.S. Singh Deo".

4.2 The Hon'ble Minister from Odisha suggested that in paragraph 11.8, to replace the sentence (The Hon'ble Member from Odisha further stated that the 18% GST on job work will not impact the price of liquor because this depends upon the relationship between the brand owner and the contract bottling unit.) with the following version : " The Hon'ble Member from Odisha further stated that the 18% GST on service of job work will not impact the price of liquor because this depends upon the

relationship between the brand owner and the contract bottling unit.” He also stated that this view had been recommended by the Fitment Committee and was accepted by all the States barring one or two States. He further stated that since the matter is not *pendente lite*, the issue could not be decided by the Hon’ble Court. The Secretary stated that presently the Minutes of the 39<sup>th</sup> GST Council were being discussed and that the final view was not being taken. The Joint Secretary (TRU-II) stated that there was a difference of opinion among the States. While some States felt alcoholic liquor for human consumption being outside GST, its job work too cannot be subjected to GST. Some other States felt that alcoholic liquor for human consumption could not be equated with food. The Hon’ble Member from Karnataka was of the view that instead of leaving the matter to the judiciary, it needed to be decided whether alcoholic liquor for human consumption was food or not. He further suggested that the Council may take it up as an agenda and discuss it threadbare so as to remove any confusion. The Hon’ble Chairperson stated that there was merit in what the Hon’ble Minister from Odisha had stated that the matter was not *sub judice* and that the Council should take an executive decision in the matter by taking it up as an Agenda Item in the next Council meeting.

4.3 The Hon’ble Member from Tamil Nadu suggested the following changes:

- i. In paragraph 13.3, their view/suggestion may be recorded after the sentence (This opinion was seconded by the Hon’ble member from Gujarat), “Tamil Nadu was of the view that levy of interest on delayed payment of taxes to be made on net cash tax liability should be given effect retrospectively from 01.07.2017.”
- ii. In paragraph 13.5, to add after the sentence (He informed that in fact, based on an analysis done, below Rs.5 crore limit, the additional tax recovered from each tax payer was Rs 13,000 per tax payer whereas the compliance cost was appx. Rs.50,000) “Tamil Nadu had supported and welcomed the ameliorative measures taken for ease of doing business by enhancing the turnover limit upto Rs.5 crore for filing annual returns in Form GSTR-9 and reconciliation statement in Form GSTR-9C.
- iii. In paragraph 13.9, to add after the sentence (There can also be a senior lawyer who can be designated as a judicial member) “Tamil Nadu expressed strong reservations against the proposed amendments to sections 109 and 110 of the CGST Act with reference to the appointment of technical members in the GST Tribunals. These amendments seek to replace two technical members by one, leaving the option to choose a Central Technical member or State Technical Member to the Government of India. Tamil Nadu was of the view that the National Bench of the Appellate Tribunal and its Regional Benches may consist of Judicial Member and a Technical Member (Central) and in State Bench of the Appellate Tribunal and its Area Benches must consist of Judicial member and a Technical member (State).”
- iv. In paragraph 10.9 of the Minutes to add after the last sentence (He pointed out that the Fitment Committee had already deliberated on issue and recommended uniform rate of 12%, he urged the council to take a decision on the same and not keep it pending.) “He further stated that in their State, they have been receiving numerous representations from the trade associations dealing with food grains complaining that the tax authorities are demanding tax for delayed filing of disclaimer affidavit before the jurisdictional Commissioner, voluntarily foregoing the actionable claim or the enforceable rights on their brand name. The intention of issuing such notification for filing disclaimer affidavit is to grant exemption on the supply of food grains having unregistered brand name. However, the delay in filing such affidavit should not be a ground for levy and collection of tax on the supply of food grains. He urged the Hon’ble Chairperson to kindly issue guidelines to condone the delay in filing the disclaimer affidavit and not to raise demands on that ground. He also suggested that the distinction between branded and unbranded food grains should be completely done away with as most taxpayers have

switched to unbranded category by filing affidavits and consequently the loss to exchequer on account of removal of the distinction will not be much. He also urged the Hon'ble Chairperson to kindly consider the remaining representations forwarded to the Council on the grounds of rationalization of tax, items of essential use by common man, items for the benefit of farmers and fishermen, items made by small artisans and items relating to religious sentiments at the earliest."

4.4 The Hon'ble Member from Tamil Nadu further stated that their proposal as mentioned in paragraph 25.6 of the draft Minutes of the 39<sup>th</sup> GST Council Meeting as approved by the Council had not yet been given effect to stating that the Law Ministry is yet to accept the proposal. He, therefore, brought this to the kind notice of Hon'ble Chairperson for necessary further action in the matter.

4.5 The Hon'ble Minister from Goa reminded the Hon'ble Chairperson that the Minutes of the 39<sup>th</sup> GST Council meeting did not reflect that it was agreed to instruct the GST Intelligence Unit, Hyderabad not to initiate action against the casinos in the State of Goa till it was decided whether GST was required to be levied on the full amount or on the gross gaming revenue as has always been done in the pre GST era. This was for the reason that casinos in Goa were on the verge of closure. That they were a very important source of revenue for the State and that Law and Fitment Committees had decided the issue and that the issue could be brought directly to the GST Council. On being informed by the Joint Secretary, GST Council Secretariat that this issue was minuted in the 38<sup>th</sup> GST Council meeting, the Hon'ble Chairperson instructed that an addendum to this effect in respect of the same may be issued.

4.6 The Hon'ble Member from Madhya Pradesh stated that they were grateful that the State had been given Rs.1,386 crore as compensation and the borrowing limit had also been raised from 3% to 5% of Gross State Domestic Product (GSDP). He, however, requested that conditionalities attached to the raising of the borrowing limit may be relaxed. He further stated that he was looking after the departments of Home and Health and during his meeting with industrialists he had learnt that medical equipment used in the fight against COVID attracted GST and had not been given any benefits/exemption. He further stated that builders have to pay GST of 12% while refund is granted only after the buildings are sold. He requested to reduce the GST on infrastructure projects to 9%.

4.7 The Hon'ble Member from Uttar Pradesh stated that he wished to state that there was an amendment in the approval granted by the Council in paragraph 16 of the Minutes of the 39<sup>th</sup> GST Council meeting for setting up of State and Area benches of GSTAT in the State of Uttar Pradesh. The Secretary informed him that this could be discussed subsequently as a separate Agenda Item No.7. The Hon'ble Member from Uttar Pradesh stated that he was grateful to FM for having released a compensation amount of Rs.2200 crore to the State. He further brought to the notice of the Hon'ble Chairperson that in the earlier GST Council meetings he had made certain requests concerning pan masala, brick kilns and mentha-oil on which no decision had yet been taken. He felt that the issues concerning the above three items needed to be addressed in order to garner more revenue. He felt that as a policy matter any issue which is discussed in any GST Council meeting, its action taken should be placed before the subsequent Council meetings.

4.8 The Hon'ble Member from West Bengal stated that the present Agenda included several routine matters which are reporting matters. These may be assumed to have been passed. There are only two-three vital issues which need to be discussed, viz., compensation to States and correction of inverted duty structure. The Hon'ble Chief Minister of Puducherry stated that there are several procedural matters in the present Agenda, put up only for the information of the Council. However, the major items are the revenue loss and compensation to be given to States, increase in tax on certain items. Both Centre and States are facing a difficult situation on account of Corona crisis. The earlier regime of Sales tax, which was a major source of revenue for the States has now been replaced with GST and

accordingly States are dependent on GST for revenue and also on compensation given by the GST Council. Smaller States are more dependent on compensation. Most States have lost revenue during the period March to May 2020. Therefore, more time should be given for discussing the revenue loss arising from the lock-down consequent to the Corona crisis. The Hon'ble Deputy Chief Minister of Bihar requested to take up the issues Agenda wise as procedural issues do not take much time to discuss. The Hon'ble member from Jharkhand expressed his gratitude to Hon'ble Chairperson for having released compensation for the period till February 2020. However, they were in dire need for compensation for the subsequent months of March – May 2020. He further stated that he supported the Hon'ble Member from West Bengal and Puducherry and that compensation and revenue should be discussed.

4.9. The Secretary requested that before the Council take up Agenda Item 2, the minutes may be confirmed.

5. For **Agenda item 1**, the Council approved the Minutes of the 39<sup>th</sup> GST Council meeting with the following changes:

5.1. To correct the name of the Hon'ble Minister in paragraph 4.23 of the Minutes from 'Shri K.P. Singh Deo' to 'Shri T.S. Singh Deo'.

5.2. To add the following paragraph after paragraph 6 of the Minutes, "6A. The Hon'ble Minister from Goa reminded the Hon'ble Chairperson that the draft Minutes of the 39<sup>th</sup> GST Council meeting did not reflect that it was agreed to instruct the GST Intelligence Unit, Hyderabad not to initiate action against the casinos in the State of Goa till it was decided whether GST was required to be levied on the full amount or on the gross gaming revenue as has always been done in the pre GST era. This was for the reason that casinos in Goa were on the verge of closure. That they were a very important source of revenue for the State and that Law and Fitment Committees had decided the issue and that the issue could be brought directly to the GST Council."

5.3. To replace the sentence 'That compensation is a solemn commitment by GST Council to the States and the State budget has been planned keeping in view the 14% cess money' in paragraph 8.5 of the Minutes with 'That compensation is a solemn commitment by GST Council to the States and the State budget has been planned keeping in view the 14% growth'.

5.4. To replace the sentence 'The Hon'ble Deputy Chief Minister of Gujarat requested that the wrong use of C forms has resulted in a loss of about 13 to 14% which should not be allowed and this matter be take up as an Agenda Item in the next Council meeting' in paragraph 8.7 of the Minutes with 'The Hon'ble Deputy Chief Minister of Gujarat requested that there is need for amendment in the Central Sales Tax Act, 1956. Letter containing detailed note for amendment in the relevant section of the CST Act is already sent to the Govt. of India. Wrong use of C-Forms is causing loss of CST revenue to many states. Other states have also agreed to prevent wrong use of C-FORM and therefore, the Central Government should bring amendment immediately. If need be, the matter may be discussed in the Council meeting'.

5.5. To add after the last sentence in paragraph 10.9 of the Minutes, "He further stated that in their State, they have been receiving numerous representations from the trade associations dealing with food grains complaining that the tax authorities are demanding tax for delayed filing of disclaimer affidavit before the jurisdictional Commissioner, voluntarily foregoing the actionable claim or the enforceable rights on their brand name. The intention of issuing such notification for filing disclaimer affidavit is to grant exemption on the supply of food grains having unregistered brand name. However, the delay in filing such affidavit should not be a ground for levy and collection of tax on the supply of food grains. He urged the Hon'ble Chairperson to kindly issue guidelines to condone the delay in filing the

disclaimer affidavit and not to raise demands on that ground. He also suggested that the distinction between branded and unbranded food grains should be completely done away with as most taxpayers have switched to unbranded category by filing affidavits and consequently the loss to exchequer on account of removal of the distinction will not be much. He also urged the Hon'ble Chairperson to kindly consider the remaining representations forwarded to the Council on the grounds of rationalization of tax, items of essential use by common man, items for the benefit of farmers and fishermen, items made by small artisans and items relating to religious sentiments at the earliest."

5.6. To replace the sentence 'The Hon'ble Member from Odisha further stated that the 18% GST on job work will not impact the price of liquor because this depends upon the relationship between the brand owner and the contract bottling unit' in paragraph 11.8 of the Minutes with "The Hon'ble Member from Odisha further stated that the 18% GST on service of job work will not impact the price of liquor because this depends upon the relationship between the brand owner and the contract bottling unit."

5.7. To add in paragraph 13.3 of the Minutes, after the sentence "This opinion was seconded by the Hon'ble member from Gujarat", "Tamil Nadu was of the view that levy of interest on delayed payment of taxes to be made on net cash tax liability should be given effect retrospectively from 01.07.2017."

5.8. To add after the sentence 'He informed that in fact, based on an analysis done, below Rs.5 crore limit, the additional tax recovered from each tax payer was Rs 13,000 per tax payer whereas the compliance cost was appx. Rs.50,000' in paragraph 13.5 of the Minutes, "Tamil Nadu had supported and welcomed the ameliorative measures taken for ease of doing business by enhancing the turnover limit upto Rs.5 crore for filing annual returns in Form GSTR-9 and reconciliation statement in Form GSTR-9C."

5.9. To add after the sentence 'There can also be a senior lawyer who can be designated as a judicial member' in paragraph 13.9, of the Minutes, "Tamil Nadu expressed strong reservations against the proposed amendments to sections 109 and 110 of the CGST Act with reference to the appointment of technical members in the GST Tribunals. These amendments seek to replace two technical members by one, leaving the option to choose a Central Technical member or State Technical Member to the Government of India. Tamil Nadu was of the view that the National Bench of the Appellate Tribunal and its Regional Benches may consist of Judicial Member and a Technical Member (Central) and in State Bench of the Appellate Tribunal and its Area Benches must consist of Judicial member and a Technical member (State)."

5.10. To replace the sentence 'Commissioner, State tax, Puducherry mentioned that this was debated in the Officer's Meeting on 13.03.2020 and this debate is resulting in delaying the decision and cases are piling up' in paragraph 13.9 of the Minutes with 'Chief Commissioner, State tax, Gujarat mentioned that this was debated in the Officer's Meeting on 13.03.2020 and this debate is resulting in delaying the decision and cases are piling up'.

## **Agenda Item 2: Review of Revenue Position**

6. The Secretary invited Shri Ritvik Pandey, Joint Secretary, Revenue to brief the Council on the subject. He initiated the discussion by inviting the attention of the Council to the broad numbers. He firstly drew attention to Table 1 of the Agenda Note where the various components of GST have been shown for the years 2017-18, 2018-19, 2019-20 and for the two months of April and May 2020-21. He highlighted that in the last financial year the total GST collections were Rs.12,22,116 crore as against which Rs.94,323 crore gross revenue have been collected in the first two months of the current fiscal. Then, he explained the collections under IGST and its apportionment/settlement as shown in Table 2 of

the Agenda Note. It was explained that the amount collected under IGST in the first two months of the current fiscal was about Rs.52,732 crore of which Rs.11,334 was refunded. Of the remaining, Rs.22,766 crore was apportioned/settled between the Centre and all the States/UTs through the normal settlement route due to return filing. It was witnessed in the past few months there was no need to do any ad hoc settlement because of change in the rules of cross utilization of IGST credit. But in the months of April'20-May'20 a net balance of Rs 18,632 crore was present mainly because the returns were deferred especially for smaller tax payers who are at the end of the value add chain. Therefore some IGST would have been paid but the credit would not have been taken since the tax payers are yet to file their returns. As and when they file their returns, this credit will also get utilized. With respect to compensation, Joint Secretary, Revenue drew the attention of the Hon'ble Members to Table 3 of the Agenda Note where the details of compensation cess collected and compensation released have been shown since implementation of GST till April 2020. In 2017-18, compensation cess collected was Rs.62,612 crore while compensation released was Rs 41,146 crore. In 2018-19 the total compensation cess collected was Rs.95,081 crore against which compensation released was Rs.69,275 crore. However, in 2019-20 the compensation collected (Rs.95,444 crore) was less than the compensation released (Rs.1,20,498 crore). In the year 2020-21 till April, Rs.1,135 crore has been collected under compensation cess while the amount released in April was Rs.15,340 crore. Thus, so far, a total of Rs. 2,46,259 crore has been released under compensation to all the States while the total compensation cess collection till April 2020 was Rs 2,54,272 crore. Further, there is a balance of Rs. 8,013 crore in the compensation head till April end 2020

6.1 Joint Secretary, Revenue then explained that there is the issue of IGST balance of 2017-18, which has been under discussion in GST Council for quite some time. While from 2018-19, balance IGST is regularly being apportioned on *ad-hoc* basis, during 2017-18, an amount of Rs.1.76 lakh crore had remained un-apportioned and was devolved as Central revenue as per Finance Commission formula. CAG, in his audit report has also pointed out that it should have been first apportioned on *ad-hoc* basis and State share from the central portion of IGST should have been given to States.

6.2 He then explained that the reversal of this transaction entailed four legs as follows:

- a. reversal of IGST devolution
- b. ad-hoc apportionment of the entire amount of Rs.1.76 lakh into SGST and CGST and release of SGST amount to States
- c. release of States' share from CGST; and
- d. reversal of compensation amount due to (b) above

First leg pertains to reversal of IGST amount devolved during 2017-18 to the entire extent of Rs 1.76 lakh crore. Once it is reversed, the total IGST of Rs 1.76 lakh crore will have to be divided into two halves of Rs 88,000 crore each between the Centre and States/UTs. Since the CGST portion is central revenue, 42% of this will be devolved to the States. Remaining Rs 88,000 crore shall be apportioned to the States and consequently the compensation which was released in 2017-18 would become excess and a part of it, depending on recalculations, has to be reversed. Because there are four legs to these transactions, some of them are releases to States and some of them are reversal of releases to States done previously and it has to and fro releases of funds, this transaction was broken into two parts. One having no net cash outgo and other will have cash outgo. It needs to be appreciated that while the amount pertaining to a, b and c above are settlements between both Consolidated Funds of Centre and States the reversal compensation at d above will be credited to the Compensation Fund. It will not go to the Consolidated Fund of India because it was released from Compensation Fund. As a result, the transaction has been split up into two parts. The first leg of the transaction having no cash implication has been carried out in the month of May 2020 and the net implication has been effected to by transferring Rs.33,412 crore from CFI to Compensation Fund in the month of May 2020. This amount

was used to release compensation due from December 2019 to February 2020 of Rs.36,400 crore in May 2020. For the remaining leg of transaction, for some States there will be a net release from Centre to States and for some States, there will be a reversal of compensation which is on cash basis which will be done in due course. Joint Secretary, Revenue further explained that the remaining legs of this transaction can be carried out after detailed deliberations in the Group of Ministers constituted on this subject matter. The compensation for March 2020 will also be released in due course. It may be noted that while the compensation required for the months of December 2019 to March 2020 was about Rs.12,500 crore per month, the compensation requirement in current year will be comparatively much higher due to lower GST collections during the current year.

6.3 Joint Secretary, Revenue then highlighted the trends in monthly revenue since the inception of GST till the first two months of the current financial year as shown in figures 2 and 3 of the Agenda Note 2. He stated that the revenue trend in the previous financial year has been a roller- coaster ride. The year opened with a good growth rate of 10% but the growth rates came down during the later part of the year. The revenue in the months of September - October 2019 and March 2020 have been negative vis-à-vis the corresponding months in 2018-19. This growth again recovered to 8 to 9% during months of December, January and February. But mainly because of COVID issue, in the month of March it fell down to minus 8%. In the current year, the collections were Rs 32,172 crore in April and Rs 62,151 in May. Since certain return filing was deferred during the current year, we can expect more deferred revenues. The State-wise details of gap between the protected revenue and the post settlement gross SGST revenue (including *ad hoc* settlement) for the period April to March in 2019-20 as compared to the corresponding period in the previous year has been shown in Table 4 and graphically in figure 4. The trends in return filing are shown in Table 5 while the State-wise details have been shown in Table 6. He highlighted that the return filing (GSTR-3B) till due date for the months of March 2020 and April 2020 were only 6% and 8% respectively mainly because of the deferral and COVID benefits given.

6.4 Thereafter, the Hon'ble Chairperson invited comments from the Hon'ble Members of the Council. The Hon'ble Deputy Chief Minister of Delhi stated that he was glad that the issue which concerned the Union Territories of Delhi and Puducherry the most i.e. apportionment of balance IGST lying in 2017-18 had finally been discussed in paragraph 6 of the Agenda Note. He stated that, on behalf of Delhi & Puducherry, this issue has been raised repeatedly, even in personal meetings with the Hon'ble Union Finance Minister and in the GST Council as well. Both the UTs with legislatures were the prime losers in the devolution because they were not covered by the Finance Commission grant and, therefore, did not get any money as a result of adoption of this mode of settlement. He stated that the Agenda laid down the process involved in the reversal of IGST balance of Rs.1.76 lakh crore during 2017-18. While the Government of India had released Rs.33,412 crore from the Consolidated Fund of India to the Compensation Fund, the remaining part of the reversal had been left to be decided by deliberations in the Group of Ministers (GoM) constituted for this subject matter. The Hon'ble Member said that he had been raising this issue in the various GST Council meetings and was now requesting GST Council to provide due share of Delhi of Rs.3200 crore. According to their calculation Delhi would have got about Rs.3700 crore out of the IGST lying in balance at the end of 2017-18. As Delhi would be required to return about Rs.326 crore which it got from Compensation Fund, the balance amount of Rs.3200 crore ought to be released to Delhi. In view of the Covid-19 pandemic, the revenue resources of Delhi have been adversely impacted and the Government is facing difficulty in meeting its statutory obligations including salary of its own staff. While an appropriate decision, in this regard, will be taken by the GST Council based on the recommendations of the GoM, the Hon'ble Member requested that the Council may approve to release this amount on *ad hoc* basis which can be subsequently settled along with revenue of the remaining States. The process laid down in the Agenda Item No.2 needs to be carried out; however, this would involve deliberations in the GoM and also



calculations of excess/deficit pertaining to the different States. Since the Government of India had already carried out the first leg of transaction by transferring Rs.33,412 crore from the Consolidated Fund of India to the Compensation Fund, it was requested that the settlement of amount pertaining to Delhi and Puducherry may be delinked from the overall reconciliation exercise. He requested that the decision to release this money of Rs 3,200 crores may be taken at the earliest so that they can get some timely relief on immediate basis. Moreover, this amount is due to Delhi. He again urged the Council to approve release of the due share of Delhi and Puducherry towards the IGST settlement pertaining to the year 2017-18, subject to final adjustment as will be decided by the Hon'ble Council on the recommendation of the GoM constituted for this purpose.

6.5 The Hon'ble Chief Minister of Puducherry supported what had been expressed by the Hon'ble Deputy Chief Minister of Delhi that as both the UTs are not covered by the devolution of the Finance Commission they did not get what was due to them on account of settlement from IGST since the fund was transferred into the Consolidated Fund of India. Several rounds of meetings were held amongst which one was held in the presence of Hon'ble Union Finance Minister and it was agreed that this issue will be resolved. Puducherry and Delhi are considered to be States under the GST Act. Therefore, both are entitled to compensation like other States. Sometimes, the apportionment will also be done. Looking into the situation, after considering the compensation that has been made, if any moneys are due to Puducherry and Delhi, it may be given. In case, the payments were excess, definitely they would have to reverse. Therefore, a final call has to be taken on this.

6.6 The Hon'ble Minister from Tamil Nadu stated that he wished to bring the long pending issue of IGST settlement for the year 2017-18 to kind attention of the Council. The Group of Ministers constituted for the purpose of examining the issue of IGST settlement had convened a meeting on 18.01.2020. No decision had yet been taken to release the pending accumulated IGST for the year 2017-2018 amounting to Rs.4,073 crore to the State of Tamil Nadu. He also requested the GoM to work out a regular system of apportioning the surplus in the IGST account among the States and Union Territories in accordance with the principles laid in section 17(2) of the IGST Act. He also urged the Hon'ble chairperson to make early release of pending compensation amount of Rs.553.01 crore for the year 2018-19 and Rs.1,101.61 crore for the year 2019-20.

6.7 The Hon'ble Minister from West Bengal referred to the presentation made. He was glad that a discussion arising out of the CAG report relating to non-settlement of the balance amount lying in IGST account of Rs.1.76 lakh crore was included in the Agenda Note 2. Out of Rs 1.76 lakh crore, Rs 88,000 crore is for the SGST. He drew attention to the CAG report which also stated that State share of central portion of IGST should have been given to the States. That amounts to Rs 88,000 crore. He was also very happy to note that an amount of Rs.33,412 crore had been reversed and the States compensated. He made an appeal that the balance amount of about Rs.54,588 odd crore which is due to the States should also be released early. His appeal was that, Rs 54,588 crore which is due to the States may be immediately returned to the States as per the formula, It is lying in the Consolidated Fund of India and it should be drawn as per the recommendation of CAG as well as the Finance Commission. Since compensation was also referred to in the presentation, he submitted that the regarding compensation as far as West Bengal was concerned, they were required to be compensated by an amount of about Rs.5,630 crore till the month of May 2020. He enquired whether all States across the country along with the Hon'ble Union Finance Minister could decide that what had been admitted already (CAG had already spoken on this subject), can it be reversed. Already Rs 33,412 crores had been paid. But Rs 54,588 crore remains to be paid. He enquired whether a decision on this matter can be taken on the same day. This amount of Rs 54,588 crore can be reversed and be paid to the States. He stated that he will speak on compensation later.

6.8. The Hon'ble Deputy Chief Minister of Bihar stated that the balance lying in Compensation Fund was Rs 8,013 crore. Now, there is a balance of Rs 5,000 crore at the end of April 2020. During the month of May 2020, another Rs 7,000 to 8,000 crore would have been collected in the compensation fund. So the total balance would be around Rs 12,000 crore. Since every State needs revenue during the epidemic, he requested that Rs 12,000 crore can be given to the States immediately as compensation for month of March 2020. Referring to the statement of Hon'ble Minister from West Bengal, he stated that out of Rs 88,000 crore of CGST revenue, the States would get 42% out of which is around Rs 36,000 crore. Already Rs 33,000 crore was disbursed which means that only Rs 3,000 crore remain. The Hon'ble Deputy Chief Minister then underscored the fact that out of the 92 lakh odd dealers during 2017-18 about 46 lakh odd dealers had filed their annual returns. Regarding the reconciliation statement out of 12,42,000, already 10,00,00 have filed their reconciliation statements. He urged for detailed scrutiny of the big tax payers among the 46 lakh dealers who filed their returns. He requested that instead of ad hoc settlement, even for 2017-18 it will be better if the Council goes for final settlement for year 2017-18. He is chairing a GoM on IGST settlement but due to Corona pandemic, he could not hold the meetings but he assured that he will hold a meeting soon regarding the 2017-18 IGST settlement. He urged the officials that the entire data of 2017-18 should be scrutinized thoroughly, analyze the entire data and examine from every angle to be placed before the GoM. It is a complicated process since there is reversal adjustment and some States get money while others are supposed to reverse. The officials should prepare a note and circulate it to the States and comments from States are to be invited which would be taken up by the GoM in its next meeting.

6.9 The Hon'ble Member from Kerala appreciated the initiative taken to resolve this long standing issue regarding outstanding IGST money which went into Consolidated Fund of India. But he thought some additional intervention is required. Just like Hon'ble Minister from West Bengal said there is a need for additional transfer of money to States. Rs 1.76 lakh crore was apportioned as per the Finance Commission formula where only 42% was apportioned to State. As per rules, States should have got 50% SGST and 42% out of the remaining 50% which turns out to be 21%. Hence, 71% should have come to the States. As of now, only Rs 33,412 crores have been transferred from the CFI to Compensation Fund. Remaining Rs 17,000 crores have to be released immediately.

6.10. The Hon'ble Minister from Telangana underscored that his State had been the top revenue performer in GST and they had not required any compensation in 2017-18 and 2018-19. In the current financial year also apart from the North-Eastern States, the State of Telangana had the least revenue gap as can be seen in Table 4 of the Agenda Note, of 11.5%. He requested that IGST settlement out of the balance at the end of 2017-18 in respect of Telangana should be done immediately as no compensation had been claimed by Telangana in 2017-18 and 2018-19. Further, the compensation requirement in the current fiscal should be released immediately because money was desperately required to fight Corona pandemic.

6.11 The Hon'ble Member from Karnataka stated that lot of calculations & clarifications are necessary on the issue of unapportioned IGST during 2017-18. Some States will gain by this exercise and some States have to do the reversal. Therefore, which State stands to get IGST apportioned and which have to do the reversal has to be calculated properly and opinion of States have to be taken on these calculations. These details can be worked out by the department and may be submitted to the GoM. The exact position of each State should be made known. States which have got more devolution would get less compensation while some States have got more compensation. This will have a direct effect on the finances of the States. He requested that this matter may be referred to a GoM which can have the detailed calculations. The reversal of money should not be conducted in one go or in a harsh manner. The GoM should also discuss how the reversal should take place keeping in view the COVID

situation and State finances. Ultimately, the capacity of the State to reverse is important and whatever is due to the States, the formula of 50:50 for State and Centre and devolution of 42% from Central pool to States should be strictly followed. Once all the figures are clear, the States will be in a better position to look into the matter and therefore should not be rushed through.

6.12. The Hon'ble Minister from Punjab stated that this issue which had been raised by Hon'ble Finance Minister of West Bengal was initially flagged off in the 37<sup>th</sup> GST Council Meeting at Goa by State of Punjab. The Hon'ble Union Finance Minister kindly consented to look into this entire matter and subsequently the GoM was constituted chaired by Hon'ble Dy. CM of Bihar but it is yet to be resolved. He saw this in State of Punjab as well that because of the COVID epidemic, apart from the Health department, every other department in the State seems to go into hibernation. This is a time where he thought every department of the Government, whether State or Union, needs to actually work over time, these are the times which brings out the character of the nation and its leaders. He felt that if this can be resolved quickly, then we can seize opportunities. Our competition is with countries like China & Korea. This matter has been pending since six to seven months. These are unusual times for the nation and he emphasized that there is a lot of pain. People lost lives and livelihoods. He felt that this epidemic has set the nation back by a number of years and he hoped that it can be recovered quickly. He urged the Hon'ble Union Finance Minister to set a time line and let us move at the speed of lightening.

6.13. The Hon'ble Minister from Haryana stated that he needed a clarification regarding Table 3 in the Agenda. The compensation cess collected for 2018-19 was Rs 95,081 crores and for 2019-20 was Rs 95,444 crores. However, in Table 1, there is a difference regarding the compensation cess figures. He thought that the figures add up to Rs 97,369 crores for 2018-19 and Rs 98,746 for 2019-20. He further added that as emphasized by all other State Ministers, every State is in dire need of funds to run their business and the Rs 55,600 crore which need to be given, if expedited, States will be in a better shape to function. In case, the States have to reverse some money that can be adjusted in the compensation that needs to be given to the State.

6.14. The Hon'ble Minister from Goa stated that everyone is aware that the country is going through troubled times. He is an optimist and looks at it as an opportunity to come out and come out well. Out of box solutions and more money are required to work but now it is a case of insufficient money. His humble suggestion is that while all States desire compensation, the compensation was supposed to be given only for five years, there was debate whether this time period should be further extended. He knew that ultimately, the States would have to stand on their own feet and compensation would become something of the past. He urged that what is due to the States should be given quickly. He made an important point that Goa depended on mining and tourism. Mining has been closed down and also tourism has totally collapsed. There are no sources of money. Goa have not received any compensation since March (it is about Rs 743 crore, had they received that amount, they would have been in a better position), Goa now is landing into a debt trap. To prevent this he requested that smaller States are to be looked at differently; ultimately, funds are going to be devolved. The Hon'ble Union Finance Minister was kind enough to give it as per the requisite formula, irrespective of whether they are big, medium or small. If there was a formula wherein it involves only a few hundred crores, if devolved earlier, the smaller States will not land into debt traps which will be difficult to get out because of the very reason that they are small. For example, for Goa, mining and tourism are closed, they have no source of funds and therefore they have to look towards the Centre only, At least what is due to them being smaller States, the smaller amounts can be given to them earlier than the bigger States where the amounts are big which are rightly due to them which they also require. Cry of smaller States is like the cry of a small

baby and therefore they should be heard first. His humble plea was that if they had given amounts earlier, they will not land into debt trap.

6.15 The Hon'ble Member from Uttarakhand expressed his gratitude to the Hon'ble Prime Minister and Hon'ble Chairperson for the fiscal package announced to help tackle the Covid pandemic. He was grateful that compensation of Rs.850 crore had been released to his State for the period December 2019-February 2020. He highlighted that Uttarakhand was also a small State and was dependent on tourism for revenue, both religious and general. However, as both were shut for the moment there was shortfall. He requested that for the month of March 2020, the compensation of Uttarakhand of Rs.302 crore should be given.

6.16 The Hon'ble Member from Odisha expressed his gratitude to the Chairperson for release of GST compensation for the period of December 2019 to February 2020. He further requested that as per the certified audit report of Principal Accountant General Bhubaneswar, Rs.456 crore was due to Odisha as compensation for 2018-19 and therefore the Hon'ble Union Finance Minister may be kind enough to release the amount.

6.17 The Hon'ble Deputy Chief Minister of Gujarat stated that he was grateful that for the fact that at a time when the income of the Central Government was low and all the States were in need of financial aid, the Central Government had released compensation. He further drew the attention of the Council to his plea made during the 39<sup>th</sup> GST Council meeting on 14<sup>th</sup> March 2020, which was also made by some other States, about the wrong use of C Forms causing loss of CST revenue to many States. He requested that there was an urgent need for amendment in the CST Act, 1956 to prevent the wrong use of C Form. He, therefore, suggested that the Parliament should introduce a bill immediately to amend the CST Law in its next session. The Hon'ble Member from Odisha supported the view of the Hon'ble Member from Gujarat for amendment of the CST Act to prevent the wrong use of C Forms.

6.18. The Hon'ble Member from Himachal Pradesh expressed his gratitude to Hon'ble Chairperson for release of Rs. 612 crore for the period December 2019 to February 2020. As the revenue of Himachal Pradesh is basically dependent on tourism and mining, both of which were suffering due to the pandemic, he requested that the amount of Rs.216 crore compensation for the month of March may be released.

6.19 The Hon'ble Member from West Bengal stated that he would like to correct his earlier figures since he was looking through the tables once again. Out of Rs 1.76 lakh crore, 42% devolution translates to Rs 73,920 crores which the States have got. He requested that for better understanding it was necessary that the officials concerned presented a matrix to the Council showing all the details of this transaction. States did get 42% because of the devolution which was Rs 73,920, now the question is by what matrix this devolution happened since there may be some corrections that may be required and requested that some light may be thrown on the remaining quantum which needs to be given to the States. Some States will gain more and some States will gain less because of Finance Commission's formula and some corrections may have to be made. He requested Joint Secretary, Department of Revenue for the matrix used and details of the amount still remaining. He also pointed out that Table 3 of the Agenda needed a bit of correction since balance quanta carried over are not present. He agreed with Dy. CM of Bihar that the balance as of now is Rs 8,013 crores and some more balance maybe accumulated. His understanding that it would be close to Rs 30,000 crores but he would like to wait and understand better what has been devolved, what is remaining and what would be correction of devolution formula vis a vis the scenario where the amounts would not have been sent to Consolidated Fund of India in that manner and the ad hoc settlement the States would have got.

6.20 The Hon'ble CM of Puducherry stated that States have not been getting GST compensation because GST collection has been less and sometimes there were delays in distribution of compensation. This period is critical to both Govt. of India and the States because of the Corona pandemic. The Hon'ble Chairperson heard the views expressed by the Hon'ble Members from States that States are mainly depending upon the revenue share for purpose of various expenditures including welfare schemes. This is the time when every State is fully concentrating on containing COVID-19. The Government of India and Governments of States are collectively working to ensure people are not affected by COVID. India is one of the few countries, thanks to its leadership at Centre & State level; the loss of life is very minimal. Entire energy and funds of the State Governments is mainly concentrated on containing COVID-19 in their respective States. As mentioned by Hon'ble Minister from Punjab, some of the departments are not able to concentrate and the focus is on containing COVID in their respective States. This being the situation, smaller states are more affected. He requested that timely payment of compensation amount was critical though the limit of borrowings by the States has been increased from 3% to 5%. There are several conditionalities attached to the enhanced borrowing. GST Council can decide on market borrowing at the Central Government level for the purpose of compensation to States. Otherwise, ways and means have to be found out. All States are dependent on revenue collection for purpose of augmenting revenue and expenditure. Smaller States are more dependent on the same. Further, UTs with legislature like Puducherry and Delhi do not get 41% of revenue share and only 26% and therefore they have been more affected. As mentioned by Hon'ble Minister from Goa that tourism was a focal area which is lost and inflow of people has been contained for the purpose of avoiding the spread of COVID-19. The businesses are going down, the two and half months of lockdown paralyzed the economy of the State. He once again requested that ways and means have to be found out to distribute compensation to the States timely. He further highlighted that as the return filing has been deferred, the apportionment of IGST could not be done and that is also one reason why they are unable to claim compensation. Therefore, GST Council needs to think and come up with a solution for this.

6.21 The Hon'ble Chairperson then asked Joint Secretary, Department of Revenue to respond to the queries/observations of the Hon'ble Members. Joint Secretary, Department of Revenue, stated that he would explain the broad number to the Council and table the detailed numbers before the GoM. As Hon'ble Minister from West Bengal had pointed out, States had actually received around Rs 68,000 crores of devolution in 2017-18 which has to be reversed, and Rs 88,000 crores should be settled to States as SGST portion. They will also get an additional Rs 37,000 crores of Rs 88,000 crores which the Centre gets from Rs 1.76 lakh crore. Since the States get Rs 88,000 crores of SGST, Rs 46,000 crores worth compensation has to be reversed. The net impact of all this is around Rs 11,000 crores. Instead of carrying out all these transactions which will entail reversal of additional compensation from some States, and release of funds to other States, only the zero cash component on the transaction was done so that money could go to compensation fund. This has been broken such that Rs 67,000 crores of devolution done in 2017-18 has been reversed. The Rs 37,000 crores devolution of Rs 88,000 crores is done but the SGST portion given is not Rs 88,000 crores but Rs 64,000 crores. The reversal of compensation is not Rs 46,000 crores but only Rs 33,000 crores. The net component of this Rs 33,000 crores had been transferred to the fund. The Rs 33,000 crores figure is a result of various debit and credit calculations. As Hon'ble Minister had requested, the entire matrix will be tabled before the GoM and explain how the calculations work so that it can be taken to its logical conclusion. He further stated that difference between Table 3 and Table 1 was on account of the fact that Table 1 showed the gross collections, Table 3 showed the net of refunds collections which accrues to the compensation fund and for comparison of trends in revenue the gross figures are utilized. He explained when coal or automobile are exported then compensation cess levied on the same are required to be refunded from the compensation kitty. He clarified that the balance in the fund is not Rs 30,000 odd crores. He further

clarified that as on April 2020 the balance of compensation fund was Rs.8,013 crore, as explained in paragraph 7 of the agenda Rs 33,000 crores were transferred and Rs 36,000 crores were released. Because of this transaction, only Rs 5,000 crore would remain as balance. For month of May 2020, the net collection would be around Rs 5,000 crores. So, as per his information after taking into account the collection under this head in the month of May 2020 there would be a balance amount of Rs.10,000 in this kitty. Hon'ble Dy. CM of Delhi enquired as to what was the position regarding Delhi since Delhi and Puducherry were outside the Finance Commission devolution and the adjustments did not happen. Joint Secretary, Department of Revenue replied that as Hon'ble Dy. CM of Delhi stated that they got a compensation of Rs 326 crores, the adjustment on behalf of Delhi resulted in transfer of fund to compensation fund and Rs 3,400 crores that Delhi was supposed to get will be transferred in the next leg of the transaction since it is a cash transaction. Hon'ble Dy. CM of Delhi requested that since they are short of funds, this process may be expedited. The Secretary to the Council stated GoM under the Chairmanship of Dy. CM of Bihar would be requested to expedite this and as few Hon'ble Ministers requested, the full matrix of devolution to States, the formulae utilized, the amount of credit and debit transactions that should happen as per the four legs mentioned earlier will be placed before the GoM and full settlement will be done. He further stated that the detailed exercise would have to be carried out to work out the reversal by the States and the additionalities that are required to be given to them. Hon'ble Dy. CM of Delhi submitted that detailed calculations based on the matrix and tabling the figures before the GoM might take time. Meanwhile, since the case of Delhi is clear cut, after adjusting Rs 326 crore compensation, Rs 3,400 may be transferred to Delhi for which GoM is not required

6.22 The Hon'ble Member from Karnataka stated that once the matrix has been prepared by the officials and placed before the GoM then the States should be given these details in advance and they should be given an opportunity to present their views before the Hon'ble GoM. The Hon'ble Chairperson said that, on this matter, as suggested by various Hon'ble Ministers, she would go by the calibrated way which Shri. Sushil Modi, Dy. CM of Bihar explained that a complete detailed matrix, payments done, what will be the give and take which has to happen and so on should be sent to every State and its team of officials. The States may raise all their respective queries and the replies from the Department of Revenue may be sent to the respective States. These will be compiled and submitted to the GoM. The GoM can take a look at it and then the Council can have a complete picture of it in the next sitting or whenever the GoM is ready. The Hon'ble Deputy Chief Minister of Delhi once again requested that the case of Delhi and Puducherry should be delinked because they did not get any amount on account of devolution of IGST by the Finance Commission formula and that they were willing to reverse the compensation given to them.

6.23 The Hon'ble Member from Kerala stated when he spoke earlier; he had limited himself entirely to 2018-19 GST reversal alone. But in the last GST Council Meeting, it was decided that there will be a elaborate and whole session devoted to compensation issue. He stated that there was a requirement to have a much larger debate on compensation and the Council should not restrict itself to only the reversal of the IGST amount. He highlighted that the GST collections in the months of April – May 2020 have fallen to about 50% of the normal collections. This could improve slightly but it will be much lower than the 14% increase that was envisaged at the time of inception of GST and the Council needs to discuss how to finance compensation. He highlighted that the compensation system worked like a contra-cyclical economic grant, i.e., when revenue collections sink, the expenditure need not be cut since there is the guaranteed level of revenue. If the stand is that the States have to be compensated only from what is collected in the compensation cess then current financial year will end with only about 10% - 15% of the compensation due being paid and therefore Council has to decide how this has to be financed. The proposal before the GST Council months before the passage of GST law was that

the Council should borrow and pay. He, therefore, urged that GST Council should borrow to pay compensation to the States and recoup the money by extending the period of compensation cess. He requested that this may be discussed and a decision taken since this is very important. Every Finance Minister has stressed the dire situation of State finances. The condition is going to accentuate in the coming months and therefore, this issue must be placed on the table and be discussed.

7. **For the Agenda item 2**, the Council took note of the same and the suggestions made by the Hon'ble Members.

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

8.1 The Finance Secretary invited Shri Manish Kumar Sinha, Joint Secretary, TRU-II to take up the Agenda Item No. 3

8.2 The Joint Secretary, TRU-II (JS, TRU-II) initiated the discussion with a presentation (**Annexure 3**) by stating that some of the Agenda Items are technical in nature, and that he will mention the same and seek approval of the Council. Introducing Agenda Item 3(i) relating to amendment in CGST Rules to prescribe the rates for Composition Scheme under Section 10(2A), JS, TRU-II stated that Rule 7 of CGST Rules needs to be amended because 6% GST Rate for Composition scheme for services (turnover up to Rs. 50 lakhs) was implemented through exemption notification route w.e.f. 01.04.2019 as at that point of time provision was missing in the GST laws.

8.3 He further stated that Section 10(2A) was enacted as part of Finance Act 2019 and notified. Now as the law had been amended, rule was also required to be amended as the rate was earlier specified through exemption notification. He proposed that Rule 7 of CGST Rules, 2017 be amended w.e.f. 01.04.2020 to prescribe 3% rate for such supplies by registered person opting to pay tax under section 10(2A) which was a change of technical nature.

8.4 The Hon'ble Minister from Tamil Nadu in his written speech circulated in the meeting submitted that they generally agreed to the proposals to amend rules for Composition taxpayers for small service providers under a separate entry in the rules.

8.5 The JS, TRU-II then took up Agenda Item 3(ii) relating to proposal for issuance of Removal of Difficulty order for extending the time limit for revocation of cancellation of registration. He stated that the Council in its 39th Meeting held on 14.03.2020 decided that for the registration cancellation orders passed up to 14.3.2020, the aggrieved was allowed to file application for revocation of cancellation till 30.6.2020 but the decision could not be implemented because Ministry of Law had raised some issues regarding Removal of Difficulty order and its scope. The same has now been sorted out with the Law Ministry and therefore date of implementation needed extension by three months. He proposed to allow filing of application for revocation of cancellation till 30.09.2020 for all the cancellation orders that were passed up to 12.06.2020.

8.6 The Hon'ble Minister from Tamil Nadu stated that he welcomed the proposal for extension for revocation of cancellation till 30<sup>th</sup> September 2020.

8.7. Taking up the next Agenda Item 3(iii) relating to notification of provisions of the Finance Act, 2020 amending various sections of the CGST Act and the IGST Act, JS, TRU-II stated that for the amendments made in CGST Act, *pari materia* amendments needed to be made in SGST Acts too. Most important of them is in relation to power to issue Removal of Difficulties order which is valid for 3 years from the appointed day i.e. till 30.06.2020 and after 30.06.2020, these powers will come to an

end. He stated that therefore, the proposal was to notify Sections 130 and 134 of Finance Act 2020 to come into force on 30.06.2020 so that powers will be available for 5 years i.e. till 30.06.2022. Power was needed for five years as it was also co-terminus with the period for which Centre had to pay compensation. He further stated that Sections 118, 125, 129 of the Finance Act, 2020 may also be given effect on 30.06.2020. As this was having no *pari materia* impact on SGST Acts, he stated that this portion of the agenda was of technical nature and be taken note of and approved, to which the Council agreed.

8.8. The Hon'ble Minister from Tamil Nadu submitted that with regard to amendment of State GST Act with reference to Finance Act No.12 of 2020, they wished to state that as the State legislature was not in session, they would issue the same by promulgating an Ordinance early.

8.9. On the second part of this Agenda he stated that there was a need to prescribe a process so that the recommendations of the Council requiring law amendment were implemented from a given date or within certain time frame as CGST Amendments and SGST amendments take time. Those States or Centre who do the amendment later than the given date may do it with retrospective effect so that the date of implementation of decisions of Council gets frozen.

8.10. To this the Finance Secretary added that this had caused certain litigation in the Court as the decisions of the Council could not be simultaneously implemented through notifications or amendments by Centre and all States, taxpayers try and take advantage of the same. He further emphasised that once the Council recommends certain amendments to be made in Central Act as well as State Acts, the amendments should be carried out as early as possible and particularly now, as due to COVID-19, there will be problems in holding sessions of the Parliament and the Legislature, therefore if the Council had taken decision then even an Ordinance could be considered so that our tax revenue gets protected as many of the amendments made, actually protect our tax revenue. If the amendments were not carried out expeditiously then many of these matters would end up in litigation and Court may take an adverse view because of the differences among various Acts.

8.11. The JS, TRU-II stated that for now the Council may only consider the same and need not take any decision as this may require detailed discussion which may be taken up later. Considering the paucity of time, the Council agreed to take up the matter in subsequent meeting(s).

8.12. Proceeding with Agenda Item 3(iv) consisting of two parts the JS, TRU-II taking up the first part on the issue of interest and late fee where the specified date for filing return (staggered up to 6<sup>th</sup> July) is breached stated that in light of the situation emerging out of Covid-19 compliance relief as detailed below had been given to all taxpayers for the returns of February, March and April 2020 tax periods

- Late fee waiver and 15 days interest waiver with lower rate of interest @9% beyond that for taxpayers having turnover > Rs. 5 Cr, if returns filed up to 24<sup>th</sup> June 2020.
- Late fee waiver and NIL interest for taxpayers having turnover < Rs. 5 Cr., if returns filed by the specified dates (staggered up to 6<sup>th</sup> July 2020).

He highlighted the issue as per the relief granted as above that, where the return is not filed by specified date(s), for the entire compliance delay, interest at 18% will be charged with late fee and the waiver of 15-day interest and late fee shall not be available. He requested that view may please be taken as to whether to allow some soft landing to these taxpayers who are not able to avail the relief granted as per the conditions of the package. He put forth the following options pertaining to the issue:

- A. Allow the scheme to continue the way it was decided, without allowing any further soft landing.



B. Extend the reduced rate of interest at 9% till the date of filing of return with full late fee.

C. Extend the reduced rate of interest at 9% till the date of filing of return with no late fee.

He further stated that this is one decision point; the second decision point is whether this soft landing should be given to all the taxpayers or to the small taxpayers only.

8.13. The Hon'ble Deputy CM, Delhi said that he was of opinion that it was good to be as soft/ lenient with the taxpayers as possible but two important factors needed consideration. First, revenue position of the States where salaries had to be paid and medical expenses to be met. Second, was to understand GST was not direct tax as income tax, where one is earning Rs. 100 and had to give some share out of that. It is like one has sold an item worth Rs. 100 collected Rs. 112. Rs. 12 being the GST collected in March from the buyer on behalf of the Government and is already lying with the dealer; moreover, State revenue was also down. Now to pay this tax, time of April and May was given because of lockdown. After duly considering these two factors we can be soft with small taxpayers.

8.14. Hon'ble Deputy CM of Bihar, stated that proposal was good and we should provide to taxpayers. Till the time previous returns were not filed, taxpayers would not be able to file their subsequent returns. Earlier also such kind of incentive was provided and if such relaxation is given again then we will get revenue which is otherwise blocked. He further stated that relief pertaining to ceiling of Rs. 500 for every delayed return statement should be given to both small and large taxpayers. It will give us additional revenue and pending returns will also be streamlined.

8.15. Finance Secretary stated clarifying that what the Hon'ble Deputy CM of Bihar had said, was a separate Agenda Item regarding the returns which could not be filed as previous returns had not been filed so far. This item is related to, when lockdown was started in March month, that time it was said that the taxpayers are not able to contact their consultants and were not able to get their returns filed. Therefore, the relaxations were given. Now, lockdown has been lifted and taxpayers can get their returns filed. Taxpayers were even generating 10-12 lakh e-way bills per day. Taxpayers who had not been able to file their return by 6<sup>th</sup> July for Feb, Mar and April month are required to pay interest at 18% as per the announcement made that time.

Current proposal is:

- First, whether to stick by decision as taken in March (as mentioned in option A above)
- Second, to give relaxation by changing interest @9% instead of 18% till the taxpayers file their return (as in option B)
- Third, charge interest @9% + no late fees (option C)
- Fourth, whether to do this only for small taxpayers or for big taxpayers too

He further said that as stated by Hon'ble Deputy CM, Delhi their revenue was under strain. We have only got Rs. 94,000 crores as GST revenue for the months of April & May. Usually we used to get more than Rs. 1 Lakh crore in each month. Therefore, we need to take a balanced view considering all the factors.

8.16. Hon'ble Finance Minister, West Bengal stated that return filing proposal is a good one as now internet is working though not perfectly but working. Some offices have also opened. So the first question is, should they be asked to file returns for past months, he thought it was quite reasonable as it will kick start the process. Second was the interest rate they should pay? Proposal was to reduce it from 18% to 9% or no interest at all? He thought as this was a *force majeure* that the taxpayers couldn't file the returns as entire nation went into lockdown so they could discuss whether to charge interest or not.

At this time, the important thing was to promote the return filing so that taxes can come. Finally, on the penalty, he was of the opinion that penalty shouldn't be there because it was a *force majeure* with no fault of the taxpayer. He added that they should be as liberal as possible so that the tax starts coming which was the point made by Delhi as also Bihar. Further he added that he was not in favour of punishing the taxpayers by charging penal interest for not being able to file the returns when entire nation went into lockdown. He submitted that if small people could not file returns, some help should be given to them.

8.17. Hon'ble Minister from Uttar Pradesh stated that he agreed with the views of Delhi, Bihar and West Bengal and requested to give effect to it as soon as possible.

8.18. Finance Secretary clarifying on the point raised by Hon'ble Finance Minister of West Bengal stated that issue is not about the interest of lock-down period, but they were saying that if someone had to file return by June 30 but couldn't do so and filed the return in December and made payment that time then whether the interest for the period from June to December should be charged or not? He said that as now lockdown period was over and if someone still doesn't pay tax till next year or till October, November or December then whether interest should be charged or not? He further added that in his view, interest should be charged as if this interest provision was not there then, there remained no incentive to pay taxes in time. So the proposal here was that their normal Rate of Interest is 18%, should they charge interest at reduced rate of 9% till the date of filing return from due relaxed date of filing return. The second part of the proposal was that big taxpayers were already given 15 days' time and that time was already over. Lot of big taxpayers had already paid taxes during that time and that is how Rs. 94,000 crores had come in the months of April and May. There should be no relaxation for big taxpayers. Relaxation should be there for only small taxpayers and up to 9% interest rate and we may not charge late fees from them. This 9% interest rate will serve as disincentive for deliberately delaying filing of return beyond July.

8.19. Hon'ble Minister from Karnataka, stated that the proposal to reduce interest rate from 18% to 9% was most welcome and as per options available, Option B seemed to be most appropriate because this deals with the post-lockdown period and for the taxpayers having turnover of Rs. 5 crore and below. Big taxpayers had already been given sufficient time as stated by Finance Secretary. Therefore, the Option B was most appropriate.

8.20. Hon'ble Deputy CM, Haryana said that they had three points to make. First, giving more time during lock-down was fine but giving more time now was not appropriate as banks were giving loan at same interest rate. Second, relaxation should be given only to the small taxpayers not to the big taxpayers as, if we start giving relaxation to big taxpayers also then there will be a major revenue loss. Third, on penalty he was of the opinion that it should be reduced because such epidemic was unforeseen and it was the right time for the Council to take call on reduction of penalties for late filers.

8.21. Hon'ble Minister from Goa, said that during this COVID time everybody was looking to the Central Government for relief but at the same time the States should also be looking towards revenue i.e. how the revenue will come? There can't be a complete soft landing for everyone. Small taxpayers should be given relief and Rate of interest should be reduced from 18% to 9% for them. As far as the penalty is concerned, the question of charging penalty shouldn't be raised as it was unforeseen circumstance but nevertheless let us take a balanced view, so that revenue should also keep coming.

8.22. Hon'ble Deputy CM, Gujarat stated that for paying tax which had already been collected from the customer, Rate of Interest should be NIL till June, from June to September, it should be 9% and after September it should be 18% as this was not required to be paid from taxpayer's own pocket. It had

already been collected from the customer on behalf of Government. If they don't increase the interest rate to 18% and keep the same at 9% only, the taxpayers will use this money, interest being lesser than bank rate. Therefore, it should be increased to 18%.

8.23. Hon'ble Minister from Tripura stated that he would like to go with the Karnataka's Finance Minister suggestions as Option B seemed to be good and balanced one. It will look after revenue collection as also give some relief to small taxpayers.

8.24. Summing up the discussion Finance Secretary stated that there appeared to be a general consensus for Option B but as Gujarat had suggested, reduced rate of 9% should only be applicable till September so that taxpayers should file their return by September and they should start getting revenue.

The modified version of Option B as laid before the Council by the Finance Secretary was:

- Reduced rate of interest at 9% (excluding the lock-down period for which interest would be NIL)
- This reduced rate of 9% will be applicable upto September, 2020.
- Beyond September, 2020, interest will be charged at earlier rate i.e. 18%
- Same be applicable only for small taxpayers

Finance Secretary sought consent of the Hon'ble Members on the same before proceeding with the next Agenda Item.

8.25. Hon'ble Finance Minister West Bengal interjected that he had a different view than that of Hon'ble Deputy CM of Gujarat. He said that as per epidemiologists' COVID cases will spike from July onwards. They didn't know, they might get lock-down in June end. Exponential curve was taking place as had been the case in other countries. As they didn't know what will be the situation from July to September, it was too pre-mature to take decision for that period. Rate of Interest at 9% for small taxpayers from July onwards also appeared very stringent to him but he was willing to go along with the decision subject to a review, that they should take a review of the decision sometime in July before applicable rates after September are decided. He accepted proposal from July onwards and suggested withholding of any final decision on applicable rates post September subject to a review of the economic situation prevailing at that time.

8.26. Finance Secretary suggested that we could record it as a decision but we will review the matter in June end or July and if we find that the situation has changed then we will modify it accordingly to which the Council agreed. Summarising the decision, he stated that till September rate of interest be charged at 9% and beyond that 18%, however this will be reviewed in July and if the situation worsens further, then they could further extend benefit of 9%.

8.27. The Hon'ble Finance Minister, West Bengal agreed to the decision conditional to review.

8.28. Proceeding with the second part of the Agenda Item 3(iv) JS, TRU-II stated that this entire discussion was thus far related to the first part of the said agenda with regard to the returns for the period of February, March and April 2020. The second part dealt with the returns for the period of May, June and July 2020. Briefly recapitulating the compliance relief that had been given to all taxpayers for February, March and April 2020 tax periods as under:

- Late fee waiver and 15 days interest waiver with lower rate of interest @9% beyond that for taxpayers having turnover > Rs. 5 Cr, if returns filed upto 24<sup>th</sup> June 2020.

- Late fee waiver and NIL interest for taxpayers < Rs. 5 Cr. Turnover, if returns filed by the specified dates (staggered upto 6<sup>th</sup> July 2020).

He requested the Council to take decision on the compliance relief, if any, to be provided to taxpayers for subsequent three months and brought forth following options for the consideration of the Council:

- Extend relief package only for small taxpayers (aggregate turnover<Rs.5cr), unlike last time when the relief was provided to all taxpayers
- Extend scheme for all taxpayers like past scheme for Feb, Mar and Apr, 2020.
- No such scheme for subsequent months

8.29. Hon'ble Minister Chhattisgarh said that he would like to give consent of Chhattisgarh for Option A. He elaborated stating that they had estimated that around 80,000 small taxpayers would be benefitted (aggregate turnover < Rs.5cr) and the revenue loss was likely to be Rs 12-13 Crore, so at this juncture, we will be putting that much money in their hands for purchasing and contributing to economic activities. He also requested that decision regarding C-Form should be taken as soon as possible. Further he thanked Hon'ble Chairperson for bringing up the issue pertaining to the amount which had gone into the Consolidated Fund of India for FY 2017-18 in GOMs meeting. Lastly, he sought Hon'ble Chairperson's permission to disengage himself from meeting as the Hon'ble Chief Minister of Chattisgarh had called for a meeting in context of COVID-19 activities. He said that the Principal Secretary and other Officers will continue to attend the meeting.

8.30. The Hon'ble Deputy CM of Bihar said that they were in favour of Option A i.e. to extend relief package only for small taxpayers. He also said that for the months of June and July, 2020 proposed GSTR-3B return filing dates are very close for small taxpayers. For the month of June the proposed dates are 23<sup>rd</sup> September and 25<sup>th</sup> September and for the month of July the proposed dates are 27<sup>th</sup> September and 29<sup>th</sup> September respectively. He suggested that there should be a gap of atleast 7 days between the proposed return filing dates for the month of June and July.

8.31. Hon'ble Minister from Goa said that they would also like to go with Option A. As everybody is expecting COVID-19 to be at its peak in June and July so it was the only feasible option.

8.32. Finance Secretary stated that as everyone consented we will go with Option A for the months of May, June and July and as suggested by Hon'ble Deputy CM of Bihar, the due dates will be sufficiently staggered.

8.33. The Agenda Item 3(v) relating to the reduction in rate of interest on delayed filing of return to 9% for the entire Fiscal year 2020-21 was not taken up as decision on reduced rates had already been taken covering period up to September 2020 and subject to review thereafter, hence the said Agenda Item was dropped.

8.34. The Hon'ble Minister from Tamil Nadu in his written speech submitted that the proposal in the Agenda Item 3(v) was to defer GST payment for taxpayers with turnover up to Rs.5 crore beyond 30.6.2020 till 31.3.2021, with interest of 9 percent. This rate of interest was lower than marginal cost of working capital. Therefore, it was likely that this category of taxpayers would be tempted to opt for deferral, even if they didn't need assistance. Further, repeated deferrals would only result in indebtedness of the small tax payers. There was also doubt if they would be able to pay deferred taxes with interest in one lumpsum after 31.3.2021. They therefore believe that tax deferral may not be the most appropriate way of supporting the small tax payers at this time of need. Moreover, State Governments had already come under heavy financial burden due to steeply falling revenues and need

for financial resources to fight COVID 19. They therefore suggested that Government of India must adopt other kinds of measures to help small businesses.

8.35. Proceeding with the last Agenda Item in Agenda 3 (vi) relating to reduction in late fees for **FORM GSTR-3B** for months from July, 2017 to January, 2020, a one-time reduction to clean up pendency in return filing in GST regime JS, TRU-II stated that this item was in relation to the small taxpayers. In the initial part of the GST launch, many of them were not able to file their returns. As the return filing cycle in GST is such that the returns have to be filed sequentially, many of the taxpayers had landed with the situation that there was a string of return which they had not been able to file. Large number of them will fall in the category where the amount of tax involved has become much lesser than the amount of late fees to be paid as the late fees per month is Rs. 10,000, and if not filed for 6-8 months, the amount reaches to Rs one lakh whereas, the tax liability for the small taxpayers for that month may be in the range of Rs. 2000-5000.

He laid before the Council following proposal:

One-time reduction in late fee on GSTR-3B returns of tax periods July, 2017 to January, 2020:

- Zero late fee for taxpayers, who did not have any tax liability for the said tax periods and were thus required to file NIL return;
- For others, reduce maximum late fee from Rs. 10000 (Rs. 5000 each for CGST & SGST) at present to Rs 500/- (Rs. 250 each for CGST & SGST) per return.
- Such reduction would apply only if the returns are filled between 01.07.2020 to 30.09.2020.

Hon'ble Chairperson asked for the views of the Council on the said proposal.

8.36. Hon'ble Minister from Goa stated that we should go ahead with the proposal. He added that it was not an amnesty but what he would rather call 'deserved relief'. He stated that it would help us get revenue and increased compliances.

8.37. Hon'ble Minister from Uttarakhand enquired whether the people who have deposited their tax in time, will get the refund of the late fees paid.

8.38. Finance Secretary clarified that this proposal is about relaxations which is brought in tax administration sometimes as a one-time measure. Only when the taxpayer files all return from July 2017 to January 2020, he will be allowed to file subsequent returns. It's a kind of temporary relief given to the taxpayers to help them clear their backlog.

He emphasised that the scheme has following 3 benefits:

1. All taxpayers will come into the system.
2. Return filing will pick-up and the system will be streamlined/ cleared.
3. We will get tax revenue.

He further clarified that if we start giving refund of late fees paid earlier, then we will end up paying a huge amount as refund. Neither Centre nor States could afford that. Such relaxation schemes had always applied prospectively.

8.39. The Hon'ble Deputy CM of Bihar stated that he did not think that there should be any issue with this proposal. It was a very good proposal and we should have general consensus on the same.

8.40. The Hon'ble Finance Minister of Kerala said that they were in total agreement with the proposal.

9. For **Agenda Item 3**, the Council:

- i. Approved following amendment in rule 7 of the CGST Rules, 2017, w.e.f. 01.04.2020 to prescribe the rates for Composition Scheme under Section 10(2A)

**7. Rate of tax of the composition levy.**-The category of registered persons, eligible for composition levy under section 10 and the provisions of this Chapter, specified in column (2) of the Table below shall pay tax under section 10 at the rate specified in column (3) of the said Table:-

Sl. No.	Category of registered persons	Rate of tax
(1)	(2)	(3)
1.	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent. of the turnover in the State or Union territory
2.	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent. of the turnover in the State or Union territory
3.	Registered persons not eligible under the composition levy under sub-section (1) and sub-section (2) but eligible to opt to pay tax under sub-section (2A) of section 10	three per cent. of the turnover of taxable supplies of goods and services in the State or Union territory
4.	Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter	half per cent. of the turnover of taxable supplies of [goods and services] in the State or Union territory

- ii. Approved issuance of Removal of Difficulty order to allow filing of application for revocation of cancellation till 30.09.2020 for cancellation orders that were passed up to 12.06.2020.

- iii.  
A) Approved the following provisions of the Finance Act, 2020 pertaining to amendments in the CGST Act and the IGST Act, to be brought into force with effect from **30.06.2020**:

S.No.	Finance Act 2020 section	CGST/ IGST Act 2017 section	Purpose of Amendment and reason for carrying out the amendment
1.	118	2(114) of CGST	To provide for merger of UTs of Daman and Diu and Dadra and Nagar Haveli – Already operational
2.	125	109 of CGST	To provide for conversion of the State of Jammu and Kashmir into Union territories of Ladakh and Jammu and Kashmir– Already operational
3.	129	168 of CGST	To provide for allowing jurisdictional Commissioners to allow job work movement beyond time limit in desired instances– Already operational but held up due to this provision not in force

4.	130 & 134	172 of CGST & 25 of IGST respectively	To extend the time period for issuance of Removal of Difficulty order from three to five years
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- B) To take up the issue of devising a manner by which decisions of the Council relating to amendment of GST Laws can be implemented expeditiously and simultaneously by Centre and states, in subsequent meeting(s) of the Council.

iv.

A) Taxpayers having aggregate turnover exceeding Rs. 5 Crore, who were required to file returns of Feb, March and April, 2020 by 24<sup>th</sup> June to avail the benefit Covid relief package, NIL interest to be charged for 15 days from due date and interest @ 9% to be charged thereafter till 24<sup>th</sup> June and at normal rate of 18% after 24<sup>th</sup> June 2020.

B) Provided relief to small taxpayers (aggregate turnover up to Rs 5 crore) for filing of returns for the months of February, March and April 2020 through reduced rate of Interest of 9% for the period of relaxed due filing date till September 2020. Beyond September 2020 interest of 18% shall apply subject to review of the economic situation.

C) Provided relief to small taxpayers (aggregate turnover up to Rs 5 crore) by waiver of late fees and interest if the returns in **FORM GSTR-3B** for the supplies effected in the months of May, June and July, 2020 are furnished by September, 2020 (staggered dates to be notified).

v. This agenda was dropped.

vi. Approved the proposals for reduction in late fees for not furnishing **FORM GSTR-3B** for tax periods during 1<sup>st</sup> July, 2017 to 31<sup>st</sup> January, 2020, if the returns are filed between 01.07.2020 to 30.09.2020

a. zero late fee for taxpayers, who did not have any tax liability for the said tax periods and are thus required to file NIL return;

b. late fee of fifty rupees per day (Rs. 25/- under CGST Act plus Rs 25/- under SGST Act) for non-filing of returns as currently applicable subject to a maximum of Rs 500/- (Rs. 250/- each for CGST & SGST) per return as against ceiling of Rs. 10000/- (Rs. 5000/- each for CGST & SGST) at present by taxpayers other than those having NIL liability.

#### **Agenda Item 4: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government**

10.1 The Secretary asked JS, TRU-II to place the agenda before the Council. JS, TRU-II introducing the Agenda briefed the Council that the Agenda is regarding deemed ratification of Notifications, Circulars and Orders in relation to decisions already taken by GST Council and if deemed fit may be ratified and approved by Council. He stated that in the 39<sup>th</sup> GST Council meeting held on 14-3-2020, the Council had ratified all the notifications, circulars and orders issued before 8-3-2020. He thereafter made a presentation (**Annexure 3**) listing out all the notifications, rate and non-rate of CGST, UTGST, IGST and Compensation Cess circulars and Removal of Difficulty orders issued since 8-3-2020 till 10-06-2020, under the GST Laws by the Central Government as available on [www.cbic.gov.in](http://www.cbic.gov.in)

10.2 Hon'ble Minister from Odisha sought permission of the Hon'ble Chairperson to make a submission that this agenda item was placed as a Table Agenda in the last GST Council meeting held

on 14-3-2020. He requested that such critical matters be discussed threadbare and not taken up as Table Agenda.

10.3 The Finance Secretary sought clarity on the Agenda that the Hon'ble Minister was pointing to as the Agenda Item 4 being discussed then was not a Table Agenda.

10.4 The Hon'ble Minister from Odisha clarified that it was not a Table Agenda for today's meeting but in the last meeting held on 14-3-2020, there was a Table Agenda wherein there were significant legal ramifications involved.

10.5. The Hon'ble Chairperson taking note of the submissions of Hon'ble Minister from Odisha stated that since the Hon'ble Minister was highlighting this issue which according to him had serious legal implications, the same be taken up as an Agenda Item in the next Council Meeting. The Hon'ble Minister from Odisha thanked the Hon'ble Chairperson for the same.

11 For **Agenda Item 4** the Council:

- i. Granted deemed ratification to the following Notifications, Circulars and Orders as in Agenda Item and the presentation (**Annexure 3**) made during the Council Meeting, which are available on [www.cbic.gov.in](http://www.cbic.gov.in)

Act/Rules	Type	Notification/Circular/Order Nos.
CGST Act/CGST Rules	Central Tax	09 to 43 of 2020
	Central Tax (Rate)	02 to 03 of 2020
IGST Act	Integrated Tax	03 of 2020
	Integrated Tax (Rate)	02 to 03 of 2020
UTGST Act	Union Territory Tax	01 of 2020
	Union Territory Tax (Rate)	02 to 03 of 2020
Circulars	Under the CGST Act	132 to 138 of 2020

- ii. The Notifications, Circulars and Orders issued by the States which are *pari materia* with above Notifications, Circulars and Orders were also deemed to have been ratified.
- iii. Table Agenda Item 11 (v) be moved as a regular agenda in the 41<sup>st</sup> GST Council meeting.

**Agenda Item 5: Decisions of the GST Implementation Committee (GIC) for information of the Council**

12. The Secretary asked JS, TRU-II to present Agenda No. 5. Thereafter, JS. TRU II stated that the GIC Implementation Committee (GIC) took decisions between 15.03.2020 and 26.05.2020. Further, due to the urgency involved, certain decisions were taken by GIC after obtaining approval amongst GST Members by circulation or by virtual meeting. Thereafter, he made a presentation (**Annexure 3**) on the decisions taken by Members of the GIC post 39<sup>th</sup> GST Council Meeting.

13. For **Agenda Item 5**, the Council took note of the decisions of the GST Implementation Committee between 15.03.2020 and 26.05.2020



**Agenda Item 6: Decisions/recommendations of the 11<sup>th</sup> and 12<sup>th</sup> IT Grievance Redressal Committee for information of the Council**

14. After the 39<sup>th</sup> GST Council meeting, two meetings of the ITGRC were held viz. the 11<sup>th</sup> ITGRC on 18<sup>th</sup> March 2020 and the 12<sup>th</sup> ITGRC on 26<sup>th</sup> May 2020 to resolve grievance of the taxpayers arising out of technical and non-technical issues. Minutes of the 11<sup>th</sup> ITGRC Meeting were attached as Annexure 1 (page no 150 to 311) to the Volume-1 of Detailed Agenda and Minutes of the 12<sup>th</sup> ITGRC Meeting were attached as Annexure A (page no 18 to 48) to the Volume-2 of Detailed Agenda. The gist of the proceedings of the 11<sup>th</sup> and 12<sup>th</sup> ITGRC, as per Agenda Item was as follows:

**11<sup>th</sup> ITGRC Meeting – 18<sup>th</sup> March 2020**

14.1. The 11<sup>th</sup> meeting of the IT grievance Redressal Committee (IT-GRC) was held in Kalpvriksha, North Block, New Delhi on 18<sup>th</sup> March 2020 to resolve grievance of the taxpayers arising out of technical and non-technical problems. There were a total of 04 Agenda Items placed before the 11<sup>th</sup> ITGRC, as follows:

- a. In Agenda 1, total 257 cases of TRAN-1/TRAN-2 received from Nodal Officers had been examined by GSTN and presented before the ITGRC.
- b. In Agenda 2, another 18 cases of TRAN-1/TRAN-2 received as Court Cases had been examined by GSTN and presented before the ITGRC.
- c. In Agenda 3, in pursuance of decision in 32<sup>nd</sup> GST Council Meeting, regarding extended scope of ITGRC, GST Council Secretariat had received another 05 cases in response to extended scope of ITGRC and analysis of these cases was presented before the ITGRC.
- d. In Agenda 4, cases covered under the M/s. Adfert Technologies Pvt. Ltd judgement in view of dismissal of SLP by Hon<sup>ble</sup> Supreme Court filed by the UOI were discussed by the ITGRC.

14.2. After detailed discussion, the 11<sup>th</sup> ITGRC decided and recommended as under:

14.3. **Recommendation for Agenda 1; Pertaining to cases received from Nodal Officers on account of technical glitches in filing TRAN-1 & TRAN-2 (257 cases):**

- i. To allow 75 cases of TRAN-1/TRAN-2 pertaining to Subcategories A1, A2, A4 and A5 of technical glitch for filing of TRAN 1/TRAN 2 in accordance with the Law Committee recommendations regarding consequential benefits related to filing of TRAN 1 and TRAN 2.
- ii. Not to allow remaining 182 cases of TRAN-1 pertaining to Category 'B' (Subcategories B1, B2, B3, B4, B5, B6, B7 and B8) in the absence of any evidence of technical/system errors in these cases, as was decided in similar cases in past ten IT-GRC meetings.

14.4. **Recommendation for Agenda 2; Pertaining to cases received as Court Cases on account of technical glitches in filing TRAN-1 & TRAN-2 (18 cases):**

- i. To allow 07 Court cases of TRAN-1/TRAN-2 pertaining to subcategories A1 and A5 of technical glitch for filing of TRAN 1/TRAN 2 in accordance with the Law Committee recommendations regarding consequential benefits related to filing of TRAN 1 and TRAN 2.
- ii. Not to allow remaining 11 Court cases of TRAN-1/TRAN-2 pertaining to Category 'B' (Subcategories B1, B3, B4 and B6) in the absence of any evidence of technical/system errors in these cases, as was decided in similar cases in past ten IT-GRC meetings.

14.5. **Decision for Agenda 3 (05 cases):**

- i. To allow reopening of portal for 01 case of Subcategory A1 as per Extended Scope of ITGRC decided in 32<sup>nd</sup> GST Council Meeting.
- ii. Not found suitable 04 cases of Subcategory A2 to take decision as per extended scope of ITGRC as laid down by 32<sup>nd</sup> GST Council decision.

**14.6. Recommendation for Agenda 4:**

- a. The Committee agreed and directed that cases shall not be referred to ITGRC wherever an appeal against the order of Court at appropriate judicial forum is decided to be filed.
- b. The Committee agreed and directed that if the order of High Court to allow filing of TRAN-1/2 etc has been accepted by the jurisdictional Competent Authority of the Centre/ State Tax, then such cases shall not be referred to ITGRC.
- c. In cases pertaining to Central Tax taxpayers, if it is decided by the jurisdictional Central Tax Commissionerate with the approval of the Chief Commissioner concerned to accept the said order of Hon'ble High Court / Supreme Court as per prescribed procedure, then the same needs to be communicated in writing to GSTN by the concerned Central Tax Commissionerate with the approval of the Chief Commissionerate for implementation of the order of the Hon'ble Court. Similarly, in case of State Tax taxpayers, if the jurisdictional State Tax authorities decide to accept the said order of Hon'ble Court, then it needs to be communicated in writing to GSTN by the jurisdictional State Tax authorities with the approval of State Tax Commissioner for compliance of the order of Hon'ble Court. On receiving of the communication from the jurisdictional field formation with the approval of the Chief Commissioner of Central Tax or Commissioner of State Tax, as the case may be, GSTN will take action for compliance of Court order for opening of the portal for the said taxpayer. However, the jurisdictional tax authority will verify the correctness, genuineness and eligibility of the transitional credit claimed by the taxpayers as per provisions of CGST / SGST Act 2017 and the rules thereof and will take appropriate remedial action, if required.
- d. All technical glitch cases submitted to Nodal Officers by the tax payers till 31st March, 2020 should be forwarded to GSTN as per SOP dated 12-04-2018 of GSTN and procedure specified in CBIC Circular 39/13/2018 dated 03.04.2018 read with CBIC letter F.No.CBEC-20/06/17/2018-GST dated 04.02.2020. Thereafter, GSTN shall examine technical logs of all such cases and place before the ITGRC for decision
- e. The following issue shall be referred to the Law Committee through GSTN:

whether the date prescribed under Rule 117(1A) is the last date for completion of all the formalities including the filing/revision of TRAN-1/2 and whether the said date would need to be extended again if the cases have been received upto 31.03.2020 by Nodal Officers and GSTN but considered and approved after 31.03.2020 by ITGRC for being allowed to file/revise TRAN-1/2.

**12<sup>th</sup> ITGRC Meeting – 26<sup>th</sup> May 2020**

14.7 The 12<sup>th</sup> meeting of the IT grievance Redressal Committee (IT-GRC) was held on 26<sup>th</sup> May 2020 through Video Conference to resolve grievance of the taxpayers arising out of technical problems. The Agenda 1 consisting of a total of 118 cases of TRAN-1/TRAN-2 had been examined by GSTN and presented before the ITGRC. Out of these, 104 cases were sent by Nodal officers and 14 were court cases. After detailed discussion, the 12<sup>th</sup> ITGRC decided and recommended as under:

**14.8. Recommendations for Agenda-1:**

- i. 38 cases of TRAN-1/TRAN-2 have been recommended, pertaining to Category 'A' (subcategories A1 and A5) for filing of TRAN-1/TRAN-2 to avail consequential benefits related to filing of TRAN-1 and TRAN-2.
- ii. 80 cases of TRAN-1/TRAN-2 have not been recommended, pertaining to Category 'B' (Subcategories B1, B2, B3, B4, B5 and B6) in the absence of any evidence of technical/system errors in these cases.

14.9. The decisions/recommendations as per attached Minutes of the 11<sup>th</sup> and 12<sup>th</sup> ITGRC were placed for information of the Council.

15. For **Agenda item 6**, the Council took note of the decisions/recommendations of the 11<sup>th</sup> and 12<sup>th</sup> Meeting of the IT Grievance Redressal Committee.

**Agenda Item 7: Creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh:**

16. The Secretary introduced the agenda and stated that the Chapter XVIII of the CGST Act 2017 provides for the Appeal and Review Mechanism for dispute resolution under the GST regime. The proposal of States and UTs for creation of State and Area Benches of Goods and Services Tax Appellate Tribunal was considered in the 35<sup>th</sup>, 37<sup>th</sup>, 38<sup>th</sup> and 39<sup>th</sup> meeting of the GST Council.

16.1. He further stated that in the 39<sup>th</sup> GST Council meeting the Council approved the proposal for creating State Bench of Goods and Services Tax Appellate Tribunal for the State of Uttar Pradesh at Allahabad and 4 Area Benches at Ghaziabad, Lucknow, Varanasi and Agra. He then asked JS, DoR, GoI to apprise the Council of the latest update.

16.2. JS, DoR, GoI stated that a fresh proposal was received from the State of Uttar Pradesh vide DO. No 20/GST dated 29<sup>th</sup> May, 2020 regarding creation of the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh. As per this letter, the State Government of Uttar Pradesh has decided to create total 04 benches of GSTAT including State Bench in the State i.e. State Bench in Lucknow and 03 Area Benches in Varanasi, Ghaziabad and Agra respectively, instead of 05 benches of GSTAT proposed by the State earlier.

16.3. Hon'ble Minister for Finance from Uttar Pradesh intervened and further proposed to consider creation of another Area bench at Prayagraj apart from Varanasi, Ghaziabad, and Agra with State Bench at Lucknow.

16.4. Accordingly, the proposal for creating the State and Area Benches of the Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Uttar Pradesh i.e State Bench at Lucknow and 04 Area Benches at Varanasi, Ghaziabad, Agra and Prayagraj was considered and approved by the Council

17. For **Agenda No. 7** the Council approved the creation of State Bench at Lucknow and 4 Area benches at Varanasi, Ghaziabad, Agra and Prayagraj for the State of Uttar Pradesh.

**Agenda Item 8: Quarterly Report of the NAA (National Anti-profiteering Authority) the period from 01.01.2020 to 31.03.2020**

18. In terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017, National Anti-Profiteering Authority (NAA) was required to furnish a performance report to the GST Council by 10<sup>th</sup> of the closing of each quarter. The Secretary introduced this Agenda Item pertaining to various issues related to the National Anti-profiteering Authority (NAA) and placed the quarterly performance report for the period from 01.01.2020 to 31.03.2020 of National Anti-profiteering Authority of the financial year 2019-2020 before the Council, as under:

- (a) 34 Orders were passed by the Authority during this quarter. All the orders were passed unanimously. A total of 66 Investigation Reports are pending for disposal with the NAA.
- (b) Apart from the above, the following important DO letters have been issued by NAA:

- (i) D.O. letters dated 14.01.2020 addressed to Chief Commissioners/CCTs of various zones/states to take necessary action on the complaints which are getting time-barred to ensure that the applications of consumers can be timely addressed.
- (ii) D.O. letter dated 19.02.2020 addressed to Principal Secretary (Finance), Government of Punjab for appointment of Screening Committee on Anti-profiteering in Punjab for quick disposal of pending complaints and proactive approach in dealing with implementation of anti-profiteering provisions in GST law.
- (iii) D.O. letters dated 17.03.2020 addressed to Director General, DGAP regarding smooth functioning of State Level Screening Committee and implementation of the Authority's Orders.

18.1. In the wake of corona pandemic outbreak and subsequent lockdown in Delhi, the hearings scheduled from 23.03.2020 to 31.03.2020 could not be held.

18.2. The complaints received by the Authority during the Quarter are as follows and the same were forwarded to the respective Screening Committee/ Standing Committee where allegation of profiteering was there:

- NAA Portal	: 37
- E-Mail	: 20
- Physically (by post)	: 8

The complaints related to enforcement issues and where allegation relates to tax-evasion etc. were forwarded to the Jurisdictional Chief Commissioners & CCTs for necessary action.

18.3. The NAA is operating a helpline (011-21400643) for the consumers to get their profiteering related queries resolved and to provide help to them in filing the complaints, along with an online grievance registration portal on NAA's official website; [www.naa.gov.in](http://www.naa.gov.in).

18.4. The above Quarterly Report of the NAA (National Anti-profiteering Authority) the period from 01.01.2020 to 31.03.2020 was placed before the Council and the Council took note of it.

19. For **Agenda item 8**, the Council took note of the performance of the National Anti-Profiteering Authority period from 01.01.2020 to 31.03.2020.

**Agenda Item 9: Constitution of Grievance Redressal Committee at CBIC Zonal/State level for redressal of grievance of taxpayers on GST related issues**

20. The Secretary introduced the agenda and stated that the GST Council in its 38th meeting held on 18.12.2019 had decided that a structured grievance redressal mechanism should be established for the taxpayers under GST to tackle grievances of taxpayers on GST related issues of specific / general nature. GST Council has accordingly approved constitution of 'Grievance Redressal Committee' at Zonal/State level consisting of both Central Tax and State Tax officers, representatives of trade and industry and other GST stakeholders.

20.1. Office Memoranda F.No. 820/GRC/GSTC/2019 dt. 30.12.2019 and 07.02.2020 were issued by this GST Council Secretariat for constitution of Grievance Redressal Committee (GRC) at CBIC Zonal/State level in accordance with CBIC letter F.No. 20/10/16/2018-GST(Pt.1) dated 24.12.2019.

20.2. The present position of constitution of GRC on the basis of orders constituting Zonal/State level Grievance Redressal Committee which have been received in the GSTC Secretariat, have been compiled and updated (**Annexure 4**). The details of constitution of these GRCs are being uploaded regularly on the GST Council website <http://www.gstcouncil.gov.in/grievance-redressal-committees->

[central-zone-state-level](#) under sub-menu "Public Grievance Redressal Committee (GRC)" under menu "Help" for creating awareness amongst the trade.

20.3. It was requested that the remaining CBIC Zones and States /UTs constitute GRC at Zonal or State/UT level, as the case may be, and copy of orders of constitution of GRC may be sent on priority to the GST Council Secretariat.

20.4. It is also informed that GSTN has created a specific portal for uploading the grievances received in these meetings, for the purpose of escalating the same to the appropriate authority. The CBIC Zones /States/UTs are requested to take Login credentials from GSTN for the aforesaid Portal.

20.5. In view of the COVID-19 instead of conducting physical meeting of GRC, it was advised that video conference option may be utilized for conducting such GRC meetings.

21. For **Agenda Item 9**, the Council took note of the latest status of the Constitution of Grievance Redressal Committee at CBIC Zonal/State level for redressal of grievance of taxpayers on GST related issues.

**Agenda Item 9A: Inverted Rate Structure in GST- Correction of inverted rates on certain key sectors**

22. Finance Secretary requested JS (TRU-I) Sh. G.D. Lohani, to take up Agenda Item 9A on inverted duty structure

22.1. JS (TRU-I) initiated the Agenda with a presentation (**Annexure 5**) and briefed the Council that the issue of Inverted Duty Structure was placed before the Council in the 39<sup>th</sup> GST Council Meeting held on 14.03.2020 and the presentation was based on the observations of Committee of Officers as also recommendations made subsequently on examination by the Fitment Committee. In the meeting emphasis was made on four commodities which were contributing heavily to inversion to the extent of being more than 50% of the total inversion. The commodities were:

- Mobile phone
- Textiles
- Footwear
- Fertilizers

He recapitulated that the Council had a detailed discussion on these items. Decision was taken wherein GST on mobile phones and specified parts was increased from 12% to 18% and notification to that effect was subsequently issued. With regard to the other 3 commodities Council decided that it needed further deliberations & discussions and it was decided that discussion could happen in future meeting. Accordingly, the Agenda had been brought up again in this meeting.

22.2. JS, TRU I initiated his presentation with the Textiles sector and informed that the Textile Ministry had again made a recommendation that the discussion which took place in the previous Council meeting should be taken forward as the entire industry was bearing the brunt of inversion. He emphasised that the textile industry felt that for the growth of entire textile chain and to make it more competitive in the international market, a uniform rate structure for the entire textile value chain was required and that there should be immediate correction of inversion. He added that therefore, the emphasis of his presentation was more on the textile sector because of the kind of inversion in the sector and the way it was affecting the industry.

22.3. JS, TRU I elaborating on the need for correction of inversion in this sector submitted that there were significant implications in terms of cash flow and unutilised ITC. No refund was given on input

services and capital goods. As a result, working capital gets blocked and the ITC became cost to the sector. Most importantly, while big units could take care of their inversion in view of their integrated business beginning from initial stage of supply chain and their significant value addition in the supply chain. For instance large units may start from chemical and go up to fabric but the issue has wider ramification for the small standalone units which may take yarn and make fabric out of it or may take fabric and make garment out of it. The accumulated ITC from capital goods hurt everybody in the domestic market and since no refund was given for the same, it was a bottleneck for investment in this sector. Investment decisions were being affected by non-refund of ITC on capital goods and the sector was not able to utilise entire ITC on the capital goods.

22.4. JS, TRU I highlighting the adverse impact of inversion stated that it led to incentivizing imports as they didn't suffer inversion. Quoting an example, he stated that fabric being imported into the country attracts 5% GST and there was no baggage of ITC on previous supply chain because all taxes were refunded in the country of export. The same fabric in India suffers from the ITC because of the higher taxes on fabric, fibres and chemicals. As a result, whenever there are inverted duty rates, the imports get undue benefits over the domestic manufacturer. He added that with all these kinds of issues in the sector the problem of misclassification of rates, etc., also arise. Moreover, while refunds were being given for goods only, claiming refunds on account of inverted duty structure is in itself an effort for business. It entails costs, process and hardship and naturally when entire ITC is not available, services being major part of the supply, consumers are also not benefitted to the extent as it appeared by the rate of 5% on fabric and low-end garments.

22.5. Elaborating further on the sector the JS, TRU I submitted that the problem was more severe in the synthetic segment of the industry where Fibre attracted GST of 18%, Yarn attracted rate of 12% and Fabric of 5%. He recalled that at the time of rollout of GST, the rate on Yarn was 18% which was subsequently brought down to 12% to ease inversion, but the problem persisted to a large extent as inversion was not only on account of goods but because of capital goods and input services also. Input services such as financial services, telecom services, security services, manpower services, supply services all attract 18% whereas final product attracts 5%. Emphasising that multiple channels of inversion were happening in the sector he cited the example of dyeing units where taxes were at 5% whereas chemicals were at 18% leading to inversion and consequent adverse impact on the sector. So, in all the sectors, the inversion comes from various sides and this inversion is resulting in blockage of funds. Some refund is given and some refund is blocked. Some corrections have been made in past but all those corrections are not fully helping the sector and also as refund of capital goods credit is not there, investment issues are there. Further discussing the implication of inversion in terms of revenue as well as refunds he stated that in 2018-19, refunds started from August as before that refund on fabric was not allowed and as of now, we end up giving a refund of about Rs. 6000 crores in a year on the textile chain and this was bound to increase in future.

22.6. JS, TRU I further stated that the entire issue was examined at great length and the recommendations of the Fitment Committee on the proposed structure of GST was as brought out in the presentation (**Annexure 5**). He stated that if inversion could be corrected, following benefits will accrue:

- A simple uniform rate across textile chain
- Refund outgo shall be reduced by at least Rs 6000 crore a year
- No cash flow issues for domestic manufacturer
- No undue advantage to imports

- Litigations and other hardships are avoided
- Growth of textile sector and encouragement to investment, as also represented by the Textile Ministry.

Countering the possibility of an argument that, if rates are increased from 5% to 12%, this may impact the price to the final consumer ( e.g., implication of GST rate on garments of value less than Rs 1000 if raised from 5% to 12%) he clarified that fact was that, if we take out cost of taking refund, ITC on capital goods and services which gets blocked on account of refund not given on capital goods and services and the compliance effort, net impact on unit price ( and thus impact to the consumer) would only be only marginal while otherwise benefiting the domestic industry immensely

22.7. The Finance Secretary informed that textiles was one such item; there were two other items in the Agenda i.e. footwear and fertilisers which could be taken up once a decision on this was made.

22.8. The Hon'ble Finance Minister West Bengal stated that in principle, inverted duty structure was an anomaly that all had been trying to grapple with. He submitted that he didn't have any problem in looking into correcting inverted duty structure but there were many other cases of inversion. He estimated over 215 other cases where there was inverted duty structure which needed correction. He stated that in today's situation where there was some projection by the Manufacturers' Association, in a study he had seen that approximately one third of small units, many of which them are in textile may not be able to survive. At a time when the unemployment rate which according to CMIE is above 23% nationally though in Bengal it was about 17% but some other States had 30%, any increase in GST on textiles and garments which are labour-intensive industries, would send out a wrong signal to the SMEs which were providing perhaps 90-93% employment in the sector. When condition of SME's was well known to them this was not the right time to send a signal to the country that in textile, they were increasing GST. Understanding of Inverted Duty Structure in terms of ITC etc. may not be understood by common people but the political/economic message at this time, when everybody was struggling and large portion of struggle is in textile sector, is absolutely not the right time. He urged that he was unable to accept the proposal. When things stabilised, they could revisit the proposal may be in July-August as he was in agreement in principle.

22.9. The Hon'ble Finance Minister, West Bengal further added that logic of correcting inverted duty structure, not only in textiles but in many areas is very strong and theoretically he agreed to it but this was not the right time to send out message that garment goes to 12% from 5%. He added that in the proposed structure only man-made fibre benefits by going down from 18% to 12% and there were very big players in this segment who could afford the inverted duty structure. He lauded the presentation given by JS TRU I but again emphasised that this was certainly not the right time and he could not agree to the proposal for present. He suggested that the matter be reviewed when things stabilized and unemployment rate came down. He urged the Council to defer their decision on the proposal.

22.10. Hon'ble Deputy CM Bihar stated that he agreed with West Bengal that this was not an opportune moment as rate would increase from 5% to 12% for the garments having price of less than Rs. 1000. This will give wrong message to public as in these Corona times they were increasing the tax rates and people will not understand the nitty gritty of ITC and tax rates will be visible on bill. He stated that the Council could discuss this along with footwear and fertiliser after 4-6 months. He added that proposal was good and could be adopted with minor changes but certainly not now.

22.11. Hon'ble Deputy CM Gujarat said that they supported West Bengal and Bihar. He stated that on one hand Centre was announcing package of Rs 20 lakh crore, various States were also giving packages, in Gujarat they had announced Rs 14 thousand crore package and also giving several other reliefs for

return filing and on other hand, increasing rates on textiles looks very inappropriate. He urged that the matter be postponed for a significant period as nobody knew when Corona would be controlled and the period of its impact, how economic recovery would happen, how employment and state income would increase was not clear. He opined that in such a situation the proposal should be kept on hold.

22.12. Hon'ble Deputy CM Haryana stated that it was not the right time, as they were looking for upliftment of SSIs and putting more money into the economy. He added that looking at the agenda, all three items related to the people who are highly affected by COVID, specially, textile, footwear and fertilizer. He also urged that they should postpone this as was suggested by Hon'ble Deputy CM of Bihar and Gujarat FM.

22.13. Hon'ble Member from Tamil Nadu stated that Fitment Committee had recommended to increase the rates on fabric and garments and he did not support the move to increase taxes on garments. Fabric includes Dhotis and Sarees and other garments of value less than Rs 1000 were widely used by masses and any increase would adversely impact this class of consumers. He further added that the tax structure of various items should be decided on the basis of the ability of the consumer to pay and not because the system could not manage deficiencies such as the inverted duty structure. He opposed the proposal.

22.14. The Hon'ble Minister from Andhra Pradesh stated that they agreed with the view of Bihar and Bengal and asked for deferring the proposal.

22.15. The Hon'ble Minister from Uttar Pradesh thanked Union Finance Minister for correcting inverted duty structure for mobile phones and stated that they had to accept to live with Corona. There is no last date or time period when it would end. He also congratulated Fitment Committee for bringing out this proposal and said they were not increasing rates, but just correcting anomaly and therefore as per their understanding the proposal could be accepted now and implemented later when deemed fit.

22.16. Hon'ble Finance Minister Kerala stated that he wished to recall the discussions that had taken place in last Council meeting. He stated that there was no objection to the proposal but the time was not appropriate and that the crisis had only deepened since. He accepted that the proposal would help production and industry but the rate on final product was increasing and that's where the problem lied. He requested to defer the issue.

22.17. Gauging the sense of the Council the Hon'ble Chairperson felt that the Agenda Item may be deferred for a later appropriate time.

22.18. The Hon'ble Minister from Tamil Nadu in his written speech submitted that in their State, they had been receiving numerous representations from the trade associations dealing with food grains complaining that the tax authorities were demanding tax for delayed filing of disclaimer affidavit before the jurisdictional Commissioner for voluntarily foregoing the actionable claim or the enforceable rights on their brand name. The intention of issuing such notification for filing disclaimer affidavit was to grant exemption on the supply of food grains having unregistered brand name. However, the delay in filing such affidavit should not be a ground for levy and collection of tax on the supply of food grains. He urged the Hon'ble Chairperson to kindly issue guidelines to condone the delay in filing the disclaimer affidavit and not to raise demands on that ground. He also suggested to completely do away with distinction between branded and unbranded food grains as most taxpayers had switched to unbranded category by filing affidavits. Doing so therefore will not have any significant impact on revenues. He further urged the Hon'ble Chairperson to kindly consider the remaining representations forwarded to the Council on the ground of rationalization of tax, items of essential use by common man, items for the benefit of farmers and fishermen, items made by small artisans and items relating to



religious sentiments at the earliest. He also brought attention of the Council to the representation of Automobile manufacturers for reduction in rate of tax as a stimulus measure during this critical phase of COVID 19.

23. For **Agenda Item 9A**, the Council decided to defer the Agenda to a later more appropriate time.

**Agenda Item 10: Any other Agenda Item with the permission of the Chairperson**

**Agenda Item 10(i): Sharing of GST data with Comptroller and Auditor General of India for the purposes of GST audit**

24. The Secretary asked Joint Secretary, Department of Revenue to place the issue of the sharing of GST data with CAG before the Council. Joint Secretary, Department of Revenue stated that this was discussed in the 35<sup>th</sup> GST Council Meeting on 21<sup>st</sup> June 2019. The Council referred the issue to the Law Committee for discussion. Multiple rounds of discussion have taken place with C&AG. The current status note has been put before the Council. He mentioned that lot of work has to be done on this issue and the Council will be updated as and when the progress is made.

25. For **Agenda Item 10(i)**, the Council took note of the submissions made.

**Agenda Item 10(ii): Discussion on compensation to States**

26. Introducing the agenda the Secretary stated that several Hon'ble Ministers mentioned about the discussion on compensation. The Finance Secretary drew the attention of the Council to the presentation made by Joint Secretary, Department of Revenue on issue of revenue position and stated that the compensation cess collected during 2017-18 and 2018-19 was more than the compensation requirement. However, since last year 2019-20, the compensation cess collected was only Rs 95,444 crore and actual compensation required was more than Rs 1,50, 000 crore. In the last financial year 2019-20 itself Rs 1,20,498 crore was released and in the current financial year, during the months December, January and February, Rs 36, 000 crore was released. So, for the last Financial Year, more than Rs 1,50,000 crores compensation was released by the Central Government. Now, the position is that the money coming into the compensation fund has been much less than the actual requirement due to the falling revenues in these difficult times. The difficulty is on two counts. The first is due to the lower volumes of trade; the compensation cess collection is low and second is that the compensation requirement is also increasing. The law (Goods and Services Tax (Compensation to States) Act, 2017) provides that the compensation to States will be provided from the Compensation Fund. The law also envisages that in case compensation fund is inadequate to compensate the States, it is the GST Council that has to take the decision as to what is required to be done. In normal times, GST Council perhaps could have taken a decision to rationalize rates on certain items. Other rationalization measures like levying compensation cess on more items could also have been undertaken in normal times. However, at this point of time, it has to be decided on how exactly more money could be brought into the compensation fund. Another factor is that the whole concept of compensation cess was to help the States transition into GST regime. The underlying presumption was during the transition, certain disturbances will take place. It was not very clear on how the revenue will grow, how the rate structure will play out, how IGST on interstate trade will get collected etc. Keeping these in mind along with the spirit of GST regime, the compensation provision was brought in. However, now we are confronted with COVID pandemic which is a *force majeure* (act of God) and the falling revenue is not because of transition into the GST system but because of a reason which was not anticipated during the time of drafting of the law. Since the law provides for the GST Council to decide in these situations, suitable decision may be

taken on how to deal with the situation. Hence, he requested the Hon'ble Union Finance Minister to invite other Hon'ble Ministers to present their views on how to deal with this situation.

26.1. Hon'ble Minister from Kerala stated that it was a very important topic and it is good that this is being discussed. He had no debate regarding how this current impasse came. In the presentation made, one important factor was left out. The way the whole GST had been implemented is also an important factor that contributed to non-buoyancy of the tax collection. Starting with the IT backbone, our inability to administer the tax by scrutinizing the tax returns and so on, the way rates were drastically reduced without considering the financial implications etc. have contributed to the fact that GST revenues have been non-buoyant. Now, the pandemic has come. Since there is the pandemic, the revenues of the States have shrunk and it is all the more reason that the legally binding compensation needs to be paid to the States. He had mentioned it earlier that it is a contra-cyclical measure. Giving compensation when the revenues shrink enables the State revenues to be stable. The issue now is how to meet it when the revenues are going down and the compensation requirement is going up. There is only one solution to this. The GST Council has to borrow the money to pay and let the compensation cess be extended. There is no other option. Now, there is no option of increasing the number of commodities on which compensation cess can be imposed because it is unacceptable during the economic slump. It is the same reason the agenda earlier was put aside. The borrowing by the GST Council does not affect the fiscal deficit of the Central Government because it is outside the budget. There was consensus on this issue in the GST Council and it was recorded in the minutes of the earlier meetings. There was a detailed discussion on this issue and the assurance of 14% growth was the reason why many States which had serious reservations agreed to this. Tamil Nadu, till the very end held out against GST. Some other States also had reservations. It was because of this promise that everyone agreed to transition into GST regime. Therefore, this measure had to be undertaken. In fact, there should be a more detailed discussion at a later time where the Council can look at the whole architecture to an extent, rates, inverted duty structure etc. He had a fear that the current rate is not Revenue Neutral. So the rates would have to be relooked at in the future. The Council also has to look into whether the compensation period has to be extended from five year to six or seven years. Already a number of Ministers have raised the issue in the Council. He thought that if the Council is looking at the whole architecture of GST, he would say in the present circumstances, the rate split must be changed from 50:50 to 60:40 (60 for the States and 40 for Centre). Perhaps, a little more flexibility of SGST rates may also be looked into. He did not want to raise the issues now but sometime later when things become normal. For the time being, there is no other solution other than GST fund borrowing and extending the compensation period by another year so that the money can be recouped. Given the present dire financial circumstances of States, the promise made by the GST Council should be met. Neither the Centre nor any particular States are sacrificing anything because of this measure and everybody wins in this.

26.2. Hon'ble Minister from Assam stated that the subject of discussion is of immense importance. Of course everyone is concerned about the fact that the compensation amount is not being paid because of the low collection on the compensation front and as a whole fall in the GST collections. What was stated by the Revenue Secretary in his initial remarks must be acknowledged. From April-May 2020, the fall in GST revenue is not because of the architecture of GST but because of the act of God. Whatever we are suffering today, for example, revenue losses in the month of April-May cannot be assigned to the architecture of GST. It is because of something else which was not imagined at the time of enactment of GST law. First, in principle, we have to decide whether these losses can be attributed to GST or GST compensation will be different. He raised this issue because raising loan is an option. Finance Minister of Kerala had stated that every State needed revenue. However, as provided by law, the GST Council can prescribe manner for collection of GST to pay compensation to the States. But, whether the GST Council has the mandate to raise the loan as a sovereign body like Centre or State

need to be examined very closely. As of now, the Union Government is so gracious that in spite of low collections, it has borrowed money and released Post Devolution Revenue Deficit Grant to States. The Central Government was taking good care of States by, firstly, allowing Revenue Deficit grant for states like Assam and Kerala and secondly, by not curtailing as of now the Devolution Grant of States. These two streams of fund were a big help for the States. They were initially afraid whether the Centre would be able to give the amount since these are big amounts like Rs 1,400 crore and Rs 600 crore for a State like Assam. His first request to the Central Government was to continue the Revenue Deficit Grant and Devolution Grant since these were their bread and butter. He thought that States are not thanking enough the Central Government for continuously giving the amounts to States which could have been cut due to low tax collections. He was sure that lot of hard labor must have gone into achieving this. The Council can continuously discuss from where the compensation revenues can be managed, whether the Council has the power to raise a loan and if the Council does not have the power to raise the loan, what are the options. Just now the Council had decided to defer a decision to augment Revenue Collection proposal knowing very well that by deferring such decision, the compensation requirement of States will go up. He fully agreed with the Hon'ble Minister from Uttar Pradesh that bold decisions have to be taken. In the beginning of the meeting it was said that any mistake committed like inverted duty on textile should not be corrected at this point of time. But then again they are now asking for compensation. Is it not contradictory? The issue is that people of many States like Assam do not like to hear that State Government was raising loan beyond a point. If Council raises loans, RBI might calculate the loan amount against States' accounts. Although GST Council is a body corporate, the loan raised will be assigned against every State. Raising loan for compensation is a huge decision and urged Hon'ble Union Finance Minister to discuss the issue with legal luminaries whether the GST Council has the legal authority to raise a loan or whether Council should correct some of the mistakes made earlier and gradually try to augment revenue for paying compensation. He thought that at some point of time, bold decisions have to be taken to raise GST revenue. If the Council starts taking loan from the market, the focus on collecting revenue will go down. Every subsequent Council meeting there will be demand to raise more loan. He clarified that he did not say the issue should not be decided but while deciding, the Council has to be very careful. He added that Assam also required compensation money. He requested all the members of the Council to come back with some suggestions to the Council as to how to increase revenue, on whether Council should borrow. These issues should be discussed in the State Cabinets. He once again requested for continuation of Revenue Deficit Grant and Devolution Grant. He stated that while considering on raising money for payment of compensation by augmenting revenue collection, or by correcting certain mistakes that were committed earlier or by borrowing, suggestions from all States should be considered carefully before any decision is taken. Finally, he had three requests to make. First was to not stop Revenue Deficit Grant. Second was to not stop Devolution Grant and third to see whether some conditions for availing increased borrowing limit can be relaxed? He agrees that some conditions have to be implemented but some of these were difficult or near impossible to implement before December 2020. He requested for some flexibility in this regard. He promised that the States will put in best efforts and in case if it is not possible to fulfill some conditions, relaxation may be given. For example without Aadhaar, One Nation One Ration Card cannot be implemented but Assam does not have Aadhaar. They had just completed up to 35%. State of Meghalaya does not have Aadhaar at all. In cases where, despite best efforts, if some of the conditionalities are not implemented, the States may not be penalized for that and may be next year they will fulfill all the conditions.

26.3. Hon'ble Dy. CM of Bihar read from page no 22 of the Agenda Note that as per the proceedings of the 39<sup>th</sup> GST Council Meeting, the Hon'ble Union Finance Minister said that '*She reiterated the commitment made by the then Chairperson of the GST Council that in case there are no adequate resources for giving compensation to the States, market borrowing may be resorted to* She also stated

*that as suggested by Dy CM of Bihar, after the Parliament session is over, may be if everyone so desire, she will work on whether the GST Council itself can borrow, the legality of such a borrowing and she will convene a meeting of all the State Finance Ministers to discuss contingencies in terms of compensation cess requirements; who would stand guarantee in case of market borrowing to fund the compensation requirements of the States, what impact FRBM Act and ways to counter the negative effects of Corona Virus pandemic on the economy.* ' Firstly, he requested that the Hon'ble Union Finance Minister can fix a day after 10 to 15 days from the 40<sup>th</sup> GST Council Meeting to discuss the sole issue of compensation cess. States will also be ready to give their view points. So for four-five hours, a separate meeting can be conducted. Secondly, as Finance Minister of Assam had mentioned, FRBM limits on State borrowings has been relaxed from 3% to 5% and the unconditional borrowing is only 0.5%. He requested that this may be increased to 1% and the conditionalities should apply to another 1% only. If the Central Government allows relaxation from 3% to 4% without any conditions it will benefit backward States like Bihar. Thirdly, by 20<sup>th</sup> June, they would be getting their devolution part for the month of June. For April-May, the Central Government gave what was required. For the month of June, they are waiting for their devolution part and he hoped that in the month of June also they would get the same revenue that they were getting. He again requested for a separate meeting on compensation cess.

26.4. Hon'ble Minister from Uttar Pradesh stated that he had keenly listened to the points made by Hon'ble Ministers from Assam and Bihar. They referred to the proceedings of the previous GST Council Meeting. He stated that State of Uttar Pradesh also had a revenue gap of about Rs 9000 crore which the State should receive. Uttar Pradesh is a big State and it had shortage of funds. In the month of April 2020 their collections were only 10% and during the month of May 2020 they collected around 40% only. Since they have an acute shortage of funds, he submitted that all the possibilities should be explored in this regard. He agreed with Hon'ble Dy. CM of Bihar that there should be detailed discussion on the issue of compensation. Along with this, he requested that detailed discussion should also be held on anomalies, sources of funds and inputs outgo as refunds since there is no end date for Corona epidemic. We should move ahead with the idea that we go forward along with the COVID disease. Just like we wear a raincoat and carry an umbrella during rains, wear a coat and muffler during winter season, we should take all precautions cum protective measures to deal with Corona epidemic and move forward with an understanding that corona epidemic will not end soon and we learn to live with it accordingly. Along with this we should recognize that economic activities are essential. If the economic activities stop, we do not move forward and we postpone decisions then all our activities will stop. He submitted that in the 37<sup>th</sup> GST Council Meeting, it was discussed that Mentha-oil may be brought within the ambit of Reverse Charge Mechanism (RCM). Mentha-oil is the subject of only Uttar Pradesh. The burden should fall on the purchaser and not on the farmer. Under RCM, Kaju (cashew), Tendu leaves, silk yarn, cotton etc. are present. The Council could not take decision on the subject on Mentha-oil in this regard. He requested that such decisions may be taken which can bring some revenues just by simplification of taxes, where additional taxes are not imposed, correcting anomalies and ambiguities. He impressed upon the Council again that lot of discussion has already taken place regarding Brick Kilns and Pan Masala. He had raised this issue in the Council multiple times. Earlier their revenue was Rs 500 crore, now, after GST, they collect only Rs 75 crore. He stated that there is a dire urgency to take decisions on these issues as well. Decisions that will enable inflow of additional revenues without putting burden on anyone should be taken immediately. That is why he pointed out that anomalies should be corrected. He stated that he may be forgiven for pointing this out but majority of the States which have presented their views in the Council did not have any difficulty in raising the price of diesel. Diesel is the necessity of a common farmer. It is required for transportation, agriculture and industry. But the price of diesel was increased. Decisions which directly benefit the revenue, increase the revenue, should not be deferred. The States have to pay salaries to their employees, meet

their expenditures and also it must be kept in mind that we have to live and move forward with Corona. Hence he once again requested that appropriate decisions may be taken.

26.5. Hon'ble Dy. CM of Delhi stated that it is true that nobody had imagined at the time of drafting of GST law that a national disaster of such high magnitude will occur. He was fortunate enough to be present in the meetings of the drafting committee. It was not imagined that a disaster of such a scale would happen. However, when it was told to the States and States were also discussing amongst themselves that States surrendering their taxing rights and Centre also giving up its tax rights and all subsume in the GST Council, it was not imagined that a pan India disaster would take place. But there was a history of localized disasters at the State level. There would be a flood, a tsunami, cyclone, a famine or a drought in State or a number of other factors for losses. Not just because of an economic disaster but due to an act of God, if the collections of States fall, it was not thought that GST Council would step aside from its responsibility and will only oversee economic management. Some items like Petrol, Diesel, and Liquor are still taxed by the States. Today, when there is an extraordinary situation in Delhi, though neighboring States have not made it so costly but we have increased the price of diesel by Rs 6. Also, they imposed 70% 'special corona fee' on liquor since they had the power to impose on these items. Now, the power to impose GST rests with the GST Council. Therefore, in extraordinary situations GST Council has to support the States. While the responsibility to pay and meet expenditures is with the States, the power to tax rests with the GST Council. Therefore, GST Council has to take up the responsibility. By labeling it as 'act of God' the GST Council cannot shirk off responsibility stating that it will only look at economic management and reimburse only if there was some issue with GST and its management. For the first time in the history of this country, we have created a superb federal structure. The responsibility should be showcased now and whatever extraordinary measures can be undertaken like possibilities of raising a loan from the market should be explored. He praised the way the Hon'ble Union Finance Minister in the previous Council meeting had perfectly summarized her position regarding this issue. He thought that the Council should fulfill its responsibility and not shirk it off labeling the pandemic as an act of god. This is very important for the coming future.

26.6. Hon'ble Minister from Goa stated that the discussions have gone as back in time by talking about the architecture of GST that had been adopted. He was surprised time and again various aspects of GST implementation were discussed except act of God. Now that *force majeure* has come in and whatever losses of revenue have occurred in the last two months cannot be attributed to the functioning/working of GST itself. At one point of time, 14% growth was envisaged and he wanted to remind all the Ministers present that it was always a decision by consensus. The decisions were arrived with the involvement of Centre and with the full involvement of every State in this country. Now, when there is a talk on architecture and opinion is presented that something is wrong, he was not willing to believe it and he had reiterated time and again that in spite of drawbacks, we are doing well as far as working of GST is concerned. He pointed out earlier that crores of transactions were happening, it was only the GSTN perhaps, in the initial stages, though it is streamlined now, did not give enough support that the system needed or the decisions of GST Council were wanting for sake of implementation. We have to realize that this did not happen because lakhs of tax payers filing returns, cores of transactions flowing were not something which was envisaged at all in one go. There were no established benchmarks anywhere in the world. The world has appreciated us for this. He further stated that today when we are faced with corona pandemic, we have a tendency to act and behave as if it is only India specific and only we are faced with the problems. We must look at the brunt borne by the advanced nations of the world, what has happened to their economies and number of deaths in those countries. He was not comparing *per se* but we are much better off. We have resilience, capacity and leadership to respond strongly and this is what has been done. If we look at the 37<sup>th</sup> GST Council Meeting at Goa meeting, the package announced by Hon'ble Union Finance Minister went a long way in helping the

economy to move forward and take it to a different level. Unfortunately, while it seemed that we were on the right track, COVID pandemic happened. When it comes to lowering the rates there is a tendency to be State specific. Only those rates which affect particular State revenues are desired to be lowered by respective members. If that is so, then who is going to think of the country and overall buoyancy in the revenue. He did not want to name anyone but the Council did not, at one point of time, hesitate to tinker the architecture of GST. A certain State was in distress and he also supported the decision then allowing them to impose a State specific cess with a sunset clause. The Council wanted to be practical. This subject needs much more time and much more application of mind. Even the States want to apply their mind and come out with some solution. It is not just merely giving opinion on whether we are allowed to borrow. Whether we will borrow, how exactly it will be done and contacting legal luminaries are not the points to ponder. What we need is pure and strong application of mind and that is why need a fuller session to discuss this particular subject. He strongly believed that all the State Finance Ministers combined with the Centre have the capacity to surmount this particular problem. There is a shortfall in revenue and it is also happening with other stronger economies in the world. At least we are progressing well and we are on the right path. He requested the Hon'ble Union Finance Minister for some time to have a full session to discuss. He did not think that a decision needs to be taken right now and he complimented Hon'ble Union Finance Minister for getting this issue on the table and at least making the States aware and allowing the States to apply their mind and come up with fresh ideas.

26.7. Hon'ble Minister from Karnataka stated that many ministers have deliberated on the subject. One thing that everyone should remember is that there is no magic in economy. Results come through efforts. This is an extraordinary situation and therefore we have to think extraordinary. Nobody had envisaged such a situation that has come now and we are dealing with it. Let us deal with it firmly with a resolute mind and move forward. He added that the finances part of it was already discussed but whole economy had to kick start. The real solution lies there and to kick start the economy, States are the engine. Therefore, any support to State will certainly bring back revenues of GST into coffers. Therefore, whenever this will be discussed, this one year period, we have to go through rough waters. With the capability of Hon'ble Union Finance Minister and her fantastic performance before and during COVID, they really believe in her. Next one year, all States would have to support her to see that rough waters are safely sailed through. Having said that, he added that lot of options have been discussed by States and lot of consultations are necessary. Crises throw up opportunities also. Therefore, for few States compensation is very important issue for them as far as their finances are concerned and there are few States for whom compensation is not a big part of it. Each State has got its own story to tell. Hence, looking into whole picture of entire country, it is difficult to manage different economic situations in entire country, it is important to micromanage. We should go deeper in the States' management also. Therefore, there are two ways of looking at things, short term measures and long term measures. Short term measures could be that some States would like to have compensation at the right time and therefore they may be given the option of borrowing at their own end, by removing certain conditions, the borrowing limit which was increased from 3% to 5% recently may be further increased by 0.25% or more. Whether the whole borrowing should be done by the GST Council is a very big question. Secondly, looking into the situation, RBI always deals with the emergencies; RBI maintains its SLR rate with banks. RBI has certain deposits to deal with the emergencies. Similarly, in future, we should have certain corpus funds for the Council. Whenever few States have certain problems or whenever the whole country is faced with issues like the current corona pandemic, certain corpus funds have to be built over a period of time, so that they can be utilized in emergencies. He thought that wider consultation is necessary, course corrections are necessary and so many other things have come up. He believed that we can get through this if everyone put their energies together. Under the leadership of the Hon'ble Union Finance Minister, we need to come up with an extraordinary solution to deal with the extraordinary situation.

26.8. Hon'ble Minister from Telangana stated that States are under a lot of stress. At this juncture if a State like Telangana did not get GST compensation, it will be difficult to maintain the State. A progressing State like Telangana will be the big loser. As per the 15<sup>th</sup> Finance Commission report, they are not getting any Revenue Deficit Grant. On the other hand, devolution for the State also has gone down. Supporting the argument of the Hon'ble Dy. CM of Delhi, at this junction, his sincere request is that the Hon'ble Union Finance Minister had to support the States. How to find a solution to this can be deliberated. Just like Dy.CM of Bihar stated, a full day discussion on this topic needed to be done. His request on behalf of State of Telangana was that, either loan has to be raised or FRBM norms may be relaxed by 1% just like Hon'ble Minister for Karnataka suggested. Somehow GST compensation needed to be paid. They had already factored in GST compensation in their budgets. On one hand, already a lot of income of the State has reduced. On the other hand, if GST Compensation also was not given, then it will be very difficult to maintain the programs run by the State. They are not in a situation to pay the full salaries to their employees which did happen in the previous month. His sincere request was that GST compensation must be paid. He stated that if the Act does not provide for borrowing then the Act may be amended to that effect to raise a loan. For repayment of such a loan, some measures can be undertaken. Once the situation improves, GST revenues can be raised, course corrections and raising rates wherever necessary can be done to improve revenues. At this juncture, he requested that the Central Government to pay the GST compensation. He emphasized that in the last two years, State of Telangana had taken the lowest GST compensation except for the North-Eastern States. Now, when they are supposed to get compensation, if they do not timely compensation, then a progressing State like Telangana will be a big loser. He finished by requesting the Hon'ble Chairperson to give the GST compensation.

26.9. Hon'ble Minister from West Bengal submitted that he agreed with many of his senior colleagues. He stated that Hon'ble Union Finance Minister had been very patient. He requested that the matter may be taken up for discussion exclusively and whether the GST Council had the constitutional authority to borrow, what are the sources may be discussed. He supported the statement of Dy. CM of Bihar that this should be taken up exclusively and before that the officers should be instructed to do due diligence on the available options. A detailed discussion can follow after this. It is time that this should be taken to another meeting exclusively with the due diligence and options to be given in advance to the States so that they can also do their due diligence and come back to the Council.

26.10. Hon'ble Minister from Uttar Pradesh stated that it was his humble request to specially present a view point that whatever matters are assigned to Law and Fitment Committees, since the Council meets once in every three months, the reports of the Committees should be tabled before the Council in its subsequent meeting. Along with this, issues that were raised, issues related to revenue collections and topics which can increase revenue collections should be decided at the earliest. Mentha-oil is an issue relevant to the State of Uttar Pradesh There would not be any additional burden due to this and therefore it has to be brought within the ambit of RCM. Brick Kiln & Pan Masala issues have been deferred for a long time. He impressed upon the Chairperson that these issues need to be considered and requested that since Uttar Pradesh is facing hardship due to shortage of funds. They have lot of liabilities to face. All States have been demanding compensation. He stated that decisions resulting in increase of revenue may not be deferred. The Hon'ble Chairperson responded that their points are valid and will be looked into.

26.11. Hon'ble Union Finance Minister concluded this issue by stating that a separate exclusive meeting would be held. Firstly, as a first step towards that, States which want to share their view points, should share their thoughts in the next ten days. Secondly, as suggested by Hon'ble Minister from West Bengal, Revenue Secretary as the Secretary to the Council should do all the due diligence on the mode

with which this can be accomplished, get all the opinion, compile and share with the States within the next ten days. Two weeks post that, in mid-July, taking all the Ministers' conveniences, a date can be fixed for an exclusive discussion on the matter of compensation. If that is suitable, exchange of thoughts would have happened within the next ten days; application of mind can be done by all the parties involved and a day long discussion can take place.

26.12. The Secretary concluded that all the agenda had been discussed and the decisions taken. Before, he formally closed this meeting; he stated that he wished to place on record the appreciation for Ms. Kajal Singh. She is an IRS Officer working in GSTN as Executive Vice President (EVP) for three years. Her tenure was concluding this week and Council may like to record the appreciation for her work.

27. For the **Agenda Item 10 (ii)**, the Council:

- i) Took note of the discussion.

**Agenda Item 11: Date of the next Meeting of the GST Council**

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

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



<b>List of Hon'ble Ministers who have attended the 40th GST Council Meeting on 12th June 2020</b>			
<b>Sl. No</b>	<b>State/Centre</b>	<b>Name of Hon'ble Minister</b>	<b>Charge</b>
1	Govt of India	Ms. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning and Legislative Affairs
4	Assam	Dr. Himanta Biswa Sarma	Finance Minister
5	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
6	Chhattisgarh	Shri T.S. Singh Deo	Minister, Commercial Tax
7	Delhi	Shri Manish Sisodia	Deputy Chief Minister
8	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj
9	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
10	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
11	Himachal Pradesh	Shri Bikram Singh	Minister for Industries, LEP, Tech. Education and Vocational & Ind Training
12	Jammu and Kashmir	Shri K. K. Sharma	Advisor to Lt. Governor
13	Jharkhand	Shri Rameshwar Oraon	Minister - Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs.
14	Karnataka	Shri Basavaraj Bommai	Minister for Home Affairs
15	Kerala	Dr. T. M. Thomas Isaac	Minister for Finance & Coir
16	Madhya Pradesh	Shri Narottam Mishra	Minister for Home and Public Health and Family Welfare
17	Meghalaya	Shri James K. Sangma	Taxation Minister
18	Mizoram	Shri Lalchamlia	Minister, Taxation, Home, Disaster Management & Rehabilitation
19	Odisha	Shri Niranjan Pujari	Finance & Excise Minister
20	Puducherry	Shri V. Narayanasamy	Chief Minister
21	Punjab	Shri Manpreet Singh Badal	Finance Minister
22	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
23	Telangana	Shri T. Harish Rao	Finance Minister
24	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
25	Uttarakhand	Shri Madan Kaushik	Minister of Urban Development, Housing, Rajiv Gandhi Urban Housing Scheme, Census, Reorganisation and Elections
26	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister Finance, Parliamentary Affairs, Medical Education
27	West Bengal	Dr. Amit Mitra	Finance Minister

**Annexure 2**

<b>List of officials who have attended the 40th GST Council Meeting on 12.06.2020</b>			
<b>Sl. No</b>	<b>State/Centre</b>	<b>Name of the Officer</b>	<b>Charge</b>
1.	Govt. of India	Dr. A B Pandey	Revenue Secretary
2.	Govt. of India	Dr Krishnamurthy Subramanian	Chief Economic Advisor
3.	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4.	Govt. of India	Shri A. K. Pandey	Member (GST), CBIC
5.	Govt. of India	Shri Sandeep M Bhatnagar	Member(Inv), CBIC
6.	Govt of India	Shri Dhruva Kumar Singh	CCA
7.	Govt of India	Shri Anil Kumar Jha	Additional Secretary, DoR
8.	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR
9.	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU I, DoR
10.	Govt. of India	Shri Manish Kumar Sinha	Joint Secretary, TRU II, DoR
11.	Govt. of India	Shri Yogendra Garg	Pr. Commissioner (GST), CBIC
12.	Govt. of India	Shri Sanjay Mangal	Commissioner (GST), CBIC
13.	Govt. of India	Shri N Gandhi Kumar	Director, DoR
14.	Govt. of India	Shri Amaresh Kumar	Addl. Comm., GST Policy Wing
15.	Govt of India	Ms Nisha Gupta	Joint Commissioner, GST Policy Wing
16.	Govt of India	Shri Vikash Kumar	DC, GST Policy Wing
17.	Govt of India	Shri Kumar Asim Anand	DC, GST Policy Wing
18.	Govt. of India	Shri Vipul Bansal	PS to Union Finance Minister
19.	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
20.	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
21.	GST Council	Shri Amitabh Kumar	Joint Secretary
22.	GST Council	Shri S.K. Rahman	Joint Secretary
23.	GST Council	Shri Rajesh Agarwal	Director
24.	GST Council	Shri G.S. Sinha	Director
25.	GST Council	Shri Jagmohan	Director
26.	GST Council	Ms. Ujjaini Datta	Director
27.	GST Council	Shri Arjun Meena	Under Secretary
28.	GST Council	Shri Rakesh Agarwal	Under Secretary
29.	GST Council	Shri Nitin Deepak Agarwal	Under Secretary
30.	GST Council	Shri Mahesh Singarapu	Under Secretary
31.	GST Council	Shri Krishna Koundinya	Under Secretary
32.	GST Council	Shri Sarib Sahran	Superintendent
33.	GST Council	Shri Adesh Nayak	Superintendent
34.	GST Council	Shri Krishan Kumar Verma	Superintendent

35.	GST Council	Ms Chanchal Soni	Superintendent
36.	GST Council	Shri Sumit Kumar	Superintendent
37.	GST Council	Shri Rakesh Joshi	Inspector
38.	GST Council	Shri Vijay Malik	Inspector
39.	GSTN	Shri Prakash Kumar	CEO
40.	GSTN	Ms Kajal Singh	EVP, Services
41.	GSTN	Shri Nitin Mishra	EVP, Tech
42.	GSTN	Shri Vashistha Chaudhary	SVP (Services)
43.	GSTN	Shri Jagmal Singh	VP, Services
44.	GSTN	Shri Sarthak Saxena	OSD to CEO
45.	Govt of India	Shri Sandeep Puri	Comissioner, Delhi - Audit
46.	Govt of India	Shri Nishith Goyal	Chief Commissioner, Patna, Ranchi Zone
47.	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner (State Tax) (GST)
48.	Andhra Pradesh	Shri K. Ravisankar	Addl. Commissioner, State Tax (GST)
49.	Andhra Pradesh	Shri D. Venkateswara Rao	OSD, Revenue
50.	Andhra Pradesh	Shri J.V.M. Sarma	Joint Commissioner, State Taxes
51.	Andhra Pradesh	Shri S. Sekhar	Joint Commissioner, State Taxes
52.	Arunachal Pradesh	Shri Anirudh S. Singh	Secretary
53.	Arunachal Pradesh	Shri Kanki Darang	Commissioner of Taxes
54.	Arunachal Pradesh	Shri Tapas Dutta	DCCT
55.	Arunachal Pradesh	Shri Teli Ngomdir	Assistant Commissioner
56.	Arunachal Pradesh	Shri Nakut Padung	ST
57.	Arunachal Pradesh	Shri Tayem Jamoh	Inspector
58.	Assam	Shri Anurag Goel	Commissioner, State Tax
59.	Assam	Shri Shakeel Saadullah	JCT
60.	Assam	Shri Bedabrata Saikia	Inspector, Taxes
61.	Bihar	Dr Pratima	Commisssioner cum Secretary
62.	Bihar	Shri Arun Kumar Mishra	Special Secretary
63.	Chhattisgarh	Shri Gaurav Dwivedi	Principal Secretary (Commercial Taxes)
64.	Chhattisgarh	Smt Ranu Sahu	Commissioner of State Tax
65.	Chhattisgarh	Shri K. R. Jharia	Additional Commissioner, State Tax
66.	Chhattisgarh	Shri T. L. Dhruw	Additional Commissioner, State Tax
67.	Chhattisgarh	Shri Manish Mishra	Deputy Commissioner, State Tax
68.	Delhi	Shri Sandeep Kumar	Secretary, Finance
69.	Delhi	Shri Vivek Pandey	Commissioner, State Tax

70.	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner (Policy)
71.	Goa	Shri Daulat Hawaldar	Secretary Finance
72.	Goa	Shri Hemant Kumar	Commissioner, ST
73.	Goa	Shri Pranab Bhat	Under Secretary, Finance
74.	Gujarat	Shri Pankaj Joshi	Additional Chief Secretary
75.	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
76.	Gujarat	Shri S. Chhakchhuak	Joint Secretary, Taxation
77.	Haryana	Shri Anurag Rastogi	Principal Secretary, Excise & Taxation
78.	Haryana	Shri Vijay Kumar Singh	Addl. Excise & Taxation Commissioner
79.	Haryana	Shri Rajeev Chaudhary	Joint Excise and Taxation Commissioner
80.	Himachal Pradesh	Shri Jagdish Chander Sharma	Principal Secretary (E&T)
81.	Himachal Pradesh	Dr. Ajay Sharma	Commissioner, State Tax and Excise
82.	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner
83.	Jammu & Kashmir	Dr. A. K. Mehta	Financial Commissioner, Finance
84.	Jammu & Kashmir	Shri P K Bhatt	Commissioner, CT
85.	Jammu & Kashmir	Shri Waseem Raja	
86.	Jharkhand	Smt Vandana Dadel	Secretary, Commercial tax
87.	Jharkhand	Shri Bor Singh Yadav	Commissioner, CTD
88.	Jharkhand	Shri Santosh Kumar Vatsa	Special Secretary, CTD
89.	Jharkhand	Shri Brajesh Kumar	State Tax officer
90.	Karnataka	Shri Srikar M.S	Commissioner, CT
91.	Karnataka	Dr. M. P. Ravi Prasad	Additional Commissioner, Commercial Taxes
92.	Kerala	Shri Rajesh Kumar Singh	Additional Chief Secretary
93.	Kerala	Shri Anand Singh	Commissioner, State Tax
94.	Kerala	Shri S. Karthikeyan	Special Commissioner, State Tax
95.	Kerala	Shri Mansur M. I.	Deputy Commissioner, State Tax
96.	Madhya Pradesh	Shri Manoj Govil	PS, Commercial Tax Department
97.	Madhya Pradesh	Shri Raghwendra Kumar Singh	CCT
98.	Madhya Pradesh	Shri Sudip Gupta	Jt. CCT
99.	Maharashtra	Shri Sanjeev Kumar	Commissioner, State Taxes
100.	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, State Taxes
101.	Maharashtra	Shri Kiran Shinde	Deputy Commissioner, State Taxes
102.	Manipur	Dr. Rajesh Kumar	Additional Chief Secretary (Finance)
103.	Manipur	Shri Charchit Gaur	Commissioner of Taxes

104.	Manipur	Shri Yumnam Indrakumar Singh	Asst. Commissioner of Taxes
105.	Meghalaya	Smt S. A. Synrem	Commissioner & Secretary, Taxation
106.	Meghalaya	Shri Arunkumar Khembavi	Commissioner of State Tax
107.	Meghalaya	Shri L. Khongsit	Additional Commissioner of State Tax
108.	Meghalaya	Smt. S. M. Sutnga	Assistant Commissioner of State Tax
109.	Meghalaya	Shri N. L. Sohliya	Assistant Commissioner of State Tax
110.	Meghalaya	Shri J. L. Kharwanlang	Assistant Commissioner of State Tax
111.	Mizoram	Shri Vanlal Chhuanga	Secretary Taxation
112.	Mizoram	Shri Kailiana Ralte	Commissioner, State Taxes
113.	Nagaland	Shri Kesonyu Yhome	Commissioner of State Taxes
114.	Nagaland	Shri Wochamo Odyuo	Additional Commissioner , State Taxes
115.	Odisha	Shri Ashok K. K. Meena	Principal Secretary, Finance
116.	Odisha	Shri Sushil Kumar Lohani	Commissioner, CT & GST
117.	Puducherry	Shri Shurbhir Singh	Secretary (Finance)
118.	Puducherry	Shri L. Kumar	Commissioner (ST)
119.	Puducherry	Shri K. Sridhar	Deputy Commissioner, State Tax
120.	Punjab	Shri A. Venu Prasad	Financial Commissioner (Taxation)
121.	Punjab	Shri V. K. Garg	Financial Advisor to Chief Minister
122.	Punjab	Shri Vivek Pratap Singh	Commissioner, State Tax
123.	Rajasthan	Shri Niranjana Kumar Arya	Additional Chief Secretary (Finance)
124.	Rajasthan	Dr. Prithvi Raj	Secretary, Finance (Revenue)
125.	Rajasthan	Dr. Preetam B Yashvant	Chief Commissioner, State Tax
126.	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
127.	Rajasthan	Ms Meenakshi Sethi Zaidi	Deputy Commissioner, State Tax
128.	Sikkim	Shri J D Bhutia	Commissioner, CT
129.	Sikkim	Shri Bikash Diyali	Deputy Director, Systems
130.	Tamil Nadu	Shri N. Muruganandam	Principal Secretary (Full Addl. Charge)
131.	Tamil Nadu	Shri K. Gnanasekaran	Additional Commissioner (Policy and Public Relations)
132.	Telangana	Shri Somesh Kumar	Chief Secretary
133.	Telangana	Ms Neetu Prasad	Commissioner Commercial Taxes
134.	Tripura	Ms Tanushree Deb Barma	Secretary, Finance
135.	Tripura	Shri Tinkuma Darlong	Additional Commissioner, Taxes

136.	Tripura	Dr Sudip Bhowmik	Deputy Commissioner, Taxes
137.	Tripura	Shri Badal Baidya	Assistant Commissioner, State Tax
138.	Tripura	Shri Ashin Barman	Superintendent of Taxes
139.	Uttarakhand	Shri Vipin Chandra	Additional Commissioner (SGP)
140.	Uttarakhand	Shri Anil Singh	Additional Commissioner, State Tax
141.	Uttarakhand	Dr Sunita Pandey	Joint Commissioner
142.	Uttarakhand	Shri S. S. Tiruwa	Deputy Commissioner
143.	Uttarakhand	Shri Ranjeet Negi	Assistant Commissioner
144.	Uttar Pradesh	Shri Alok Sinha	APS/Additional Chief Secretary, State Tax
145.	Uttar Pradesh	Ms Amrita Soni	Commissioner, CT
146.	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, CTD
147.	Uttar Pradesh	Shri Paritosh Mishra	AC, CT
148.	West Bengal	Shri H. K. Dwivedi	Finance Secretary
149.	West Bengal	Shri Devi Prasad Karanam	Commissioner, State Tax
150.	West Bengal	Shri Khalid Aizaz Anwar	GST PPU Head

# PPT for 40<sup>th</sup> GST Council

## 12<sup>th</sup> June 2020

1

### Agenda 3(i)

#### Amendment in rule 7 of CGST Rules to prescribe the rates for Composition Scheme under Section 10(2A)

- Composition scheme for services (turnover upto Rs. 50 lakhs) implemented through Rate notification w.e.f. 01.04.2019
- Section 10(2A) enacted as part of Finance Act 2019 and notified
- Rate of tax under the same is required to be prescribed, though covered by Notification

#### **Proposal:**

- Rule 7 of CGST Rules, 2017 to be amended w.e.f. 01.04.2020 to prescribe 3% rate for such supplies by registered person opting to pay tax under section 10(2A) which is a technical change of legal drafting.

2

### Agenda 3(ii)

#### Proposal to issue Removal of difficulty order for extending the time limit for revocation of cancellation of registration

- In the 39<sup>th</sup> meeting of the GST Council, issuance of RoD order was recommended in cases where cancellation orders were passed upto **14.3.2020**, the aggrieved may be allowed to file application for revocation of cancellation till **30.6.2020**
- The same could not be implemented due to drafting issues which have now been sorted out with the Law Ministry and therefore date of implementation needs extension by three months.

#### **Proposal:**

- Filing of application for revocation of cancellation may be allowed till **30.09.2020** for all the cancellation orders that were passed up to **12.06.2020**

3

### Agenda 3(iii)

#### Notification of provisions of the Finance Act, 2020 amending various sections of the CGST Act and the IGST Act

#### **Proposal:**

- **Clauses 130 and 134 of Finance Act 2020 to come into force on 30.06.2020** (*Power to issue orders for removal of difficulties valid till 30.06.2020 - now approved till 30.06.2022*) 130-CGST Act and 134-IGST Act
- In addition, **clauses 118, 125, 129 also be given effect on 30.06.2020** since having no impact on SGST Acts

**The Council may also like to decide a date by which the corresponding amendment in SGST Acts may be carried out by all the States so that all the **law amendments made vide Finance Act 2020** can take effect**

- Need to prescribe a process so that the recommendations of the Council requiring law amendment are implemented from a given date or within certain time frame of Centre making amendments. Those States or Centre who do the amendment later may do it with retrospective effect.

4



### Agenda 3(iv) – Interest and late fee where the specified date for filing return (staggered upto 6<sup>th</sup> July) is breached. (1/2)

- Compliance relief had been given to all taxpayers for February, March and April 2020 tax periods
  - late fee waiver and 15 days interest waiver with lower rate of 9% beyond that for taxpayers having turnover > Rs. 5 Cr if returns filed upto 24<sup>th</sup> June 2020.
  - late fee and interest waiver for taxpayers < Rs. 5 Cr. Turnover if returns filed by the specified dates (staggered upto 6<sup>th</sup> July 2020).

#### Issue:

In the relief granted as above, it was envisaged that where the return is not filed by specified date(s), for the entire compliance delay, interest at 18% will be charged with late fee and the waiver of 15 day interest and late fee shall not be available as it was expected to act as a nudge for paying tax and filing return in time.

#### Available options:

- Allow the scheme to continue the way it was decided,
- Extend the reduced rate of interest @9% till the date of filing of return with **full** late fee,
- Extend the reduced rate of interest @9% till the date of filing of return with **no** late fee.

**Taxpayers:** The decision as above can be taken for all **or** only for small taxpayers(< Rs. 5 Cr)

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### Agenda 3(iv) – Proposal for subsequent months (2/2)

- Compliance relief had been given to all taxpayers for February, March and April 2020 tax periods
  - late fee waiver and 15 days interest waiver with lower rate of 9% beyond that for taxpayers having turnover > Rs. 5 Cr if returns filed upto 24<sup>th</sup> June 2020.
  - late fee and interest waiver for taxpayers < Rs. 5 Cr. Turnover if returns filed by the specified dates (staggered upto 6<sup>th</sup> July 2020).
- GSTN has also proposed a revised schedule due to bunching of date of filing of returns around 30<sup>th</sup> June 2020.

#### Proposal:

- Revised schedule for Feb, March and April, 2020 may be accepted as it has no impact on interest and late fee and is essentially an IT proposal,
- Similar scheme may be granted for **May, June and July, 2020** whereby the compliance requirement is deferred till September, 2020.

#### Available options:

- Extend relief package only **for small taxpayers** (aggregate turnover<Rs.5cr), unlike last time when the relief was provided to all taxpayers
- Extend scheme **for all taxpayers like past scheme for Feb, Mar, Apr,20.**
- No such scheme** for subsequent months

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### Agenda 3(v)

Reduction in rate of interest to 9% for delay in payment of GST

**Proposal:** Reduce interest rate to 9% for FY 2020-21

**Available options :**

1. **Tax Period options:** Reduce the interest rate for:
  - (i) entire FY 2020-21; or
  - (ii) only for the Covid-19 impacted period (say from **March 2020 to July, 2020**).
2. **Taxpayers selection options**
  - (a) Reduce the interest rate for all taxpayers @9% for FY21; or
  - (b) Reduce the interest rate for only small taxpayers (i.e. with aggregate turnover < Rs. 5 crores) @9% for FY21; or
  - (c) Differential reduced interest rates for small and large taxpayers (say 12% for large tax payers and 9% for small taxpayers) for FY 21
3. **No further reduction** in interest rates beyond the previous proposal

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### Agenda 3(vi)

Reduction in late fees for FORM GSTR-3B for months from July, 2017 to January, 2020- One time amnesty to clean up pendency in return filing in GST regime

**Proposal as follows may be considered for approval :**

- Reduce late fee on GSTR-3B returns of tax periods July, 2017 to January, 2020:
  - **zero late fee** for taxpayers, who did not have any tax liability for the said tax periods and were thus required to file **NIL** return;
  - Reduce maximum late fee from Rs. 10000 (Rs. 5000 each for CGST & SGST) at present to Rs 500/- (Rs. 250 each for CGST & SGST) per return for others
  - such reduction would apply only if the returns are **filled between 01.07.2020 to 30.09.2020**.

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## Agenda 4

### Deemed ratification of notifications, Circulars and Orders by the GST Council

- The following notifications, Circulars and Orders issued after 08.03.2020 till 10.06.2020 under the GST laws by the Central Government, are placed before the Council for information and ratification.
- Issued under the **CGST Act**:
  - **Notification No. 09/2020 - Central Tax to Notification No. 47/2020 - Central Tax**
  - **Notification No. 02/2020 and 03/2020- Central Tax (Rate)**
  - **Circular No. 132/2/2020 to 140/10/2020**
- Issued under the **IGST Act**:
  - **Notification No. 03/2020 Integrated Tax**
  - **Notification No. 02/2020 and 03/2020- Integrated Tax (Rate)**
- Issued under the **UTGST Act**:
  - **Notification No. 01/2020 Union Territory Tax**
  - **Notification No. 02/2020 and 03/2020- Union Territory Tax (Rate)**

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## Agenda 5

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

- **Decisions by Circulation:**
- Meeting dated 26.03.2020- **IGST Settlement**
- Meeting dated 27.03.2020- **Insertion of Section 168A for Ordinance**
- Meeting dated 01.04.2020- **COVID-19 Relief Package**
- Meeting dated 11.04.2020- **Clarification on COVID-19 relief package**
- Meeting dated 01.05.2020- **Misc. issues on COVID-19 relief package**
- **35<sup>th</sup> Meeting dated 26.05.2020**
- Extension of time for passing order in case of refund
- Extending validity of e-way bills expired during lockdown
- Extension of date for migration of Daman & Diu and Dadra and Nagar Haveli merged UT
- Clarification on refund related issue

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## Agenda No 6 - ITGRC

- Agenda 6 has Decisions / Recommendations of the **11<sup>th</sup>ITGRC** (held on 18<sup>th</sup> March 2020) and **12<sup>th</sup> ITGRC** (held on 26<sup>th</sup> May, 2020) for information of the Hon'ble Council.
- Minutes of 11<sup>th</sup> ITGRC are placed at **page No. 148 of Vol-1** and Minutes of 12<sup>th</sup> ITGRC are placed at **page No. 17 of Vol-2 of the Agenda Note**.
- The decisions/recommendations as per the minutes of both 11<sup>th</sup> ITGRC and 12<sup>th</sup> ITGRC meetings are placed for information of the Hon'ble Council.

## Agenda No 7 - GSTAT

- UP Government have sent a fresh proposal on 29-5-20 to create a total of 4 benches of GSTAT with State Bench at Lucknow and 3 Area Benches at Varanasi, Ghaziabad and Agra. This is for approval of the Hon'ble Council at **page No 312 of Vol-1** of Agenda Note
- [t may be recalled that in the 39 GSTC meeting, the Council had approved creation of State Bench at Allahabad and 4 Area Benches at Ghaziabad, Lucknow, Varanasi and Agra.]

## Agenda No 8 - NAA

- The **4<sup>th</sup> quarterly report** of the National Anti-profiteering Authority for the period 1-1-2020 to 31-3-2020 is placed **at page No 313 of Vol-1** of Agenda Note. A total of 34 orders have been passed by the NAA in this period. This is for information of the Hon'ble Council.

## Agenda No. 9 - GRC

- As per the directions of the GSTC in its 38<sup>th</sup> meeting held on 18-12-2019, Grievance Redressal Committees are being constituted at zonal/State/UT level.
- The present status of constitution of GRCs at various Zones/ States/ UTs as on 6-6-20 is placed at Annex A of the Agenda at **page No 317 of Vol-1** of Agenda Note, It is still pending for constitution at some of the zones at the central level and for some of the States.
- This is placed before the Hon'ble Council for information.

**Annexure 4**

Status of GRC Zone-wise (CBIC) and States/UTs as on 10-06-2020  
(as per the orders and information available with the Council's Secretariat.)

<http://www.gstcouncil.gov.in/grievance-redressal-committees-central-zonestate-level>

S. No.	State/UT	State level GRC	Central Zone	Central Level GRC
1	Jammu and Kashmir	YES	Chandigarh	YES
2	Himachal Pradesh	YES		
3	Punjab	YES		
4	Chandigarh	YES		
5	Ladakh	YES		
6	Andhra Pradesh	YES	Vishakhapatnam	YES
7	Arunachal Pradesh	YES	Guwahati	YES
8	Assam	YES		
9	Manipur	YES		
10	Meghalaya	YES		
11	Mizoram	YES		
12	Nagaland	YES		
13	Tripura	YES		
14	Bihar	YES	Ranchi	YES
15	Jharkhand	YES		YES
16	Chhattisgarh	YES	Bhopal	YES
17	Madhya Pradesh	YES		YES
18	Delhi	YES	Delhi	YES
19	Goa	YES	Pune	
20	Gujarat	Pending	Ahmedabad	Pending
21			Vadodara	

22	Dadra ,Nagar Haveli, Daman and Diu	Pending		YES
23	Haryana	Pending	Panchkula	Pending
24	Karnataka	YES	Bangalore	YES
25	Kerala	YES	Thiruvananthapuram	YES
26	Lakshadweep	Pending		
27	Maharashtra	YES	Mumbai	YES
28			Pune	YES
29			Nagpur	YES
30	Odisha	YES	Bhubaneshwar	YES
31	Puducherry	Pending	Chennai	Pending
32	Tamil Nadu	Pending		
33	Rajasthan	YES	Jaipur	YES
34	Sikkim	YES	Kolkata	YES
35	West Bengal	YES		
36	Andaman and Nicobar Islands	Pending		
37	Telangana	YES	Hyderabad	YES
38	Uttar Pradesh	YES	Meerut	YES
39			Lucknow	YES
40	Uttarakhand	YES	Meerut	YES



## INVERTED RATE STRUCTURE IN GST

### 40<sup>th</sup> GST Council Meeting

The 12<sup>th</sup> June, 2020

1

### A brief re-cap

- A presentation was made in the 39<sup>th</sup> meeting on the inverted rate structure
- The presentation was based on the recommendation of Committee of Officers and fitment committee
- Inversions in the four sectors was emphasized,-
  - Mobile phone
  - Textiles
  - Footwear
  - Fertilizers
- Hon'ble Council took a decision on mobile phones
- On others, after detailed deliberation, the Council recommended further discussions in future meetings

2



## Post Council meeting

- The GST rate on mobile phone and its specified parts has been raised from 12% to 18% (as recommended by the council)
  
- Textile Ministry has again reiterated and recommended
  - a uniform rate structure
  - correction of inverted rate structure for textiles sector

3

Inverted duty structure in textiles....

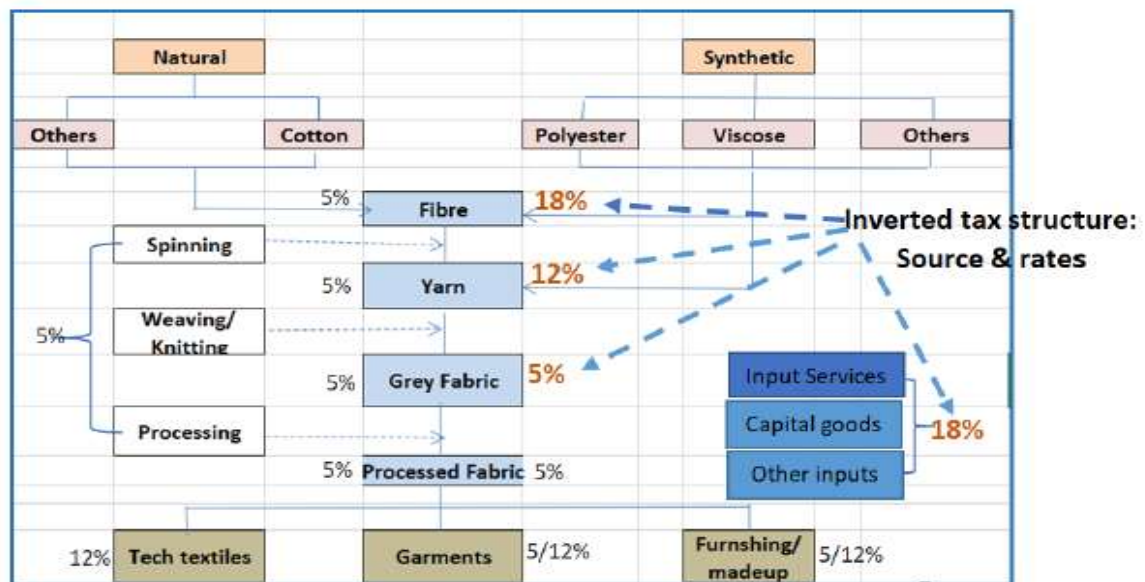
4

## IMPLICATION.....

- ☐ Unutilized ITC becomes a cost to the manufacturer
- ☐ Cash-flow issue even if refund is given
- ☐ No refund of on input services and capital goods
- ☐ Inverted rates greater injury to Small standalone units
- ☐ Accumulated ITC on capital goods hurts the exporter
- ☐ Disincentives domestic manufacturing and investment
- ☐ Incentivizes imports
- ☐ Gives rise to fraudulent practices- fake invoices, misclassification
- ☐ Claiming refund entails efforts, cost and hardship
- ☐ Consumer not benefitted. Unutilized ITC is a dead weight cost

5

## Inverted rates on Manmade Textiles segment [1/2]

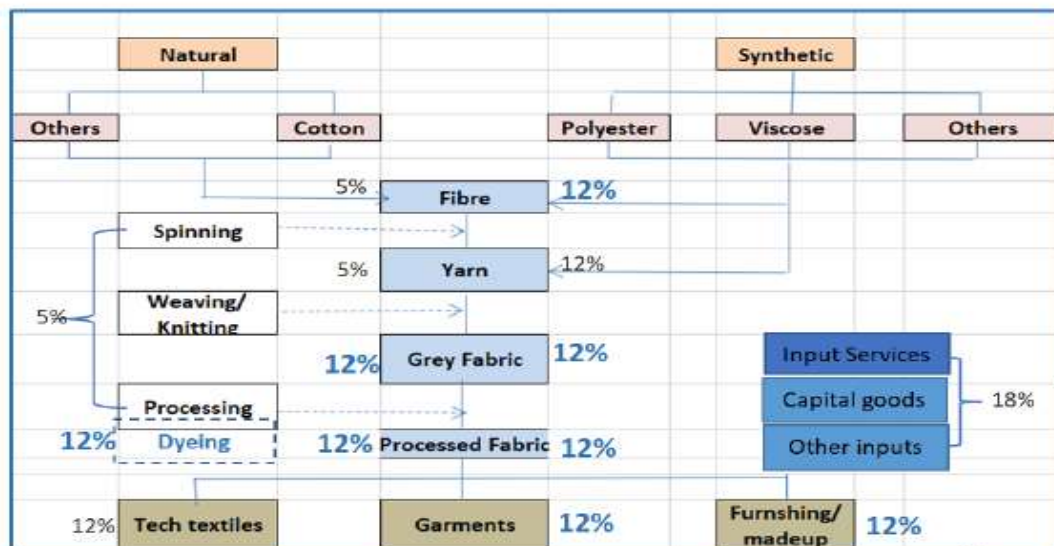


6

## Inverted rates in Manmade Textiles segment ...(2/2)



## Fitment Committee's recommendation



The proposed changes in rates are shown in blue (bold font)

8

## Benefits

- A simple uniform rate across textile chain
- Refund outgo shall be reduced by at least Rs 6000 cr a year
- No cash flow issues for domestic manufacturer
- No undue advantage to imports
- Litigations and other hardships on this count are avoided
- Growth of textile sector and encouragement to investment, as argued by the Textile Ministry.

**Impact on unit prices would be marginal as cash flows improves along with fully integrated ITC chain**

9

## Proposed Rate Structure

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

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**Agenda Item 1(ii): Confirmation of the Minutes of the 41<sup>st</sup> GST Council Meeting held on 27<sup>th</sup> August 2020**

The 41<sup>st</sup> Meeting of the GST Council (hereinafter referred to as ‘the Council’) was held on 27<sup>th</sup> August, 2020 under the Chairpersonship of the Hon’ble Union Finance Minister, Smt. Nirmala Sitharaman (hereinafter referred to as the Chairperson). A list of the Hon’ble Members/Ministers of the Council who attended the meeting is at **Annexure 1**. A list of officers of the Centre, the States, the GST Council, the Goods and Service Tax Network (GSTN) who attended the meeting, is at **Annexure 2**.

2. The following agenda item was taken up for discussion in the 41<sup>st</sup> Meeting of the Council:
  1. GST Compensation to the States and Union Territories

**Preliminary Discussion**

3. The Chairperson invited the Union Finance Secretary and the ex-officio Secretary to the GST Council (hereinafter referred to as the Secretary) to begin the proceedings. The Secretary welcomed the Hon’ble CM, Hon’ble Deputy CM’s and Hon’ble Ministers to the 41<sup>st</sup> GST Council Meeting. He, on behalf of the Council welcomed the following new Members nominated from the various States, Sh. Ajit Pawar, Hon’ble Deputy Chief Minister of Maharashtra, Sh. Jagdish Devda, Hon’ble Minister for Commercial Tax, Finance, Statistics and Planning from Madhya Pradesh and Sh. Subodh Uniyal, Hon’ble Minister for Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development from Uttarakhand.

3.1 The Secretary then briefed the Council that the only Agenda that day was discussion on the GST Compensation to the States and UT’s. He then asked Sh. Ritvik Pandey, Joint Secretary, DoR to begin with the presentation.

**Agenda Item 1: GST Compensation to States/UT’s**

4. The Joint Secretary, DoR began with a presentation (attached as **Annexure 3**) stating that it was a small presentation to give the status on the Compensation released till then, the legal provisions, the interpretation of those legal provisions and thereafter a discussion on the options available with respect to GST compensation could be taken up. The JS, DoR stated that since the inception of GST i.e 1<sup>st</sup> July 2017 GST compensation of around Rs. 3 Lakh Crore had been released out of a collection of almost a similar amount of GST Compensation Cess. The releases were slightly more than the collection and he recalled that in the last GST Council Meeting it had been presented that around Rs.33,400 Crore were transferred out of the Consolidated Fund of India (hereinafter referred to as ‘CFI’) due to reversal of devolution of IGST which was not apportioned in 2017-18. Taking the same into consideration the balance in GST compensation fund was around Rs. 11,000 Crore as on 31 July 2020.

4.1 The Finance Secretary added that in the 39<sup>th</sup> GST Council Meeting held on 14<sup>th</sup> March 2020 the Hon’ble Chairperson had mentioned that she will take legal opinion on the entire issue. He highlighted that after the Meeting on 14<sup>th</sup> March 2020 compensation of around Rs. 65,000 Crore had been released to the States while during the period April, May, June and July the total collection has been only around Rs. 21,000 Crore.

4.2 Continuing with his presentation, the JS, DoR highlighting the challenges being faced in meeting the requirement of compensation brought out the following points:

- a. The protected revenue continues to grow at a rate of 14% over previous year irrespective of how the revenue performs.

- b. The GST revenues are expected to be adversely impacted due to economic impact of COVID-19.
- c. Widened gap between protected revenue and actual collections.
- d. Less than normal cess collection due to economic impact of COVID-19.

He stated that all of this had led to the unprecedented situation that they were in that day. Further giving a background of the same he briefed that such a hypothetical situation was discussed when the GST Council was deliberating the compensation framework and that now it had become a reality. Citing the deliberations of the Council from the 7<sup>th</sup> and the 8<sup>th</sup> GST Council Meeting the JS, DoR stated that when discussions were taking place as to whether the Compensation should be met out of the cess receipts and there should be a dedicated fund for paying compensation or whether it should be paid from the general revenues and CFI, the then Chairperson of the Council had remarked in the 7<sup>th</sup> GST Council Meeting held on 22-23 December 2016 that it was not possible to meet it from CFI. It would be unpragmatic to meet the compensation requirements from the CFI and that it should be met through the cess amount and if there was a shortfall the Council should sit and deliberate on how that shortfall should be met. The JS, DoR added that this was further discussed in the 8<sup>th</sup> GST Council Meeting held on 3-4 January, 2017 in which even the borrowing option was discussed and the Hon'ble Chairperson again had stressed that it was the GST Council that would need to deliberate on the ways available to meet such gap. JS, DoR stressed that the intent was always to have a dedicated stream of revenue in the form of cess for payment of compensation to the States/UT's on account of the loss of revenue due to implementation of GST. Further stating that this dedicated revenue stream had a good impact in 2017-18 and 2018-19 and because of the same the release of compensation to the States/UT's was never impacted due to competing demands on the CFI on account of various Centrally sponsored schemes or expenditure requirements of Government of India for internal security, defence requirement etc.

4.3 The JS, DoR stated that based on the discussions in the GST Council, when the Bill was presented in the Parliament similar issues were brought up and Sh.K.C.Venugopal, Hon'ble Member of the Parliament had introduced an amendment to the bill at that time stating that the compensation to the States for loss of revenue should be paid from the CFI. This was deliberated in the Parliament and this amendment was rejected by Parliament thereby clearly indicating the legislative intent of the Parliament that it was of the firm view that compensation should be paid from the compensation fund and that it should not be paid from CFI.

4.4 Proceeding further with the presentation, the JS, DoR brought out the constitutional provision on the basis of which the compensation law had been made. He detailed Section 18 of the Constitution (One Hundred and First Amendment) Act, 2016 stating that the Parliament shall, by law, on the recommendation of GST Council, provide for compensation to the States for loss of revenue arising on account of implementation of GST for a period of five years.

4.5 The Finance Secretary emphasised that GST (Compensation to States) Act, 2017 was passed as per the mandate given through constitutional amendment made in 2016 and stressed that the compensation was to be paid to the States for loss of revenue on account of implementation of GST for a period of five years so the issue had to be looked at, from that perspective that compensation was to be paid for the loss on account of implementation of GST. Proceeding with the presentation, the JS, DoR stated that the GST (Compensation to States) Act, 2017 was accordingly enacted consisting of 14 Sections which provides for formula for calculation of base year revenue, protected revenue, levy of cess and the GST Compensation Fund. He detailed that Section 10 of the Act provides for the GST Compensation Fund which says that the proceeds of the cess levied under Section 8 shall be credited to the Fund, and such other amounts as recommended by the GST Council can be credited to the Fund.

Further, Section 10(2) specifically provides that the compensation shall be released only from the Fund. So, based on these legal provisions and as was discussed in the 39<sup>th</sup> GST Council Meeting on 14<sup>th</sup> March, 2020, opinion of the Ld. AGI was sought about the options which are available to the Council for various aspects relating to compensation.

4.6 The Finance Secretary reminded the Council that in the 39<sup>th</sup> GST Council Meeting held on 14<sup>th</sup> March, 2020, the Hon'ble Chairperson had mentioned that the entire issue of compensation will be discussed in a special meeting in the month of April, but due to the pandemic, meeting could not be held. He also reminded that the Chairperson had mentioned of taking legal opinion and release as much GST compensation to the States/UT's as was possible and that the entire issue would be examined. Accordingly, on the basis of directions given in the Meeting the opinion of the learned Ld. AGI was sought on the matter. The Secretary asked JS, DoR to present verbatim opinion of the Ld. AGI.

4.7 The JS, DoR presented the verbatim opinion of learned AG:

- a. Irrespective of what the situation goes, whether cess resources are adequate or not at any point of time, the entitlement of the States are very hard coded in the Act that cannot be changed, it is protected revenue minus actual revenue, every year.
- b. There is no express provision in the Compensation Act which puts a mandate on the Government of India to raise resources or to arrange resources for payment of compensation.
- c. GST Council has the power to raise resources, it is very clearly mentioned in the Act that GST Council has to find other sources to meet the requirement.
- d. Council will be well within its rights to discuss the borrowing issue to meet the compensation gap, nevertheless the borrowings will be determined by the constitutional provisions which are different from the GST provisions, which is governed by Article 293 of the Constitution.

Giving gist of Ld. AGI's opinion as above the JS, DoR read out the Ld. AGI's opinion for kind information and consideration of the Council (**Annexure 4**).

Certain clarifications were sought on the AG's opinion above which were then responded to by the Ld. AGI in his comprehensive response (**Annexure 4A**) which was read out by the JS, DoR for information and kind consideration of the Council.

5. The Hon'ble Minister from Punjab sought permission from the Hon'ble Chairperson to initiate discussions and expressed his regret that the opinion of the learned AG was not circulated or shared with the States in advance to allow them to be in a better position to comment on it. Having said so he emphasised that of all the issues faced by the Council the issue of compensation was at the very top. He added that the entire foundation of GST was built on the promise that if there were to be any GST deficit for any State, the Centre would make good the loss in the first five years. Now they were in a situation where doubts were being raised whether the Centre is legally accountable for compensation and should the compensation be met by allowing States to borrow. It is one thing to say that there are no funds available for compensation but an entirely another thing that there is no commitment to pay compensation. Perhaps a few lines in the law may create some confusion in the minds of some but for those who have dealt with the subject for over a decade, there is no ambiguity in this. The very first report of the Parliamentary Standing Committee on Finance which was headed by the former Finance Minister Sh. Yashwant Sinha, in which a Constitution Amendment Bill was being considered in 2011 and in the process provided for background of the GST Constitution Amendment Bill in 2014. It was at the time when UPA was in Government and a lot of the BJP run States had made a pitch for the mechanism of compensation to be made part of the Constitution itself. The Hon'ble Minister from

Punjab drew attention of the Council to para 92 of the report, when asked whether compensation to States should be made part of the Constitution, Ministry of Finance stated that it was expected that there would be no loss of revenue, nonetheless the Centre assured to pay compensation for a specified period if there was such a loss. He emphasised that it was in this spirit that it finally got incorporated into the Constitutional Amendment Bill, 2014 which was later finally passed and was worded as follows “Parliament shall, by law, on the recommendation of GST Council, provide for compensation to the States for loss of revenue arising out of implementation of GST for a period of five years”. So, the question was that the Parliament had enacted a law as provided in the Constitution including stated recommendations of the GST Council. Thus, this would require us to look at the Minutes of the Council’s Meetings. He reminded the Council of the elaborate discussions on the subject prior to enactment of the GST Compensation law. Many Members had invited attention that in case the compensation cess was insufficient to meet the needs Central Government should provide for the deficit from its own funds. Some suggested that if the amounts available for compensation were not sufficient to pay compensation then the levy of cess might be extended beyond five years to recover the shortfall. To these concerns, the Hon’ble Chairperson of the Council stated, the same being recorded towards the end of Para 21 on Page 33 of the Minutes of the 7<sup>th</sup> GST Council Meeting as follows:

*“The Hon’ble chairperson observed that there was constitutional commitment for the Central Government to provide 100% compensation and how it would be done was for the Council to decide”*

This was further reinforced in the 8<sup>th</sup> Meeting of the GST Council again in the words of the Chairperson which are recorded on page 27 of the Minutes which are as follows:

*“The Hon’ble Chairperson assured the compensation to the States, shall be provided for five years in full within stipulated period of five years and in case, the amount in the GST Compensation Fund fell short of the compensation payable in any bi-monthly period, GST Council shall decide the mode of raising additional resources including borrowing from the market which could be repaid by collection of cess in the sixth year or further subsequent years.”*

The Hon’ble Minister from Punjab added that it was evident from the above statements that there was no doubt that promised compensation would cover 100% of the deficit and that it would be payable within the stipulated period of five years and the Centre would have the obligation to pay and only the manner of payment was to be decided by the Council. If there was shortage borrowing was an option and in Page 28 of the Minutes of the 8<sup>th</sup> GST Council Meeting a formal decision is also recorded that Section 10(2) of the proposed draft of the GST Compensation Bill be modified to clearly reflect that in case the amount in the Compensation Fund was likely to fall short or fell short, the Council shall decide the mode of raising additional resources including borrowing from the market which could be repaid by collection of cess in the sixth years or further subsequent years. However, the GST Compensation Act which has been worded making no mention of the liability of the Central Government or of the borrowing. In fact, when pointed out in the 10<sup>th</sup> Meeting of the GST Council the Secretary to the Council statement is recorded in Para 6.3, Page No. 13 as follows:

*“Central Government could raise resources by other means for compensation and this could then be recouped by continuation of cess beyond 5 years. He stated that other decisions including possibility of market borrowing for payments of compensation were part of the Minutes of the 8<sup>th</sup> Meeting and need not be incorporated in the law”*

The Hon’ble Minister from Punjab further added that the Council agreed to the above suggestion. Thus it was evident that the GST Compensation Act was not worded as per the additional decisions of the Council, but in view of the assurances given by the Secretary to the Council, not to insist on legal change, agreeing to accept the promise there is no ambiguity what so ever that Centre was responsible



for payment of compensation and that in case of a shortage Centre will have to provide for shortfall including borrowing. If the Centre had no obligation to pay GST compensation then the question arises as to why the orders for release of compensation from time to time were being issued by the Central Government, why not the Council Secretariat. The Compensation Fund is reflected in the Union Budget as a receipt of the Central Government under Major Head 009. Summing up he said that he appreciated the view of the learned AG but if the Minutes of the 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> Council Meeting were seen it was amply clear that full compensation payment was Centre's obligation and they should not shy away from it.

6. The Hon'ble Deputy Chief Minister of Bihar thanked the Hon'ble Chairperson for release of compensation for the year 2019-20 and for convening the meeting specifically on GST compensation. He opined that this shortfall was not due to structural design of GST, that there may have been some shortfall due to structural design but it was largely due to economic slowdown and thereafter because of the pandemic. He stated that he had gone through the Minutes of Parliamentary proceedings wherein Hon'ble Member of Parliament Sh. K.C. Venugopal, had moved an amendment on compensation to the states on loss of revenue on account of the implementation of GST shall be paid from the CFI. The amendment was rejected so compensation to the States out of CFI was out of question. He recalled the 8<sup>th</sup> GST Council Meeting in which the then Chairperson Late Sh. Arun Jaitley had given a roadmap in case of revenue shortfall which had already been mentioned but he would like to reiterate pointwise:

1. Compensation shall be paid for five years in full within the stipulated period of five years meaning compensation cannot be a deferred payment and shall be paid within five years.
2. In case of shortfall, GST Council to decide the mode of compensation which had two options one being raising additional resources, to which the Hon'ble Deputy CM of Bihar remarked that if tax rates were increased by 1% overall, that should yield only around Rs. 60,000 Crore of incremental revenue per annum and will lead to price rise and in view of the pandemic it was not an appropriate option at this stage to raise the tax rates.
3. With regard to raising cess rate, which are currently on demerit goods and may be extended to some other items. This again he opined was not feasible as most of the cess was from tobacco and motor vehicles. Increasing cess on motor vehicles was not an option as it was greatly affected by pandemic. There was little scope of raising cess on tobacco. He requested the Council to constitute a Committee of Officers which can look into the issue of increase of levy of cess on existing items under cess, look for additional items for levy of cess and rates thereon. He although opined that this exercise could lead to incremental revenues of around ten thousand to twenty thousand Crore per annum which again would not be sufficient to compensate the States.
4. The second option was borrowing from the market which he felt was the only option available which posed questions such as who would borrow, Central government will borrow or State Government would borrow and what could be the mode of repayment which had been answered to by the Hon'ble Chairperson as recorded in the Minutes that the repayment could be made through collection of cess in the sixth year and further subsequent years.

The Hon'ble Deputy CM of Bihar submitted to the Chairperson that the only option left was market borrowing. He stated that it would be better if Central Government could borrow and compensate the States, but understanding the limitations of the Centre as the Centre already had Rs. 12 Lakh Crore of borrowing this Financial Year which meant that fiscal deficit was crossing 5.5%. The projected revenue shortfall assuming collections in FY 2020-21 to be 65% of 2019-20 would be around Rs.3.65 lakh Crore. Even in case of 80% collection the shortfall would be around Rs.2.73 lakh Crore. He recognised

the huge borrowings Centre had to undertake for this kind of deficit and the limitations it would entail. He proposed that in such a case borrowing by States was an option to which Bihar was agreeable based on certain conditions as follows:

1. Absolutely no burden on the State-exchequer.
2. Government of India to make necessary arrangements to enable the States to borrow.
3. Interest rate on market borrowing should be very low.
4. State is able to borrow as much and as often as it needs within the compensation gap limits.
5. Assurance/Guarantee to be borne by GST Council or Government of India for regular and timely transfer of amounts required for repayment and in case the cess fund falls short the gap will be funded by Govt. of India or through the compensation cess fund and in no case interest burden should fall on the States ex-chequer.

Summarising his arguments the Hon'ble Deputy CM of Bihar stated that even if the borrowing is decentralised to the States, it would be the responsibility of the Central Government to create a congenial atmosphere so that States could borrow at lower interest rates, whatever amount is required, which could be repaid for from compensation cess fund, so the cess period would have to be increased for another 4-5 years and as the cess fund is being maintained by the Centre and not the States so Centre would have to take care of repayment from this fund. The borrowing for this purpose should not impact the State's ability to borrow in the normal course. The FRBM Act had to be amended to exclude borrowing for this purpose from normal borrowing limits under the Act. He further stated that without going into the background reasons of shortfall, this year there would be a huge deficit and this year States required money as many didn't even have money to pay salaries to staff and pensioners. So the only option left was borrowing. If the Centre wanted States to borrow, they could borrow but the Centre had to then make arrangements as had been discussed wherein the States would borrow on behalf of the GST Council or the Government of India and all the repayments and other things would have to be taken care of by the GST Council. The Hon'ble Deputy CM stated that in the Compensation Act it was provided that at the end of five years the cess would be merged into CGST and SGST so the States would have to forego revenue which would otherwise have accrued to them had cess been merged with SGST after June 2022, so that would be a loss for the States but the States were willing to bear that loss. He further emphasised the immediate need of funds for the States and that whatever decision had to be taken should be finalised in this meeting itself. He urged the Council to consider his suggestions.

7. The Hon'ble Minister from Tamil Nadu stated that the issue being discussed was the most important issue causing anxiety amongst all the State Governments. He noted that it was worrisome that in this fiscal for the period up to July 2020 Compensation claims of Rs 12,258.94 Crore were pending for State of Tamil Nadu. He stated the importance that compensation payments held for the overall fiscal situation of the State need not be emphasised, moreover significance of the same had increased manifold due to the fiscal stress caused by Covid-19 situation. He added that the Government of Tamil Nadu expected the Government of India to continue to honour its commitment and to protect revenue at 14% growth from base year. Any reneging from the promise will not only affect the confidence of the State in the overall GST framework but will also stress State's finances particularly during Covid-19 situation. GST (Compensation to States) Act, 2017 assured revenues with 14% growth over base year. This law was enacted for implementation of Section 18 of the 101<sup>st</sup> Constitutional Amendment Act and to honour the commitment made by the Government of India while canvassing for ushering in to the new taxation regime. It was on the basis of those unequivocal assurances that most of the States including Tamil Nadu under leadership of the then Hon'ble CM Late Smt. J. Jayalalithaa agreed to support GST. He added that it was well understood that in the GST (Compensation to States) Act, 2017 it is the GST Council's responsibility to identify other sources for cess fund, but the primary, moral and legal responsibility of providing compensation remained with the Central Government.

Therefore, as first option the Government of India should pay for compensation from its own sources, the Government of India could be requested to source money from market borrowing and if necessary, make changes in the Act to extend the levy of cess for a period beyond five years for financing repayment obligation. He further suggested the GST Council to request the Government of India to grant a loan to pay the compensation to the States, this loan could be repaid through future cess receipts. Government of India's borrowings would be cheaper than the State borrowings. He noted that it was also understandable that there may be apprehension that the economic slowdown may cause difficulty in mobilising resources for the cess fund and that there may also be an expectation from the Government of India that State governments must tighten their bills however they wished to emphasise that the States had already cut down drastically their non Covid related expenditure which could not be brought down any further. Any further cuts would severely impact implementation of welfare schemes which were essential for protecting the poor and vulnerable. He stated that under the present circumstance it was more difficult for the States to mobilise additional sources of revenue than it was for the Centre. He urged the Chairperson for her guidance in resolving this pressing issue in a manner that helped the States to continue contributing towards nation's development.

8. The Hon'ble Deputy CM of Maharashtra extended greetings to all the Hon'ble members of the Council and stated that the State had pending compensation claim of Rs. 22,534 Crore for the FY 2020-21 till July and going by this rate this was likely to go up to Rs. 1 lakh Crore by the end of two years. If this compensation was not made available timely, the State's finances would further deteriorate and hinder development works of the State. He emphasised that in times of COVID-19 the State needed more resources to tide over the situation. He urged the Centre to borrow from the market as for States it was not possible to borrow owing to the fiscal limits, as also States would be unable to obtain the interest rates that Centre could obtain and this undue high rate would ultimately burden the final consumer in form of greater cess. If all States entered into market to take loan, then interest rate will further shoot up and it will become more difficult to raise loans. Centre has made a mechanism in the form of cess to compensate the States that is to be paid up to five years till June 2022. This period should be increased further for levy of cess. Centre should, in the present situation make provision for loans and should compensate the States. Recovery made in the extended period can be used by the Centre to pay the amounts borrowed and interest accrued, till loan is repaid cess levy should be continued. For a developed State like Maharashtra such a difficult financial crisis has come, State is trying to get out of the same but because GST is a major source of revenue for the states so it is requested that States should get the compensation at the earliest, Centre as an elder brother should consider it sympathetically and help the states tide over this crisis.

9. The Hon'ble CM of Puducherry said the meeting was at a very crucial time with Covid 19 pandemic situation and economic slowdown on one side, with all States in financial crisis and with struggle for economic revival on the other. He said that in his State more than 42% of the revenue was lost after the Covid pandemic. He emphasised that theirs was a small State with revenue coming through commercial tax and excise and since they did not have any minerals, tourism was one of their major sectors which was affected adversely due to Covid. He recalled the meetings when Late Sh. Arun Jaitley was the Hon'ble Chairperson of the Council and Finance Minister and the time when deliberations were going on among the members of GST Council. He stated that as the Hon'ble Minister from Punjab explained in detail the deliberations of the 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> Meeting, the then Finance Minister took the responsibility and said that Government of India would make good the losses to the States and compensation would be paid in time to them. The then Finance Minister also suggested that the Government of India would come to the rescue or they could go for market borrowing. Commenting on the two options given by Hon'ble Deputy CM of Bihar one being that Centre could borrow and give the compensation to the States and second that the States may be allowed to borrow based on certain

conditions, he submitted that his State was not in a position to borrow from the market, already the FRBM had been increased from 3% to 5% and certain conditions had been imposed by the Central Government going for additional borrowing and it was taking a lot of time for State Governments to borrow from the market. Therefore, it was responsibility of the Central Government as per the commitment given in the Act and also in the GST Council to compensate and disburse protected revenue with 14% growth, to the States, moreover now when some of the States were unable to pay salaries to the employees, in addition to managing the Covid situation which required additional funds. Apart from this, economic activities had to be started for which some concessions had to be given by the State Government. That being the situation he urged the Chairperson not to burden the States any further. Let the central government borrow the money and give it to states, already there was provision in the GST Act that after a period of five years whatever additional cess had been collected it could be retained. He further added that from past several months the lockdown had slowly eased and economy had been opened but still tourism had taken a big hit in their State much like Goa. He requested the Hon'ble Chairperson to let Government of India take the responsibility. Two things have been quoted, one is the statement of Finance Secretary in the Standing committee on Finance. The Finance Secretary in the Standing Committee of Finance said that Government had no money at present to pay GST compensation to the States, this should not have been done and solution should have been given. Taking opinion of the Hon'ble Finance Minister, secretary should have said that it is a burden on Centre government and also on State Government and Central Government is duty bound to pay compensation to the States, by not saying so an impression had been created in public of various States that Government of India is under no obligation to pay. Second, the Ld. AGI's view has also been received, he opined that the Central Government's commitment to pay compensation is very clear. Reading Section 7(2) of the GST (Compensation to States) Act he said that the compensation under this act shall be payable to the States during the transition period. He emphasised that the word being used was 'shall' and not 'may'. He brought into notice that at the time of enactment of the CGST Act, SGST Act and IGST Act an impression was given that the manufacturing States will get advantage. This did not happen; the manufacturing States were losers and consuming States were getting advantage. He stated that Puducherry though being a small State was a manufacturing State and was losing 40% of its GDP as their goods were going to other States. The land was theirs; electricity was theirs; water was theirs; labour was theirs and manufacturing was done in their State but revenue accrued to the consuming State. He stated that fundamentally they have to think about modifying and making a different model for GST. Since it was not working and they had to look into the fundamental things then alone they could arrive at a solution because five years alone are not enough, it is not going to solve the problem. Government of India should come to the rescue of the states because it was a natural thing and he was not blaming the Government of India. Government of India is also helping the states for the purpose of coming out of Covid. As far as borrowing is concerned the Government of India should take the responsibility, as deliberations that took place in the GST Council it was one of the options that had been given that the Government of India will borrow and give to States. Quoting a RBI report the Hon'ble CM of Puducherry stated that the States had lost Rs. 6.2 lakh Crore of revenue, and asked the Chairperson as to who would compensate for the same. Further he stated that Government of India should borrow and give to States. On the discussions with regard to Parliament rejecting the amendment moved by Hon'ble MP Sh. K.C.Venugopal, he reminded the Council that he had himself been an MP for more than 23 years and had great respect for the Parliament, but whatever deliberations that had taken place in the Council, the assurances made by the Hon'ble chairperson of the Council and decisions taken in Council may not be in the knowledge of the Parliament, so taking umbrage in the argument may not be appropriate. Further he brought up the issue that every State was getting 51% revenue share whereas Puducherry was getting only 26% whereas it was entitled to 51% and also Puducherry was not being duly compensated even in grants given by Government of India. He made a strong plea that the Hon'ble chairperson should think of extending the period of compensation for ten years or go for a

different financial model for the States for GST. There was shortfall of cess and we were going for market borrowing and that being the situation, considering this aspect a separate meeting could be called as to what should be the different financial model, different sharing model so that GST Council can definitely in its wisdom come to the conclusion. They were all hard pressed, every State was suffering, decision be taken in this Council meeting so that Hon'ble members of the Council can understand how they will be able to receive the money for the States and then plan their expenditure.

10 The Hon'ble Minister from Chattisgarh stated that for him the issue was not just a matter of revenue or shortfall but the matter was of ensuring protected revenue guaranteed under Section 18 of the 101<sup>st</sup> Constitutional Amendment Act. The issue as had been discussed earlier is Parliament 'shall' and there were no options. The only rider was recommendation of the GST Council. So, the Council had to make recommendation to the Parliament. He stated that views had been expressed that Government of India is constrained for revenue and so were the States, so if the shortfall had to be met by borrowing, who should make the borrowings. He stated that if the States were asked to make the borrowings and as was mentioned by the Hon'ble Deputy CM of Bihar that States could be given benefit of additional limit apart from the limits for financial prudence set by FRBM etc, then how did it restrain the same thing to be applicable to the Government of India. Why should the head of family for this country shy away from this constitutional provision that had been made, that Parliament shall see that there would be no shortfall as far as protected revenue for the States is concerned. So eventually if the States were asked to take this loan, even under relaxed norms, the Government of India was standing surety and being asked to provide sovereign guarantee. As also pointed out by Tamil Nadu that the rate of interest will be lower for Government of India then why should not GST Council ask Government of India to borrow, why should Parliament not make this provision and in addition prudence norms could be relaxed for the States by the Government of India, so that these borrowings taken at lower rates be credited into the Cess Fund and the States be paid compensation. He also pointed out that there were suggestions that the five-year GST compensation term be extended for another five years on which the Council was yet to take a decision. He added that lot of views had been expressed and discussions held before the implementation of the GST regime but the basic issue was that if they were going for borrowing to meet out the deficit in the cess funds then who shall borrow. He asked why the Government of India seemed to be backing out and putting it on the State Governments maybe at higher interest rate and standing sovereign guarantee. He recommended that the Government of India and the Parliament must come forward, must stand for the country, for the federal structure and ensure that they were there with the States in times of stress. The rights of the taxation have been taken away from the States and given to GST Council. He added that he was also not in agreement that GST Council should take initiative and opined that Parliament should take initiative as enshrined in the 101<sup>st</sup> Constitutional Amendment Act. He humbly reminded the Chairperson that she was leading them in the Council and also representing the Government of India and in these times of hardship they should ask the Government of India to take these loans. He added that he had some other suggestions regarding other possible revenue sources which he would share in writing.

11. The Hon'ble Deputy CM of Delhi noted that he has had the privilege of being associated with GST Council and before that in the empowered committee since 2015 when the Constitutional amendments were being framed. The intent of lawmakers was very clear. GST was envisioned as a new tax regime in the nation with a vision seen by the Centre and as also shown to the States that it would be very beneficial. In the process the States surrendered their rights for tax collection up to 70-80% and let go of the flexibility in their revenue generation. He noted that contrary to the vision, the ground realities were hard and specially in these times. Hon'ble Member from Punjab discussed about the 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> Meeting of the GST Council, he pointed that a careful reading of the Minutes of these meetings made the intentions of the lawmakers very clear. He added that Hon'ble Minister from Punjab

had clearly brough forth the assurances made in the Council and what had been documented in law and he would refrain from reiterating the same. He highlighted that in the circumstances that had arisen today it was the responsibility of the Central Government as the States were promised that they would be given a protected revenue for five years in lieu of the States surrendering their 70-80% rights of taxation. He drew the attention of the Council to a vital point that after the inception of GST for two years the compensation cess collected was more than the what was required to paid to the States and in those times the Central Government had been enjoying the possession of the additional cess so collected. When such was the situation Central Government transferred Rs.47,000 Crore to the CFI from that cess fund. He submitted that when Cess being collected was more then there had been no consultation with the Ld. AGI as to how to utilise the additional cess so collected, whether it was required to be distributed amongst states or kept with Centre. At that time Centre conveniently credited the money to CFI, now that it was falling short, they were shifting responsibility to States to borrow and manage. He added that he had always been raising the issue of Rs. 3,000 Crore of IGST settlement pending for Delhi which had yet not been resolved. He lamented that when the cess collected was more, the Central Government had full liberty to utilise the excess cess so collected and now that it was falling short the Council was discussing that whether States could borrow. On the points made by Hon'ble Deputy CM of Bihar regarding possibility of borrowings by the States he said that Delhi did not have the power to take loans and give guarantee. He again reiterated that Delhi was one State that did not have the power to take loans and take guarantee. He again stressed that the responsibility of meeting the shortfall was of the Central Government as was evident from the Minutes of the 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> GST Council Meeting and the assurances given by the Chairperson and Secretary therein as discussed by Hon'ble Minister from Punjab. He added that he had been very vocally advocating federal structure like the GST Council in sectors of education and health where State and Centre could work together and that if a decision was taken that it is the State's responsibility and that the States should borrow to make good the shortfall then this would be the last time that States would ever trust assurances by the Centre. He stated that the assurances given in the meeting and the intent of the Council in bringing out the GST framework were more important than what was written in the law. He emphasised that the intent of entire journey of bringing in the new tax regime should be seen and not what was written in the law or what the learned AG opined. He stated that Hon'ble Minister from Punjab had brought forth the point that the Act was actually failing to adhere to the Constitutional Amendment and that being the case, they should amend the act and not put the onus on to the States. He again pointed out that if the States would be asked to borrow it would be big betrayal to Delhi which did not even have the power to take loans.

12. The Hon'ble Minister from Goa congratulated the Chairperson for convening the meeting and taking heed to the suggestions made by the Hon'ble Ministers of different States. He stated that they had seen how the GST had been doing thus far and that he had painfully listened to some of the views expressed by Hon'ble Ministers before him. He stated that the situation that they were facing was not anyone's doing and specifically not of the Central Government. He stated that he was certain that if even half the money was available in the kitty of the Centre, it would have been ensured that compensation reached the States in time to all States that deserve it and who are badly waiting for it. He stated that it was economic slowdown initially and thereafter the most unexpected COVID 19 impact had been to the extent of economy coming to a halt during lockdown. He added that had lockdown not been imposed there would have been a situation of large number of people dying in various States and regions thus, the situation warranted a lockdown. He said it was a challenging task to get the economy back on track and to get the GST compensation collections to a level that States did not have to complain. He stated it was important to look at finer points which were notable in the GST journey thus far such as reaching levels of one lakh Crore collection, increasing taxpayer base from 64 lakhs to 1.24 Crore and impact on collection of direct taxes through increase in number of assesses to a higher level

due to GST. He noted that if today collections were down then all the States have been party to it to the extent that tax reductions were State specific and as per suitability of the electorate in the State. He stated that the Covid pandemic had resulted in a grim situation and the figures show that as economy is slowly getting back on track, collections are increasing but he acknowledged that States were heavily impacted as compensation was not being released on time. He drew the attention of the Council towards Goa and noted that Goa was heavily dependent on mining which the Hon'ble Supreme Court prohibited. Further, he added that Goa was also heavily dependent on tourism which had been demolished by the pandemic which raised questions on Goa's economic survival. He stated that similar were the problems of other States, but small states get impacted by small amounts, noting that total dues to Goa were less than Rs. 1000 Crore. He stated that Compensation Cess Fund currently had a balance of Rs. 11000 Crore and if his counterparts from bigger States could have a larger heart, smaller States could be given their dues in time allowing them to survive and be saved from financial collapse. Smaller States such as Goa had a very small tax base and no new commodities or activities could be taxed to generate revenue. My learned friends in the Council had been privy and part of the formulation of the entire GST structure, He found it appalling that 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> GST Council Meetings were being quoted, though they had a roadmap mentioned in these very Minutes that if there was a shortfall in the revenue, GST Council will take a call, the GST Council had to decide a way out in case of shortfall and it had to be a concerted effort of both the Centre and the States and the Centre alone could not be held responsible in isolation. He found that no one was offering any solution as to from where the revenue could come. He stated that solution could come from out of box thinking as these times do not give room for any further taxation. He suggested that tobacco was injurious to health and quoting 2011 figures for direct and indirect disease costs attributable to tobacco use exceeded one lakh crore, close to 1.16% of GDP and thus the Council should consider taxing tobacco and tobacco products. Tobacco was affecting both rich and the poor, with poor finding no means for treatment. He noted that if cost of beedi increased by Rs.1 the exchequer could realise an additional Rs. 50,000 Crore and even a slight higher increase will result in further up to 50/60/70 thousand Crore. He urged the Council to re-analyse on which products higher cess and more taxes could be imposed without impacting growth of economy. He urged the Council to come to a solution through consensus and not blame anyone. He further stated that the levy of cess could be extended for a period beyond five years so that the collection of compensation cess thereafter could be used to pay off current borrowings, which are much required in the current scenario and not let the economy worsen. He agreed with the opinion of the learned AG that the GST Council had to decide in such situation. The States and the Centre had to come together and decide on borrowing and the cess could be collected far beyond the five-year period to repay the borrowings taken so that situation in the States did not worsen any further, with no salaries paid to the employees and staff. He called for a solution driven discussion and consensus in the Council. He noted that there were 221 items in the 12% GST slab and 607 items in 18% slab, and that this could be rationalised to a single rate slab instead of two. He highlighted that the collection levels of Rs. 1 lakh Crore had been touched in 2019-20 and that there was a 10% increase in GST Collection in the period Jul-Mar 2018-19 vis a vis the same period in 2017-18, implying that the new GST regime had worked well. He urged the Hon'ble Members to give solutions in these challenging and difficult Covid times on how the revenue could be increased, how greater cess could be collected and possibly later rates could also be increased so that States don't suffer and the Centre would have sufficient revenue. It is not as though the Centre had plenty of funds which they were reluctant to release to the States. The quantum of stimulus provided by Centre in all sectors including Housing where tax rate is only 5% and for affordable housing only 1%. These were all positive steps. He stated that India had always been resilient and under the leadership of dynamic PM they would tide through these times and India will be the most prosperous country and that economy would rise again. He added that he had carefully listened to and appreciated the application of mind exhibited by the Hon'ble Chairperson in the recent CII meeting and he was confident that the economy will make a strong comeback. Stating on behalf of the smaller States he

again requested the Hon'ble Chairperson to look into problem of smaller States. He compared the Centre to a father figure and the smaller states as little children crying for little things and sometimes the father lets the smaller child eat first and lets the elders, in the form of bigger States eat later as their hunger is more so also their capacity to wait. He again requested the Centre and bigger States that the current balance of over Rs. 11,000 Crore in the cess fund be utilised for paying off the smaller States so that not everyone is in a critical situation and the smaller States fair well and going forward they were all in it together and helping each other to revive economy.

12. Hon'ble Member from Jharkhand recalled the statement by Hon'ble member from Goa that Goa was a small State and there is a necessity of putting more focus on it and he stated that Jharkhand is a little bigger than Goa but would be one among the small States. Also, they also are among poor States. The amount they would ask from the Central Government which the Government of India possesses, in the GST Council, is also a small amount. They are requesting for Rs 2481 crore which is not large. It is below Rs 2500 crore. Hence, in the beginning they request that this amount may be released immediately so that business of the State Government can continue. Hon'ble Finance Minister from Punjab, in the deliberation, spoke about how the GST was made in the beginning, how consensus was achieved which is remarkable. This is worth focusing on. It is possible that the opinion of the learned Attorney General would be about the legal responsibility. However, any government would be vested with moral responsibility along with legal responsibility. The Hon'ble Union Finance Minister is the head of the family. She is the eldest and taking care of the younger ones is her moral responsibility, especially during these times. The Government of India is helping the States but more help is required on the issue of GST. Hon'ble Member from Bihar had stated that States can borrow. He would want to slightly differ here. When there is a requirement of taking loan, then the head of the family has to take the loan. If the Central Government does not take the loan, then the GST Council should take the loan and the Government of India can become the guarantor and the payment may also be made by them. He stated that protected revenue for five years, which was guaranteed as per the amendment to the Constitution, has to be given to the States. Hence, there should not be backtracking on these commitments. They have trusted the Central Government in the past, they continue to trust now and will continue to trust in the future as well. They should not be any issue in giving the protected revenue of 14%. He stated that the issue with Jharkhand is that they are a manufacturing State. They get less revenues in the GST regime. Consuming States will get more revenues as was stated by Hon'ble Member from Puducherry. He was right when he said that manufacturing States have a loss in GST. Their collections are low. There is a necessity of focusing on this issue. COVID-19 times have brought social and health related responsibilities. There is a dire need for money and their collections are also falling. Since the Chairperson is also the Finance Minister for the Government of India, he felt that it was necessary to convey that the Central Government has lot of pressure on the resources of the State. For example, 24% of the all coal mining in the country is done in Jharkhand. The production is done within the State but the revenues accrue to the Government of India. Fifty thousand acres of the State Government's land was lost but they did not get anything in return. Hon'ble Coal Minister visited Jharkhand and sanctioned only Rs 250 crore. Their outstanding requirement is about Rs 45,000-50,000 crore. What purpose will Rs 250 crore serve. He requested for those funds as well. He is well aware that this is the meeting of the GST Council but the Chairperson is also the Finance Minister of the country. He requested that they may be given the funds through Coal India Ltd in consultation with the Hon'ble Minister of Coal. The compensation for the State Government's lost land is still to be paid to the State. The Coal below the surface belongs to the Central Government but the land belongs to the State Government. He also requested for the GST Compensation money (protected revenues) and also the compensation for coal mining. He thanked the Chairperson for listening to him.



13. Hon'ble Member from Haryana stated that many Hon'ble Members spoke before him on the issue of compensation. Without going on the same lines, he wanted to convey that Haryana was a manufacturing and exporting State. He felt that States like these were worst hit where revenue had declined. On top of that, COVID pandemic had negatively impacted the overall functioning. Not only the State but also the Centre was affected by this. He wanted to sum up the discussion by making three points. First, as Hon'ble Members from Delhi, Punjab and others had stated that when Centre had the power over the formation of the GST Council, it was stated that Parliament would decide. He requested that in the coming session, as the Chairperson of the GST Council, she should take up this issue and let the borrowing come from the Centre. Today, when he speaks for Haryana, around Rs 5,850 crore GST compensation is pending pertaining to the last four months. It is pretty hard for States like Haryana, which are manufacturing and exporting, to work without capital. Second, COVID had given a jolt to every State and he felt that extension of protected revenue period should be extended beyond 2022 and the GST Council should start working on it. Maybe the 14% gap could be reduced, there should be a revision but it should be extended further for at least three to five years. Third point which no Member had spoken till then was that there had to be a plan which was also put forth by Hon'ble Member from Goa. Why shouldn't the GST Council plan on increasing the tax slabs. Revenues come only when there is tax collection. This power is with the GST Council which can decide and propose to Government of India that at least the tax slabs should be reviewed. If the 5% tax slab is changed to 6% tax slab, then according to him there wouldn't be a huge variation in the rate but the tax collection will increase. 5% tax slab had the largest basket. If the 12% slab was increased to 14% or 15% and 28% was increased to 30%, then at least the gap which was created over the last three years will be filled. He felt that for the coming meeting on 19<sup>th</sup> September, Central Government could deliberate and the States also should propose on how to get additional collections since Cess couldn't be the only way to get tax. If Rs 90,000 crore would be the cess collection, then the Central Government cannot fill the gap for the States. There have to be alternative ways which have to be worked out by the GST Council. He thought that all the members will agree. He made another request that Vidhan Sabhas are being conducted physically, Parliament session will be attended physically and so, next meeting of the GST Council may be physically conducted at Vigyan Bhawan. This is better since each and every State would be present in the meeting and it would be very easy to coordinate and discuss on issues which may be not done effectively through video conferencing.

14. Hon'ble Member from Telangana stated that on the sovereign guarantee of the Central Government, all the States had joined the GST. In the Act itself, it was stated that it was protected revenue. This Act had clearly conveyed that States' revenue will be protected. Protected revenue minus actual revenue would be the compensation which would be paid accordingly. So, on the Central Government's guarantee all the States had joined GST Council. The Chairperson knows that most of the States subsumed around 70-80% of their revenues. Whereas the Central Government subsumed only around 30-31% revenues. The Central Government has other sources like Income Tax, Corporation Tax, Central Excise Tax and many other opportunities are present for the Central Government. States had only few opportunities left and meagre things are left with the States. Hon'ble Member from Punjab stated that it was clearly decided in the 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> GST Council Meetings that if compensation cess falls short, either the GST Council or Central Government will take a loan and give to the States. Now there was a proposal that States should take the loan. He wanted to state that when compensation cess was left with the Centre, at that time Rs 47,000 crore were credited into Consolidated Fund of India and IGST amounts of around Rs 1.5 lakh crore were transferred to Consolidated Fund of India. When there were excess funds, they were transferred to the Central Government but when the funds fall short, the States are being asked to borrow. Technically there is a problem in this. It's not that he was just passing it to the Centre, he stated that they all should think that if States had to take loan then lot of issues would come. FRBM limits, variable rate of interest between States, loan tenure for two or three years (the rate

of interest will be decided on the tenure as well), when they will pay the compensation back, when States will get the compensation and when will they pay back the banks etc will be there when the State takes the loan. He sincerely requested that Centre should take the entire responsibility, Centre should take the loan and give money to the States and the GST cess period can be extended. Till what time the cess period has to be extended cannot be told now. Nobody was able to tell clearly when the COVID issue will subside, quantum of losses etc. In these circumstances, they suggest that the cess period should be increased till the repayment is over. Total period is for five years, so there are about 20 more months to go. How much compensation will be paid, when the COVID situation will improve, when exactly the revenues would increase nobody can tell. So, it is better that Central Government should take the responsibility and it should pay the compensation as quickly as possible to the States so that States can work better in health sector and other sectors during the COVID pandemic times. They were not able to pay the employee salaries for three months and they have to pay their employees. Their situation is very bad. His plea is that Central Government should take all the responsibility and they should take the loan. It will be easier for the Central Government to take the loan rather than the States since individual States will get loans at different rates. What rate of interest should be applied for repayment, how many months should be the loan tenure etc. complications can be avoided. The request from State of Telangana was that the Central Government should take the loan and pay the States. His second request was to Dy. CM, Bihar. In the 40<sup>th</sup> GST Council Meeting, a committee on IGST settlement was formed under his chairmanship. He requested that a meeting of the committee on IGST settlement may be convened as early as possible. Once the election notification for Bihar is released then he would get more busy. Telangana should get around Rs 2700 crore. Decision has already been taken, only the method has to be finalized in this issue. He requested Dy. CM, Bihar that a meeting of the committee should be convened as early as possible, the method for IGST settlement should be decided and States should be paid what their dues at the earliest. Dy. CM, Bihar clarified that in the 40<sup>th</sup> GST Council Meeting it was suggested that the officials would prepare a note regarding this issue and circulate among the States after which a meeting of the committee on IGST settlement would be convened. He requested the Finance Secretary and other officials that a note should be prepared on this immediately and then this issue can be discussed. Hon'ble Finance Minister directed that this be done expeditiously.

15. Hon'ble member from Andhra Pradesh stated that GST enactment probably in independent India was the biggest exercise and deliberation that could have happened which resulted in the enactment that everyone was aware of. He did not have the opportunity to participate in the initial years. In the presentation that was given at the beginning to this meeting there were four issues that were mentioned. One is that the then Chairman when requested by certain Members from various States had opined that it was difficult to pay money out of the Consolidated Fund of India because of Income Tax and other taxes coming there. Second, there was a particular instance of Hon'ble Member of Parliament Shri. K.C. Venugopal from Kerala asking for money coming in from Consolidated Fund of India which also was not accepted. Another was interpretation of Section 18 of 101<sup>st</sup> Constitutional Amendment and then the learned AG's opinion. On the whole it appeared that in the presentation itself, there was an indication of showing the way forward i.e. by way of States being enabled to borrow. He felt it was indicated that way. When they look at the actual enactment and the way the various deliberations that took place over more than a decade ago, the spirit of the entire enactment which was mentioned by Hon'ble member from Punjab and other Members, in the 7<sup>th</sup> GST Council Meeting, he reiterated that *"The Hon'ble Chairperson observed that there was Constitutional commitment for the Central Government to provide hundred per cent compensation and how it would be done was for the Council to decide"*. In another instance the minutes of the 7<sup>th</sup> GST Council Meeting state that *"The Hon'ble Chairperson said that in the Council there was shared sovereignty between the Centre and the States and the Council was the de facto legislative body and it was expected that the Parliament and the State*

*legislators would adopt the decision of the Council in toto*". Hon'ble Member from Punjab had earlier stated and he repeated that in the 8<sup>th</sup> GST Council Meeting, while perusing the draft of the Compensation Act it was approved that **"Section 10(2) (Crediting proceeds of cess to GST Compensation Fund): To modify this sub-section to clearly reflect that compensation shall be paid bi-monthly and that it shall be paid within 5 years, and in case the amount in the GST Compensation Fund is likely to fall short or fell short of the compensation payable in any bimonthly period, the GST Council shall decide the mode of raising additional resources including borrowing from the market which could be repaid by collection of cess in the sixth year or further subsequent year"**. In the minutes of the 10<sup>th</sup> GST Council Meeting it was recorded that the then Hon'ble Chairperson *"expressed a hope that good faith would prevail and that the Parliament and the State Legislatures would refrain from amending the Rules placed before them after the approval of the Council"* and then Secretary also stated that *"this implied that the Central Government could raise resources by other means for compensation and this could be then recouped by continuation of cess beyond five years"*. In this entire deliberation and the process that followed before the enactment of Compensation Cess Act, it is clearly seen that all States had cooperated with the Centre in all ways for a common good cause and there might be certain technicalities or words that have been used in the actual Act but on the whole the spirit states that it is the Centre that will take care of any shortfall in the States' revenues. In that context, for example, when demonetization happened, most of the States revenues fell short, but all States actually cooperated in the spirit of federalism and went on to take whatever was given. On the whole, the State of Andhra Pradesh feels that responsibilities of States are multitude in nature and far more closer to the common man. So they would like to emphasize that the transfers to the States should get overriding consideration over other demands of the Central Government and keeping in view the multitude of services that State Governments are mandated to provide, where any shortfall will have direct and adverse effect on the citizenry, the responsibilities and commitments have become more onerous due to the COVID-19 pandemic especially towards health care and social protection services. Just like Hon'ble member from Telangana said he felt that it was difficult to even pay the salaries of the government employees in view of this crisis. Since the Central Government has the power, authority and facility to raise the money, the Centre either by revision of compensation cess or Government of India borrowing and then extending the compensation period or even by authorizing the RBI to raise the money so that they tide over the crisis. On the whole, they truly opine that because of various sizes of States, various revenue patterns and various specific nature and financial situations, they feel that Centre has to somehow hand hold the States and take them forward by providing all the compensation they have to receive and even more, if possible. It becomes very difficult for smaller and medium States to repay at later stage because of amount of borrowing.

16. Hon'ble Member from Assam thanked the Chairperson for convening this important meeting. He had mentioned his thoughts on this issue in the previous meeting also. Some of his esteemed colleagues had taken a stand that it was for the Central Government to pay compensation if it was not legal responsibility, at least it was a moral responsibility. The provision of the Constitution was very clear that compensation will be provided for GST implementation. Nowhere is it mentioned that if State and Central Government suffer revenue loss for certain other reasons not because of GST, he thought that Central Government was neither morally nor legally responsible to pay compensation to the States. There have been losses in the past four to six months (analysis of records will show this), They have lost certain amount because of implementation of GST but they have also lost GST revenue because of the COVID-19 situation and lockdown which was imposed state wide. When Central Government imposed a nationwide lockdown, it was a national policy. But, thereafter in his State, lockdown was imposed in Guwahati on their own count. There was question by Central Government whether it was warranted but the State went ahead. On that count, they suffered a loss of Rs 100 crore. Was it the moral responsibility of the Central Government to pay that amount to them? He thought that if a tough stand

is taken like joining in the federal structure of GST Council was wrong like his colleague from Delhi had stated, then everything would be scrutinized afresh. At some point of time, this pandemic had come and lockdown was imposed, it was not envisaged by the former Chairperson when drawing the minutes which Hon'ble Member from Punjab referred to. Those minutes referred to a situation of shortfall of revenue because of the GST implementation. Those minutes should not be referred out of context today to emphasize that whatever may happen, the Central Government was morally responsible to pay to States. In Centre-State relationship, morality had no place. Parliament had passed the Constitution which states that it was for the GST Council to prescribe the manner in which the compensation can be paid. Once the Parliament passed the law and State Assembly ratified it, the States cannot make the Central Government morally responsible. He thought that an artificial aura around them should not be created that they will not do anything to earn revenue, whenever there is a proposal for increasing revenue, they will collectively say that it was not the proper time and then come back to the Central Government to fix moral responsibility. There was nothing moral in this world. It was purely a legally binding relationship where they have entered into the GST Council. He agreed that for the loss on account of implementation of GST which can be easily separated, he thought that at some point of time, whatever may be the wording, they have to find out a way for paying the compensation cess to the States. For the loss on account of COVID situation, when Kerala had suffered floods, they allowed certain provision, for Kerala to raise revenue and under the Constitution they had been given a prescription to raise revenue. There was no morality involved at that point of time which was done by the Constitution. He admitted that the Central Government has taken good care of States during the pandemic and if someone used harsh words, he was very sorry for that. The Central Government had arranged Revenue Deficit Grant and Devolution Grant. They could have taken a moral and legal stance that Income Tax, Excise Collections were low and hence grants may not be given. The moral question would have been flattened. The Central Government was looking after the States like a mother looked after her child during crisis. The Chairperson was playing the exact same role. He stated that in spite of revenue loss, he would require about Rs 2,148 crore but he would not use a single harsh word or put moral, legal responsibility on the Centre. Going by the conduct of the Chairperson in March, he was convinced that the special meeting was convened to help the States knowing that it was neither the moral responsibility nor legal responsibility to pay for the loss due to COVID-19. He stated that on account of GST implementation, the Central Government may have responsibility. His suggestion was that the GST Council at some point of time had to clearly make up mind that they had to raise the revenue. They cannot block revenue realization/revenue generation proposals and then ask for the compensation. State of Assam will support on this front and any State which opposes revenue generation program, he thought that they should not be given compensation. After four to six months, when Central Government comes with the proposal to hike rates, then they should not try to destabilize those proposals. If they have said that Central Government had moral and legal responsibility to pay compensation then equally the Central Government can also say that it was their moral and legal responsibility to come to Council with proposals and the States should approve morally and legally, whatever tax generation program the Central Government proposed. Learned AG had opined that loan could be raised. He would suggest two things. On the account of implementation of GST, whatever loss was suffered, the Central Government could give by raising loan. On the loss suffered due to COVID-19, the States may be given some fiscal space where they will raise loan subject to the requirement. If they did not require, then no loan will be raised. If they felt that they needed to go to the market to raise loan, they will go to the market to raise the loan. All these things will be accounted. Once compensation cess was collected by extending beyond five years, whether they will continue to pay the States again for five years is a different question altogether. The learned AG has clearly said that cess revenue can be collected even after five years. So, let those cess revenues be collected and be utilized to pay back to banks and RBI. He was of the opinion that the losses should be bifurcated and States should be told about their loss on account of GST implementation. If there was a certain loss on account of national

calamities, then there was a constitutional provision on how to manage and provide for it. The GST law is clear on this. The Chairperson had convened this meeting to discuss this issue and it was gracious of her that she was looking after States well in the COVID-19 situation and he again emphasized without her, they would not have been able to pay salaries. Today they are doing that. Even after the Revenue Deficit grant was finished, she again reappropriated and started paying to States. These things history will record. Some people were trying to project as if the States were not being looked after by Centre but history and records will say otherwise that Centre has gone out of way to help the States in this crisis. Clearly, there were two losses, one on account of GST implementation and other on account of COVID-19 pandemic. He requested that for GST implementation loss, the Central Government can borrow and the GST council will pay back to Central Government or RBI from the cess that will be collected even after five years or at the enhanced rates whenever they are in a position to raise the rates. On the COVID-19 related loss, the States imposed lockdown and managing the State was their responsibility fully knowing that there will be loss. On that count, his humble suggestion was that certain fiscal space and borrowing limit may be given and if they felt the need to borrow, they will otherwise they will not. He would not be one among those who would hold the Central Government morally and legally responsible for COVID-19 loss.

17. Hon'ble Member from Kerala stated that the provision of payment of compensation in the constitution or any other law was unconditional. There was no reference whatsoever to the reason or causes for shortfall in the revenue. There is no earthly way of distinguishing between or factoring the loss due to Centre action or State action or some other reason. Therefore, he thought it should be kept straight and simple as it was in the law that payment of compensation for any shortfall below 14% growth is unconditional. Now, he also wanted to make a point that the pandemic had certainly aggravated the revenue buoyancy of GST. He hoped that all the members remember that during the 37<sup>th</sup> GST Council Meeting at Goa, much before the COVID came to the scene, half session was spent in discussing about the possibility of future revenues of GST not keeping up with 14% growth which was untenable etc. therefore, he would argue that there is some structurally inherent problem in the GST rates, administration etc. which he would like to revisit. Now may not be the appropriate time to revisit the rates but he would like to revisit. They all would look in to the need for extending the compensation beyond 5-year period. There were suggestions regarding changing rate structure. He did not want to enter into those issues at this point of time. He wanted to flag that these issues have to be revisited. He wanted to state that he would fully agree with Punjab, Telangana, Tamil Nadu, Andhra Pradesh, Delhi, Chattisgarh and so on who have made it very clear that if the deliberations of the Council were looked at, ever since the compensation issue was discussed and debated, the whole spirit was not what learned AG gave in his opinion. Maybe it was a legal position. From a comprehensive reading of the debate and discussions would reveal a different picture. As Hon'ble Members from Telangana and Delhi mentioned regarding the way compensation fund was handled. If there was an excess balance, it went into the Consolidated Fund of India and the undistributed IGST also went in the Consolidated Fund of India. If there was a shortfall, how can the Centre shy away from addressing the problem? He hoped that they would take it in the spirit. But for the time being, he agreed that the GST Council had sought the opinion of the learned Attorney General and they would have to work within the framework of his opinion. He did not want to state what learned AG had said but he would fully agree with Dy. CM, Bihar that there was only one option at the current juncture, for reasons he had elaborated that, borrowing was the only solution. Now, what would be the agency to do this borrowing? There are three agencies, Central Government, State Government and the GST Council itself. The initial presentation by the Revenue Secretary seemed to have hinted that the it would be more appropriate for the States to borrow. Hon'ble Member from Andhra Pradesh had elaborated the difficulties involved. One is the FRBM Act, the other is that the cost of borrowing would be much higher, and the third is that there is no particular macroeconomic merit in making States to borrow. As far as fiscal deficit is concerned,

when the Centre borrows, Centre's fiscal deficit goes up and when the State borrows, State's fiscal deficit goes up. But for any macroeconomic analysis or for rating agencies' optics, the combined fiscal deficit of States and Centre is relevant. So, it did not matter whether it was Centre or State. Borrowing by the Centre had certain advantages which were already elaborated by many Members and therefore he would pray that there is a simple solution. Even if the Centre had no legal responsibility to pay, given the spirit of discussion and also the fact that the way the present fund was managed or undistributed IGST was maintained, the best and simple solution was that the Central Government borrowed which would be repaid within a year or two or three by the extension of compensation cess. It is a simple thing and the whole thing will be solved. Any macroeconomic expert will tell that this is the way to proceed. It does not matter and they need not worry about fiscal deficit increasing by another 1% because of this exercise. This was his position and if for some reason it was not possible then the GST Council should be empowered to borrow. Now, GST Council could make a recommendation under Article 279A(4)(h) on any other matter relating to GST to the Central Government and State Government and change in the law can be implemented so that GST Council directly borrows. That should be a last resort. The simplest and appropriate method would be for the Central Government to borrow and provide money to GST compensation fund and in another two to three years it will be paid back. So, he hoped that they would have the good sense to reach the settlement from the house today itself and not postpone this decision for future time for the simple reason that the States needed money. The States were in dire situation even to pay salaries and therefore savage cuts were being made in the welfare schemes and development activities etc. These being done by the State Governments which account for 60% of total governmental spending in India was utterly aggravating the crisis. So, he hoped that a decision would be reached in the current GST Council Meeting itself and not postponed any further. Even if some more discussions had to be made, even if the Central Government did not take the responsibility for future, he would plead that temporary accommodation may be provided for GST compensation fund and the payment may be made to the States for the first two months of the current financial year so that normal functioning of the State Governments is possible. Other issues would be taken up in the upcoming meeting on 19<sup>th</sup> September 2020.

18. Hon'ble Member from Himachal Pradesh stated that he had carefully listened to the thoughts of various Hon'ble Members. They had focussed on the option of raising loan. He agreed with the suggestion of Dy.CM, Bihar that the States would be in a position to take a loan on account of GST compensation only if loan burden in any form did not fall on them. Himachal Pradesh is a unique State and this had to be kept in mind when making any kind of decision. It was his hope that if there was a necessity for the State to take a loan on account of GST compensation then in the current circumstances there should not be any negative effect on the borrowing limit of State. The revenue gap of the State was steadily increasing while the return compliance of the State was better than the national average. In the end, he also wanted to state that the even after borrowing limit of the State was increased from 3% to 5% of GSDP, still there was revenue gap of about Rs 4,500 crore. If a loan had to be raised to fund the compensation cess they looked forward to cooperation from Central Government. He agreed with few suggestions from States like raising the rate of compensation cess and rationalizing the GST rates. He requested the Hon'ble Union Finance Minister that while making a decision, the unique circumstances of Himachal Pradesh may be kept in mind.

19. Hon'ble Member from Karnataka thanked the Chairperson for conducting a special meeting on the issue of compensation. This showed that she was a person who would take the issues head on and she called the meeting to get the views of the States, position of the law as well as get some concrete solution to the unparalleled problems which he appreciated. He stated that Karnataka was one the fastest progressing States and in terms of revenue collections also it does well. In the last four months, in spite of and despite COVID they were trying their best to have the same growth as in the same period in the

previous financial year. They had almost achieved 13.9% tax growth when compared to the same period in the last financial year. That showed the effort Government of Karnataka was trying to put in spite of COVID. He felt that COVID was a major stumbling block but that should not be the dead end of the road. They can overcome it. With will power and ways and means to think something different they can see bright sunshine at the end of the tunnel. Their efforts started very earnestly at the beginning. However, the distress in the total revenue continues. They had envisaged Rs 1.8 lakh crores but they estimated tax revenues (GST and other taxes) to Rs 1.2 lakh crore. The difference is about Rs 60,000 crore. Compensation which was not paid in the last four months had added another Rs 13,764 crore. At the end of the year, it will be around Rs 30,000 crore. Therefore, the compensation was very important factor as far as State finances are concerned. The entire country is going through difficult phase. Not only States but Centre was also facing problems. Therefore, joint effort had to be made to come out of this situation. India, as one country, believing in the strength of the people, they are very optimistic to come out this situation. This problem was temporary. However, this problem also gave opportunity to think together, act together and solve together. That must be the spirit. The constitution provides certain law and regulation. However, the market doesn't only go by law. Sometimes it goes beyond law, sometimes along with law and sometimes indifferent to law. GST Council is a moderator between the market and the law. Therefore, very proactive thinking had to be done in this situation as a moderator. Apart from taking the letter and spirit of constitution, the market spirit should also be considered. Therefore, putting the economic wagon back on the rail is of the highest priority of the States and Centre. To put the economy on track finances, investment, capital expenditure without gaps are required for Centre and States. Decisions of any kind which reduce the capital expenditure of the States will certainly harm not only the States but also Centre. He emphasized that this was a testing time and it was not only the monetary aspect to be considered but the very foundation of the federal structure. The cooperative federalism which was proposed and propagated by Hon'ble Prime Minister has to be taken forward. He felt that they have to come out with a solution in the current meeting or next meeting itself without wasting time. Having said this, he stated that the position of law was well known which he did not want to repeat. The law provides that what should be done in these circumstances. One of the solutions which had been deliberated in the 8<sup>th</sup> GST Council Meeting, which was the sum and substance of the entire discussion, is that the then Chairman mentioned "*in case the amount in the GST Compensation Fund is likely to fall short or fell short of the compensation payable in any bimonthly period, the GST Council shall decide the mode of raising additional resources including borrowing from the market*". He thought that this could be compensated with the cess collection in the 6<sup>th</sup> year or subsequent years. This will sum up the whole thing and lead the way forward. The question was who will borrow. Ultimately, as some Hon'ble Members have addressed it, even if the State or Centre borrows, from macroeconomic point of view, the combined fiscal deficit will count. Sovereign debt counts ultimately. All the compensation cess funds are accounted in the compensation cess account with the Government of India. Since all compensation cess levied on the items go into this account and which can be used for repayment in further years. Since the payment goes there, borrowing by the State would make it bit difficult in terms of transfer and payment of funds. He felt that conscious decision had to be taken by the GST Council. Since Centre was also part of the GST Council, everyone should unanimously think of borrowing at one place where the cess was collected and accounted for i.e. with the Government of India on the advice of the GST Council. If this could be done, it would be the way forward and multi-pronged approach was necessary. It is not only the market borrowing, like few Hon'ble Members have suggested, rationalization of GST rates and at least increase in the tax rates for luxury items which were earlier reduced. The rates on certain luxury items should be rethought without affecting the economic stimulation. Rates on Tobacco, Pan Masala etc have to be relooked and revenue generation had to be considered. Staggering of payments, extension of compensation period, market borrowings could be looked into. Comprehensive solution to this complex problem should be done since GST Council had collective responsibility to find a solution for compensation crisis. This

was not just a small problem but they were going through a crisis. This was testing time for everyone. Everyone had to stand united and there was no question of distributing the onus of responsibility. Karnataka being a progressive State, they were always with the Government of India in any reforms which can bring economic change and economic stimulation. One point he wanted to make as far as Karnataka was concerned, since they are almost growing at 14% (targeting 13.9%) efficiency should not be punished. If not rewarded it should not be punished. Therefore, looking into all these views and increase of borrowing limits since they had come out with certain reforms, it might take some time; SBI in its reports had said the day before the previous day that only eight States were capable of borrowing and other States find it difficult to borrow. This aspect also had to be relooked into so that State Finances must be reserved. He thought that with the Chairperson at the helm of affairs who had been one of the experienced persons in handling finances as well as she had been advocating the States' cause for a lot of time, he felt that under the leadership of the Chairperson, Statesman like decision had to be taken by the GST Council. That means that almost three fourth of the responsibilities of the States. They had to strive to increase the revenues, they had to contribute to Central pool which was their duty. At the same time, the compensation issue should not be withered away between the Centre and State. That's why careful balance is also necessary. He once again pleaded that multipronged solution was necessary and Karnataka was in a dire state. They needed compensation and since it was one of the highest revenue earning States, with some help from Government of India, they would certainly recontribute their revenues to the Government of India's kitty. Therefore, looking into the performance of their State, he pleaded for timely compensation and help from Government of India through GST Council, if need be, the amendment of law could be looked into. This can be debated in the Parliament and permanent solution can be found out so that in future such crises could be avoided. When excess cess was collected, it was accounted with the Consolidated Fund of India and now since there was a deficit, at least by borrowing, the Government of India could come to their rescue. He strongly pitched about Karnataka's plight and wanted to impress upon her the need for compensation. She had already deliberated the issue and he was sure that she would come up with a solution for this which will be a win-win situation for both Centre and State. Ultimately it would be a victory for cooperative federalism.

20. Hon'ble Member from Gujarat thanked the Chairperson for calling the meeting for a big decision. Due to the Corona pandemic, there was an economic slowdown in the entire country and the income of the Centre and States was decreasing. Businesses, Trade, employment, service sector etc. were facing slowdown. During the lockdown everything was shut down and therefore neither the Centre nor the State earned any income. In such a situation, for keeping up the financial stability of the States, the decision of the earlier GST Council regarding which the Parliament discussions and former Chairman's words recorded in the Minutes were heard by everyone. The important issue in the thoughts of various Members who presented their views in the GST Council was that all States were in dire necessity for liquidity. All States were requesting Government of India's help and GST Council's help in one form or another for meeting their expenditure. The GST compensation till now which had to be compulsorily given to the States by law, all Hon'ble Members had discussed on how the payment has to be made. He felt that it was not right to hold something or someone as the cause for these circumstances. Only the circumstances have turned out like this. They all had to only think about how to get out of this situation with the help of Government of India. He requested that they all should think on the simplest and fastest way to meet the compensation needs and the liquidity needs of the States. Just as Dy.CM, Bihar stated that there was only one option. When they earlier discussed about the compensation issue, the Corona pandemic was not present. At that time, there were balance dues of compensation of States. At that time their thoughts were expressed and were also recorded in the minutes that, if possible, Government of India or GST Council would take a loan and pay the respective amounts to the States and the create mechanism for repayment through cess collections. Till the repayment was done, the burden of interest should not fall on the States. He made this suggestion when



corona was not present. The situation had worsened now and payment of around Rs 3 lakh crore demand of States was required. As the presentation stated, Rs 12 lakh crore would be arranged by loan by the Government of India, it was the responsibility of the Centre to think about how to raise loan for this issue. Gujarat was to be paid a compensation of Rs 12,000 crore and this situation will continue in the future. It cannot be expected that market will rise suddenly and the economy would reach the earlier levels. They understood and accepted that it will not happen in the near future. He felt that the Government of India, GST Council and all State Governments together should work together and create a loan structure so that the compensation demand of the States for present and future were taken care of since the GST Council did not have income by which the States could be paid. He requested that for the current financial year, demand of the States may be met immediately by a mechanism created by Government of India, GST Council and States together. This mechanism could be through RBI or other bank or borrowing from any other source and the amounts should be given to States as early as possible. The interest burden for the borrowings should not fall on States at any point of time. Compensation payment would only be for 5 years but cess can be collected beyond 5 years also. The cess should be collected till the loan was repaid and future needs were met. The financial condition of the States would improve, Central Government would not be burdened. Many Hon'ble Members had spoken on the system and earlier meetings' minutes were quoted. It was not necessary since this was not a man-made crisis but natural crisis. They all should come together to face this and prevail. His suggestion was if the loan was taken by the Central Government or a mechanism may be created for paying the States and a moratorium period may also be created. The Central Government need not pay this immediately. Two or three years moratorium may be given to the States after which the interest burden should not be shifted to the States and repayment must be made from the income of the cess. According to him, there would not be an issue even if the cess period is increased for five years. The Centre-State relations would flourish. The financial problems of Centre and States would be solved. The primary objective of the GST Act was 'One Nation One Tax' would be successfully met. The GST Act would be successful and the conviction of the States in the law and in the GST Council should remain firm. Suitable mechanisms for this should be created. His request was that, if possible, a committee consisting of five to seven secretaries/commissioners from States may be constituted urgently and they should submit a report on how to raise a loan, how to implement this mechanism, who will take the loan, when the payments will be made etc. within seven to ten days. It was necessary that payments were made as early as possible. If there were delays then the troubles of States would multiply. States were not in a position to pay salaries also. Plans and development activities in States had stopped. These had to be taken forward and Atma Nirbhar Bharat also had to be implemented by them. To do these, financial situation of the States had to be strengthened. A committee of officers as mentioned above may be constituted with inputs from the States and a mechanism/formula may be created. The States should express their thoughts on the proposed formula then the path will become easy. The decision on implementation of this cannot be taken by video conference but if the committee gave the suggestion and the States gave their suggestions on it then the implementation would be easy.

21. Hon'ble Member from West Bengal submitted that the empowered committee had met in Kolkata where the question was of Section 18 of 101<sup>st</sup> Constitutional Amendment. He recalled that the proposal made by the Centre was that the Parliament 'may' compensate. The Finance Ministers of States were present and he was helping out the Chairperson then. They all decided that 'may' was not okay and it was replaced with 'shall' compensate. He was happy to state that the then Chairperson agreed to 'shall'. Then the question came up regarding the payment 'upto five years'. All the Finance Ministers, irrespective of political parties, said it should be 'five years' and not 'upto five years' because of the experience of CST before. Central Sales Tax was cut after three years by the previous Government. This was accepted and therefore the amendment happened. Therefore, having experienced that whole process, his first submission was that, the spirit of what they were doing were giving up 70% of their

power to tax. An internationally benchmarked reform, the whole world will say tomorrow that that India had done something important and novel. The States agreed because of the fact that their revenues were protected. Some Members had said that there was moral responsibility and Dy.CM, Bihar was quoted by the media, rightly or wrongly, that it was the moral responsibility of the Centre and Hon'ble Member from Punjab cited the earlier Council discussions. He did not want to waste time by going there. He would like to emphasize that it was not just a moral responsibility but also the trust factor the States and Centre worked marvellously. They do not do any politics and went by merit in this forum. Trust factor has been a crucial part of this. So moral responsibility and trust factor were two key things that he would like to humbly submit to the Chairperson. Coming to the practical part question to answer was how to they manage this. They fully understood the COVID situation; the situation of the Central Government and Centre should understand their situation. There were two options. One is to increase the GST rates and through various mechanisms collect more cess etc. which would be for the long term. As per RBI and studies by different agencies, GDP may fall this year from 4-9%. If it falls even by 2%, it will shrink. In this situation, if the GST rates & cess are increased, cesses on sin goods are hiked; it would be impractical and not doable in the current times. So, the second option is borrowing. Who is going to borrow is the question. Capacity to borrow is one of the usual criteria for borrowing. Capacity to borrow of the States is in a precarious condition. Hon'ble Member from Karnataka cited the SBI report that only eight States were in a state to borrow. The fact is that nobody is in a state where they can borrow and build up debt which they have to service. So, his first point is that capacity to borrow lies with the Centre. The Centre had already given Rs ten lakh crore stimulus. It would probably be Rs twelve or thirteen lakh crore in reality of which the RBI is perhaps a 70-80% partner. The Centre can monetize its fiscal deficit but the States cannot. The States cannot monetize their fiscal deficit and ask for money. The Centre can do it, essentially it means to print money. Capacity to borrow is a critical point and his humble submission was that the Centre becomes the eligible entity because of their capacity to borrow. Second point he made was the rate of borrowing. Today the States did not have capacity which was said by eleven-twelve States and others agreed. The Centre borrows at 1.5 to 2% less than the States. Hon'ble Member from Telangana stated that every State will have its own borrowing which would be a complete mess. Third is the debt servicing capacity. When the State or Centre borrows, they will have to service the debt. West Bengal was servicing massive debt like all other States. They cannot go back on it and sovereign bonds were issued by the State. His third point is that debt servicing capacity lies with the Centre. He reminded the Chairperson that on 14<sup>th</sup> March 2020, he quoted from the Minutes that the Chairperson was kind to say, in the context of cess and compensation, he quoted "*the Centre is duty bound to give compensation to the States*". That was in a good and positive spirit from the Chair. Today it had come to the point of practical solution. His earnest suggestion was that Centre had the capacity to borrow unlike the States, Centre had a lower rate of borrowing unlike States which also had differential rates, Centre had the debt servicing capacity. He felt from his heart that Central Government has many constraints in this COVID situation with the GDP shrinking. The actual percentage of shrinkage will be seen in the third or fourth quarter of the fiscal year. Despite the fact that both Centre and States were in bad shape, relatively speaking, the Centre had capacity to monetize the fiscal deficit, Centre had the capacity to borrow, better rate of borrowing and debt servicing capacity. In practical terms, his earnest submission was that the practical solution for the short term, the Centre borrowed and as the former Chairman had given the idea that maybe after the 5-year period was over, the cesses could continue in the sixth or seventh year. If they talk about the legal part that was started by the discussion, legal things can be interpreted in many different ways. What cannot be interpreted is what happened in the Kolkata meeting of the Empowered Committee. The States gave up their rights because they wanted a big fiscal jump which the world would remember. With the spirit, on one condition, that for 5 years and no more than 5 years, the Centre compensates the States. Due to COVID lockdown which was initiated by the Hon'ble Prime Minister and later on States also imposed lockdown, citing all the data that Hon'ble Member from Punjab started with, Hon'ble

Dy.CM, Delhi expressed the same sentiment, Hon'ble Member from Kerala brought in the question of rating agency where it doesn't matter whether the Centre or State borrows since it will be counted as fiscal deficit and it will affect the rating agencies, he earnestly submitted that since Centre had the capacity to borrow, can borrow at right rate and had the debt servicing capacity this may be considered objectively. With it, the Chairperson can put in place a long-term strategy with the GST Council that they will rejig the rates, especially the cesses and particularly the sin goods. Those could be in the long run when the economy had recovered. Some more headroom would be obtained. Then of course, they would bring in reforms without much revenue loss. If done today, the revenue would fall due to elasticity of demand. The present elasticity of demand says if the rates are increased, the revenue will shrink because of the current condition of the economy. He concluded humbly that the Centre may take this on and do what had been done for the stimulating the economy, though it had not been cash which was his earnest submission, 70-80% was taken by RBI as partner and 20% may be taken by Centre with 1-2% of fiscal outgo. The RBI helped in loans. He requested for the RBI to be brought in. He had seen in the news that RBI had done only 44% of total payment to the Centre so they have got some headroom. She could work with them as a partner and bring this about. His earnest submission is the Chairperson could consider this. For the long term, she could come bring back to the GST Council, if this were to continue then how it would be managed in terms of cess adjustment and GST adjustment.

22. Hon'ble Member from Rajasthan stated that Section 18 of the 101<sup>st</sup> Constitutional Amendment made a clear provision that by a Parliamentary law the States would be paid compensation for 5 years. Rajasthan is yet to be paid Rs 6,990 crore GST compensation. It was known that due to COVID the income of the States had drastically fallen to almost 40% compared to earlier figures. In these situations, they were not in a position to pay salaries, pension and fund developmental activities. They were not able to make payments for last five to six months to various institutions. In these situations, when the Central Government brought in GST, on one hand the State's power to tax was centralized. It is a federal structure and they all are dependent on the Centre. Therefore, the States should get timely payments of GST Compensation. The Chairperson in the previous meeting stated that "*the States are entitled to it and there is no question of them asking the Centre for it. It was the solemn commitment to the States. The Centre is duty bound to give compensation to the States*". The question rises on how to give the compensation. For this, before him, various Hon'ble Members had given solutions based on their experiences that RBI's help may be taken, Centre can help by printing more money, NABARD has a lot of money which belongs to the Central Government in the form of corpus fund which can be used to pay compensation to States. It was also true that the capacity of States to borrow is finished. They were a victim of indebtedness. Hence, for this reason, they would not take huge loans and if they took, they have to face huge interest burden. When the Central Government takes loan from related sources or institutions, they get it for lesser rate of interest. In these circumstances, the Central Government had to find out a way and pay the compensation for which the Central Government was committed to. He also reminded that their Hon'ble Chief Minister, who is also the Finance Minister, wrote a letter requesting extension of the cess period for five more years. Due to COVID, the income of all States had fallen and nobody could predict till when this situation will be present and when things will be back to normal. For this reason, the cess period should be extended. With a federal structure mechanism, for the States, the Central Government may also raise funds by raising loans from IMF, World Bank and other institutions and pay compensation to the States. The responsibility to pay compensation is with the Central Government. Due to COVID, the expenses of the State had increased. This is a global pandemic. The Central Government had to bear the expenses of this pandemic. Due to COVID, their expenses have increased and revenues had fallen. Therefore, their legitimate demand for compensation, which the Government had promised in accordance with Constitution should be definitely met. Along with this, he also wanted to draw attention to the fact that changes were brought in the Centrally Sponsored Schemes. Taking the example of Rajasthan, he stated that, before 2013, the Central

Government used to give 90% grant for drinking water schemes but after 2013, the Central Government had changed the ratio to 50:50. In Jal Jeevan Mission, 50% fund contribution from the Central Government and 50% contribution from Rajasthan Government. Their contribution to the Centrally Sponsored Schemes was increased which they found difficult to meet. Hon'ble Prime Minister wanted to deliver water to every home in the entire country within five years. For this, Rajasthan which is the largest State in India required Rs 1 lakh crore out of which the Government of Rajasthan had to contribute Rs 50,000 crore. In the current situation, they could not make such contribution. Therefore, even in Centrally Sponsored Schemes, where there are deserts, mountains, semi-arid and arid zones, where they used to get 90% contribution, they should again get 90% contribution. He had full faith that keeping in mind the situation of the States, the Chairperson will make timely payments of GST compensation to all States which are due. He wanted to repeat that Rajasthan which was yet to be paid Rs 6,990 crore, should be paid immediately so that they can timely pay salaries, pension and meet State's contribution to the much required Centrally Sponsored Schemes. They were not able to meet the promises made in State budgets and their development had stalled. In these circumstances, the GST Council should take a decision immediately and pay compensation to the States.

23. Hon'ble Member from Uttar Pradesh thanked the Chairperson for arranging a special meeting on compensation. The Government of Uttar Pradesh gave highest priority to the realization of expected revenues. They always used to put in efforts to keep the revenue shortfall (which is projected minus actual revenue) to the minimum. Effective steps had been taken to ensure highest filing of returns and for preventive action. Uttar Pradesh required less compensation. However, due to situation caused by COVID-19, the State's requirement for compensation increased as compared to previous years. In these testing times of Corona, for taking care of States, the compensation for the month of February 2020 was paid and Uttar Pradesh received Rs 3,943 crore for which he specially thanked the Chairperson. However, Uttar Pradesh still had to get Rs 11,876 crore compensation. He impressed this on priority that balance Rs 11,876 crore should be given to Uttar Pradesh due to the current testing times. If they calculated the compensation amount for the next two years, then they would get a figure of Rs 60,000 crore. In the exclusive meeting on GST compensation, there were two options before them. First was that their resources and other means may be increased and the second is that, to deal with the current circumstances, borrowings may be resorted to and take a loan in some form. He wanted to attract attention to the fact that during the lockdown period premium segment video on demand service aggregators like Netflix, Amazon Prime, Hotstar, Zee Five had grown faster and the effect of this on the GST revenues from cinema halls and multiplex is natural. The tax slab for these should be increased from 18% to 28% and based on viewership bringing these under the ambit of compensation cess may be considered. Apart from this, cess also should be imposed on horse racing, gambling. It also had to be deliberated that from 15<sup>th</sup> November 2017, 178 items were moved from 28% slab to 18%. In first phase GST rates should be increased from 18% to 20% on items used by high income group by which the revenues of Centre and States will increase and the requirement of compensation will decrease. The problem which they had in the current times; this can also be one option. He wanted to especially state that when the talk of responsibility happens they say that the Chair is responsible or the Central Government is responsible, time and again it was seen that certain decisions of the GST Council taken were keeping in the interest of individual States, the respective Members stated that it was not the proper time to enhance rates. They had to look at the issue in toto to come out of this situation. Another thing that he wanted to focus on is that brand owners of packed food grains announce giving up their actionable claims and avail benefit of tax exemption. Benefit of reduction in rate of food grains of these brands is neither available to the farmer nor consumer but only to the marketers. Slaughtering services, premium segment services like child care services, pet care, day care services may also be brought within the ambit of GST from the point of view of revenue. Earlier also he had emphasized on it and he would repeat that agricultural produce, Mentha oil, cashew, tendu leaves, silk yarn, raw cotton should

be brought within the ambit of RCM. Uttar Pradesh had made the requests to GST Council on these issues. It is pending with Fitment and Law Committee. There is a necessity for bringing Mentha Oil within the ambit of RCM on priority. He drew the attention of the Chairperson to the fact that time limits have to be imposed for matters referred to Fitment Committee and Law Committee. They have to present their reports within 30 to 60 days. Decisions which bring in revenue should not be delayed. He personally also made these requests earlier. His humble submission was that matters involving revenue, if referred to Fitment Committee and Law Committee, then strict timelines should be imposed for them. They should take decisions between two GST Council Meetings so that they can be put up to the GST Council in the subsequent meeting for final decision to be taken for the benefit of States. Hence, he wanted to emphasize this issue. Along with this, Uttar Pradesh had requested GST Council for capacity based special compensation scheme for brick kiln, pan masala, this was referred to the joint meeting of Fitment Committee and Law Committee but this matter is still undecided. Hence, they wanted to attract the attention of the Chairperson to this issue. Revenue realization from advertisements shown on Facebook, YouTube, Google is negligible. If a mechanism was devised to share data then their revenues could increase. Finance Secretary at the beginning had focussed on how to deal with the current situation and Hon'ble Member from Gujarat stated that borrowing had to be done, whether the Centre, GST Council or the States. In this matter, they are completely with the GST Council and Central Government in case they take a decision for reforms. Hon'ble Member from Gujarat stated that committee may be formed and in five to ten days they deliberate on all the issues and options. Thoughts were expressed on what the situation will be if the Central Government borrows and if the State Government borrows. Their issues like rate of interest, FRBM limits, conditions for loans and other issues of the State Government are known to the Chairperson. If such a committee is formed, then Uttar Pradesh should be given representation in it. This committee should deliberate on all issues and should submit its report in a maximum of ten days so that it would be easy for the Chairperson to decide. The spirit of announcement of compensation was that compensation was a grant which would be available to the States in case of deficiency. The nature of compensation should remain as such and interest and other burdens should not fall on the States. He thanked for the opportunity to present his thoughts and stated that Government of Uttar Pradesh was with the Chairperson for any decision that may be taken in the GST Council.

24. Hon'ble Member from Odisha stated that they all appreciate that COVID-19 had affected the functioning of economy causing undue hardship to everyone, particularly to the poorest of the poor in entire country. Though revenues of both States and Centre were adversely affected, the State Government being at the forefront of the fighting the COVID pandemic, their requirement was higher and increased spending by them would go a long way in supporting their economy. They also understood that the revenues of the Central Government were not adequate to compensate the States but it is also a fact that Centre is in a better position to borrow against future receipts of compensation cess and provide assured compensation to the States as was the agreement arrived at the time of introduction of GST. Therefore, they propose that GST Council should recommend the Central Government to borrow against future compensation cess.

25. Hon'ble Member from Uttarakhand extended his gratitude for calling an exclusive meeting of GST Council to discuss the compensation issue. They were a tourism dependent State and it was the most important sector of their State's economy but the subsequent lockdown due to COVID-19 had severely crippled the State's tourism sector. The Chairperson knows that their population was 1.25 crores and 7 crore tourists visit the State. The sector was demolished and it will take years to correct. Apart from this other sectors also faced losses. They were a small Himalayan State. Before they transitioned from VAT to GST, they were growing at 17% but the Centre fixed a growth of 14% which was also a loss they faced. As far as borrowing was concerned, in the current situation, their borrowing

capacity was 3% and they are already paying a big amount of Rs 5,800 crore as interest which is 2.1% of their GSDP. The total loan liability for their State was Rs 71,500 crore which is 24.36% of GSDP. Hon'ble Member from Jharkhand stated that their liability was Rs 45,000 crore. In spite of being a small State, they have a liability of Rs 71,500 crore. There were not in a position to borrow further. His humble request was that it was preferable for the Centre to take the loan and pay to the States.

26. Hon'ble Member from Madhya Pradesh stated that during the Corona times, due to economic slowdown State tax revenues fell by 40%. From April to July 2020, including the dues from earlier period, Madhya Pradesh was yet to receive compensation of Rs 6,000 crore. His request was that this may be paid immediately and they received a compensation of Rs 2,600 in the current year for which he thanked the Chairperson. Hon'ble Member from Gujarat spoke on many issues and he agreed with him. Other Hon'ble Members have spoken quite extensively as well and he would not speak much further. He requested that the compensation may be paid immediately.

27. Finance Secretary stated that an estimate was made regarding the shortfall in compensation, taking into account the SGST, CGST, IGST collections in last four months and the trend of how the economy is picking up. He further stated that as the Union Finance Secretary, the aspects of Union's revenue sources and further devolution to the States also needed to be considered. He explained that in case of indirect taxes, the revenue falls in proportion to the fall in the transactions. In case of GST or excise duty, if the transactions are down by 30%, the tax revenue also reduces by 30%. However, in case of income tax, corporate income tax, which makes up for about 50% of the Union's revenue, if the transaction or turnover reduces by 10% the fall in revenue will not be 10% but much more. If a company whose turnover reduces because of Covid-19 or any such issue, by 10%, it does not mean that the company will pay only 10% less in income tax or corporate tax, as the company may go into loss and pay zero tax in present year and even setoff the loss against the profit in next year also. With respect to Personal Income Tax, people have lost jobs, salary growth is reduced, so massive impact is foreseen in income tax collections. While it was stated in the meeting that the States have surrendered 70% taxing rights in GST and that the Union has only surrendered 30%, the fall would be much higher in the rest 70% of Union's tax base which is outside of GST. Customs duty and Excise Duty collections are also impacted. Dividends which the Centre gets from various Public Sector Units and other units will also be falling disproportionately. Disinvestments in this scenario will also be a difficult proposition. Other non-GST revenues will also be impacted and much more than the GST revenues.

27.1. He further stated that the Union already needs to incur a heavy borrowing, Further the Union's commitments on defence, internal security, various welfare programmes like food subsidy, rations also need to be taken into account as unless these responsibilities are met, the problems in economy may become more serious. However, as the States are also facing issues, there is a need to take a collective view. He further stated that compensation gap for only the first four months of the current Financial Year is Rs. 1,50,000 crore compared to what used to be the compensation gap for an entire year, around 1,00,000 crore. Then, he requested the Joint Secretary (DoR) to present the estimates on shortfall.

27.2. Joint Secretary (DoR), presented the estimates on shortfall. He stated that it was an indicative estimate as it was difficult to estimate the shortfall depends on how the recovery would take place. Even if it is assumed that there would be recovery in the coming few months, estimates suggest that there would be a shortfall of around Rs. 3,00,000 crore for the year against the protected revenue. For April-July, the shortfall is around Rs. 1,50,000 Crore. Shortfall has been divided into how much of is it because of Covid, and how much is the shortfall even if Covid was not there. If Covid was not there, around 10% growth rate would have been registered in post settlement SGST revenue over 2019-20. The gap between protected revenue and revenue of 2020-21 as estimated in the above manner, would have been the gap even if Covid was not there. The rest of the gap is because of Covid. For the

estimation, only revenues from April till January are taken as the compensation for February and March becomes payable in the next Financial Year, as is the case every year. The protected Revenue for the period from April to January would be Rs. 6,38,339 Crore. Post settlement SGST collection during the same period last year was Rs. 4,30,147 Crore. Therefore, it is estimated that, with 10% increase, if Covid had not been there, collection would have been Rs. 4,73,161 Crore. Thus, a shortfall of Rs. 1,65,718 Crore is expected for ten months compared to the shortfall of Rs. 1,75,000 Crore for the entire year of 2019-20.

27.3. Finance Secretary intervened to state that this year was extraordinary with once-in-a-century Covid situation. If Covid had not happened and had the revenue grown in normal manner, that is around 10%, the gap between the protected revenue and the normal growth, would be because of GST implementation.

27.4. Joint Secretary (DoR) stated that the total revenue gap for the 10-month period (2020-21), which is attributable to the implementation of GST would be around Rs. 1,65,178 Crore. As Rs. 11,438 Crore is available in the Compensation Cess fund as on 31.07.2020, and an estimated Rs. 57,266 Crore would be collected from August to March, a total of Rs. 68,700 Crore would be available against the gap of Rs. 1,65,178 Crore resulting in an estimated shortfall of Rs. 96,477 Crore. Further, Statewise estimates would have variation as this is a net figure of adjusting one against the other. Thus, this shortfall of Rs. 96,477 Crore would arise even if one considers only the gap attributable to implementation of GST.

27.5. Finance Secretary summarized the presentation by Joint Secretary (DoR) by stating that total compensation requirement would be around Rs. 3,00,000 Crore out of which Rs. 1,65,000 Crore would be because of implementation of GST and the remainder Rs. 1,35,000 Crore would be because of the Covid situation. Thus, a view could be taken considering the shortfall being divided into these two buckets.

28. Hon'ble Member from Delhi stated that these are the projected facts which are presented and the figures presented may also change. On the basis of either the Centre's proposal or from any of the proposals floated during the discussions, a decision or view point could be made.

29. Hon'ble Member from Kerala suggested that the spirit of discussion in the Council should be understood and that apportionment of shortfall into loss from Covid and loss from implementation of GST should not be done as the Constitution does not make such distinction. It is a false direction of discussion as there is no distinction made in legal terms. He suggested that the Council should instead discuss how this entire loss could be met.

30. Hon'ble Member from Assam stated that the differentiation between implementation of GST and other reasons is inherent in the Constitution and not technical in nature. He further stated as per Section 18 of the 101<sup>st</sup> Constitution Amendment Act, Parliament shall, by law, on the recommendation of Goods and Services Tax Council provide for compensation to the States for loss of revenue *arising on account of implementation of Goods and Service Tax* for a period of five years. Thus, distinction is inherent. GST implementation loss should be met from Compensation kitty, but to say that it is the moral responsibility of the Centre to compensate for any loss accrued because of Covid-19 also, is not a proper inference of the Act. Supposing if any State faces flood situation in future, it cannot be suggested that Centre should compensate for the loss of revenue in such situation also. He further stated that though he was not opposed to Centre supporting the States, it could only be done for the loss arising out of implementation of GST. Regarding Covid situation, it can only be requested to the Centre to help the States which Centre is any way doing, but not as responsibility of the Centre.

31. Hon'ble Member from Puducherry stated that the distinction between Covid and normal growth situation should not have been made as the Act only talks about the loss of revenue of the State during the implementation of GST law. Covid situation was not foreseen during the drafting of the law. It is a solemn assurance given to the States by the Government of India to compensate any deficit in the 14% growth in any circumstance, whether normal or otherwise. Taking umbrage under the reasoning that, States have to bear the loss which is occurring because of Covid situation, is not a fair argument. States would have to be compensated for the 14% growth rate from the revenue arising out of GST compensation and if it did not happen, according to the discussions in 7th, 8th and 10th GST Council meetings under the erstwhile Finance Minister as the Chairman of the Council, the Government of India should compensate the States. There was also discussion in the Goa meeting regarding the borrowings from market. Thus, any kind of calamity should not prevent the States from getting the assured compensation. It is not a proper argument to say that States would have to bear the loss occurring due to the Covid situation. The solemn assurance of the Government of India, at the time of implementation of GST, must be honoured by the Government of India.

32. Hon'ble Member from Assam stated that there was no solemn assurance from anyone to compensate for the revenue loss arising from anything other than GST implementation. States could only request the Centre to support them in Covid situation but the Minutes of the earlier GST Council meetings cannot be misinterpreted to mean that Centre would compensate the States in any other situation. Neither legal nor moral responsibility exists on the Centre to compensate the loss that occurs because of Covid. Instead, only a request can be made to the Centre. He further stated that in this regard, he had a strong disagreement with the Hon'ble Member from Puducherry.

33. Hon'ble Chairperson stated that while all the suggestions from all the States are welcome, and the Council would be enriched from the healthy debate. She further suggested that instead of a debate about the interpretation of the Act, or the Minutes, the States may present their views on the suggestions made.

34. Hon'ble Member from Punjab stated that a clarification may be given from the Government of India on the IGST amount which was wrongly credited to the Consolidated Fund of India. He further stated that an entry of about Rs. 34,000 Crore was reversed, but a clarification was needed about the rest of the money. If the rest of the amount Rs. 54,000 Crore was also reversed, it would help ease the compensation shortfall situation. He further stated that he would hate to see the day when the States feel pressurized by citizens to breach the spirit of GST just because basic commitments not being met, as *hungry stomach knows no law*. Compensation was supposed to be an exception and it was thought that by 2022, most of the States would not need compensation. He requested that the Centre may persuade the XV Finance Commission to make revenue deficit grants to the States which have large deficit. Punjab was looking at the deficit of almost 65% by 2022 because the State had been uniquely disturbed by GST as 25% of the State's revenue was subsumed on account of not being able to tax food grains under GST. Post-2022, when there is no assured compensation, Punjab would be in a precarious situation.

35. Hon'ble Member from Goa stated that there has to be a distinction between the loss arising on account of implementation of GST and other reasons. Covid situation was not foreseen by anyone. In all international laws, agreements there is always a *force majeure* clause, which is used in unexpected cases as in an *act of God*. As both States and Centre are facing the shortfall, the situation needs proper application of mind to make good the shortfall especially considering the situation of the Centre losing much more, as explained by the Finance Secretary. He further stated that in case of Kerala, in spite of much opposition, after much deliberation, due to a *force majeure* or *act of God* clause, the Council allowed the State of Kerala to impose a special Cess to come out of the flood situation. A similar solution



can be thought of in the present scenario including where the Cess rates need to be increased on few goods without impacting the common man and raise some revenue in GST. He further suggested that proposals should be put up by the Members of the Council. He stressed that all Members were party to all decisions taken in the Council right from the beginning, and it was not a time to score points. As the economy is going through a grave crisis, all the States would have to participate, contribute and come out with a solution instead of blaming the Centre. He further stated that the Centre had always reached out, even when the State of Goa's revenues dropped by more than 75% and continuing to drop. He stressed that there should be no debate about a distinction being made between the normal course of growth and Covid related shortfall.

36. Hon'ble Member from Delhi stated that he agreed with the Finance Secretary about the loss of revenue to the Centre in non-GST taxes such as Excise duties, Corporate tax, Income tax, yet, States have also suffered losses in VAT, Excise, Property tax, Vehicle tax, Registration etc., because of Covid. The distinction between shortfall from GST implementation and from Covid is difficult to make and may be wrong also. While no national disaster like Covid was observed, there have been many disasters at the State level. If any State faces such disaster, it would not be right to divide the shortfall into being caused by GST implementation and by disaster. While it seemed to be a consensus view that a borrowing must be done to tackle the shortfall situation, the question is whether Centre or the States need to take this loan. He further stated that even if the States take loan at different interest rates, according to the Section 10 (1) of the GST (Compensation to States) Act, all amounts need to be credited to the Public Account of India, and need to be redistributed among the States which makes it a difficult and complex proposition. He stated that Centre should instead take the loan, and it could be paid back from the Cess collections in subsequent years.

37. Hon'ble Member from Bihar stated that in the last three years, the shortfall was never divided into arising from economic slowdown, or from any disaster and that any shortfall was compensated. He stated that while it was good to understand this distinction, it may not be the proper time for this as the States require money at present. He stated that the basic questions at hand were to decide who should borrow and how to borrow. He further stated that because of the distinction, the amount of compensation to be released to the States stands reduced and while it is good to understand, it may not be the appropriate time for this differentiation. He stated that whatever be the loss, it should be compensated, from borrowing by either the Centre or the States. He suggested that the States may be allowed to borrow but with conditions such as FRBM relaxation, same rate of interest for all States, repayment responsibility lying with the Centre.

38. Finance Secretary stated that the distinction between shortfall on account of GST implementation, Covid related shortfall had to be made as the current crisis was going to be a prolonged one unlike the local disasters that occurred in the past. The sources of revenue of the Centre are impacted much more than GST in the current situation. There could be multiple options to handle the present situation. One view could be to borrow the entire shortfall amount, but the combined borrowing by the Centre and the States will have adverse impact on the economy in terms of macroeconomic stability, increase in interest rates, bond yield rate which would affect the investment and working capital availability to the industry at an affordable interest rate which help the economy recover faster. Even the currency fluctuation, sovereign rating of the economy needs to be looked at as the drying up of foreign exchange and flight of capital would affect the economy greatly. Thus, an overall view needs to be taken about the level of borrowing which the economy (Centre and States together) can sustain in the present time.

39. Hon'ble Member from Tamil Nadu stated that the distinction between GST implementation loss and Covid induced loss is not correct and is unacceptable. He stated that the States were promised

compensation for shortfall and that no mention was made about the reasons in the Compensation Act and thus the issue of *force majeure* does not arise. He further requested that the opinion of the Learned Attorney General may be shared with all the States.

40. Hon'ble Member from Kerala stated that he disagreed with the assessment made by the Finance Secretary in dealing with the situation. When the economy is in recession, or in contraction, the theory suggests that the Government should expand the expenditure. He suggested that States were not asking for a stimulus package but are asking to maintain the existing expenditure. He suggested that the interest rate at present was one of the lowest and borrowing will not have much impact. He suggested that a part of the Centre borrowing may be monetized instead, to not affect the interest rate. He stated that during the preliminary discussion, all the Hon'ble Members except one or two Hon'ble Members expressed their opinion that States are in need of compensation because of the current situation. He stated that proposal should be put forward that embodies the spirit of the discussion in the Council meeting. He stated that if the Centre proceeds with the present line, it may lead to a dispute between the Centre and the States. He further stated that the plea was not to expand the expenditure and create panic in the economy, but instead, to allow the States to maintain the present level of expenditure.

41. Hon'ble Member from Assam stated that the presentation of the Finance Secretary regarding the impact of combined borrowing on the economy must be taken in the right spirit. He stated that the Centre and the States are bound to act by the Constitution which states that the compensation may be done only for the loss arising on account of GST implementation. He stated that Centre's borrowing of the entire amount of Rs. 3,00,000 Crore would affect the borrowing programme of the States by driving the interest rates up. He stated that Assam planned to borrow Rs. 15,000 Crore from the market and if the Centre also borrows during this time, it might increase the interest rate by around two percentage points from the present level of 7% for which no compensation can be paid to the State.

42. Hon'ble Member from Uttar Pradesh stated that a call may be taken as most of the States had put forward their views.

43. Hon'ble Member from Telangana stated that States like Telangana would have much to lose as they contribute most in the form of Compensation Cess and receive very little in terms of compensation. In the first year, the State of Telangana took meagre amount of compensation, almost Nil in second year and comparatively less in the third year also. He further stated that Telangana was in need of compensation for the first time this year because of Covid situation and if a distinction is made between Covid induced loss and shortfall because of GST implementation, the State of Telangana would lose. He suggested that as more money is pumped into the market, money circulation would increase and the economy would improve. As the shortfall is not being met from the Centre's kitty, but from the Cess collection from the States, Centre needed to support the States in the present situation. He pointed out that Telangana was in need of compensation for the first time, whereas several other States which were affected by natural calamities or were being handled badly were provided with compensation earlier, leaving better performing States disincentivized. He further stated that the allocations made by the XIV and XV Finance Commissions were also skewed against the better performing States like Telangana. He stated that, while he agreed with the support being given by the Finance Commission to the low performing States, States like Telangana lost much more. Similar treatment was happening with the disbursement of GST Compensation also. He requested that instead of making a distinction between shortfall from GST implementation and Covid induced loss, entire shortfall amount may be given by the Centre and let it be repaid by extending the Compensation levy for a further period.

44. Hon'ble Member from Karnataka stated that the law was very clear and he agreed with the perspective shared by the Finance Secretary regarding the identification of actual shortfall from Covid and non-Covid reasons. He further stated that he shared the views of the Hon'ble Members from Assam

and Goa that the losses should be understood in a comprehensive way and that there is nothing wrong in projecting the revenue loss regarding shortfall due to implementation of GST, and due to Covid situation. He further stated that since all the States need compensation, the debt load of the shortfall may be eased by spacing out of the Compensation to one or two years beyond the prescribed transition period. He further stated the both the Centre and the States must together face the situation.

45. Hon'ble Member from West Bengal that the ultimate crux of the discussion was to decide whether the Centre or the States or the GST Council would borrow with a sovereign guarantee from the Centre. He stated that the borrowing by GST Council with a guarantee from the Centre would be the same as borrowing by the Centre and further borrowing by GST Council may attract higher interest rate as the Centre commanded lower interest rate as it is a bulk borrower. He further stated that the States were not in a position to borrow as the State Bank of India report suggested. He stated that the argument presented by the Finance Secretary with respect to the fiscal deficit would be a red herring, as it would not matter whether States or the Centre borrows because the credit agencies consider the collective deficit of the States and Centre put together. He further stated that of the three borrowing possibilities, the States have suggested that the Centre should borrow to be repaid from extended Cess for two years beyond the prescribed transition period. He stated that a conclusion can be made that the Centre would borrow and the debt would be serviced from the Cess collections after making necessary amendments in the Act.

46. Hon'ble Chairperson thanked all the Members for attending the Council Meeting on the single agenda of Compensation which is being discussed since February. She stated that an extraordinary situation is prevailing which no lawmaker could have foreseen and therefore the present meeting was called to resolve the pending issues. She stated that there was never a second thought on Centre being duty bound to give compensation to the States. She further stated that since the meetings of the Empowered Committee of Finance Ministers and later the GST Council Meetings, there was a never a situation of Centre versus the States. The difference if any were always discussed and thrashed out to speak collectively for federal India. At present, federal India needed extraordinary solutions urgently to help the States which are at the forefront of fighting Covid. She reminded that she had to take the opinion of the learned Attorney General as she had committed in an earlier Council Meeting because the Cess collection was not proving adequate for meeting the requirement. She reminded that she answered in the Parliament also regarding the delay in payment of compensation which was a challenge in itself. She further stated that regarding few Members' comment that the surplus in Cess collection was kept in the Consolidated Fund of India, it was not done with any vicarious interest, and it was drawn to give to the States though with a delay caused by procedural matter as it required appropriation through the Parliament. She further stated that regarding the issue of IGST settlement, the issue was resolved but the mechanism of adjustment among the States is being examined by the Group of Ministers headed by the Hon'ble Member from Bihar which the GoM would be able to do after submission of the report by the Department of Revenue officials. She stated that the approach had been to resolve the issues as early as possible, not to keep any issue pending. She stated that any question of mistrust is not warranted in the Council as efforts were always made to clear the long pending dues of the States at the earliest. She further stated that it was understood that the Centre and the States borrowing are added to arrive at the Debt-to-GDP ratio and it was suggested not to worry about the fiscal deficit and expand expenditure by the Government. She pointed out that this was the principle behind Aatma Nirbhar Bharat package whether it is through RBI or Ministry of Finance, or investing in the National Infrastructure pipeline. She mentioned that the spending shall continue through the year. She then presented the proposal before the Council as Option 1 which is derived from the discussion earlier. She mentioned that she was in constant engagement with the Reserve Bank of India so that Centre and States do not rush to the market to crowd out and harden up the yield in the market. She stated that she was discussing with the RBI to

see the possibility of a Special Window through which borrowing can be made with interest rate being pegged close to the G-Sec and compensation being paid to the States in a bi-monthly manner. She further stated that this amount would be paid back on the assumption that the Council would approve extension of Cess for the next three-four years after the compensation period is over. She stated that the opinion of the learned Attorney General confirmed the feasibility of such an arrangement and Cess collection would be used to repay the borrowed amount and thus the States were not going to be burdened as it is the Cess collection that would pay back the amount borrowed. She further stated that it was inappropriate time to discuss the increasing of tax or cess rate. She clarified that the Option 1 was worked out from the point of view of shortfall arising out of GST implementation only, which is about Rs. 96,477 Crore. She further stated that, as second part of Option 1, a relaxation of 0.5% in States' FRBM limit may be worked out and RBI would also be approached to offer a reasonable yield for this part also commensurate to the number of years. She stated that the States need not individually approach the RBI, instead the Centre can facilitate with the RBI so that same rate can prevail for all the States. She further stated that any excess collection of Cess after paying back the borrowed amount through RBI, will be given to the States which can also help in the repayment of States borrowing from the market under relaxed 0.5% FRBM limit.

47. Hon'ble Chairperson then presented the Option 2, that total Compensation requirement for the year of 2020-21 being around Rs. 3,00,000 Crore and the estimated collection of Rs. 70,000 Crore, the borrowing needs to be around Rs. 2,30,000 Crore which is about 1.15% of GDP. For this Option also, Centre will allow the borrowing by the States through the RBI and pay back from the arrears of compensation released beyond the transition period. She further stated that the compensation requirement would be around Rs. 3,50,000 Crore for the year of 2021-22, the last of the 5-year transition period, and estimated collection would be around Rs. 90,000 Crore requiring around Rs. 2,40,000 Crore to be borrowed. She suggested that the arrangements may be done only for the current year and review the compensation situation next year after considering the revival of the economy. She stated that for both the options, the repayment would have to be done from the Cess collections from the extended period beyond the transition period.

48. Hon'ble Member from West Bengal stated that Option 2 for a limited period of the present year where the Centre borrows Rs. 2,30,000 Crore to be repaid from the Cess collections from extended period would be agreeable to him.

49. Hon'ble Chairperson clarified that the Centre would only facilitate the borrowing through the RBI but the borrowing would be in the name of the States as the Centre already had borrowings upsetting the FRBM.

50. Hon'ble Member from West Bengal stated that it was his understanding that the States would not be burdened with debt or with the interest payment requirements.

51. Hon'ble Chairperson clarified that States would not be burdened with repayment of debt as the borrowed amount would be paid back with the collections from the Cess beyond the transition period.

52. Hon'ble Member from Tamil Nadu stated that his State would go with Option 2 for 2020-21 and consider 2021-22 requirement later. He further stated that the entire compensation amount may be borrowed by the Government of India and the mechanism can be clearly outlined separately.

53. Hon'ble Member from Puducherry stated that Puducherry would go with Option 2 but they have to approach the Home Ministry to approve the borrowing.

54. Hon'ble Chairperson suggested that Ministry of Finance would work with the Ministry of Home Affairs to facilitate the borrowing by Puducherry.

55. Hon'ble Member from Puducherry stated that a deemed approval may be given, as Puducherry is considered to be a State under GST law which will allow Puducherry to borrow similar to other States.

56. Finance Secretary stated that Ministry of Finance would work with the Ministry of Home Affairs and take all the permissions needed.

57. Hon'ble Member from Puducherry reiterated that under the GST law, Puducherry is equated with a State, therefore going through the Home Ministry for the compensation amount is not legally tenable and Puducherry along with the other States may borrow money with the facilitation made by the Chairperson. He stated that the condition of going to the Home Ministry may be dispensed with, for going to the Reserve Bank.

58. Hon'ble Member from Rajasthan stated that his State's fiscal deficit is already beyond the limit prescribed by FRBM Act and debt-to-GDP ratio is already 33% as against 25% suggested by FRBM Act. He further stated that if the loan is being paid for by the Cess, the Centre should borrow and recover from the cess as States have already crossed the FRBM limits and such option would be welcomed by all States.

59. Hon'ble Member from Kerala stated that the best course of action would be to give some time to the States to communicate the option they choose to exercise.

60. Hon'ble Member from Assam stated that a time of seven days may be given to communicate their decision in writing. He further stated that if Option 1 is given, the State may or may not go for further market borrowing depending on the requirement but in Option 2 means that such borrowing will certainly take place.

61. Hon'ble Chairperson clarified that even in the Option 2, the borrowing would be done in the name of the States.

62. Hon'ble Member from West Bengal supported the proposal made by the Hon'ble Minister from Assam and suggested that a detailed proposal may be sent by the Finance Secretary to allow the States to consider the options as it is difficult to ascertain the effect of borrowing on the States' debt burden. He requested for time of seven working days to come back with reply and State's submissions and refinements if any.

63. Hon'ble Chairperson stated that a Note detailing both the options would be sent to all the States and within seven working days, States may communicate their decision.

64. Hon'ble Member from Delhi stated that Delhi is not entitled to take a loan under the present legal position and the Centre needs to take the loan on behalf of Delhi.

65. Hon'ble Chairperson stated that the States may communicate their option within seven working days after sending the note.

66. The meeting ended with the Finance Secretary thanking the Chairperson, Chief Minister, Deputy Chief Ministers, Finance Ministers of the States, officers from the Government of India and officers who helped in organizing the meeting.

**Annexure 1**

<b>List of Hon'ble Ministers who have attended the 41<sup>st</sup> GST Council Meeting on 27<sup>th</sup> August 2020</b>			
<b>Sl No</b>	<b>State/Centre</b>	<b>Name of Hon'ble Minister</b>	<b>Charge</b>
1	Govt of India	Ms. Nirmala Sitharaman	Union Finance Minister
2	Govt of India	Shri Anurag Singh Thakur	Minister of State (Finance)
3	Andhra Pradesh	Shri Buggana Rajendra Nath	Minister for Finance, Planning and Legislative Affairs
4	Assam	Dr. Himanta Biswa Sarma	Finance Minister
5	Bihar	Shri Sushil Kumar Modi	Deputy Chief Minister
6	Chhattisgarh	Shri T.S. Singh Deo	Minister, Commercial Tax
7	Delhi	Shri Manish Sisodia	Deputy Chief Minister
8	Goa	Shri Mauvin Godinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
9	Gujarat	Shri Nitinbhai Patel	Deputy Chief Minister
10	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
11	Himachal Pradesh	Shri Bikram Singh	Minister for Industries & Transport
12	Jammu and Kashmir	Shri K. K. Sharma	Advisor to Lt. Governor
13	Jharkhand	Dr. Rameshwar Oraon	Minister - Planning cum Finance, Commercial Taxes, Food, Public Distribution & Consumer Affairs.
14	Karnataka	Shri Basavaraj Bommai	Minister for Home Affairs
15	Kerala	Dr. T. M. Thomas Isaac	Minister for Finance
16	Madhya Pradesh	Shri Jagdish Devda	Minister for Commercial Tax, Finance, Statistics and Planning
17	Maharashtra	Shri Ajit Pawar	Deputy Chief Minister
18	Manipur	Shri Yumnam Joykumar Singh	Deputy Chief Minister
19	Meghalaya	Shri James K. Sangma	Taxation Minister
20	Odisha	Shri Niranjan Pujari	Finance & Excise Minister
21	Puducherry	Shri V. Narayanasamy	Chief Minister
22	Punjab	Shri Manpreet Singh Badal	Finance Minister
23	Rajasthan	Shri Bulaki Das Kalla	Minister for Energy, Public Health and Engineering, Ground Water, Art and Literature, Culture and Archaeology
24	Tamil Nadu	Shri D. Jayakumar	Minister for Fisheries and Personnel & Administrative Reforms
25	Telangana	Shri T. Harish Rao	Finance Minister
26	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
27	Uttarakhand	Shri Subodh Uniyal	Minister Agriculture, Agricultural Marketing, Agricultural Processing, Agricultural Education, Garden and Fruit Industries, Silk Development
28	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister Finance, Parliamentary Affairs, Medical Education
29	West Bengal	Dr. Amit Mitra	Finance Minister

<b>List of officials who have attended the 41<sup>st</sup> GST Council Meeting on 27.08.2020</b>			
<b>Sl No</b>	<b>State/Centre</b>	<b>Name of the Officer</b>	<b>Charge</b>
1	Govt. of India	Dr. A B Pandey	Finance Secretary
2	Govt. of India	Dr Krishnamurthy Subramanian	Chief Economic Advisor
3	Govt. of India	Shri M. Ajit Kumar	Chairman, CBIC
4	Govt. of India	Shri Sandeep M Bhatnagar	Member (Inv), CBIC
5	Govt. of India	Shri Vivek Johiri	Member (GST, IT, Tax Policy), CBIC
6	Govt. of India	Shri Ritvik Pandey	Joint Secretary, DoR
7	GSTN	Shri Manish Kumar Sinha	EVP
8	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU I, DoR
9	Govt. of India	Shri Yogendra Garg	Pr. Commissioner (GST), CBIC
10	Govt. of India	Shri Sanjay Mangal	Commissioner (GST), CBIC
11	Govt. of India	Shri Vipul Bansal	PS to Union Finance Minister
12	GST Council	Shri Amitabh Kumar	Joint Secretary
13	GST Council	Shri S.K. Rahman	Joint Secretary
14	GST Council	Ms Ashima Bansal	Joint Secretary
15	Govt. of India	Shri Rajesh Malhotra	DG (M&C)
16	Govt. of India	Shri Astik Sinha	PS to MoS (Finance)
17	GST Council	Shri Rajesh Agarwal	Director
18	GST Council	Shri G.S. Sinha	Director
19	GST Council	Shri Jagmohan	Director
20	GST Council	Ms. Ujjaini Datta	Director
21	Govt. of India	Shri N Gandhi Kumar	Director, DoR
22	Govt. of India	Shri Amaresh Kumar	Addl. Comm., GST Policy Wing
23	Govt. of India	Ms Nisha Gupta	Joint Commissioner, GST Policy Wing
24	Govt. of India	Shri Rahul Raja	OSD to Chairman, CBIC
25	Govt. of India	Shri Vikash Kumar	DC, GST Policy Wing
26	Govt. of India	Shri Kumar Asim Anand	DC, GST Policy Wing
27	GST Council	Shri Arjun Meena	Under Secretary
28	GST Council	Shri Rakesh Agarwal	Under Secretary
29	GST Council	Shri Nitin Deepak Agarwal	Under Secretary
30	GST Council	Shri Mahesh Singarapu	Under Secretary
31	GST Council	Shri Krishna Koundinya	Under Secretary
32	GST Council	Shri Naveen Agrawal	Under Secretary
33	GST Council	Shri Karan Choudhary	Under Secretary
34	GST Council	Shri Sarib Sahran	Superintendent
35	GST Council	Shri Krishan Kumar Verma	Superintendent
36	GST Council	Ms Chanchal Soni	Superintendent
37	GST Council	Shri Abhishek Kumar	Superintendent
38	GST Council	Shri Rakesh Joshi	Inspector

39	GST Council	Shri Pankaj Bharadwaj	Inspector
40	GST Council	Shri Vijay Malik	Inspector
41	Govt. of India	Shri Nishith Goyal	Chief Commissioner, Patna, Ranchi Zone
42	Govt. of India	Ms Vandana K. Jain	Principal Commissioner, Chandigarh Zone
43	Govt. of India	Shri Bijoy Bihari Mohapatra	Pr. Commissioner, Raipur, Bhopal Zone
44	Andhra Pradesh	Dr Rajath Bhargav	Special Chief Secretary, Revenue
45	Andhra Pradesh	Shri Peeyush Kumar	Chief Commissioner (State Tax)
46	Andhra Pradesh	Shri D. Venkateswara Rao	OSD to Special Chief Secretary
47	Andhra Pradesh	Shri S. Shekhar	Additional Commissioner State Tax
48	Arunachal Pradesh	Shri Anirudh Singh	Secretary
49	Arunachal Pradesh	Shri Kanki Darang	Commissioner
50	Arunachal Pradesh	Shri Telly Ngumdir	Assistant Commissioner
51	Arunachal Pradesh	Shri Nakut Padung	Superintendent
52	Arunachal Pradesh	Shri Kenmi Zirdo	Superintendent
53	Arunachal Pradesh	Ms Tadu Lily	DA
54	Assam	Shri Anurag Goel	Commissioner Taxes
55	Assam	Shri Shakeel Saadullah	Joint Commissioner of Taxes
56	Assam	Shri Bedabrata Saikia	Inspector of Taxes
57	Bihar	Dr Pratima	Commisssioner cum Secretary
58	Bihar	Shri Arun Kumar Mishra	Special Secretary
59	Chhattisgarh	Ms Maninder Kaur Dwivedi	Principal Secretary (Commercial Tax)
60	Chhattisgarh	Ms Ranu Sahu	Commissioner of State Tax
61	Delhi	Shri Sandeep Kumar	Secretary, Finance
62	Delhi	Shri Vivek Pandey	Commissioner, State Tax
63	Delhi	Shri Anand Kumar Tiwari	Additional Commissioner, GST
64	Delhi	Shri C. Arvind	Secretary to Dy CM
65	Goa	Shri Hemant Kumar	Commissioner, ST
66	Gujarat	Shri Pankaj Joshi	Additional Chief Secretary
67	Gujarat	Shri J. P. Gupta	Chief Commissioner, State Tax
68	Haryana	Shri Anurag Rastogi	Principal Secretary, Excise & Taxation
69	Haryana	Shri Shekhar Vidhyarthi	Excise & Taxation Commissioner
70	Haryana	Shri Rajeev Chaudhary	Joint Excise and Taxation Commissioner
71	Himachal Pradesh	Shri Jagdish Chander Sharma	Principal Secretary (Excise & Taxation)
72	Himachal Pradesh	Shri Rohan Chand Thakur	Commissioner of State Tax and Excise
73	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner of State Tax and Excise
74	Jammu and Kashmir	Dr. A. K. Mehta	Financial Commissioner, Finance



75	Jammu and Kashmir	Shri P. K. Bhat	Commissioner, State Taxes
76	Jammu and Kashmir	Shri Waseem Raja	Assistant Commissioner, State Taxes
77	Jharkhand	Ms Vandana Dadel	Secretary, Commercial Tax
78	Jharkhand	Ms Akansha Ranjan	Commissioner, CTD
79	Jharkhand	Shri Santosh Kumar Vatsa	Special Secretary, CTD
80	Jharkhand	Shri Brajesh Kumar	State Tax Officer
81	Karnataka	Shri. M. S. Srikar	Commissioner, CT
82	Karnataka	Shri Padmakar Kulkarni	Additional Commissioner
83	Karnataka	Dr. Raviprasad	Additional Commissioner
84	Kerala	Shri Anand Singh	Commissioner, State Tax
85	Kerala	Dr. Karthikeyan	Special Commissioner, State Tax
86	Kerala	Shri Abraham Renn	Additional Commissioner, State Tax
87	Kerala	Shri Mansur M. I.	Joint Commissioner, State Tax
88	Madhya Pradesh	Ms Dipali Rastogi	PS, Commercial Tax Department
89	Madhya Pradesh	Shri Raghwendra Kumar Singh	CCT
90	Madhya Pradesh	Shri Sudip Gupta	Jt. CCT
91	Maharashtra	Shri Manoj Saunik	ACS Finance
92	Maharashtra	Shri Rajgopal Devra	Principal Secretary, Finance
93	Maharashtra	Shri Sanjeev Kumar	Commissioner, State Taxes
94	Maharashtra	Shri Dhananjay Akhade	Joint Commissioner, State Taxes
95	Maharashtra	Shri Kiran Shinde	Deputy Commissioner, State Taxes
96	Manipur	Shri Charchit Gaur	Commissioner of Taxes
97	Manipur	Shri Yumnam Indrakumar Singh	State GST Nodal Officer
98	Meghalaya	Smt S. A. Synrem	Commissioner & Secretary, Excise, Registration, Taxation & Stamps
99	Meghalaya	Shri Arunkumar Khembavi	Commissioner of Taxes
100	Meghalaya	Shri L. Khongsit	Additional Commissioner of State Tax
101	Meghalaya	Shri K. War	Deputy Commissioner of State Tax
102	Mizoram	Shri Vanlalchhuanga	Commissioner & Secretary Taxation
103	Mizoram	Shri HK Lalhawngliana	Joint Commissioner, State Taxes
104	Nagaland	Shri Kesonyu Yhome	Commissioner of State Taxes
105	Nagaland	Shri Y Mhathung Murry	Additional Commissioner of State Taxes
106	Nagaland	Shri Wochamo Odyuo	Additional Commissioner of State Taxes
107	Nagaland	Shri C. Lima Imsong	Deputy Commissioner of State Taxes
108	Odisha	Shri Ashok K. K. Meena	Principal Secretary, Finance

109	Odisha	Shri Sushil Kumar Lohani	Commissioner, CT & GST
110	Puducherry	Shri Shurbhir Singh	Secretary (Finance)
111	Puducherry	Shri L. Kumar	Commissioner (CT)
112	Puducherry	Shri K. Sridhar	Deputy Commissioner
113	Punjab	Shri V. K. Garg	Advisor (Financial Resources) to Chief Minister
114	Punjab	Shri A. Venu Prashad	Financial Commissioner (Taxation)
115	Punjab	Shri Nilkanth S. Avhad	Commissioner of State Taxes
116	Punjab	Shri Ravneet Khurana	Additional Commissioner (Audit)
117	Rajasthan	Shri Niranjana Kumar Arya	Additional Chief Secretary (Finance)
118	Rajasthan	Dr. Prithvi Raj	Secretary, Finance (Revenue)
119	Rajasthan	Shri Abhishek Bhagotia	Chief Commissioner, State Taxes
120	Rajasthan	Shri Ketan Sharma	Special Commissioner (GST)
121	Sikkim	Shri Jigme Dorjee Bhutia	Secretary cum Commissioner, CT
122	Tamil Nadu	Shri S. Krishnan	ACS Finance
123	Tamil Nadu	Shri M . A. Siddique	Principal Secretary/Commissioner Commercial taxes
124	Telangana	Shri Somesh Kumar	Chief Secretary
125	Telangana	Ms Neetu Prasad	Commissioner, CT
126	Telangana	Shri Laxmi Narayan Jannu	Additional CCT
127	Telangana	Shri N. Sai Kishore	Joint CCT
128	Tripura	Ms Tanushree Deb Barma	Secretary, Finance
129	Tripura	Dr. Vishal Kumar	Joint Secretary, Finance
130	Tripura	Dr. Sudip Bhowmik	Deputy Commissioner of Taxes
131	Tripura	Shri Badal Baidya	Assistant Commissioner of Taxes
132	Tripura	Shri Ashin Barman	Nodal Officer, GST
133	Uttarakhand	Shri Vipin Chandra	Additional Commissioner
134	Uttarakhand	Dr Sunita Pandey	Joint Commissioner
135	Uttarakhand	Shri Anurag Mishra	Joint Commissioner
136	Uttarakhand	Shri Pramod Joshi	Joint Commissioner
137	Uttarakhand	Shri S. S. Tiruwa	Deputy Commissioner
138	Uttar Pradesh	Shri Alok Sinha	Additional Chief Secretary, Commercial Tax
139	Uttar Pradesh	Ms Amrita Soni	Commissioner, CT
140	Uttar Pradesh	Shri Sanjay Kumar Pathak	Joint Commissioner, CTD
141	Uttar Pradesh	Shri Anil Kanaujia	Deputy Commissioner, CT
142	Uttar Pradesh	Shri Paritosh Kumar Mishra	Assistant Commissioner, CT
143	Uttar Pradesh	Ms Nidhi Srivastava	Assistant Commissioner, CT
144	West Bengal	Shri H K Dwivedi	ACS Finance
145	West Bengal	Shri Rajsekhar Bandyopadhyay	Additional Secretary, Finance
146	West Bengal	Shri Devi Prasad Karanam	Commissioner, CT
147	West Bengal	Shri Khalid Aizaz Anwar	Joint Secretary, Finance

# GST Compensation

## STATUS AND OPTIONS

## Compensation Fund Account

₹ crore

	2017-18	2018-19	2019-20	2020-21	Total
Cess Collected	62,612	95,081	95,444	21,355 (till July'21)	2,74,492
Compensation released	41,146	69,275	1,20,498 (till Nov'19)	65,546 (till Mar'20)	2,96,465
<b>Balance</b>	<b>21,466</b>	<b>25,806</b>	<b>(-25,054)</b>	<b>(-44,191)</b>	<b>(-21,973)</b>

Taking into account the amount ₹ 33,412 crore transferred from the Consolidated Fund of India to Compensation Cess Fund as a part of an exercise to apportion balance of IGST pertaining to 2017-18, the cess balance available in CFI as on 31<sup>st</sup> July, 2020 is **₹ 11,438 crore**

## Challenges in meeting the requirement

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The protected revenue continues to grow at rate of 14% over previous year

The GST revenues are expected to be adversely impacted due to economic impact of COVID-19

Widened gap between protected revenue and actual collections

Less than normal cess collection due to economic impact of COVID-19

3

## Discussions in the GST Council

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The issue relating to what will happen if cess collections fall short of compensation requirement has been deliberated in Council in detail.

In seventh GST Council Meeting held on 22-23 December, 2016, the then Chairman of the Council stated

the demand for payment of compensation from the Consolidated Fund of India essentially meant funding compensation from Income Tax or non-tax revenues of the Central Government, which would be a challenge as the Central Government also had its own committed expenditure. He said that based on these considerations, certain principles had been agreed upon, namely that the compensation would be funded out of the cess mechanism, which would have a pool of revenue and if there was any shortfall in this pool, it could be supplemented by some mechanism that the Council might decide.

4

## Discussions in the GST Council

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In eighth GST Council Meeting held on 3-4 January, 2017, the then Chairman of the Council stated

compensation to States shall be paid for 5 years in full within the stipulated period of 5 years and, in case the amount in the GST Compensation Fund fell short of the compensation payable in any bimonthly period, the GST Council shall decide the mode of raising additional resources including borrowing from the market which could be repaid by collection of cess in the sixth year or further subsequent years

The intent was to have a dedicated revenue stream in form of cess, to be credited to the fund, for the purposes of payment of compensation to States and not to have compensation paid from CFI

5

## Discussions in the Parliament

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The issue of payment of compensation from consolidated fund of India instead from the cess proceeds out of the compensation fund was also discussed in the Parliament.

Shri. K.C. Venugopal (Alappuzha) also moved the following amendment

The compensation to the States for loss of revenue arising on account of implementation of the Goods and Service tax **shall be paid from the Consolidated Fund of India.**

**This amendment was rejected by the Parliament clearly displaying the legislative intent**

6

## Legal Provisions – Constitution

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### Section 18 of the Constitution (One Hundred and First Amendment) Act, 2016

18. Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, **provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax** for a period of five years.

7

## Legal Provisions – Compensation Act

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### Section 10 of the Goods and Services (Compensation to States) Act, 2017

#### **10. Crediting proceeds of cess to Fund.—**

(1) The proceeds of the cess leviable under section 8 and such other amounts as may be recommended by the Council, shall be credited to a non-lapsable Fund known as the Goods and Services Tax Compensation Fund, which shall form part of the public account of India and shall be utilised for purposes specified in the said section.

(2) **All amounts payable to the States under section 7 shall be paid out of the Fund.**

8

## AG's opinion

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Irrespective of whether cess resources are adequate or not, States are entitled for compensation for the five year period.

There is no express provision in the Compensation Act for the Government of India to bear the liability of making good the shortfall.

It is for the GST Council to decide on any other source from where it may lawfully recommend the credit of the necessary amounts into the GST Compensation Fund

Council can discuss and recommend borrowing to meet compensation gap which can be allowed within overall framework of Article 293.

*(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.*



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**OFFICE OF THE ATTORNEY GENERAL FOR INDIA**

My answers to each of the queries posed for my opinion are as follows:

- (i) **In case the balance in the Goods and Services Tax Compensation Fund is not adequate to meet the compensation payable under Section 7, are the States still entitled to receive the full amount of compensation calculated as per the provisions of the Goods and Services Tax (Compensation to States) Act, 2017?**

Section 18 of the Constitution (101<sup>st</sup> Amendment) Act, 2016, provides thus:

*"Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years"*

The law passed by Parliament in this regard is the 'Goods and Services Tax (Compensation to States) Act, 2017' [hereinafter 'the Compensation Act']. Section 7(1) of the Compensation Act provides that compensation under the said Act "shall be payable to any State during the transition period". The 'transition period' is defined in Section 2(1)(r) as a period of 5 years from the "transition date". Sub-Section (2) of Section 7 requires that the compensation payable to every State shall be provisionally released "at the end of every two month period", subject to final calculation for every financial year "after receipt of final revenue figures as audited by the Comptroller and Auditor General of India". Section 10(2) provides that all amounts payable to the States under section 7 shall be paid out of the GST Compensation Fund. No express provision appears to have been made in the Compensation Act in regard to a situation of shortfall in the GST Compensation Fund.

It would follow from the above, in my opinion, that the States are entitled to receive the full amount of compensation during the "transition period", in accordance with the provisions of the Act, irrespective of the shortfall.

- (ii) **In case the balance in the Goods and Services Tax Compensation Fund is not sufficient, is there an obligation on the Centre to meet the shortfall wholly or partly?**

There is no express provision in the Compensation Act for the Government of India to bear the liability of making good the shortfall. On the other hand, Section 10(2) of the Act states that all amounts payable to the States under Section 7 shall be paid out of the GST Compensation Fund. In terms of Section 10(1), the "*proceeds of the cess leviable under Section 8 and such other amounts as may be recommended by the Council shall be credited*" to the said Fund.

Obviously, this would mean that it is the GST Council which has to decide on making good the shortfall in the GST Compensation Fund, by providing for sufficient amounts to be credited to it. I may mention that under Article



279A (9), the weightage given to the vote of the Central Government, in the GST Council, is one-third, i.e. around 33%. The remaining two-thirds (i.e. around 67%) would be given to the votes of all the State Governments taken together. However, since all decisions of the GST Council have to be by a 3/4<sup>th</sup> majority, obviously, 67% votes would not be sufficient for this purpose. In other words, the GST Council would not be in a position to make a recommendation to which the Central Government is opposed. This has to be kept in mind.

- (iii) **What are the options before the GST Council, Union and States to meet the said shortfall? Can the GST Council recommend extension of period during which the compensation for the transition period can be paid to the States in terms of Section 8?**

It may be pointed out that Article 279A (4) of the Constitution, while setting out the powers of the GST Council, authorises it to make recommendations, *inter alia*, on “any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster”. This provision will directly apply to the present situation, in view of the Covid-19 pandemic, and would indicate one possible solution for making up the shortfall in the GST Compensation Fund. It is for the GST Council to decide on any other source from where it may lawfully recommend the credit of the necessary amounts into the GST Compensation Fund.

No provision exists in the Compensation Act for extending the period of five years for payment of compensation to the States. Section 8(1) would only entitle an extension in regard to the period of the levy and collection of the Cess, beyond the period of five years, if the Council so recommends. This would not permit the extension or deferment of the period of 5 years for the payment of compensation to the States. In my opinion, therefore, it is only in a case where all the States together agree to a deferment or extension in regard to the payment of compensation to them, that one could adopt such a course of action.

- (iv) **Can the States borrow on the strength of the future receipts from the Compensation Fund to meet the compensation gap either fully or partially?**

This query can be answered with reference to Articles 292 and 293 of the Constitution. The entitlement of a State to borrow is set out in Article 293(1). The limitation on such right is found in Clause (3), which prohibits a State from raising any loan, without the consent of the Government of India, “if there is still outstanding any part of a loan which has been made to the State by the Government of India...”. Clause (2) of Article 292 authorizes Parliament to make loans to a State, subject to any limit which may have been fixed by law made by Parliament.

It is within these parameters that a State can borrow, even on the strength of future receipts from the compensation fund.

- (v) Can the GST Council recommend or request the Centre to consider allowing States to borrow money to meet the compensation gap either fully or partially?

I have referred earlier to Article 279A of the Constitution which sets out, *inter alia*, the powers and functions of the GST Council. Clause (4) of Article 279A provides that the GST Council "shall make recommendations to the Union and States on" certain specified matters. In addition to the specifically enumerated matters under Sub-Clauses '(a)' – '(g)' of Clause (4), on which the GST Council may make recommendations, Sub-Clause '(h)' of Clause (4) empowers the GST Council to make recommendations in regard to "any other matter relating to the goods and services tax, as the Council may decide" (emphasis supplied).

The Supreme Court of India, in a catena of judgments, has consistently taken the view that the phrase 'in relation to' is a "very broad expression", having the widest import. According to the Court, these are "words of comprehensiveness" and have "to be given full effect to" [See *Thyssen Stahlunion GmbH v. Steel Authority of India Ltd.* - (1999) 9 SCC 334, and *Doypack Systems (P) Ltd. v. Union of India* - (1988) 2 SCC 299]. The words "relating to", occurring in Article 279A(4)(h), would also, in my view, stand on the same footing.

The implementation of measures to meet the shortfall in the GST Compensation Fund can reasonably be said to be a matter relating to the Goods and Services Tax. Thus, in my view, the GST Council can, in the exercise of its duties under article 279A(4)(h) of the Constitution, recommend to the Central Government to permit the States to borrow money, as a measure for meeting the compensation gap. It would, however, be for the Central Government to take a final decision in the matter, in exercise of its authority under article 293(3) of the Constitution.



(K. K. Venugopal)  
Attorney General for India  
23.06.2020

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**OFFICE OF THE ATTORNEY GENERAL FOR INDIA**

In the light of the facts stated in the file noting referred for my opinion on 25.08.2020, I would proceed to answer the queries set out therein. I am answering the queries in continuation of my earlier opinion dated 23.06.2020, though, I find that it has become necessary to vary a few of the conclusions which I had arrived at.

It would be far more convenient to address the queries conjointly, rather than each one separately.

I may state, by way of introduction, that both the Central Government as well as the State Governments are facing a serious downturn in their GST revenues, owing to the impact of the COvid-19 pandemic. As a result, the balance in the GST Compensation Fund [**the Fund**] set up under Section 10 of the GST (Compensation to States) Act, 2017 [**The Act**] is inadequate to pay full compensation to the States in terms of the Act.

The question which arises is as to how this issue is to be addressed by the GST Council. I have already opined earlier that each one of the States is entitled, under the Act, to the payment of full compensation during the transition period. There are two provisions which could be said to deal with such a situation, and these are:

- (i) Article 279A(4)(f) of the Constitution of India provides that the GST Council may recommend "any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster". It is a matter for the GST Council to decide whether the consumers can bear the burden of an increase in the rates at the present time, and whether an increase in the rates is otherwise appropriate.
- (ii) Under Section 10 (3A) of the Act, on the recommendation of the GST Council, an amount remaining unutilized in the fund at any point of time in any financial year during the transition period may be divided between the Centre and the States. The proviso to Section 10(3A) requires that if there is a shortfall in the amount collected in the Fund against the requirement of compensation payable to the States, the amount unutilized could be recovered from the Centre and the States. However, I am told that though a surplus existed in the Fund till the middle of the financial year 2019-20, this has been distributed to the States already.

We come to a third alternative, which arises out of Section 8 of the Act. Section 8 deals with the levy and collection of the GST compensation cess [**the cess**] on the supply of goods and services. The proceeds of this cess are credited to the Fund under Section 10. The cess is to be levied and collected for the purpose of payment of compensation to the States for loss of revenue arising on account of implementation of the GST, "for a period of 5 years or for such period as may be prescribed on the recommendations of the Council" (emphasis supplied).

Two things follow, in my view, from the scheme of the Act:

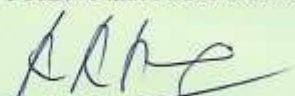
- (i) The compensation under the Act is payable to the States during the transition period (i.e. 5 years); and
- (ii) Such payment shall be made from the Fund, into which the proceeds of the cess are credited.

What, then, does Section 8 mean, when it provides for the levy and collection of the cess for a period of 5 years or for such period as may be prescribed on the recommendation of the GST Council? The cess cannot be collected for adding to the general revenues of the Central Government. If this be so, the continued levy and collection of the cess beyond the period of five years could take place only in the event there has been a shortfall in the payment of compensation to the States during the 5 year transition period. If the States are fully compensated during the 5 year transition period, no question of extension of the levy and collection of the cess beyond 5 years would arise. In other words, the GST Council would recommend the continuance of the cess beyond the transition period of 5 years only in a situation of shortfall during the transition period, which would necessitate the raising of funds for paying the compensation to the States after the 5 year period is over.

I cannot see any other reason why such a provision is made in Section 8, permitting an extension in the duration of the levy and collection of the cess. This would necessarily imply that where, on account of extraordinary circumstances causing a steep fall in GST revenues and a shortfall in the Fund, the states cannot be paid full compensation during the transition period, the shortfall in the payment of compensation could be made up even after the transition period of 5 years.

Of course, a recommendation by the GST Council extending the levy and collection of the cess beyond 5 years under Section 8(1) of the Act, would require a decision by a three-fourth majority of the weighted votes. Since all the States are represented in the GST Council, this can only be achieved if the requisite number of States support such a recommendation.

I believe that I have answered the queries posed. I advise accordingly.



**K. K. Venugopal**  
Attorney General for India  
26.08.2020

**Agenda Item 2: Deemed ratification by the GST Council of Notifications, Circulars and Orders issued by the Central Government**

In the 22<sup>nd</sup> meeting of the GST Council held at New Delhi on 06<sup>th</sup> October, 2017, it was decided that the notifications, Circulars and Orders which are being issued by the Central Government with the approval of the competent authority shall be forwarded to the GST Council Secretariat, through email, for information and deemed ratification by the GST Council. Accordingly, in the 40<sup>th</sup> meeting held on 12.06.2020 through video-conference, the GST Council had ratified all the notifications, Circulars, and Orders issued till 10.06.2020.

2. In this respect, the following notifications, Circulars and Orders issued after 10.06.2020 till 25.09.2020 under the GST laws by the Central Government, as available on [www.cbic.gov.in](http://www.cbic.gov.in), are placed before the Council for information and ratification: -

Act/Rules	Type	Notification/Circular/Order Nos.	Description/Remarks
CGST Act/CGST Rules	Central Tax	1. Notification No. 48/2020- Central Tax dated 19.06.2020	Seeks to make sixth amendment (2020) to CGST Rules, 2017.
		2. Notification No. 49/2020- Central Tax dated 24.06.2020	Seeks to bring into force Sections 118, 125, 129 & 130 of Finance Act, 2020 in order to bring amendment to Sections 2, 109, 168 & 172 of CGST Act, 2017 w.e.f. 30.06.2020.
		3. Notification No. 50/2020- Central Tax dated 24.06.2020	Seeks to make seventh amendment (2020) to CGST Rules, 2017.
		4. Notification No. 51/2020- Central Tax dated 24.06.2020	Seeks to provide relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020.
		5. Notification No. 52/2020- Central Tax dated 24.06.2020	Seeks to provide one time amnesty by lowering/waiving of late fees for non-furnishing of FORM GSTR-3B from July, 2017 to January, 2020 and also seeks to provide relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to July, 2020.
		6. Notification No. 53/2020- Central Tax dated 24.06.2020	Seeks to provide relief by waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods for months from March, 2020 to June, 2020 for monthly filers and for quarters from January, 2020 to June, 2020 for quarterly filers.



	7. Notification No. 54/2020- Central Tax dated 24.06.2020	Seeks to extend due date for furnishing FORM GSTR-3B for supply made in the month of August, 2020 for taxpayers with annual turnover up to Rs. 5 crores.
	8. Notification No. 55/2020- Central Tax dated 27.06.2020	Seeks to amend notification No. 35/2020- Central Tax in order to extend the due date of compliance which falls during the period from "20.03.2020 to 30.08.2020" till 31.08.2020.
	9. Notification No. 56/2020- Central Tax dated 27.06.2020	Seeks to amend notification no. 46/2020- Central Tax in order to further extend period to pass order under Section 54(7) of CGST Act, 2017 till 31.08.2020 or in some cases up to fifteen days thereafter.
	10. Notification No. 57/2020- Central Tax dated 30.06.2020	Seeks to amend notification no. 52/2020- Central Tax in order to provide conditional waiver of late fees for the period from July, 2017 to July, 2020.
	11. Notification No. 58/2020- Central Tax dated 01.07.2020	Seeks to make eighth amendment (2020) to CGST Rules, 2017.
	12. Notification No. 59/2020- Central Tax dated 13.07.2020	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2019-2020.
	13. Notification No. 60/2020- Central Tax dated 30.07.2020	Seeks to make Ninth amendment (2020) to CGST Rules, 2017.
	14. Notification No. 61/2020- Central Tax dated 30.07.2020	Seeks to amend Notification no. 13/2020- Central Tax in order to amend the class of registered persons for the purpose of e-invoice.
	15. Notification No. 62/2020- Central Tax dated 20.08.2020	Seeks to make Tenth amendment (2020) to CGST Rules, 2017.
	16. Notification No. 63/2020- Central Tax dated 25.08.2020	Seeks to notify the provisions of section 100 of the Finance (No. 2) Act, 2019 to amend section 50 of the CGST Act, 2017 w.e.f. 01.09.2020.
	17. Notification No. 64/2020- Central Tax dated 31.08.2020	Seeks to extend the due date for filing FORM GSTR-4 for financial year 2019-2020 to 31.10.2020.

		18. Notification No. 65/2020- Central Tax dated 01.09.2020	Seeks to amend notification no. 35/2020-Central Tax dated 03.04.2020 to extend due date of compliance under Section 171 which falls during the period from "20.03.2020 to 29.11.2020" till 30.11.2020.
		19. Notification No. 66/2020- Central Tax dated 21.09.2020	Seeks to give one time extension for the time limit provided under Section 31(7) of the CGST Act 2017 till 31.10.2020.
		20. Notification No. 67/2020- Central Tax dated 21.09.2020	Seeks to grant waiver / reduction in late fee for not furnishing FORM GSTR-4 for 2017-18 and 2018-19, subject to the condition that the returns are filled between 22.09.2020 to 31.10.2020.
		21. Notification No. 68/2020- Central Tax dated 21.09.2020	Seeks to grant waiver / reduction in late fee for not furnishing FORM GSTR-10, subject to the condition that the returns are filled between 22.09.2020 to 31.12.2020.
UTGST Act	Union Territory Tax	1. Notification No. 02/2020 - Union Territory Tax dated 24.06.2020	Seeks to provide relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020.
IGST Act	Integrated Tax	1. Notification No. 04/2020 - Integrated Tax dated 24.06.2020	Seeks to bring into force Section 134 of Finance Act, 2020 in order to bring amendment to Section 25 of IGST Act, 2017 w.e.f. 30.06.2020.
		2. Notification No. 05/2020 - Integrated Tax dated 24.06.2020	Seeks to provide relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020.
Circulars	Under CGST Act, 2017	1. Circular No. 141/11/2020 - GST dated 24.06.2020	Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of spread COVID-19.
Removal of Difficulty Order	Under CGST Act, 2017	1. Order No. 01/2020- Central Tax dated 25.06.2020	Seeks to extend the time limit for filing an application for revocation of cancellation of registration for specified taxpayers.

3. The GST Council may grant deemed ratification to the notifications, Circulars and Orders as detailed above.

### **Agenda Item 3: Decisions of the GST Implementation Committee (GIC) for information of the Council**

The GST Implementation Committee (GIC) took certain decisions between 27<sup>th</sup> May 2020 and 8<sup>th</sup> September 2020. Due to the urgency involved, decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions taken are given below:

#### **Decision by Circulation – 4<sup>th</sup> June 2020**

2. The proposal before the GIC was regarding clarification in respect of levy of GST on Directors' remuneration.

2.1. It was mentioned in the agenda note that various references had been received from trade and industry regarding clarification on the levability of GST on Director's remuneration paid by companies to their directors. The representations had sought clarity on the levability of GST on Director's remuneration paid by companies. In this regard reference was drawn to provisions of the Companies Act, 2013 which govern the appointment and remuneration of directors in a company. A company as an artificial person, acts through directors who are elected representatives of the shareholders and who execute decision making for the benefit of shareholders. Directors are paid remuneration, which may be called as salary, commission, sitting fees or by any other name

2.2. Doubts had been raised as to which activities get covered as non-taxable by virtue of entry Schedule III and which activity will be taxed under RCM in the context of Director's remuneration. It appears that the doubt had arisen due to perceived overlap in the scope of the entry 1 in schedule III [*'services by an employee to the employer, in course of or in relation to his employment'*] but there was no clarity regarding employment being full time or part time; also there was no clarity as to whether the activity performed by the employee includes only the activity performed for salary or all activities performed for all remuneration, including salary but not restricted to salary and the entry 6 in Table to notification 13/2017-Central Tax (Rate) issued under section 9(3) [which mentions all *'Services by directors'* without any distinction whether such a Director is an employee or not]. It is also pertinent to note that as per provisions of the Income Tax Act, the salaries paid to Directors is subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

2.3. A detailed agenda regarding the same was placed before the Law Committee in its meeting held on 19.05.2020. The primary issue that was placed before the Law Committee for taking a view was 'whether a Director, who is also an employee of the company, can carry out any activity for the company as a person independent of being 'employee' [*i.e. can he wear the proverbial twin hats - when required, as an employee and when required, as an independent person/Director*]. The Committee took view of the fact that with effect from 01<sup>st</sup> July, 2012, Section 194J of the Income Tax Act had been amended to provide that, any remuneration or fees or commission by whatever name called other than those on which tax is deductible under Section 192, to a director of a company **shall be liable for TDS under Section 194J** [*Section 192 of IT Act is for TDS on "salary" whereas 194J in for TDS on "Fees for professional or Technical Services"*].

2.4. The Law Committee, in its meeting held on 19.05.2020, recommended to issue a circular to clarify that the director, who is also an employee, can carry out activities of provision of services to the company in an independent capacity as Director also and that part of the service which has been provided in an independent capacity shall be leviable to GST. The part of the provision of services that has been provided as an employee only shall be outside the scope of GST. In other words, for



employee directors, GST would not be levied on that portion of the remuneration on which TDS is deducted under section 192 of the IT Act as “salary” and GST would be leviable on that portion of the remuneration which is other than salary (TDS is done under 194J of IT Act). There is no doubt that the activity carried out by an independent director for the company, by way of provision of service is however in the nature of provision of service, and is therefore liable to GST.

2.5. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, Circular No: 140/10/2020 – GST dated 10<sup>th</sup> June, 2020 was issued.

#### **Decision by Circulation – 5<sup>th</sup> June 2020**

3. The proposal before the GIC was regarding amendment of rule 26(1) to allow corporates to furnish **FORM GSTR-3B & FORM GSTR-1** till 30<sup>th</sup> September, 2020 using EVC.

3.1. It was mentioned in the agenda note that during the ongoing lockdown due to COVID pandemic, taxpayers had reported that they had difficulties to access or use their digital signature (DSC) as their movement was restricted. Further, on their request to do away with the requirement of DSC for furnishing any document / return on portal, especially during the present period of lockdown, system was enabled to allow corporates to furnish **FORM GSTR-3B** with EVC from 21.04.2020 to 30.06.2020. Accordingly, in order to provide legal provision for the same, a proviso was inserted in the sub-rule (1) of rule 26 of the CGST Rules vide notification No. 38/2020-Central Tax dated 05.05.2020. The provision had been enabled till 30.06.2020, but, in wake of continued lockdown/restrictions, it was proposed that the said facility may be extended till 30.09.2020. Second proviso to sub-rule (1) of rule 26 of the CGST rules, 2017 may be amended accordingly.

3.2. A legal provision needed to be provided for the new system of allowing corporates to furnish **FORM GSTR-1** with EVC from 27.05.2020 till 30.09.2020. it was proposed that a proviso similar to one drafted for the furnishing of **FORM GSTR-3B** with EVC by corporates could be inserted in the sub-rule (1) of rule 26 of the CGST Rules, 2017.

3.3. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, Notification No. 48/2020 – Central Tax dated 19<sup>th</sup> June, 2020 was issued.

#### **Decision by Circulation – 19<sup>th</sup> June 2020**

4. The proposal before the GIC was regarding data sharing with the office of CAG.

4.1. It was mentioned in the Agenda Note that The Comptroller and Auditor General of India, in his letter dated 28<sup>th</sup> September 2018, requested the Finance Minister in her capacity as Chairman of the GST Council to impress upon the States and CBIC the need for regular and structured flow of data and issue suitable directions to all States/UTs and CBIC to formalize the data sharing protocol. CAG has been emphasizing on the need for unrestricted access to all GST data of all taxpayers. This issue was discussed at various for a including a meeting of some officers of Central and State tax administration on this issue on 3<sup>rd</sup> May, 2019 and then in the officers’ meeting before the GST Council on 20<sup>th</sup> June, 2019. The matter was placed before the GST Council in its 35<sup>th</sup> meeting held on 21<sup>st</sup> June, 2019 in New Delhi.

4.2. In the 35<sup>th</sup> GST Council meeting, officers from GST Council made a presentation. During the meeting, the Principal Director (Audit), CAG informed that an API Data Scheduler had been developed, which would draw data from APIs of GSTN. In addition, access was also needed to review the back-office functions and reports being generated by CBIC and the State. The Council decided to refer the

issue of data sharing with officers of CAG by the Central and State Tax administrations in GST regime to the Law Committee for further deliberations.

4.3. The matter was discussed in the meeting of the GST Law Committee meeting held on 28<sup>th</sup> June, 2019 in which officers from the CAG office also participated. However, no consensus could be reached with respect to sharing of GST data with CAG. The issues was further deliberated in the meeting of the GST Law Committee held on 7<sup>th</sup> November, 2019 and the Law Committee recommended that as was the practice before introduction of GST in Centre as well as most of the States, jurisdiction based digital access to GST data should be given to audit officers for conduct of audit.

4.4. Since this was only a continuance of the existing practice, CBIC (Systems) had started providing jurisdiction-based digital access to audit officers from December 2019 and 111 user-ids with different privileges have already been created. These officers can access 49 different reports and a user management module had also been made accessible to audit officers. This matter was placed before the 40<sup>th</sup> GST Council meeting held on 12<sup>th</sup> June 2020 held through video conference but was deferred.

4.5. In his letter No 619/RA-INDT/GST/2019 dated 11th June, 2020 addressed to Finance Minister, CAG has stated that the CAG would be physically verifying around 10% of the transactions, and that access to full pan-India data and back-end systems is required to

(a) identify the transactions that require to be checked in their respective jurisdictions and

(b) identify systemic inconsistencies or shortcomings if any in the various modules such as registration, refund. He has further stated that the access to pan-India data would be required at the GSTN premises, and data dump will be required on CAG's systems in respect of the transactions identified for physical verification.

4.6. The issue was deliberated by the Law Committee in its meeting held on 19.06.2020. The Law Committee has recommended that *"officers of the respective tax administration which is proposed to be audited by CAG should also participate / be consulted at the query formulation stage and request for data for the identified taxpayers being sought by CAG from GSTN also should be through the concerned Government"*. The proposal was placed before the GIC for approval. GIC had approved the proposal and it further suggested that *"officers of the respective tax administration which is proposed to be audited by CAG should also participate / be consulted at the query formulation stage and request for data for the identified taxpayers being sought by CAG from GSTN also should be submitted through the concerned Government."*. The Finance Secretary informed Dy. CAG through Demi Official Letter vide F.No. 31011/14/2016-ST-I-Part dated 22<sup>nd</sup> June 2020 that necessary instructions were issued to GSTN to provide all necessary logistic and technical support to CAG's audit team to provide pan-India data.

#### **Decision by Circulation – 25<sup>th</sup> June 2020**

5. The proposals before the GIC were enabling filing of GSTR-1 by SMS, relaxation of time period under 168A of CGST Act for compliances during the Covid-19 induced lock down and proposal to waive the requirement of 3 days deemed approval for registration during the Covid period.

#### **Agenda - Enabling filing of GSTR-1 by SMS**

5.1. It was mentioned in the agenda note that in the 39<sup>th</sup> meeting of the GST Council, a facility to file Nil returns by SMS was introduced which was a part of initiative recommended by the Council to facilitate and ease compliance burden for small taxpayers and hence, this was part of the initiative to bring facilitation measures of the new return design model to current returns Accordingly, a new Rule

67A was inserted in the CGST Rules, 2017 vide notification No.38/2020- Central Tax dated 05.05.2020 to enable filing of Nil **FORM GSTR-3B** through SMS and the provision was made effective from 08<sup>th</sup> June, 2020 vide notification No.44/2020-Central tax, dated 08.06.2020.

5.2. GSTN informed that the functionality for NIL filing of **FORM GSTR-1** through SMS was almost complete, and tentatively they would be ready to deploy it by 25<sup>th</sup> June, 2020 subject to the Performance Test which they had scheduled for 23<sup>rd</sup> June, 2020. From law perspective, this would require amendment in Rule 67A so as to allow the NIL filing of **FORM GSTR-1** through SMS.

5.3. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, Notification No. 58/2020 – Central Tax dated 1<sup>st</sup> July 2020, was issued.

#### **Agenda - Relaxation of time period under 168A of CGST Act for compliances during the Covid-19 induced lock down**

6. It was mentioned in the agenda note that an email dated 22.06.2020 had been received from the office of CCT, Maharashtra wherein they have forwarded an agenda note for the Law Committee. It was proposed in the agenda note to further extend the time period for general compliances in continuation to the already provided relaxation by way of notification No. 35/2020-Central Tax, dated 03.04.2020, wherein actions and compliances for which the due dates were falling during the period from the 20<sup>th</sup> day of March, 2020 to the 29<sup>th</sup> day of June, 2020 were extended till 30<sup>th</sup> June, 2020. State of Maharashtra had further recommended that the time period be extended till 31<sup>st</sup> August, 2020 and such relaxation may not be extended for return filing and payments thereon and it may be relaxed only for general compliances.

6.1. It was informed that in exercise of the power conferred under the provision of section 168A, notification No. 35/2020 – Central Tax, dated 03.04.2020 was issued which specified the actions and compliances for which the due dates were falling during the period from the 20<sup>th</sup> day of March, 2020 to the 29<sup>th</sup> day of June, 2020 would get extended to 30<sup>th</sup> June, 2020; and also specified the sections which would be outside the purview of the said extended date for compliance purposes. It may be noted that due to the existing Covid-19 situation, various areas of different States had been kept under lockdown, thereby restricting movement and placing restrictions on trade and industry. It was also reported that Central / State tax offices were closed or were functioning with skeletal staff. This had led to hardships to taxpayers in respect of filing of refund applications, filing of appeals etc. This situation was expected to continue in certain districts even till mid-July, 2020. Accordingly, it was felt that further relaxation was required to be given for the compliances pertaining to the Covid-19 lock down period.

6.2. Accordingly, it was proposed that the due dates for actions and compliances during the Covid-19 period, other than compliances which were specifically excluded by notification 35/2020 – Central Tax, dated 03.04.2020, which were falling during the period from the 20<sup>th</sup> day of March, 2020 to the 30<sup>th</sup> day of August, 2020 be extended to 31<sup>st</sup> August. The same may be carried out through a notification under section 168A. Chief Commissioner, State tax, Gujarat concurred in the proposal and stated that whether certain procedures can be implemented differently (separate time limits) due to uncertainty prevailing, few places are still under lockdown/with restrictions has to be considered. This can be further deliberated in the Law Committee.

6.3. The Law Committee in its meeting held on 25.06.2020 had recommended that actions and compliances during the Covid-19 period, other than compliances which were specifically excluded by notification 35/2020 – Central Tax, dated 03.04.2020, falling during the period from the 20<sup>th</sup> day of March, 2020 to the 30<sup>th</sup> day of August, 2020 be extended to 31<sup>st</sup> day of August, 2020. It had also

recommended similar extension for notification No. 46/2020-Central Tax, dated 09.06.2020, also issued under section 168A of the CGST Act.

6.4. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, notification No. 55/2020 – Central Tax dated 27<sup>th</sup> June 2020 was issued.

#### **Agenda - Proposal to waive the requirement of 3 days deemed approval for registration during the Covid period**

7. It was mentioned in the agenda note that Sub-section (10) of section 25 of the Central Goods and Services Tax Act, 2017 provides for prescribing time period within which registration is required to be granted. Accordingly, rule 9 of the Central Goods and Services Tax Rules, 2017 provides for deemed approval after a period of three working days, if the proper officer fails to take any action on the application of registration within the said period of three working days.

7.1. Strong apprehensions had been raised on possible mis-use of the deeming provision during the lock down period, where either the central / state tax offices were closed or were functioning with skeletal staff. Since the lockdown applied across all establishments including those belonging to the Government (Central and State), during the lockdown period there being no ‘working days’, the GSTN was requested to ensure that the deemed approval was not granted on the portal with effect from 25<sup>th</sup> March, 2020. This has resulted in piling up of registration applications, which as on 24.06.2020 had reached a figure of 1,14,000. The decision to suspend deemed registration process was purely administrative based on interpretation as above. Though, in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government in exercise of powers conferred under section 168A of the CGST Act, has issued notification No. 35/2020-Central Tax, dated 03.04.2020 thereby extending time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20<sup>th</sup> March, 2020 to 29<sup>th</sup> June, 2020, and where completion or compliance of such action had not been made within such time, to the 30<sup>th</sup> June, 2020. However, such extension was not applicable for compliances relating to provisions of section 25 of the CGST Act and rules made thereunder. In effect, it meant that the provision for deemed approval of registration continues.

7.2. The issue had been deliberated informally in the past in the Law Committee and also internally. If the deemed approval process was reinitiated suddenly, over 1,00,000 registrations would get approved on deemed basis. It was felt that it needed to be ensured that the said pendency was reduced at the earliest before the deemed approval process was reinitiated. Accordingly, it was proposed that the pending applications be disposed of as a special drive for which necessary administrative instructions may be issued to all proper officers to liquidate the pending applications by 12.07.2020 and the deemed approval of registration may be resumed from 13.07.2020

7.3. Further it was also needed to be deliberated whether any enabling provision needed to be provided in the GST Rules for waiver of 3 days deemed approval for registration provision during 25.03.2020 to 12.07.2020. One of the following options could be considered:

- i. Special Drive to liquidate pendency would suffice
- ii. Notification under section 168A of the CGST Act. or
- iii. Amendment in Rule 9 of the CGST Rules, with effect from 25<sup>th</sup> March, 2020 (also suggested by CCT, Tamil Nadu).

7.4. The issue was deliberated by the Law Committee in its meeting held on 25.06.2020. Law Committee had recommended to tackle the issue through special drive administratively. The recommendations of the Committee as under were put up for approval:

- i. *All applications pending as on 30.06.2020 to be disposed-off by 15.07.2020 (else deemed approved on 16.07.2020) and those received thereafter and pending as on 28.07.2020 shall be deemed approved on 31.07.2020.*
- ii. *From 01.08.2020 the process of deemed approval shall be resumed.*
- iii. *GSTN to forward the list of such taxpayers who have got deemed approval during the lockdown to the jurisdictional officers.*

7.5. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, a letter to Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax vide CBEC-20/06/11/2020-GST dated 17<sup>th</sup> July 2020 was issued by GST Policy Wing.

#### **Decision by Circulation – 29<sup>th</sup> June 2020**

8. The proposal before the GIC was regarding conditional waiver of late fees for the period from July, 2017 to July, 2020.

8.1. It was mentioned in the agenda note that an e-mail communication was received from GSTN on 29.06.2020, wherein it has been informed that the field for “Late fee” is globally programmed in the GST Common portal maintained by GSTN, and it can-not be different for different tax periods. It was further informed that a change in the system architecture would involve a cycle of minimum 2-3 months as GSTR 3B ledgers would need change.

8.2. This had implications on the recommendations of the GST Council in its 40<sup>th</sup> Meeting held on 12.06.2020 which were based on Agenda Note Nos. 3 (iv) & 3(vi) placed before the Council. *Inter-alia*, a scheme for a conditional waiver of late fees for small taxpayers (taxpayers with aggregate turnover up to Rs. 5 crore) for the tax period May, 2020, June, 2020 and July, 2020 and a scheme for one-time amnesty for all taxpayers by lowering/waiving of late fees for non-furnishing of **FORM GSTR-3B** from July, 2017 to January, 2020 was approved by the Council. As reported by GSTN, the present system architecture did not allow different ceilings of late fee for different tax periods simultaneously. Due to the said system related constraint, the decision of reducing the late fees for July, 2017 to Jan, 2020 was found un-implementable under the present system architecture.

8.3. The scheme for conditional waiver in late fees envisages that due dates for furnishing of returns would not be extended but the benefit of a conditional waiver of late fees shall be provided to taxpayers if the returns are furnished by the specified dates. For example, if the returns for March, 2020 by taxpayers having aggregate turnover > Rs. 5 crores in the preceding FY were not filed till 24.06.2020, late fee would be levied from 21<sup>st</sup> April, 2020 onwards. In order to have a single ceiling of late fee for being implemented on the portal, it would require change in the scheme for conditional waiver of late fee notified vide No. 52/2020-CT, dated 24.06.2020. The same may be done by putting a cap on late fee for the tax period February, 2020 to July, 2020, on par with that being provided for returns for the period July 2017 to January 2020, provided the same was filed by 30<sup>th</sup> September, 2020. However, this would extend the benefit of reduced late fees to all taxpayers for the months of February, 2020 to July, 2020. The scheme for one-time amnesty by lowering/waiving of late fees for non-furnishing of **FORM GSTR-3B** from July, 2017 to January, 2020, provided the same are furnished between 01<sup>st</sup> day of July, 2020 to 30<sup>th</sup> day of September, 2020, remains unchanged.

8.4. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, Notification No. 57/2020 – Central Tax dated 30<sup>th</sup> June 2020 was issued.

### **Decision by Circulation – 7<sup>th</sup> July 2020**

9. The proposal before the GIC was regarding extension of due date for furnishing **FORM GSTR-4** for F.Y. 2019-20.

9.1. It was mentioned in the agenda note that an e-mail dated 07.07.2020 from EVP (Services), GSTN was received which said that development of software application could not be completed in time and accordingly it was requested to extend the due date for filing **FORM GSTR-4** for FY 2019-20 from 15<sup>th</sup> July, 2020 to 31<sup>st</sup> August, 2020.

9.2. A special procedure under section 148 of the CGST Act was made for those persons who had opted for paying tax under section 10 or opted to avail benefit under notification No. 02/2019- Central tax (Rate) dated 07.03.2019. In terms of notification No. 21/2019 – Central Tax, dated 23<sup>rd</sup> April, 2019 it was notified that such persons shall furnish a return for every financial year or, as the case may be, part thereof in **FORM GSTR-4**, on or before the 30<sup>th</sup> day of April following the end of such financial year. They would also be required to furnish a statement, containing the details of payment of self-assessed tax in **FORM GST CMP-08**. The new format for **FORM GSTR-4** was notified vide notification No. 31/2019 dated **28<sup>th</sup> June, 2019**.

9.3. Notification no. 34/2020 Central Tax dated 3<sup>rd</sup> April, 2020, relief provided to such persons and the due date for filing **FORM GSTR- 4** for the year 2019-20 was extended till 15<sup>th</sup> July, 2020.

9.4. Since the **FORM GSTR-4** was still not available on portal, as informed by the GSTN, and also grievance was being received on social media, it was proposed that the due date for furnishing the said return for the FY 2019-20 be extended to 31<sup>st</sup> August, 2020 as requested by GSTN.

9.5. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. To the observation of Chief Commissioner, State Tax, Gujarat as to whether GSTN can confirm that it was prepared to upload the necessary changes well in time for the above date to be practical for the reason that unnecessary change in the date frequently due to non-execution of decision is avoidable, GSTN responded by stating that they were in last phase of testing and would be there in production shortly, may be in the coming week. GSTN have further stated that the expected date of deployment for these changes is 10<sup>th</sup> July 2020. Accordingly, notification No. 59/2020 – Central Tax dated 13<sup>th</sup> July 2020 was issued.

### **Decision by Circulation – 22<sup>nd</sup> July 2020**

10. The proposal before the GIC was regarding revised e-invoice schema in **FORM GST INV-01**.

10.1. It was mentioned in the agenda note that the e-invoice schema in **FORM GST INV-01** was notified vide notification No. 02/2020-Central Tax, dated 01.01.2020. Further, in terms of sub-rule (4) of rule 48 of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), notification No. 13/2020-Central Tax, dated 21.03.2020 was issued to notify the class of registered persons required to issue e-invoice. In the said notification, registered person other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the CGST Rules, whose aggregate turnover in a financial year exceeds one hundred crore rupees, were notified as a class of registered person who shall prepare invoice and other prescribed documents, in terms of sub-rule (4) of rule 48 in respect of supply of goods or services or both to a registered person. The date for implementation of e-invoicing was notified as 01.10.2020.

10.2. Thereafter, due to certain anomalies observed, GSTN and NIC undertook a revision of the schema. An email dated 14.07.2020 was received from GSTN regarding finalisation of the revised e-invoice schema based on discussion with NIC. The changes in the revised schema were deliberated by

the Law Committee in its meeting held on 20.07.2020. In the revised schema, following changes were recommended by the Law Committee:

- i. In notes of row A.1.3.11 “Including GST” need to be removed;
- ii. In whole document (mainly section 3): the reference to ‘Buyer’ need to be replaced with recipient;
- iii. ‘Supplier claiming refund’ question - retained for ‘deemed export supplies’ only, hence change in notes;
- iv. Export duty need to be captured hence a new row 10.6 got added.

10.3. GSTN had submitted the finalised e-invoice schema in **FORM GST INV-01** after incorporating all the changes recommended by the law Committee. It was also recommended to start the system of e-invoice, initially, for notified persons whose aggregate turnover in a financial year exceeds five hundred crore rupees.

10.4. Accordingly, the recommendation of Law Committee to notify the revised e-invoice schema in **FORM GST INV-01** and to have the same applicable for notified persons whose aggregate turnover in a financial year exceeds five hundred crore rupees were placed before the GIC for approval. The GIC had approved the proposal. The State of Gujarat had stated to clarify that generation of e-invoicing was not required for SEZ to DTA supply of goods where turnover of an SEZ unit exceeds Rs.500 crores. The State of Haryana proposed that the threshold should be reduced from Rs 500 crores to Rs 100 crores once the system stabilized. Accordingly, Notification No. 60/2020 – Central Tax dated 30<sup>th</sup> July 2020 was issued.

#### **Decision by Circulation – 23<sup>rd</sup> July 2020**

11. The proposal before the GIC was regarding consent based sharing of taxpayer turnover and export data with MSME Ministry.

11.1. It was mentioned in the agenda note that a proposal by Department of Revenue, for data sharing between GSTN and the Ministry of MSME had been received. This sharing of data was required in view of the decision of Ministry of MSME that classification of micro, small and medium enterprises should be done on the basis of the composite criteria of investment and turnover. Point No. 5(2) of the notification dated 26th June, 2020 issued by MSME provides for, “Information as regards turnover and exports turnover for an enterprise shall be linked to the Income Tax Act or the Central Goods and Services Act (CGST Act) and the GSTIN”. In this regard, Ministry of MSME had proposed a temporary data sharing arrangement that Ministry of MSME would be uploading PAN details in Excel format, daily on secured FTP (sFTP) server of GSTN and GSTN will update this excel sheet in maximum 2 days with the details of export related data and other details of GSTINs. This temporary system was proposed till an API based data sharing system was developed by GSTN.

11.2. The issue was deliberated by the Law Committee in its meeting held on 22.07.2020, and the Law Committee approved that wherever prior consent of the taxpayer/registrant had been obtained, data may be shared. MSME had assured that prior consent of the registrants regarding use of GST data was being obtained. The Law Committee had requested Development Commissioner (MSME), Ministry of MSME to share the format in which the consent of the registrant was being obtained, and he agreed to provide the same

11.3. In this regard, it may be noted that section 158 of the CGST Act provides that “*all particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other*

*than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.”. Further clause (k) of sub-rule 3 of rule 158 mandates that bar on disclosure shall not apply to “any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force;”.*

11.4. Since the Ministry of MSME had requested that details should be provided urgently to help issue Udyam (MSME) certificate to MSME units, the issue was placed before the GIC for decision. The GIC approved the proposal. State of Haryana while agreeing with the proposal stated that Ministry of MSME may be requested to share the format in which consent of the tax payer was stated to be obtained by them which was shared by email.

#### **Decision by Circulation – 4<sup>th</sup> August 2020**

12. The proposal before the GIC was regarding revised **FORM GSTR-2A** and introduction of static statement **GSTR-2B**.

12.1. It was mentioned in the agenda note that various enhancements in the GST system were being undertaken by GSTN to enhance the taxpayers’ experience on the common portal, especially after the decision of the GST Council to continue with the current system of return filings and making gradual improvements from time to time. As a part of one such enhancement in respect of the process of furnishing returns and availing of input tax credit, certain amendments in the dynamic **FORM GSTR-2A** (containing details of ITC available to the taxpayer based on all GSTR-1s filed by his suppliers) were proposed. It had also been proposed to introduce a new **FORM GSTR-2B**, which would be a static statement indicating the ITC available and ITC unavailable to the taxpayer based on the FORM GSTR-1s filed by his suppliers during a defined period. These changes were proposed by GSTN, and the same were approved by Law Committee in its meeting held on 22.07.2020 and 29.07.2020.

12.2. **FORM GSTR-2A** is a notified form under rule 60(1) of the CGST Rules, 2017. Accordingly, it was proposed to amend the said rules by substituting the revised **FORM GSTR-2A**. As per the recommendations of the Law Committee, **FORM GSTR-2B** may not require notification at this stage as it was only an information statement which was not required to be statutorily acted upon. The same may be notified only at the next stage of integration of returns when data would flow from GSTR-2B to GSTR-3B. However, at this stage press release or instruction may be issued making the taxpayer aware about the functionality GSTR-2B and its advantages to taxpayers.

12.3. Accordingly, the proposal was placed before the GIC. The State of West Bengal commented that illustration in instruction 3 to **GSTR-2B** may be split to include the details relating to **GSTR-6** filed by ISD and further requested to expand the instruction 9 so as to clarify the term ISD credit & debit note along the same lines as instruction 8 of **GSTR-6**. The State of Tamil Nadu commented/suggested that with respect to **GSTR-2A**, NIL filing of **GSTR-3B** may be indicated, quarterly filing of **GSTR-1** may be captured & auto populated, separate colour code for **GSTR-5** may be indicated and port name may be captured in PART D (it may be noted that port code is already captured in PART D). With respect to **GSTR-2B**, Tamil Nadu commented that date of generation was not mentioned, it was not clear whether ITC reflected is based on filing or saving of **GSTR-1**, it was not clear as to how the period of generation of **GSTR-2B** is considered for quarterly filer of **GSTR-1**, it had been mentioned that supplies leviable to Reverse Charge in circumstances of supply from unregistered person to registered person, government department to registered person, registered person to another registered person does not seem to have been captured in **GSTR-2B**. The members of the GIC had approved the proposal. Accordingly, Press Release dated 29.08.2020 for **GSTR-2B** for month of July 2020 was issued. The notification notifying changes in **GSTR-2A** is yet to be issued.



### **Decision by Circulation – 7<sup>th</sup> August 2020**

13. The proposal before the GIC was regarding modalities of Aadhaar based verification for newly registered taxpayers.

13.1. In the agenda note reference was drawn to Notification Nos. 16 to 19/2020 – Central Tax, all dated 23.03.2020 which were issued in order to implement the recommendations of the GST Council in its 39<sup>th</sup> meeting held on 14.03.2020 regarding operationalization of Aadhaar authentication for new taxpayers. All the relevant provisions related to Aadhaar authentication were made operational from 01.04.2020. Reference was invited to the decision of the Law Committee in its meeting held on 19<sup>th</sup> May, 2020 wherein, the policy decision regarding the implementation of Aadhaar provisions was re-deliberated. It was recommended by the Law Committee that the procedure regarding Aadhaar authentication may be revised in view of certain issues that were likely to arise upon implementation of Aadhaar based authentication as per the original scheme; and to carry out suitable amendment to the CGST Rules/notifications so that the related provisions come into effect from a date to be notified (from the present date of 01.04.2020).

13.2. The procedure was finalised and as recommended by the Law Committee, the system shall be modified such that if the taxpayer did not opt for the Aadhaar authentication process, or failed Aadhaar authentication procedure, the concerned jurisdictional officer has to initiate physical verification of the premises before granting registration. The Officer shall also have means for non-physical verification, in lieu of the physical verification of the premises, by way of asking for additional documents. In order to decide upon the registration application in such cases by carrying out such physical verification, *or non-physical verification in lieu of the physical verification*, the officer shall be granted a specified time period. In instances where the specified period has lapsed, but the registration application has neither been accepted, nor a notice for rejection has been issued, it is proposed that the application shall be deemed to be approved. Currently, the specified period was proposed to be kept at 21 days, and may be amended later, as notified from time to time.

13.3. The revised manner and timelines of implementation of the revised procedure had been communicated by GSTN, and it had been informed that the functionality was ready to be implemented in the system from the 15<sup>th</sup> August, 2020. It had also been communicated that for the initial phase, based on existing functionality (*deemed registration would be granted after 3 weeks on a weekly basis to those applicants which have not submitted Aadhaar and have also not been issued any SCN*) the batch was **proposed to be run every week once** say Sunday night. This was because everyday processing would make IT system complex and therefore this solution is suggested as an interim measure. This would remain a process till the new and amended functionality is implemented. The amended functionality, when developed, would ensure the strict implementation of the 21-day deemed registration. Accordingly, the following were proposed:

- a. The relevant provisions of the earlier notification for amendment in the CGST Rules, bringing into force the Aadhaar authentication provisions from 01.04.2020, may be rescinded with effect from 01.04.2020;
- b. The CGST Rules may be amended to incorporate the revised procedure and shall be made applicable from 15.08.2020.

13.4. The revised draft rules were deliberated by the Law Committee in its meeting held on 29.07.2020 and recommended the same. In order to implement the above recommendations, a Notification under Section 164 for amendments to the CGST Rules, 2017 was required to be issued.

13.5. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, Notification No. 62/2020–Central Tax dated 20.08.2020 was issued.

#### **Decision by Circulation – 30<sup>th</sup> August 2020**

14. The proposals before the GIC were extension of due date for furnishing FORM GSTR-4 for F.Y. 2019-20 and extension of due dates for compliances and actions in respect of Anti-profiteering measures under GST in wake of the Covid-19 pandemic

#### **Agenda - Extension of due date for furnishing FORM GSTR-4 for F.Y. 2019-20**

14.1. It was mentioned in the agenda note that return in FORM GSTR-4 was required to be filed by the Composition dealers on annual basis for 2019-20. Also a special procedure under section 148 of the CGST Act was made for those persons who had opted for paying tax under section 10 or opted to avail benefit under notification No. 02/2019- Central tax (Rate) dated 07.03.2019. In terms of notification No. 21/2019 – Central Tax, dated 23<sup>rd</sup> April, 2019 it was notified that such persons shall furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4, on or before the 30<sup>th</sup> day of April following the end of such financial year.

14.2. A new format for **FORM GSTR-4** was notified vide notification no. 31/2019 dated **28<sup>th</sup> June, 2019**. Vide notification no. 34/2020 Central Tax dated 3<sup>rd</sup> April, 2020, relief was provided to such persons and the due date for filing FORM GSTR- 4 for the year 2019-20 was extended till 15<sup>th</sup> July, 2020 which was further extended to 31<sup>st</sup> August 2020 vide Notification No. 59/2020-Central tax dated 13<sup>th</sup> July 2020.

14.3. It is noted that till end of day 29<sup>th</sup> August 2020 only 2,55,529 GSTR-4 have been filed as against 14,39,198 quarterly GSTR-4 for March 2019. Representations have been received that the facility for annual GSTR-4 was made available on the common portal only on the 21<sup>st</sup> July 2020 and that in view of prevalent conditions due to COVID-19 pandemic, more time should be provided for filing GSTR-4.

14.4. GSTN had informed that the filing calendar for September 2020 was quite full and accordingly, it was proposed that the due date for furnishing the return in **FORM GSTR-4** for the FY 2019-20 be extended to 31<sup>st</sup> October, 2020.

14.5. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, Notification No. 64/2020–Central Tax dated 31.08.2020 was issued.

#### **Agenda - Extension of due dates for compliances and actions in respect of Anti-profiteering measures under GST in wake of the Covid-19 pandemic**

15. In the agenda note reference was invited to notification No. 35/2020 – Central Tax dated 03.04.2020 as amended by notification No. 55/2020 – Central Tax dated 27.06.2020 *vide* which any time limit for completion or compliance of any action, by any authority or by any person, under the GST Act, which falls during the period from the 20<sup>th</sup> day of March, 2020 to the 30<sup>th</sup> day of August, 2020 has been extended up to the 31<sup>st</sup> day of August, 2020. The extension of compliances as detailed above is applicable to section 171 of the CGST Act also (Anti-profiteering provisions).

15.1. The provisions related to Anti-profiteering measures are contained in section 171 of the CGST Act read with rules 122 to 137 of the CGST Rules. Sub-rule (6) of rule 129 deals with the timelines of initiation and conduct of proceedings and specifies that investigation shall be completed within a period of six months from the receipt of reference, which may be extended by a period of three months. Request has been received from NAPA that due to the Covid-19 induced lockdown, a further extension of three

months for all compliances in respect of Anti-Profiteering provisions may be granted so as to pass the orders following due process of law.

15.2. It was proposed that the change would be implemented by amending notification No. 35/2020 – Central Tax dated 03.04.2020 by way of insertion of a proviso to specify that “*where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20<sup>th</sup> day of March, 2020 to the 29th day of November, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of November, 2020.*”.

15.3. The proposal was placed before the GST Implementation Committee for approval. The GIC approved the proposal. Accordingly, Notification No. 65/2020–Central Tax dated 01.09.2020 was issued.

**Agenda Item 4: Timelines in respect of TRAN-1/TRAN-2 declarations based on the discussions of 13th meeting of IT Grievance Redressal Committee held on 01.09.2020**

The thirteenth meeting of the IT Grievance Redressal Committee (ITGRC) was held on 01<sup>st</sup> September 2020 through Video Conference to resolve grievance of the taxpayers arising out of technical issues. One of the Agenda point before the Committee was as follow:

**Agenda-2 of ITGRC: Discussion and decision on timelines in respect of TRAN-1 / TRAN-2 declarations:**

2. It was observed and discussed by the Committee that Rule 117(1A) of CGST Rules, 2017 had been amended vide Notification No. 02/2020-CT dated 01.01.2020 extending the due date for submitting the declaration electronically in Form GST TRAN-1 upto 31.03.2020 **in respect of taxpayers who could not submit the said declaration by the due date on account of technical difficulties on the common portal** and in respect of whom the Council has made a recommendation for such extension. Similarly, due date of filing TRAN-2 had been extended upto 30.04.2020 in those cases.

3. The ITGRC has taken note that in view of the spread of pandemic COVID-19, and in terms of CBIC Notification No. 35/2020-CT dated 03.04.2020 read with Notification No.55/2020-CT dated 27-06-2020, the due date under the above said Rule 117(1A) stands extended to 31-08-2020. Accordingly, the due date of submission of declaration electronically in Form GST TRAN-1 in respect of taxpayers, who could not submit the said declaration by the due date on account of technical difficulties on the common portal, has been over on 31.08.2020 as per the present provisions of Rule 117(1A) of CGST Rules 2017. Therefore, submission of declaration electronically in Form GST TRAN-1 in respect of cases recommended by ITGRC in its meeting held on 1.9.2020, i.e. after due date of submission of 31.08.2020, is not permissible as per the present provisions of Rule 117(1A) of CGST Rules 2017. Further, as due date for submitting the declaration electronically in Form GST TRAN-1 under present provisions of Rule 117(1A) is already over on 31.08.2020, it appears that ITGRC cannot take up for any fresh case for discussion and recommendation unless the Rule is amended.

4. The ITGRC discussed the issue in detail and agreed upon that (i) there has to be an end date for processing of TRAN-1 cases by GSTN and ITGRC as it is almost 3 years from the due date of 27-12-2017; and (ii) legal backing may be required for enabling opening up of the portal in respect of the cases approved by GST Council on the recommendation of ITGRC in this meeting, i.e. beyond 31-08-2020.

**Recommendations of ITGRC for Agenda-2:**

5. The ITGRC requested that the following may be referred to Law Committee for appropriate recommendation:

- (i) As the declaration in Form GST TRAN-1 cannot be filed electronically in cases (including Court cases), recommended by ITGRC for allowing filing and approved by GST Council, after 31.08.2020, i.e. after due date under the present provisions of Rule 117(1A) of CGST Rules 2017, whether any amendment in Rule is required for enabling filing of FORM TRAN-1 electronically in such cases; and
- (ii) If so, the manner in which the relevant rule needs to be amended.

The ITGRC requested the Law Committee to deliberate on the above issues at the earliest and bring its recommendations before the 42<sup>nd</sup> meeting of the GST Council.

6. Accordingly, an agenda was placed before the Law Committee (as Annexure-1 to this Agenda note) for deliberation on the above issue referred by ITGRC. It was proposed to the Law Committee that as the declaration in Form GST TRAN-1 cannot be filed electronically in cases (including Court cases), recommended by ITGRC for allowing filing and approved by GST Council, after 31.08.2020, i.e. after due date under the present provisions of Rule 117(1A) of CGST Rules 2017 read with Notification No. 55/2020-CT dated 27.06.2020, whether any amendment in Rule is required for enabling filing of FORM TRAN-1 electronically in such cases and if so, the manner in which the relevant rule needs to be amended to put a finality to process of filing TRAN-1/ TRAN-2.

7. The issue was deliberated by Law Committee in its meeting held on 09-09-2020, wherein it was decided that the timeline under Rule 117(1A) should not be extended, as any extension of time limit under Rule 117(1A) may adversely affect the stand taken by the Government in the Special Leave petition 7425-7428/2020 filed by the Revenue in the case of Brand Equity Treaties Limited in the Hon'ble Supreme Court. Hon'ble Delhi High Court vide its order dated 5.5.2020 in WPC No. 11040/2018, 196/2019, 8496/2019, 13203/2019 in case of Brand Equity Treaties Limited Vs Union of India had inter alia held that Cenvat Credit/ input tax credit are vested rights, that the time limit provided in Rule 117 of CGST Rule is directory in nature and that the cut-off provided under Rule 117(1A) is arbitrary. Hon'ble High Court had also held that the maximum time for availing transitional credit would be three years from the appointed date under Limitation Act. In the SLP filed by the Government against the said order of Hon'ble Delhi High Court, the Hon'ble Supreme Court vide its Order dated 19-06-2020 has stayed the operation of the said order dated 05.05.2020 of Hon'ble Delhi High Court.

8. It is mentioned that in its 13<sup>th</sup> ITGRC meeting held on 01.09.2020, ITGRC had recommended 26 cases (including court cases) for allowing filing of TRAN-1/ TRAN-2. However, as discussed above, the declaration in FORM TRAN-1/ TRAN-2 cannot be submitted electronically on portal in respect of these recommended cases, since the due date of submission of the declaration electronically in FORM GST TRAN – 1 in respect of taxpayers who had faced technical glitches and in respect of whom Council has made recommendations, has expired on 31.08.2020 as per the present provisions of Rule 117(1A) of CGST Rules. Besides, GSTN has also informed vide their email dated 21.09.2020 that they have 20 pending cases (including court cases) which have been analyzed by them and are yet to be considered by ITGRC.

9. Thus, the matter is placed before the Council for recommendation on appropriate course of action.

**Sub: Draft Agenda for the Law Committee meeting scheduled on 09-09-2020 based on the Minutes of 13<sup>th</sup> Meeting of IT-Grievance Redressal Committee (IT-GRC) held on 01<sup>st</sup> September 2020 through Video Conference.**

The thirteenth meeting of the IT Grievance Redressal Committee (ITGRC) was held on 01<sup>st</sup> September 2020 through Video Conference to resolve grievance of the taxpayers arising out of technical issues. One of the Agenda points before the Committee is as follows:

**Agenda-2 of ITGRC: Discussion and decision on timelines in respect of TRAN-1/TRAN-2 declarations:**

2. It was observed and discussed by the Committee that Rule 117(1A) of CGST Rules, 2017 had been amended vide Notification No. 02/2020-CT dated 01.01.2020 extending the due date for submitting the declaration electronically in Form GST TRAN-1 upto 31.03.2020 in respect of taxpayers who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension. Similarly, due date of filing TRAN-2 had been extended upto 30.04.2020 in those cases. The ITGRC has taken note that in view of the spread of pandemic COVID-19, and in terms of CBIC Notification No. 35/2020-CT dated 03.04.2020 read with Notification No.55/2020-CT dated 27-06-2020, the due date under the above said Rule 117(1A) stands extended to 31-08-2020. Accordingly, the due date of submission of declaration electronically in Form GST TRAN-1 in respect of taxpayers, who could not submit the said declaration by the due date on account of technical difficulties on the common portal, has been over on 31.08.2020 as per the present provisions of Rule 117(1A) of CGST Rules 2017. Therefore, submission of declaration electronically in Form GST TRAN-1 in respect of cases recommended by ITGRC in the meeting on 1.9.2020, i.e. after due date of submission of 31.08.2020, is not permissible as per the present provisions of Rule 117(1A) of CGST Rules 2017. Further, as due date for submitting the declaration electronically in Form GST TRAN-1 under present provisions of Rule 117(1A) is already over on 31.08.2020, it appears that ITGRC cannot take up for any fresh case unless the Rule is amended.

3. The ITGRC discussed the issue in detail and agreed upon that (i) there has to be an end date for processing of TRAN-1 cases by GSTN and ITGRC as it is almost 3 years from the due date of 27-12-2017; and (ii) legal backing may be required for enabling opening up of the portal in respect of the cases approved by GST Council on the recommendation of ITGRC in this meeting, i.e. beyond 31-08-2020.

**Recommendations for Agenda-2:**

4. The ITGRC requested that the following may be referred to Law Committee for appropriate recommendation:

- (i) As the declaration in Form GST TRAN-1 cannot be filed electronically in cases (including Court cases), recommended by ITGRC for allowing filing and approved by GST Council, after 31.08.2020, i.e. after due date under the present provisions of Rule 117(1A) of CGST Rules 2017, whether any amendment in Rule is required for enabling filing of FORM TRAN-1 electronically in such cases; and
- (ii) If so, the manner in which the relevant rule needs to be amended.

ITGRC also requested that Law Committee may also be asked to deliberate on the above issues at the earliest and bring its recommendations before the 42<sup>nd</sup> meeting of the GST Council scheduled on 19-09-2020.

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

**Agenda Item 6(i): Extension of the GSTR-1/3B system of return filing and change in due date for quarterly taxpayers upon introduction of the new GSTR-2B functionality**

Reference is invited to sub-rule (5) of rule 61, which states that “Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 and in **FORM GSTR-2** under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in **FORM GSTR-3B** electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

*Provided that where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3**.”.*

2. Accordingly, **FORM GSTR-3B** has been prescribed for various tax periods from time to time. In this context, reference is invited to notification No. 29/2020- Central Tax dated the 23<sup>rd</sup> March, 2020 wherein **FORM GSTR-3B** was prescribed for the months from April, 2020 to September, 2020. Similarly, vide notification No. 27 and 28/ 2020- Central Tax, both dated the 23<sup>rd</sup> March, 2020, due date for furnishing of the details of outward supplies under sub-section (1) of section 37 (**FORM GSTR-1**) was extended as under:

- i for a specified class of registered persons, *having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year*, for the quarters in April, 2020 to September, 2020 by the last day of the month succeeding such quarter; and
- ii for a specified class of registered persons, *having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year*, for the months from April, 2020 to September, 2020 till the eleventh day of the month succeeding such month.

3. Based on the Councils decision of continuing with the present GSTR-1/3B system with incremental improvements, the return under section 39 of the CGST Act (**FORM GSTR-3B**) is required to be prescribed for the period October, 2020 onwards. Based on the status of implementation of the said proposal of REAP (Return Enhancement and Advancement project), the existing system of return filing of **FORM GSTR-3B / GSTR-1** may be continued, at least, from October, 2020 till March, 2021.

4. Moreover, a new functionality in **FORM GSTR-2B** has been deployed by GSTN wherein the auto-calculated details of input tax credit on the basis of **FORM GSTR-1s** filed by all suppliers of a registered person is being made available to the taxpayer on a monthly basis at the **end of 13<sup>th</sup> day of a month**. In case, the present system of filing return on monthly basis in **FORM GSTR-3B** and monthly / quarterly furnishing of details of outward supplies in **FORM GSTR-1** is required to be notified, it is proposed that the due date for furnishing the **FORM GSTR-1** for registered persons, *having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year* shall now be made to **13<sup>th</sup> of the month, instead of the earlier date of last day of the month succeeding the end of the quarter**.

5. The matter was discussed in the Law Committee in its meeting on 23.09.2020, and it was decided that the present system of return filing in GSTR-1/GSTR3B may be continued for a further period of six months, *i.e. till March, 2021*. Further, it was also decided that due date for quarterly furnishing of GSTR-1 be amended from the 30<sup>th</sup> day to 13<sup>th</sup> day of the month succeeding the quarter, while for monthly GSTR-1 filers the 11<sup>th</sup> day of the month succeeding the month shall continue.

6. Since in terms of the decision of the Council in its 39<sup>th</sup> Meeting held in March 2020 the enhanced GSTR-1 and GSTR-3B system is to continue, a decision needs to be taken in respect of the alignment of legal provisions under the GST Act with the system of furnishing of returns under GST. This is due to the fact that the present legal framework for return filing system is based on GSTR 1/2/3 design, and provisions had also been enacted with the GST new return design in mind. However, the current GST compliance is based on GSTR-1 and GSTR-3B filing. Accordingly, it is felt that amendments in Chapter IX, primarily in section 37-39 and 41-43A would be required since it has been decided to permanently replace the GSTR-1/2/3 return filing system with the presently operational GSTR-1/3B system.

7. Based on the above, the following issues are placed before the GST Council for deliberations and decision:

- i. Extension of the present GSTR-1/3B return filing system till March, 2021;
- ii. Changing the due date for furnishing GSTR-1 by quarterly taxpayers till 13<sup>th</sup> of the month succeeding the quarter;
- iii. In principle decision to make legal changes to replace GSTR-1/2/3 related provisions with the present GSTR-1/3B return filing system.
- iv. The Law Committee may be empowered to deliberate upon the amendments required in the GST Acts and Rules accordingly.

8. The agenda note is placed before the GST Council for deliberation and approval. Relevant notifications and amendment in CGST Act and Rules would be drafted by the Law Committee in consultation with the Union Ministry of Law and Justice.



### **Agenda Item 6(ii): Issues related to Annual Return for Financial Year 2019-20**

In terms of the decision taken in the 37<sup>th</sup> GST Council in its meeting held on 20<sup>th</sup> September, 2019 to simplify the Annual Return / Reconciliation Statement Forms, vide Notification No. 56/2019 – Central Tax dated 14<sup>th</sup> November, 2019, the Annual returns **FORM GSTR 9 & 9C** were simplified for the Financial years 2017-18 & 2018-19 under GST by making few entries/Tables optional.

2. Further, following relaxations have also been provided in filing of annual return based on the recommendations of the Council:

- i. The filing of annual return in **FORM GSTR-9/9A** was made optional for taxpayers having aggregate annual turnover less than rupees 2 Crores for the Financial Year 2017-18 and 2018-19 (notification No. 47/2019 CT dated 9<sup>th</sup> October, 2019);
- ii. The threshold of aggregate annual turnover for filing of reconciliation statement in **FORM GSTR-9C** for the financial year 2018-19 was increased from Rupees 2 Crore to Rupees 5 Crore vide amendment in rule 80 of the CGST Rules, 2017.

3. As the last date for filing the Annual returns specified under section 44 of the CGST Act, 2017 for the FY 2019-20 is 31<sup>st</sup> December, 2020, the Law Committee in its meeting held on 17<sup>th</sup> September, 2020 deliberated on the following issues: -

#### **3.1. Return format for GSTR-9/9C for FY 2019-20:**

The simplifications done in **FORM GSTR-9** and **GSTR-9C** vide notification 56/2019 CT, dated 14<sup>th</sup> November, 2019 for FY 2017-18 & 2018-19 were examined. The Law Committee noted that since November 2019 the information available on the common portal has undergone many changes and as such some of the difficulties/constraints reported by the taxpayers and tax practitioners are no longer present. Law Committee recommended that the FORM 9/9C in 2019-20 be kept same as FORMS for 2018-19, except for the following.

- i. Table 6 (details of ITC availed on capital goods to be provided mandatorily while breakup of inputs and input-services may be kept optional)
- ii. Table 8A to 8D where an option to upload self-created table through 9C was provided, to be no longer available i.e. Cell 8A and 8B to be auto populated and rest of the information to be provided by the taxpayer, since details of the invoices forming the figure auto populated in cell 8A have now been made available by GSTN

#### **3.2.1 Relaxations in filing of Annual return for small taxpayers for FY 2019-20:**

Issue of providing relaxations in filing of Annual Return for small taxpayers for FY 2019-20 was also deliberated, especially in view of the challenges being faced by the taxpayer in Covid times. It was also pointed out to the Law Committee that the turnover definition of “micro and small enterprises” has been revised upwards by the Ministry of MSME. It was also highlighted that the GST Council, in its 39<sup>th</sup> meeting, has recommended amendment to section 35 and section 44 so that **GSTR-9C** is required to be filed only in specified cases and not by all taxpayers above the prescribed threshold of Rs. 2 Cr. and the taxpayers till threshold of Rs. 5 Cr turnover were given the relaxation from filing **GSTR-9C**. (as prescribed for 2018-19). However, the Law Committee recommended that the same relaxations as granted for the annual returns of financial year 2018-19 may also be maintained for the financial year 2019-20.

3.2.2 In this context it is relevant that in 2019-20, only 1.97% of the taxpayers- around 2,01,860 having aggregate turnover > Rs. 20 Cr. contributed 83.78% Tax. If exemption from **GSTR-9C** was to be provided to all taxpayers below Rs. 20 Cr. turnover, 5,00,000 taxpayers (approx.) would be saved from this additional compliance cost besides appx. 70 lakh taxpayers below Rs. 5 Cr. turnover for whom

the **GSTR-9C** filing is already exempted. However, there was no agreement in this regard in the Law Committee which has recommended status quo.

3.2.3 It is also relevant that the relaxation granted from filing of Annual Returns due under sub-section (1) of Section 44, also extends to **FORM 9A**, which is due under the proviso to sub-section (1) Section 44. Since **FORM GSTR 4**, return specified for taxpayers liable to file **FORM GSTR-9A** has also been made annual in nature, Annual Return in **FORM-9A** may not be necessary. If approved the said matter may be suitably clarified.

4. Accordingly, the matter is placed before the Council for deliberation and decision in this regard.

**Agenda Item 6(iii): Steps taken to improve compliance behaviour of taxpayers for making furnishing of GSTR-1 mandatory before furnishing GSTR-3B**

It may be recalled that in the 39<sup>th</sup> GST Council Meeting held on 14<sup>th</sup> March, 2020, incremental approach to the rollout of the new return system was discussed. Based on the discussions, it was decided to introduce various improvements to the existing return system. The plan of rolling out of the incremental approach as proposed by GSTN was as follows:

- a. *By May, 2020, the SMS based filing of 'Nil' returns would be introduced.*
- b. *By June, 2020, linking GSTR-3B liability for monthly filers to their GSTR-1 would be done.*
- c. *By September, 2020, Infosys would provide matching tools for ITC as well as the linkage of liability of GSTR-1 to the GSTR3B of quarterly filers.*
- d. *By January, 2021, the linkage of outward supplies as furnished in GSTR-1 and its tax payment by the suppliers would be linked with the ITC of the recipient.*

2. Accordingly, as a part of the implementation of the incremental approach, following new facilities on the GST common portal have already been introduced:

- a. Nil **GSTR-3B** and **GSTR-1** filing by SMS (w.e.f. 08.06.2020 and 01.07.2020 respectively),
- b. a static statement of ITC on the basis of invoices contained in statements of outward supplies furnished by suppliers (**GSTR-2B**) (since 27<sup>th</sup> August 2020),
- c. enhancements in the statement **FORM GSTR-2A**,
- d. linking of **FORM GSTR-1** with **FORM GSTR-3B** (in pdf) (since 27<sup>th</sup> August 2020),
- e. matching tool to help taxpayers match their purchase register with details of invoices in GSTR-2B (since 14<sup>th</sup> September 2020).

3.1 In respect of the facility at para 1 (c), it had been discussed in the Council that linking of the return **FORM GSTR-3B** with the details of outward supplies in **FORM GSTR-1** could provide several benefits to taxpayers as also to the tax administration. This would not only address the problem of difference in output tax liability declared by the taxpayers in the two forms (which are currently required to be independently filled) and thereby minimize errors, but would also eliminate scenarios where the tax liability based on details of invoices declared in **GSTR-1** is different from the amount of tax liability declared in **FORM GSTR-3B**.

3.2 Here it is pertinent to note that the input tax credit available to a recipient comprises of the outward supplies of all his suppliers as declared in respective GSTR-1s; and this linking of GSTR-1 and GSTR 3B would ensure that whatever ITC is being availed by a recipient is against an invoice which has been accounted for in computing the tax liability or tax has been paid to the Government on such invoices (*in cases where the corresponding GSTR-3B has been filed*). In terms of provisions of section 16(2)(c) of the CGST Act, a necessary condition for availing input tax credit is that tax charged on the invoice for which ITC is being availed has been paid to the Government.

3.3 Further Hon'ble High Court of Madhya Pradesh has held that the liability in terms of the statement of outward supplies furnished in **FORM GSTR-1** is an accepted liability of the registered person and recoverable. The council has also already recommended amendment in section 75(12) of the CGST Act to provide for recovery as confirmed liability under section 79, in respect of amount of tax specified in the outward supplies on liability declared in **FORM GSTR-1** for which GSTR-3B is not filed.

3.4 **However, it is implicit that the maximum benefit of this linking would only be derived if the GSTR-1s are filed before the GSTR-3Bs.** If majority of the taxpayers do not furnish their GSTR-1s on or before the due date, the details in GSTR-3Bs would not be populated correctly by the system, and potential benefits would not accrue.

3.5 This could also pave the way for a simplified return for pure B2C suppliers who do not pass any ITC which would be known from pre-filed GSTR-1, (*they can potentially directly move from GSTR-1 to the challan for tax payment*) similar to the proposed SAHAJ in the new return system.

4.1 While discussing the Return Enhancement and Advancement Project (REAP), it was discussed in the Council that based on the supplies declared by the suppliers in GSTR-1, the input tax credit computation of the recipient shall be made automatic, along with providing him a tool for matching the invoices that have not been uploaded.

4.1.2. Here it is pertinent to note that the input tax credit available to a recipient comprises of the outward supplies of all his suppliers as declared in respective GSTR-1s; and this linking would ensure that whatever ITC is being availed by a recipient is against an invoice which has at least been accounted for (*in cases where the corresponding GSTR-3B has not been filed*) or tax has been paid to the Government on such invoices. If all the invoices shown by the suppliers are auto populated in the return of the recipient as maximum possible ITC which can be availed, the recipient's job would be limited to identifying ineligible ITC. However, it has been observed that since there is indiscipline in furnishing of GSTR-1s by the suppliers, there is a mismatch between the details of invoices that are available as per the common portal and the invoices actually in possession of the recipient for availing ITC.

4.2. Accordingly, in order to restrict ITC on such missing invoices, rule 36(4) was introduced w.e.f. 9.10.2019 restricting the availability of ITC on invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, up to 20 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. The margin of ITC which could be availed over and above the tax charged on declared invoices was reduced from 20 per cent to 10 per cent from 01.01.2020.

4.3 Now once the linking facility is made available, the recipients would be greatly benefited as the ITC in respect of details of all invoices uploaded by his suppliers would be auto-populated. The matching tool would help the recipient identify supplies and the suppliers, whose details have not been furnished by the suppliers; and thus not reflected in matched credit statement GSTR 2B generated by the common portal. This would enable the recipient to take up the matter with the respective suppliers.

4.4 **However, here also it is implicit that the true benefit of all these facilities/tools would be derived only if the GSTR1s are filed before the GSTR-3Bs.** If majority of the taxpayers furnish their GSTR-1s on or before the due date, the details of ITC populated in the recipients' GSTR-3Bs would be as close to the actual ITC potentially available to the recipient.

5. In this background, an analysis of the present legal provisions implies the following:

- in the originally envisaged GSTR-1-2-3 system, the return GSTR-3 could only have been filed if GSTR-1 is filed (*i.e. GSTR-1 was required to be furnished before GSTR-3B*);
- provisions of late fees apply independently to details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 of the CGST Act. However, only the late

fee for delay in furnishing of the return in GSTR 3B is populated in the system (in the subsequent GSTR 3B);

- in the GSTR-1/3B system however, furnishing of GSTR-1 before GSTR-3B was not enforced on the common portal. This has led to a perception that non-filing of GSTR-1 has no repercussions vis-à-vis the tax authorities; and
- as a result, it is difficult to determine whether the relevant tax in respect of an invoice for a supply has been paid to the Government or not.
- Moreover, the GSTR-1 is not being filed sequentially like the GSTR-3B (where the previous GSTR-3B must be filed before proceeding to file the next GSTR-3B).

6.1 Till date, the collection of late fees for delay in furnishing GSTR-1 has not been enforced i.e. the GSTR-1 late fee is not populated in the next GSTR-3B return unlike the late fee on account of late filing of GSTR-3B. Moreover, various late fee waiver schemes have been implemented for the benefit of taxpayers so as to facilitate filing of pending GSTR-1 and GSTR-3B returns without late fee or with reduced late fee. While the late fee on GSTR-1s is still not being collected, due to measures like Rule 36(4), there has been a behavioral change and the filing percentage of GSTR-1s have improved in 2019-20 as compared to filing in earlier years.

6.2 To understand the taxpayer behavior in this respect, the filing data of taxpayers from April, 2019 to February, 2020 (*FY 2019-20 for the period just before Covid-19 pandemic*) was examined. The following is observed on a simple average basis in respect of taxpayers who have furnished both GSTR-1 and GSTR-3B before the due date of furnishing the GSTR-3B for the subsequent tax period:

- 63.54 % taxpayers furnish GSTR-1 before GSTR-3B;
- 14.10% taxpayers furnish GSTR-1 after GSTR-3B for the current tax period but before the due date of GSTR-3B for the subsequent tax period;
- Cumulatively, around 77.64% taxpayers furnish GSTR-1 before the due date of GSTR-3B of the subsequent tax period;
- If taxpayers above aggregate annual turnover (AATO) of Rs. 5 Crores are seen,
- 86.28 % taxpayers furnish GSTR-1 before GSTR-3B;
- 4.96% taxpayers furnish GSTR-1 after GSTR-3B for the current tax period but before the due date of GSTR-3B for the subsequent tax period;
- Cumulatively, around 91.25% taxpayers furnish GSTR-1 before the due date of GSTR-3B of the subsequent tax period;

7. Interpreting the above data in light of the fact that taxpayers with AATO more than Rs. 5 crores would invariably account for more than 93-95% of the revenue, it can be inferred that reasonably large number of such taxpayers are furnishing GSTR-1 within the reasonable timelines though not always before filing GSTR-3B. In this context, the benefits of linking the GSTR-1s of the suppliers with a) the GSTR-3Bs of the suppliers (*for auto-populated liability*) and b) the GSTR-3Bs of the recipients (*for auto-populated ITC*) have already been enumerated above.

8.1. In addition to the above, it is also relevant that presently there is no system of auto-population of interest for delay in furnishing of return in GSTR-3B. One of the reasons for non-implementation in the system is that it is not feasible for the system to determine whether the liability declared in GSTR-3B is entirely for the present month or there is some component of liability that pertains to any previous month. However, it may be appreciated that if the interest liability is pre-populated in the system, the recovery of interest is expected to improve since such liability in the individual returns would be small and thus comparatively easily recoverable. As arrears, such interest amount, calculated on net basis, which has not been paid since July 2017 is presently around Rs. 9000 Cr.

8.2. If some presumptions are built in (*assumption that entire tax and interest belongs to the tax period for which tax return is being filed*), and the system calculated interest is implemented with a facility to reconcile the minor differences due to the said presumptions at a later date and a desired frequency, then it is expected that the interest collections for future delays would also improve. Moreover, if the furnishing of GSTR-1s is made mandatory before furnishing of the returns in **FORM GSTR-3B**, in future, the system may be able to determine the month to which the liability pertains and thus interest calculations would be more correctly estimated.

9.1 Accordingly, it is proposed that in order to encourage better discipline among taxpayers, filing of GSTR-1 may be made compulsory before filing of GSTR-3B. The same would be required for auto populating GSTR -3B (*matching of credit and auto population of liability*) as proposed under REAP). In this context, the following issues are placed before the GST Council for further deliberation and decisions please:

- The date and timelines from which such auto-population (*i.e. mandatory furnishing of GSTR-1 before GSTR-3B*) shall be made compulsory;
- What would be the consequences if GSTR-1s are not filed before GSTR-3B: In order to incentivize the taxpayers, a waiver of late fees for furnishing of GSTR-1s when furnished after due date, but furnished before the respective GSTR-3B can be considered.
- Moreover, if GSTR-1s are not furnished before the respective GSTR-3B, the late fees may be auto-populated in the subsequent GSTR-3B.
- Similarly, interest for late payment of tax may also be auto-populated in next GSTR-3B presuming that the entire liability is for the current tax period;
- A decision also needs to be taken regarding the treatment of late fees for earlier period where it has not been collected and whether it would be collected in the future period.

9.2 Simultaneously, it is also proposed that filing of GSTR-1 may be made sequential w.e.f. **01.01.2021**.

10. The matter was discussed preliminarily in the Law Committee on 23.09.2020, wherein it concurred with the proposal in principle. Agenda note is placed before the GST Council for further deliberation. On approval, relevant notifications and any amendment felt necessary in CGST Rules in this regard would be drafted by the Law Committee in consultation with the Union Ministry of Law and Justice.

**Agenda Item 6(iv): Amendment to FORM GSTR-1 and notification 12/2017-Central Tax, dated 28.06.2017 for improving data quality to enhance tax administration**

First proviso to rule 46 of the CGST Rules, 2017 mandating the requirement of HSN on invoice is as below:

*“Provided that the Board may, on the recommendations of the Council, by notification, specify-*

*(i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention, for such period as may be specified in the said notification; and*

*(ii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services, for such period as may be specified in the said notification”*

2 Further, in terms of proviso to rule 46, notification No. 12/2017-Central Tax, dated 28.06.2017 has been issued specifying the requirement of HSN as below:

Sl. No.	Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
1	Upto rupees one crore fifty lakhs	Nil
2	more than rupees one crore fifty lakhs and upto rupees five crores	2
3	more than rupees five crores	4

3.1 The issue of requirement of mandatory reporting of HSN was deliberated in the Law Committee in its meeting held on 25.06.2020 in the context of sharing data with National Authority for Chemical Weapon Convention. In the context of the said agenda, Law Committee recommended 8-digit HSN for all categories of notified supplies for all classes of taxpayers, both at invoice level and in GSTR-1.

3.2 GSTN has also suggested amendment in notification No. 12/2017-Central Tax, dated 28<sup>th</sup> June, 2017 and in GSTR-1 to capture the HSN / rate of tax. This would have advantage of giving Rate-wise tax collection and the table also becomes aligned to Table 4 where the format of data collection is - Rate, Taxable Value and Amount. Then it would pre-fill the table 12-and allow taxpayer to split each row into multiple HSNs. It would take time to develop but in the process the data quality would improve. The proposed changes would improve capacity of the IT system to calculate value addition for various commodities and therefore is necessary also in the long run for the tax administration. Moreover, this is in a scenario when we have completed 3 years of implementation of GST and GST has stabilized to a great extent.

4. Accordingly the following was placed before the Law Committee on 28.09.2020:

(i) Notification No. 12/2017-Central Tax, dated 28.06.2017 may be amended so as to mandate providing details of HSN in the invoice as below:

- i. For registered person having Annual Turnover in the preceding Financial Year more than rupees five crores:
  - a. For supply of goods: 8 digit
  - b. For supply of services: 6 digits
- ii. For registered person having Annual Turnover in the preceding Financial Year upto rupees five crores:
  - a. For supply of goods: 6 digit

b. For supply of services: 4 digit

To ensure that this doesn't enhance compliance burden on the small taxpayers in respect of supplies made to unregistered recipients (B2C supplies), the HSN reporting invoices could be limited to supplies made to registered recipients.

(ii) **FORM GSTR-1** may also be amended so as to make provision of HSN in table 4 or 12 keeping in view that in the proposed ANX-1 seeking such information had already been approved by the Council.

(iii) The changes are proposed to be notified with effect from a prospective date, say, w.e.f. **01.04.2021** so that trade and industry get time to change their ERP, wherever required.

(iv) Amendment may also be carried out in proviso to rule 46 of the CGST Rule so as to seek HSN for a class of supplies, irrespective of turnover, as recommended by the Law Committee detailed in para 3.1 above as below (in red):

*“Provided that the Board may, on the recommendations of the Council, by notification, specify-*

- (i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or*
- (ii) a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code are required to be mentioned by all registered taxpayers;- and*
- (iii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services; ~~for such period as may be specified in the said notification~~”*

5.1 The issue was deliberated by the Law Committee in its meeting held on 28<sup>th</sup> September, 2020 and Law Committee approved to make necessary provisions to take the power to notify requirement of HSN for class of taxpayers and for class of supplies.

5.2 Further, the law committee also recommended that above aggregate annual turnover (AATO) of Rs. 5 crores, HSN at 6 digits for both goods and services shall be made mandatory; and below the AATO of Rs. 5 crores, HSN at 4 digits for both goods and services shall be made mandatory for B2B supplies only.

5.3 Law Committee also deliberated on the amendment in **FORM GSTR-1**, and recommended that amendment shall be made in Table 12 (with the “Rate of tax” to be substituted in Column 6 in place of “Total Value”).

6. Accordingly, agenda note is placed before the GST Council for further deliberation.



**Agenda Item 6(v): Agenda Note regarding refund to be disbursed in same PAN and Aadhaar linked bank account on which registration has been obtained under GST**

Reference is invited to the deliberations in the 39<sup>th</sup> meeting of GST Council held on 14.03.2020 on the following issues with reference to the menace of fake invoicing and passing on of fraudulent ITC and monetisation of such fake and fraudulent ITC by way of refund:

- a. Proposal for Notification/ Rule change for enabling Aadhaar based authentication in GST. Vide the aforesaid agenda approval of GST Council was sought on the amendment proposed in the CGST Rules, 2017 for operationalisation of Aadhaar based authentication for obtaining registration under GST. Further, in the same agenda approval of GST Council was sought on the proposal of granting refund to the existing registered taxpayer only after they undergo Aadhaar based authentication. However, the amendment in the CGST Rule 2017 for enabling the aforesaid provision was not notified as the module for Aadhaar based authentication was existing taxpayers was not available on the common portal.
  - b. Physical verification and KYC of persons willing to take registration within first six months and corresponding spike rule placed before the GST council in its 39<sup>th</sup> meeting held on 14.03.2020. Vide said agenda, in-principle approval of GST Council has been sought on the proposal that a person seeking registration under GST shall undergo physical and financial verification before he can pass on credit in excess of 3 lakh per month or else he would be required to deposit 20% of the amount of ITC to be passed on to the buyer in his electronic credit ledger. In the said agenda, it was stated that no refund would be granted to a new registrant until he undergoes the physical or financial verification.
2. From the above, it can be observed that enough safeguards have been put in place or proposed to be put in place to identify the person and to verify the financial footprints of the said person specially when that person wants to avail the facility of refund. However, it is observed that in spite of all these safeguards there may arise a situation where a person may defraud the government by obtaining registration in other person's name by utilising their PAN and Aadhaar details. As such person would get the registration after Aadhaar authentication, there would be no restriction on him on passing on the fake credit or obtaining refund from the government.
3. In the present system, the taxpayer filing for refund is required to furnish the details of bank account in which he would like his refund to be credited. The said bank account is validated by PFMS only to the extent that the said bank account exists and is active. There is no validation whether the bank account actually belongs to the registered person or on the same PAN on which the registration is obtained. Due to this, the person who has intention to defraud the government creates an un-traceable chain where the refund would be obtained in the account of third person who may not exist actually on the basis of fake documents. Once the refund amount is disbursed, the amount is withdrawn from the account and closed immediately.
4. Therefore, in order to prevent such misuse in future, it is proposed that refund shall be paid/disbursed in the same PAN based bank account which is validated with the Aadhaar of the registrant. In case of any mismatch, the refund of the registrant would be kept pending till the bank account is validated (PAN and Aadhaar based bank account). GSTN can be asked to initiate the process for such validation of bank accounts.
5. The issue was deliberated by the Law Committee in its meeting held on 28<sup>th</sup> September, 2020 and has accepted the proposal in principle. Accordingly, the agenda is placed before the GST Council for deliberation and approval.

## **Agenda Item 6(vi): Proposal for amendments to CGST Rules, 2017**

Law Committee, in its meeting held on 08.06.2020, 22.07.2020, 10.08.2020 and 02.09.2020, deliberated upon several issues and recommended changes in various provisions of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”). In addition to the changes in the CGST Rules, changes in the FORMS have also been recommended by the Law Committee. These changes are discussed below:

### **I. Amendment to rule 67A:**

1.1 Facility to file NIL return in **FORM GSTR-3B** or NIL statement in **FORM GSTR-1**, through SMS is available for normal taxpayers on common portal. There is no such facility for Composition taxpayer who files a statement in **FORM GST CMP-08** on quarterly basis to discharge the liabilities. GSTN has now developed functionality for filing NIL statement by SMS for **FORM GST CMP-08**. The same is under testing now. In order to implement the new facility, Law Committee in its meeting held on 02.09.2020 has recommended to amend the rule 67A of CGST Rules, 2017. The amendment will be brought into force in consultation with GSTN as per availability of the feature on common portal.

1.2 The proposed amendment to rule 67A is shown in red color below:

<b>Rule 67A</b>
<b>67A. Manner of furnishing of return or details of outward supplies by short messaging service facility.-</b> Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in <b>FORM GSTR-3B</b> or a Nil details of outward supplies under section 37 in <b>FORM GSTR-1</b> or a Nil statement in <b>FORM GST CMP-08</b> for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.
<b>Explanation.</b> - For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in <b>FORM GSTR-3B</b> or <b>FORM GSTR-1</b> or <b>FORM GST CMP-08</b> , as the case may be.

### **II. Amendment to rule 138E -Blocking of e-Way Bill:**

2.1 Relief was provided to taxpayers during the COVID pandemic by providing conditional waiver of interest and/or late fee for furnishing return in **FORM GSTR-3B** and outward supply statement in **FORM GSTR-1** for the months from February to July, 2020. But, the actual due date was not extended except for the month of May, 2020. Therefore, the provision of rule 138E of CGST Rules viz. blocking of e-way bill generation if the return/ outward supply statement is not furnished for consecutive period of two months/quarters was still applicable on the taxpayers during the COVID relief period. The matter was deliberated by the Law Committee in its meeting held on 08.06.2020 and 22.07.2020. Law Committee recommended taking administrative decision to start blocking of e-way bill of taxpayers for non-filing of returns for tax period February, 2020 onwards only after 30.09.2020. It is now proposed that the relevant rule i.e. rule 138E may be amended to make legal provision for the said administrative decision.

2.2 The proposed amendment to rule 138E, with effect from 20.03.2020, is shown in red color below:

**Rule 138E****138E. Restriction on furnishing of information in PART A of FORM GST EWB-01.-**

Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in **PART A** of **FORM GST EWB-01** in respect of a registered person, whether as a supplier or a recipient, who,—

(a) being a person paying tax under section 10 or availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 189, dated the 7th March, 2019, has not furnished the statement in **FORM GST CMP-08** for two consecutive quarters; or

(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

Provided that the Commissioner may, on receipt of an application from a registered person in **FORM GST EWB-05**, on sufficient cause being shown and for reasons to be recorded in writing, by order, in **FORM GST EWB-06** allow furnishing of the said information in **PART A** of **FORM GST EWB 01**, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in **PART A** of **FORM GST EWB 01** under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Explanation:– For the purposes of this rule, the expression “Commissioner” shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b).

*Explanation.* - For the purposes of this Chapter, the expressions ‘transported by railways’, ‘transportation of goods by railways’, ‘transport of goods by rail’ and ‘movement of goods by rail’ does not include cases where leasing of parcel space by Railways takes place.”

(c) being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.

Provided that the said restriction shall not apply during the period from the 20<sup>th</sup> day of March, 2020 till the 30<sup>th</sup> day of September, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February, 2020 to August, 2020.

**III. Amendment to rule 142:**

3.1 Sub-rule (1A) was inserted in rule 142 of the GST Rules, mandating the tax officer to intimate the details of the demand in **Form GST DRC-01A**. It implies that SCN and summary of SCN in Form GST DRC-01 or Statement in Form GST DRC-02 under sub-rule (1) cannot be issued if details of demand in Form GST DRC-01A have not been communicated to the taxpayer. Law Committee in its meeting held on 08.06.2020 deliberated on the rule 142(1A) regarding the provision of mandatorily communicating the details of any tax, interest and penalty under sub-section (1) of Section 73 or sub-section (1) of Section 74, before service of notice. Law Committee recommended that communication of the same before issuing the notice should not be mandatorily required, but, should be at the option of tax officer. It therefore recommended that rule 142(1A) may be amended accordingly.

3.2 The proposed amendment to rule 142 (1A), w.e.f. 09.10.2019 i.e. the date of insertion of sub-rule (1A), is shown in red color below:

<b>Rule 142</b>
(1A) The proper officer <del>shall</del> <b>may</b> , before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, <del>shall</del> communicate the details of any tax, interest and penalty as ascertained by the said officer, in <b>Part A</b> of <b>FORM GST DRC-01A</b> ;

**IV. Amendment in FORM GST RFD-01:**

4.1 **FORM GST RFD-01** is for making application for refund under GST. In the said form, Statement 2 is for providing details in respect of 'Export of services with payment of tax'. But, in the heading of the said statement the words and brackets "(accumulated ITC)" are mentioned. Law Committee in its meeting held on 22.07.2020 deliberated on the same and recommended to omit the words and brackets "(accumulated ITC)" as the same is not required.

4.2 The proposed amendment in **FORM GST RFD-01** is shown in red color in **Annexure A**.

**V. Amendment of FORM GSTR-5**

5.1 The non-resident taxable person files return in **FORM GSTR-5** giving details of the outward and inward supplies. CAG team made observation that there was no provision in the said return for reporting inward supplies attracting reverse charge which is to be paid by recipient. The matter was deliberated in the Law Committee and in its meeting held on 02.09.2020, it recommended amendments in the form including insertion of provision to report liabilities relating to inward supplies attracting reverse charge.

5.2 The proposed amendments to **FORM GSTR-5** is shown in red color in **Annexure B**.

**VI. Amendment of FORM GSTR-5A**

6.1 OIDAR service provide located outside India who makes supply to unregistered person files return in **FORM GSTR-5A** on monthly basis and provides Place of Supply (POS) wise details of the supplies made to unregistered persons in the country. But, in the interest table of the return, POS field is missing. The matter was deliberated by the Law Committee in its meeting held on 10.08.2020 and recommended amendment in form to insert of POS field and minor formatting.

6.2 The proposed amendment to **FORM GSTR-5A** is shown in red color in **Annexure C**.

**VII. Amendment of Various DRC Forms & FORM GST ASMT-16**

7.1 Late fee was waived for late furnishing of **FORM GSTR-1, GSTR-3B & GSTR-4** for the period from July, 2017 to September, 2018 if the same was furnished during the period from 22.12.018 to 31.03.2019. The same were notified vide notification nos. 75/2018-Central Tax, 76/2018-Central Tax and 77/2018-Central Tax all dated 31.12.2018. But, GSTN did not implement the system as per the notifications. System completely waived late fee during the period. The matter was brought by GSTN to the Law Committee in order to implement the system of recovering the late fee so skipped inadvertently.

7.2 The matter was deliberated in the meeting held on 22.07.2020 and 10.08.2020 and it was recommended that amount of outstanding late fee shall be shown to the taxpayer. Option should be given to make payment while filing return in **FORM GSTR-3B** but not to be made mandatory to begin

with. Taxpayer can pay the amount voluntarily through **FORM GST DRC-3** also. But, in the said form, minor head late fee has not been mentioned. Therefore, a new column of 'Fee' has to be inserted in the amount details table of the form. Taxpayer can make payment on voluntary basis through this **FORM GST DRC-3**. Insertion of late fee column will be required in **FORM GST DRC – 01, , FORM GST DRC – 02, FORM GST DRC – 07, FORM GST DRC – 08, FORM GST DRC – 09, FORM GST DRC – 24, FORM GST DRC – 25, FORM GST ASMT- 16**. Law Committee recommend amendment in these forms including insertion of late fee column.

7.3 The proposed amendment in these forms are shown in red color in **Annexure D**.

2. Accordingly, the agenda is placed before the GST Council for consideration and approval. Parimateria changes would also be required in the respective SGST Rules.

**FORM GST RFD-01****[Statement- 2 [rule 89(2)(c)]**Refund Type: Export of services with payment of tax (~~accumulated ITC~~)

Sr. No.	Document Details					Integra ted Tax	Cess	BRC/FIRC		
	Type of Document	No.	Date	Value	Taxable value			No.	Date	Value
1	2	3	4	5	7	8	9	10	11	12
										“;”

**FORM GSTR-5**

[See rule 63]

**Return for Non-resident taxable person**

Year				
Month				

1.	GSTIN																			
2.	(a)	Legal name of the registered person	Auto Populated																	
	(b)	Trade name, if any	Auto Populated																	
	(c)	Validity period of registration	Auto Populated																	
	(d)	ARN	Auto Populated																	
	(e)	Date of ARN	Auto Populated																	

**3. Inputs/Capital goods received from Overseas (Import of goods)**

(Amount in Rs. for all Tables)

Details of bill of entry			Rate	Taxable value	Amount		Amount of ITC available	
No.	Date	Value			Integrated Tax	Cess	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9

**4. Amendment in the details furnished in any earlier return**

Original details		Revised details									Differential ITC (+/-)	
Bill of entry		Bill of entry			Rate	Taxable value	Amount		Amount of ITC available			
No	Date	No	Date	Value			Integrated Tax	Cess	Integrated Tax	Cess		
1	2	3	4	5	6	7	8	9	10	11	12	13

**5. Taxable outward supplies made to registered persons (including UIN holders)**

	Invoice details	Rate	Amount	
--	-----------------	------	--------	--

GSTIN/ UIN	No.	Date	Value		Taxable value	Integrated Tax	Central Tax	State /UT Tax	Cess	Place of Supply (Name of State/UT)
1	2	3	4	5	6	7	8	9	10	11

**6. Taxable outward inter-State supplies to un-registered persons where invoice value is more than Rs 2.5 lakh**

Place of Supply (State/UT)	Invoice details			Rate	Taxable Value	Amount	
	No.	Date	Value			Integrated Tax	Cess
1	2	3	4	5	6	7	8

**7. Taxable supplies (net of debit notes and credit notes) to unregistered persons other than the supplies mentioned at Table 6**

Rate of tax	Total Taxable value	Amount			
		Integrated	Central Tax	State /UT Tax	Cess
1	2	3	4	5	6
<b>7A. Intra-State supply (Consolidated, rate wise)</b>					
<b>7B. Inter-State Supplies where the value of invoice is upto Rs 2.5 Lakh [Rate wise]</b>					
Place of Supply (Name of State)					

**8. Amendments to taxable outward supply details furnished in returns for earlier tax periods in Table 5 and 6 [including debit note/credit notes and amendments thereof]**

Details of original document			Revised details of document or details of original Debit/Credit Notes				Rate	Taxable Value	Amount				Place of supply
									Integrated Tax	Central Tax	State / UT Tax	Cess	
GSTIN	No.	Date	GSTIN	No.	Date	Value							
1	2	3	4	5	6	7	8	9	10	11	12	13	14
<b>8A. If the invoice details furnished earlier were incorrect</b>													
<b>8B. Debit Notes/Credit Notes [original]</b>													
<b>8C. Debit Notes/Credit Notes [amendment of debit notes/credit notes furnished in earlier tax periods]</b>													



**9. Amendments to taxable outward supplies to unregistered persons furnished in returns for earlier tax periods in Table 7**

Rate of tax	Total taxable value	Amount			
		Integrated Tax	Central Tax	State / UT Tax	Cess
1	2	3	4	5	6
Tax period for which the details are being revised					
9A. Intra-State Supplies [Rate wise]					
9B. Inter-State Supplies [Rate wise]					
Place of Supply (Name of State)					

**10. Total tax liability (including reverse charge liability, if any)**

Rate of Tax	Taxable value	Amount of tax			
		Integrated Tax	Central Tax	State/UT Tax	CESS
1	2	3	4	5	6
10A. On account of outward supply					
10B. On account of differential ITC being negative in Table 4					
10C. On account of inward supplies liable to reverse charge					

**11. Tax payable and paid**

Description	Tax payable	Paid in cash	Paid through ITC		Tax Paid
			Integrated tax	Cess	
1	2	3	4	5	6
(a) Integrated Tax					
(b) Central Tax					
(c) State/UT Tax					
(d) Cess					

**12. Interest, late fee and any other amount payable and paid**

Description	Amount payable	Amount paid
1	2	3
<b>I Interest on account of</b>		

(a) Integrated tax		
(b) Central Tax		
(c) State/UT Tax		
(d) Cess		
<b>II Late fee on account of</b>		
(a) Central tax		
(b) State / UT tax		

### 13. Refund claimed from electronic cash ledger

Description	Tax	Interest	Penalty	Fee	Other	Debit Entry Nos.
1	2	3	4	5	6	7
(a) Integrated tax						
(b) Central Tax						
(c) State/UT Tax						
(d) Cess						
Bank Account Details (Drop Down)						

### 14. Debit entries in electronic cash/credit ledger for tax/interest payment [to be populated after payment of tax and submissions of return]

Description	Tax paid in cash	Tax paid through ITC		Interest	Late fee
		Integrated tax	Cess		
1	2	3	4	5	6
(a) Integrated tax					
(b) Central Tax					
(c) State/UT Tax					
(d) Cess					

#### Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signatures of Authorised Signatory

Place .....

Name of Authorised Signatory

Date .....

Designation /Status

## Instructions:-

1. Terms used:
  - a. GSTIN: Goods and Services Tax Identification Number
  - b. UIN: Unique Identity Number
  - c. UQC: Unit Quantity Code
  - d. HSN: Harmonized System of Nomenclature
  - e. POS: Place of Supply (Respective State)
  - f. B to B: From one registered person to another registered person
  - g. B to C: From registered person to unregistered person
2. GSTR-5 is applicable to non-resident taxable person and it is a monthly return.
3. The details in GSTR-5 should be furnished by 20<sup>th</sup> of the month succeeding the relevant tax period or within 7 days from the last date of the registration whichever is earlier.
4. Table 3 consists of details of import of goods, bill of entry wise and taxpayer has to specify the amount of ITC eligible on such import of goods.
5. Recipient to provide for Bill of Entry information including six digits port code and seven digits bill of entry number.
6. Table 4 consists of amendment of import of goods which are declared in the returns of earlier tax period.
7. Invoice-level information, rate-wise, pertaining to the tax period ~~separately for goods and services~~ should be reported as under:
  - i. For all B to B supplies (whether inter-State or intra-State), invoice level details should be uploaded in Table 5;
  - ii. For all inter-state B to C supplies, where invoice value is more than Rs. 2,50,000/- (B to C Large) invoice level detail to be provided in Table 6; and
  - iii. For all B to C supplies, ~~(whether inter-State or intra-State) where invoice value is up to Rs. 2,50,000/-~~ other those reported in table 6, shall be reported in Table 7 providing State-wise summary of such supplies. ~~shall be filed in Table 7.~~
8. Table 8 consists of amendments in respect of -
  - i. B2B outward supplies declared in the previous tax period;
  - ii. “B2C inter-State invoices where invoice value is more than Rs. 2.5 lakhs” reported in the previous tax period; and
  - iii. Original Debit and credit note details and its amendments.
9. Table 9 covers the Amendments in respect of B2C outward supplies other than inter-State supplies where invoice value is more than Rs 2,50,000/-.
10. Table 10 consists of tax liability on account of outward supplies declared in the current tax period and negative ITC on account of amendment to import of goods in the current tax period. **Inward supplies attracting reverse charge shall be reported in Part C of the table.**

~~On submission of GSTR-5, System shall compute the tax liability and ITC will be posted to the respective ledgers.~~

**FORM GSTR-5A***[See rule 64]***Details of supplies of online information and database access or retrieval services by a person located outside India made to non-taxable persons in India**

1. GSTIN of the supplier-
2. (a) Legal name of the registered person -  
(b) Trade name, if any -
3. Name of the Authorised representative in India filing the return –
4. Period:      Month -              Year –  
4(a) ARN:  
4(b) Date of ARN:

**5. Taxable outward supplies made to consumers in India***(Amount in Rupees)*

Place of supply (State/UT)	Rate of tax	Taxable value	Integrated tax	Cess
1	2	3	4	5

**5A. Amendments to taxable outward supplies to non-taxable persons in India***(Amount in Rupees)*

Month	Place of supply (State/UT)	Rate of tax	Taxable value	Integrated tax	Cess
1	2	3	4	5	6

**6. Calculation of interest, ~~penalty~~ or any other amount**  
*(Amount in Rupees)*

Sr. No.	Description	Place of supply (State/UT)	Amount <del>of tax</del> due (Interest/ Other)	
			Integrated tax	CESS

1	2	3	4 3	5 4
1.	Interest			
2.	Others <del>(Please specify)</del>			
	Total			

**7. Tax, interest, ~~late fee~~ and any other amount payable and paid**  
*(Amount in Rupees)*

Sr. No.	Description	Amount payable		Debit entry no.	Amount paid	
		Integrated tax	CESS		Integrated tax	CESS
1	2	3	4	5	6	7
1.	Tax Liability (based on Table 5 & 5A)					
2.	Interest (based on Table 6)					
3.	Others <del>(Please Specify)</del> (based on Table 6)					

**8. Verification**

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place	Signature
	Name of Authorised Signatory
Date	Designation /Status

**Annexure D****FORM GST DRC - 01***[See rule 100 (2) & 142(1)(a)]*

Reference No:

Date:

To

\_\_\_\_\_GSTIN/Temp. ID

----- Name

\_\_\_\_\_Address

Tax Period -----

F.Y. -----

Act -

Section / sub-section under which SCN is being issued -

SCN Reference No. ----

Date ----

**Summary of Show Cause Notice**

(a) Brief facts of the case :

(b) Grounds :

(c) Tax and other dues :

(Amount in Rs.)

Sr. No.	Tax rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
Total												

Signature

Name

Designation  
Jurisdiction  
Address

Note -

1. Only applicable fields may be filled up.
2. Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.
3. Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.

**FORM GST DRC -02***[See rule 142(1)(b)]*

Reference No:

Date:

To

\_\_\_\_\_ GSTIN/ID

----- Name

\_\_\_\_\_ Address

Tax Period :

F.Y. :

Section /sub-section under which statement is being issued :

SCN Ref. No. -----

Date – Statement Ref. No.

---- Date –

**Summary of Statement:**

(a) Brief facts of the case :

(b) Grounds :

(c) Tax and other dues :

(Amount in Rs.)

Sr. No.	Tax rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
Total												

Signature

Name

Designation

Jurisdiction

Address



Note -

1. Only applicable fields may be filled up.
2. Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.
3. Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.

**FORM GST DRC-07***[See rule 100(1), 100(2), 100(3) & 142(5)]***Summary of the order**

Reference No. -

Date –

## 1. Details of order :

(a) Order No. :

(b) Order date :

(c) Financial year :

(d) Tax period: From --- To -----

## 2. Issues involved :

## 3. Description of goods / services (if applicable):

Sr. No.	HSN code	Description

## 4. Section(s) of the Act under which demand is created:

## 5. Details of demand :

(Amount in Rs.)

Sr. No.	Tax Rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12 <del>11</del>	13 <del>12</del>
Total												

You are hereby directed to make the payment by <Date> failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature  
Name  
Designation  
Jurisdiction  
Address

To

\_\_\_\_\_ (GSTIN/ID)

-----Name

\_\_\_\_\_ (Address )

**Note –**

1. Only applicable fields may be filled up.
2. Column nos. 2, 3, 4 and 5 of the Table at serial no. 5 i.e. tax rate, turnover and tax period are not mandatory.
3. Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.

**FORM GST DRC - 08***[See rule 142(7)]*

Reference No.:

Date:

**Summary of Rectification /Withdrawal Order**

1. Particulars of order:	
(a) Financial year, if applicable	
(b) Tax period, if any	From --- To ----
(c) Section under which order is passed	
(d) Original order no.	
(e) Original order date	
(f) Rectification order no.	
(g) Rectification order date	
(h) ARN, if applied for rectification	
(i) Date of ARN	

2. Your application for rectification of the order referred to above has been examined 3. It has come to my notice that the above said order requires rectification (Reason for rectification as per attached annexure)

☐☐

4. The order referred to above (issued under section 129) requires to be withdrawn

5. Description of goods / services (if applicable) :

☐

Sr. No.	HSN code	Description

6. Section of the Act under which demand is created:

7. Details of demand, if any, after rectification :

(Amount in Rs.)

Sr. No.	Tax Rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12 <del>11</del>	13 <del>12</del>
Total												

You are hereby directed to make the payment by <Date> failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature  
Name  
Designation  
Jurisdiction  
Address

To

\_\_\_\_\_ (GSTIN/ID)  
\_\_\_\_\_ Name  
\_\_\_\_\_ (Address )

**Note –**

1. Only applicable fields may be filled up.
2. Column nos. 2, 3, 4 and 5 of the Table at serial no. 7 i.e. tax rate, turnover and tax period are not mandatory.
3. Place of Supply (POS) details shall be required only if the demand is created under the IGST Act.
4. Demand table at serial no. 7 shall not be filled up if an order issued under section 129 is being withdrawn.

**FORM GST DRC – 09***[See rule 143]*

To

\_\_\_\_\_

-----

Particulars of defaulter -

GSTIN –

Name -

Demand order no.:

Date:

Reference no. of recovery:

Date:

Period:

**Order for recovery through specified officer under section 79**

Whereas a sum of Rs. <<----->> on account of tax, cess, interest and penalty is payable under the provisions of the <<SGST/UTGST/ CGST/ IGST/ CESS>> Act by the aforesaid person who has failed to make payment of such amount. The details of arrears are given in the table below:

(Amount in Rs.)

Act	Tax/Cess	Interest	Penalty	Fee	Others	Total
1	2	3	4	5	6	7
Integrated tax						
Central tax						
State/UT tax						
Cess						
Total						

&lt;&lt; Remarks&gt;&gt;

You are, hereby, required under the provisions of section 79 of the <<SGST>> Act to recover the amount due from the << person >> as mentioned above.

Signature

Name

Designation

Place:

Date:

**FORMGST DRC-24***[See rule 160]*

To

The Liquidator/Receiver,  
-----

Name of the taxable person:

GSTIN:

Demand order no.:

Date:

Period:

**Intimation to Liquidator for recovery of amount**

This has reference to your letter <<intimation no. & date>>, giving intimation of your appointment as liquidator for the <<company name>> holding <<GSTIN>>. In this connection, it is informed that the said company owes / likely to owe the following amount to the State / Central Government:

**Current / Anticipated Demand**

(Amount in Rs.)

Act	Tax	Interest	Penalty	Fee	Other Dues	Total Arrears
1	2	3	4	5	6	7
Central tax						
State / UT tax						
Integrated tax						
Cess						

In compliance of the provisions of section 88 of the Act, you are hereby directed to make sufficient provision for discharge of the current and anticipated liabilities, before the final winding up of the company.

Name

Designation

Place:

Date:

**FORM GST DRC – 25***[See rule 161]*

Reference No &lt;&lt; --- &gt;&gt;

&lt;&lt; Date &gt;&gt;

To

GSTIN -----

Name -----

Address -----

Demand Order No.:

Date:

Reference number of recovery:

Date:

Period:

Reference No. in Appeal or Revision or any other proceeding -

Date:

**Continuation of Recovery Proceedings**

This has reference to the initiation of recovery proceedings against you vide above referred recovery reference number for a sum of Rs.....

The Appellate /Revisional authority /Court ..... << name of authority / Court>>has enhanced/reduced the dues covered by the above mentioned demand order No.....dated.....vide order no. ----- dated ----- and the dues now stands at Rs.....The recovery of enhanced/reduced amount of Rs..... stands continued from the stage at which the recovery proceedings stood immediately before disposal of appeal or revision. The revised amount of demand after giving effect of appeal / revision is given below:

Financial year: .....

(Amount in Rs.)

Act	Tax	Interest	Penalty	Fee	Other Dues	Total Arrears
1	2	3	4	5	6 5	7 6
Central tax						
State / UT tax						
Integrated tax						
Cess						

Signature

Name

Designation

Place:

Date:



**FORM GST ASMT- 16***[See rule 100(3)]*

Reference No.:

Date:

To

\_\_\_\_\_ (GSTIN/ID)

\_\_\_\_\_ Name

\_\_\_\_\_ (Address )

Tax period:

F.Y.:

**Act/ Rules Provisions:****Assessment order under section 64**

Preamble - &lt;&lt; standard &gt;&gt;

It has come to my notice that un-accounted for goods are lying in stock at godown----- (address) or in a vehicle stationed at ----- (address & vehicle detail) and you were not able to, account for these goods or produce any document showing the detail of the goods. Therefore, I proceed to assess the tax due on such goods as under:

Introduction :

Discussion &amp; finding :

Conclusion :

Amount assessed and payable (details at Annexure) :

(Amount in Rs.)

Sr. No.	Tax Rate	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12 <del>11</del>	13 <del>12</del>
Total												

Please note that interest has been calculated upto the date of passing the order. While making payment, interest for the period between the date of order and the date of payment shall also be worked out and paid along with the dues stated in the order.

You are hereby directed to make the payment by << date >> failing which proceedings shall be initiated against you to recover the outstanding dues.

Signature

Name

Designation

Jurisdiction

Address

**Note –**

1. Only applicable fields may be filled up.
2. Column nos. 2, 3, 4 and 5 of the above Table i.e. tax rate, turnover and tax period are not mandatory.
3. Place of Supply (POS) details shall be required only if demand is created under IGST Act.

**Agenda Item 7: Issues recommended by the Fitment Committee for the consideration of the GST Council**

**Agenda Item 7(i): Agenda Note on the representation received from HADMA seeking GST rate of 12% on Ayurveda/Unani/Siddha' (AUS)-ingredients based sanitizer**

A representation dated 27<sup>th</sup> July, 2020, has been received from the Haryana Ayurvedic Drugs Manufacturers Association (HADMA) (**Annexure A**) regarding Ayurveda/Unani/Siddha (AUS) ingredient-based sanitizers, having Tulsi, Neem, aloe vera or other similar ingredients, claiming that the said goods are Ayurvedic medicines and therefore merit classification under HS Code 3004 90 11 and should attract GST at the rate of 12%. The contention is that the clarification in Press Release dated the 15<sup>th</sup> July, 2020 does not apply to AUS ingredient-based sanitizers. Their main argument is that AUS ingredients-based sanitizers should be treated differently from alcohol-based sanitizers for the purpose of GST levy, since AUS ingredients-based sanitizers fall under category of Ayurveda 'medicines' and require license under the Drugs and Cosmetics Act, 1940.

2. Subsequently, HADMA filed CWP No. 11474 of 2020 before the Hon'ble Punjab and Haryana High Court, praying for accepting their above-mentioned contention regarding AUS ingredient-based sanitizers, as well as relief from enforcement action by GST authorities on this account. The Hon'ble High Court, in its Order dated the 11<sup>th</sup> August, 2020 (**copy enclosed**) disposed of the said petition with the observation that-

*"It is hoped that the same shall be taken up for consideration by the Council at the earliest, considering the issue involved."*

3. Thus, the Hon'ble High Court has directed that the representation of HADMA dated 27<sup>th</sup> July, 2020 be placed before the Council for consideration.

4. Essentially, HADMA has contended that AUS ingredient-based sanitizers should be treated differently from alcohol-based sanitizers for purpose of GST levy, cause the former comes under definition of 'Ayurvedic drugs' under the Drugs and Cosmetic Act, 1940 and requires licence under the said Act.

5. In the wake of COVID-19, hand sanitizers have become essential to meet the requirements of emergency arising due to the pandemic. Regarding the GST rate on sanitizers, a Press Release was issued by the Government of India on 15<sup>th</sup> July, 2020 (**copy enclosed**), clarifying that hand sanitizers are disinfectants and attract GST at the rate of 18%.

6. The World Customs Organization, jointly with the World Health Organization, prepared a HS Classification reference for Covid-19 medical supplies. As per the reference document 'Hand sanitizers' have been described as – '*A liquid or gel generally used to decrease infectious agents on the hands alcohol-based type*' and classified under CTH 3808 94. As per the First Schedule to Customs Tariff Act, 1975 the corresponding 8-digit tariff item is 3808 94 00 with description 'Disinfectants'.

Entry at serial number 87 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28<sup>th</sup> June, 2017 reads as-

S. No.	Chapter Heading/ Sub- Heading/ Tariff item	Description of goods
87.	3808	Insecticides, rodenticides, fungicides, herbicides, anti- sprouting products and plant-growth regulators, disinfectants and similar products [other than bio-pesticides mentioned against S. No. 78A of schedule –II]

7. The said Press Release clarified that inputs/input services for manufacture of hand sanitizers also attract a GST rate of 18%. It was mentioned that reducing the GST rate on sanitizers and other similar items would lead to an inverted duty structure and put the domestic manufacturers at disadvantage vis-a-vis importers. Lower GST rates help imports by making them cheaper. This is against the nation's policy on Atmanirbhar Bharat. Consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure.

8. In the above background, the representation of Haryana Ayurvedic Drugs Manufacturers Association (HADMA) dated 27<sup>th</sup> July, 2020 was placed before the Fitment Committee for looking into the matter before placing it before the Council.

9. The Fitment Committee examined the issue and has recommended that Ayurveda/Unani/Siddha (AUS) ingredients-based sanitizers are classified under tariff item 3808 94 00 and attract 18% GST and as such there should be no distinction between them and alcohol-based hand sanitizers.

10. Accordingly, the Agenda item is placed before the GST Council for consideration that whether Ayurveda/Unani/Siddha (AUS) ingredients-based sanitizers merit classification under HS Code 3004 90 11, attracting GST at the rate of 12%, whereas sanitizers, in general, are classified under 3808 94 00 attracting GST at the rate of 18%.



## HARYANA AYURVEDIC DRUGS MANUFACTURERS ASSOCIATIONS

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General Secretary  
VAIBHAV KAKKAR  
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Ref. No. :

To,

1. Secretary, Central Board of Indirect Taxes & Customs (CBIC), Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi, 110001.
2. Secretary, Goods and Services Tax Council Secretariat, 5<sup>th</sup> Floor, Tower II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001.
3. Chief Commissioner of Central Goods and Services Tax, SCO 407-408, Sector 8, Panchkula, Haryana, 134109.

**Subject:** Urgent issuance of clarification/press release regarding applicability of 12% GST to manufactures of the 'ASU ingredient-based sanitizers', who have obtained licences from the AYUSH Department in accordance with Section 3 clause (a) & clause (h) of the Drugs and Cosmetic Act, 1940 r/w rule 158 B of the Drugs and Cosmetic Rules, 1945, for the reason that they are categorised under Chapter 30 (HS Code: 30049011), which deals with the *medicaments under Ayurvedic System*.

Hon'ble Sir(s),

Kindly refer to the aforementioned subject.

Enc: I to 16  
Enc: II Total 6 Page P-1 to P-5  
Enc: III P-1 to P-7

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## HARYANA AYURVEDIC DRUGS MANUFACTURERS ASSOCIATIONS

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Ref. No. :

Dated : 27/07/2020

In this regard it is humbly submitted that on 15.07.2020, the Government of India through the Press Information Bureau (GOI-PIB) made a clarification w.r.t. the GST rates on alcohol-based hand sanitizers vide Release Id: 1638769 (enclosed as "enclosure 1"). It has been stated in the said clarification "that hand sanitizers attract GST at the rate of 18%". It is further stated that "sanitizers are disinfectants like soaps, anti-bacterial liquids, dettol etc., which will attract duty standard rate of 18%". On the basis of the above clarification, the department started issuing show-cause notices to every manufacturer of sanitizers including those who are manufacturing the "Ayurvedic-Siddha-Unani (ASU) ingredient-based sanitizers". It is important to mention herein itself that manufactures of ASU ingredient based sanitizers have obtained license under Section 3(a) & (h) of the Drugs and Cosmetic Act, 1940 r/w rule 158 B of the Drugs and Cosmetic Rules, 1945 and is statutorily treated as a separate and distinct class from other manufactures of sanitizers under both the statutes- the Drugs and Cosmetic Act, 1940 and under the 'Indian Trade Clarification based on Harmonized System of Coding' (HS Code- 30049011/ Ayurvedic products).

It is also important to mention here that, by the very fact of having the licence issued under Section 3(a) & (h) of the Drugs and Cosmetic

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Grievance Committee Office : Plot No. 05, Sector-3, HSIIDC, Karnal-132001 Haryana





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Ref. No. :

Dated :

Coding (HS Code), any such issuance of show-cause notice would be a complete derogation of Article 265 of the Constitution of India.

The reasons for the same with detailed explanation are as follows:

1. The classification as mentioned in the HS Code related to the hand sanitisers based on Alcohol can come under three chapters which are:

- A. Chapter 30
- B. Chapter 34
- C. Chapter 38

The same can be concurred from the notification no. 08/2015-2020, dt. 01.06.2020 which is enclosed as "Enclosure 3", wherein the categorisation of the sanitizers under HS Code is explicitly mentioned. It is apparently clear from the above notification marked as "enclosure 3" that the alcohol based hand sanitizers can categorized in all the above-stated three chapters under HS Code.

**RE: CHAPTER 30- PHARMACEUTICAL PRODUCTS**

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General Secretary  
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Ref. No. :

Dated :

**RE: CHAPTER 34**

Alcohol based hand sanitizers can also be categorised under sub-heading code "3401" and "3402". As it is not the subject matter, the same is not discussed here-in.

**RE: CHAPTER 38- MISCELLANEOUS CLEMICAL PRODUCTS**

Alcohol based hand sanitizers under chapter 38 can also be categorised under sub-heading code "3808", which states as follows:

*Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers)*

Under sub-heading code "3408", Alcohol based hand sanitizers can be classified under the following HS Codes:

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Alcohol based hand sanitizers under chapter 30 can be categorised under sub-heading code "3004" which states as follows:

*"Harmonised Codes of Medicaments (excluding Goods Of Heading 3002, 3005 Or 3006) Consisting Of Mixed Or Unmixed Products For Therapeutic Or Prophylactic Uses, Put Up In Measured Doses (including Those In The Form Of Transdermal Administration Systems) Or In Forms Or Packings"*

Under sub-heading code "3004", Alcohol based hand sanitizers can be classified under the following HS Codes:

HS Code	Category	Rate
30049011	Of Ayurvedic System	12% (6%+6%)
30049087	Antihypertensive drugs: Antibacterial formulations, not elsewhere specified or included	12% (6%+6%)

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HS Code	Category	Dated : Rate
380894	Disinfectants	18% (9%+9%)

### INTERPETATION OF THE CLARIFICATION ISSUED BY GOI-PIB

2. The clarification issued by the GOI-PIB clarified that Disinfectant mentioned under chapter 38 (HS Code 380894) includes sanitizers by stating that "sanitizers are disinfectants like anti-bacterial liquids". Now Anti-bacterial formulations are mentioned under chapter 30 (HS Code: 30049087), which is for "Antibacterial formulations, not elsewhere specified or included". The holistic reading of both the chapter's code (HS Codes i.e 380894 & 30049087), would clear that the Alcohol based hand sanitizers are now **specified or included** in chapter 38 (HS Codes 380894) under disinfectants, which was earlier characterised under chapter 30 (HS Code: 30049087- Antibacterial formulations, not elsewhere specified or included). Therefore by the virtue of the clarification by GOI-PIB, sanitizer being antibacterial formulations, which was earlier understood to be included under chapter 30 (HS Code:

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Grievance Committee Office : Plot No. 25, Sector-20, Part-1, HUDA, Faridkot-143001



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Dated :

30049087) is now clarified to be specially included in chapter 38 (HS Code 380894) under disinfectants.

3. It is submitted that, the above interpretation is just restricted to sanitizers characterised under chapter 30 (HS Code: 30049087), which is for "*Antibacterial formulations, not elsewhere specified or included*" and not even remotely related to the sanitizers, which are mentioned in chapter 30 (HS Code: 30049011) which deals with the "*Ayurvedic-Siddha-Unani (ASU) ingredient-based sanitizers*".
4. It is important to state that the sanitizers can also be manufactured under the *Ayurvedic Method*. The same can be verified with the letter dated 02.04.2020 issued by the Ministry of AYUSH, which is enclosed as "**Enclosure 4**". It is also important to mention that the ayurvedic products have been given special category under chapter 30 (HS Code: 30049011) which deals with the medicaments under *Ayurvedic System* and for the same category, the GST rate is specified as 12% (6% + 6%).

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Grievance Committee Office : Plot No. 25, Sector 20, Part 1, HUDA, Bapna, District-132102 Haryana





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5. It is also important to draw your attention to the RTI reply dated 16.07.2020 by the Directorate, AYUSH Department (enclosed as "**Enclosure 2**"). In the said RTI, it is specifically stated that "*Any product/formulation including sanitizers, which is approved under Section 3 clause (a) and Section 3 clause (h) of the Drugs and Cosmetic Act, 1940 and rule 158 B of the Drugs and Cosmetic Rules, 1945 will be **Ayurvedic Medicine***". It is also important to mention that a license to manufacture Ayurvedic product/formulation will only be granted to the manufacturer, if the product/formulation is having Ayurvedic ingredients to the satisfaction of the licencing authority in accordance with Section 3 clause (a), Section 3 clause (h) read with Chapter 4A of the Drugs and Cosmetic Act, 1940 and rule 158 B read with rule 152, 153, 154 (2) & 157 of the Drugs and Cosmetic Rules, 1945.
6. It is important to state that, once the product/formulation got the sanction/approval/licence under the AYUSH Department by the AYUSH Drug Control Authority, it shall be treated an Ayurvedic Medicine as the same has undergone a strict scrutiny for its approval as an ayurvedic medicine by the committee, which constituted of seven members from the field of Ayurveda

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experts and Pharma industry. The notification dated 21.04.2017 by the Health & AYUSH Department related to the formation and the scope of the committee is enclosed as "Enclosure 5".

7. Keeping in view the above stated facts, the ASU ingredient-based sanitizers which got the approval/licence of the AYUSH Department by virtue of the Drugs and Cosmetic Act, 1940 are being characterised as "Ayurvedic Medicaments" by the said statutory authority. Under HS Code, the ayurvedic products are mentioned in chapter 30 (HS Code: 30049011) which deals with the **medicaments under Ayurvedic System** and for which the GST applicable is 12% (6%+6%) and the same cannot be charged at the rate mentioned under chapter 38 (HS Code 380894) which deals with disinfectants and which is purely chemical in nature.

8. Even otherwise, the issue is not *res-integra* anymore as the same has been settled by the Hon'ble Supreme Court in number of cases which deal with the categorisation under Chapter 30 vis-à-vis the ayurvedic products/formulation/medicines. The Hon'ble Supreme Court

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Dated :

held that, if the ingredients of the products are mentioned in the Ayurveda textbook, the product is liable to be classified as medicament (*CCE v. Sharma Chemical Works [(2003) 5 SCC 60]*). It was further held that if a product is known to both Ayurveda and Western Science, it will not affect the classification of the product under Chapter 30 (*Amrutanjan Ltd. v. CCE [(1996) 9 SCC 413]*). It was also held that the extent or quantity of the Ayurvedic substance will not be relevant in determining the product as Ayurvedic Medicament (*held: even 2% ayurvedic substance will make the product as Ayurvedic Medicament*) and further, that such ayurvedic products may not be necessary sold under doctor's prescription (*PUMA Ayurvedic Herbal (P) Ltd. V. CCE, Nagpur [(2006) 3 SCC 226]*).

9. Keeping in view the above stated, following is the conclusion:

- A. ASU ingredient-based sanitizers are treated as medicament by the statutory authority having therapeutic or prophylactic uses in accordance with the ASU raw material, used for its formation.

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B. Manufactures of the *ASU ingredient-based sanitizers*, who have obtained licences from the AYUSH Department in accordance with Section 3 clause (a) & clause (h) of the Drugs and Cosmetic Act, 1940 r/w rule 158 B of the Drugs and Cosmetic Rules, 1945, is statutorily treated as a separate and distinct class from other manufactures of sanitizers who have obtained licence under Section 3 clause (b) (i)/(ii) of the Drugs and Cosmetic Act, 1940.

C. Being treated differently and distinctively by the Drugs and Cosmetic Act, 1940, the Manufactures of the *ASU ingredient-based sanitizers* having valid licences from the AYUSH Department have to be categorised differently under chapter 30 (HS Code: **30049011**).

D. Chapter 30 (HS Code: **30049011**) deals with the **medicaments under Ayurvedic System** and for the same, the GST rate is specified as 12% (6% + 6%), which is different from chapter 38 (HS Code 380894), which deals with **chemicals** and for which the GST rate is specified as 18% (9% + 9%).

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Grievance Committee Of



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E. GOI-PIB clarification cannot be applied mechanically as the same has no relation with the *ASU ingredient-based sanitizers* under Chapter 30 (HS Code: 30049011) which deals with the medicaments under Ayurvedic System. GOI-PIB clarification is only to clarify the confusion by virtue of the mention of "Anti-bacterial formulations" under chapter 30 (HS Code: 30049087) vis-à-vis disinfectants mentioned under chapter 38 (HS Code 380894). The same construction can be adduced from the very text of the GOI-PIB clarification where it states that "*sanitizers are disinfectants like anti-bacterial liquids*".

### PRAYER:

Therefore, through this representation, it is requested to you to do the following:

- i. Issue an urgent clarification to the concerned authorities to clarify that GOI-PIB clarification dated 15.07.2020 *vide Release Id: 1638769* is not related to the manufactures of the *ASU ingredient-based sanitizers*, having Tulsi, Neem, aloe vera or other similar ingredients coupled with the fact that they have obtained licences from the AYUSH Department in accordance

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with Section 3 clause (a) & clause (h) of the Drugs and Cosmetic Act, 1940 r/w rule 158 B of the Drugs and Cosmetic Rules, 1945, for the reason that they are categorised under Chapter 30 (HS Code: **30049011**), which deals with the **medicaments under Ayurvedic System.**

- ii. Consequentially to set aside all show cause notices being issued by the GST department asking to deposit the GST @ 18%, rather than the GST as paid @12% to the manufactures of the *ASU ingredient-based sanitizers*, who have obtained licences from the AYUSH Department in accordance with Section 3 clause (a) & clause (h) of the Drugs and Cosmetic Act, 1940 r/w rule 158 B of the Drugs and Cosmetic Rules, 1945, for the reason that they are categorised under Chapter 30 (HS Code: **30049011**), which deals with the **medicaments under Ayurvedic System.**
- iii. If the above request will take some time for its proper adjudication, then a directive should be issued to the concerned GST authorities to keep all the show cause Notices in abeyance, not to finalize the assessment and further not to adopt to any coercive methods of recovery, till the pendency of this

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Ref. No. :

representation, from the manufactures of the *ASU ingredient-based sanitizers*, who have obtained licences from the AYUSH Department in accordance with Section 3 clause (a) & clause (h) of the Drugs and Cosmetic Act, 1940 r/w rule 158 B of the Drugs and Cosmetic Rules, 1945.

Dated :

**PLEASE TREAT THE SAME WITH EXTREME EMERGENCY. THE WHOLE BUSINESS OF THE MEMBERS OF THE ASSOCIATION IS EXTREMELY GETTING AFFECTED. IN THE EVENT OF ANY DELAY, WE WILL BE CONSTRAINED TO APPROACH OTHER APPROPRIATE AUTHORITIES UNDER THE LAW.**

Sincerely,

**Settled By:**  
MANIK SETHI LAW OFFICE  
#9, Birbal Road, Jangpura Ext.,  
N-Delhi-110014  
8376959827;  
lawoffice@maniksethi.in

  
**KAMAL BHATIA**  
Chairman Grievance  
Haryana AYUSH Drugs  
Manufacture Association

Enclosures:

1. Government of India through the Press Information Bureau issued clarification dated 15.07.2020 w.r.t. the GST rates on alcohol-based hand sanitizers vide Release Id: 1638769.

Regd Office : Plot No. 430, Sector-3 Ext HSIDC, Karnal 130001

Ministry of Finance

## Clarification on issue of GST rate on alcohol based hand sanitizers

Posted On: 15 JUL 2020 4:46PM by PIB Delhi

The issue of GST rate on alcohol based hand sanitizers has been reported in few sections of media.

It is stated that hand sanitizers attract GST at the rate of 18%. Sanitizers are disinfectants like soaps, anti-bacterial liquids, dettol etc which all attract duty standard rate of 18% under the GST regime. The GST rates on various items are decided by the GST Council where the Central Government and all the state governments together deliberate and take decisions.

It is further clarified that inputs for manufacture of hand sanitizers are chemicals packing material, input services, which also attract a GST rate of 18%. Reducing the GST rate on sanitizers and other similar items would lead to an inverted duty structure and put the domestic manufacturers at disadvantage vis-a-vis importers. Lower GST rates help imports by making them cheaper. This is against the nation's policy on Atmanirbhar Bharat. Consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure.

\*\*\*\*\*

RM/KMN

(Release ID: 1638769) Visitor Counter : 42



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Rathdhana, Distt. Sonapat.

- |   |  |        |
|---|--|--------|
| 5 | Dr. Gulam Nasir,<br>Unani Medical Officer,<br>Director of Ayush, Haryana,<br>Panchkula                   | Member |
| 6 | Dr. Yudvir Dhama<br>M.D. (Ras Shastra) Ayurvedic<br>Medical Officer, GAD Kheri<br>Tagga, Distt. Sonapat. | Member |
| 7 | Dr. Jai Deep<br>B. Pharma, Chemist, Baidyog,<br>Pharmacy, Plot No.321, Rai,<br>Indl. Area, Sonapat       | Member |

The following direction shall be applicable:-

- (i) The meeting of expert committee may be called by State Licensing Authority as per requirement of the work load. The quorum of the committee will be four members.
- (ii) The above referred expert committee shall scrutinize the patent/ proprietary/ Ayurvedic or Unani

Medicines being submitted in the office of Licensing Authority for their license / approval.

- (iii) The member who will not attend three meeting continuously will ceases by the member of this committee.
- (iv) The term of the committee will be two years from the date of issuances of these orders.
- (v) No TA/DA or any other remuneration will be given to the non official members.

Dated: Chandigarh  
the 21.04.2017

Amit Jha  
Principal Secretary to Govt. Haryana  
Health and Ayush Department.

Endst. No. 60/3/2008-4 HB-IV

Dated Chandigarh, the 26.04.2017

A copy is forwarded to the following for information and necessary action:-

1. The Secretary to the Government of India, Ministry of Health and Family Welfare, Red Cross Building, Red Cross Road, New Delhi-110001
2. The Director General, Ayush, Haryana, Near Youth Hostel, Sector-3, Panchkula

H-2 131

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3. All members concerned.

sd/-

Deputy Secretary Health  
For Principal Secretary to Govt. Haryana  
Health and Ayush Department

// True Copy //



109/20

Enc: II

PE

Stamp of Receiving

Directorate Aayush Department, Haryana

Sector-3, Panchkula

Diary No. 10978      Diary No. 20.07.2020

Subject: For providing information under Right to Information Act, 2005 to Shri Purushottam Agarwal, 581/9, Khasra No. 4653/280, Dhawanpur Road, Diladabad Road, Industrial Area, Gurugram 122001.

With reference to your letter No. R.T.I./P./E-6/Aayu/Hari/2020/19733 dated 13.07.2020 on the above cited subject.

Following is the pointwise reply to the information sought by the Applicant Shri Purushottam Aggarwal, 581/9, Khasra No.4653/280, Dhawanpur Road, Diladabad Road, Industrial Area, Gurugram:-

Serial No.	Information sought by the Applicant	Remarks by department/ information
1	Under which law Aayush Department gives approval to any Aayurvedic medicine?	Approval grants under Section 3 Clause (a) and Section 3 Clause (h) of the Drug and Cosmetics Act, 1940 and Rule 158B of Drug and



		Cosmetic Rules, 1945
2	Any product which is being approved by Aayush Department what it will be called whether Aayurvedic Medicine, Allopathy, Homeopathy, Food Products (FSSAI) or Cosmetic Product	Any formula/ product approved under Section 3 Clause (a) of Drug and Section 3 Clause (h) of the Drug and Cosmetics Act, 1940 and Rule 158B of Drug and Cosmetic Rules, 1945 will be Aayurvedic / Sidha/ Unani medicine.
3	Kindly provide information about the committee constituted for approval of Ayurvedic Medicines and their role in approving the medicines.	Copy of Notification dated 21.04.2017 issued by the Government is attached.
4	According to Drug & Cosmetic Act, 1940 (Indian Government) apart from the medicines consumed through mouth, additional ointments (like oil, ointment, cream, eye drops,	Any formula/ product approved under Section 3 Clause (a) of Drug and Section 3 Clause (h) of the Drug and Cosmetics Act, 1940 and Rule 158B of Drug and Cosmetic Rules, 1945 will be Aayurvedic

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	sanitizer etc) comes under which category.	/ Sidha/ Unani medicine.
5	Formulas which have been approved by Aayush Department for Hand Sanitizer etc., under which they have been approved whether Allopathy, Homeopathy, Food Products (FSSAI) or Cosmetic Products, so please clarify whether those products will be called Allopathic Medicine, Homeopathic Medicine, Food Products (FSSAI or Cosmetic Products or Ayurvedic medicines.	Any formula/ product approved under Section 3 Clause (a) of Drug and Section 3 Clause (h) of the Drug and Cosmetics Act, 1940 and Rule 158B of Drug and Cosmetic Rules, 1945 will be Aayurvedic / Sidha/ Unani medicine.
6	Hindi meaning of disinfectant is "Roganuo se mukt karne wala" and according to Ayurvedic ethology Neem, Tulsi, vinegar, lemon and essential Oil like Tea	The information cannot be furnished as the information demanded is in form of question and do not satisfy the Definition of Information under Sub-Section (f) of Section (2)

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	Tree Oil peppermint etc. are accepted as disinfectant and neem is also used to prepare fertilizer for pouring it in the fields to kill germs. In Ayurveda there is written about Yagya for purifying the environment. So for these medicines, can we use the word 'Disinfectant' in the Ayurveda. Kindly clarify.	of RTI Act, 2005.
--	---	-------------------

This is for your information and necessary action.

Sd/- State Licensing Authority

Directorate Aayush Department Haryana

To,

State Public Information Officer and Supervisor

Directorate Aayush Department Haryana

Panchkula

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/24

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Asha-

Letter

No.45/RTI/Drug/Aayu/Hari/2020/20  
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Dated 16.07.2020



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F. No. Z 25023 /09/2018-2020-DCC (AYUSH)

Government of India

Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH)

Dated: 2<sup>nd</sup> April, 2020.

**Subject: Expediting the process for grant of approval/license/renewal of license for manufacturing of ASU immunity boosting healthcare products and sanitizers- reg.**

Regulatory and quality control provisions for the manufacturing of Ayurvedic, Siddha and Unani drugs/medicines under Drugs and Cosmetics Act, 1940 and Rules thereunder are enforced by the Licensing Authorities/Drug Controllers appointed by the State/UT Government. Due to COVID 19 outbreak, the need for public use of ASU based immunity boosting products for healthy people and hand sanitizers has been significantly emphasized and their demand has increased manifold. In this regard, some drug manufacturers engaged in or interested to proceed for producing ASU ingredients-based such products have represented to the Central Government about the problems being faced in the States/UTs for grant or renewal of license/approval in the current situation.

Whereas Hon'ble Prime Minister during interaction with the AYUSH stakeholders via video-conference on 28<sup>th</sup> March, 2020 inter alia suggested for ASU medicines manufacturers to utilize their resources towards producing essential items like sanitizers and highlighted the impact of traditional practices towards boosting immunity of healthy people to play the important role in India's fight against COVID-19.

Accordingly, in view of the urgent need of meeting the challenge of increased demand of aforesaid ASU healthcare products, all the State AYUSH Licensing Authorities/Drug Controllers and Expert Committees thereunder are hereby directed to complete the licensing/approval/renewal process expeditiously and dispose of the applications of the manufacturers maximum within a week's time provided the prescribed standards and relevant provisions of the Drugs & Cosmetics Rules, 1945, in terms of use of ingredients and permitted excipients in accordance with the authoritative books including Pharmacopoeias and Formularies, are fulfilled. It is also appealed to send the list of manufacturers and details of such ASU products being licensed /approved under your jurisdiction.

This is issued with the approval of Secretary (AYUSH), Government of India.

Adviser (Ay.) and Head, Drugs Policy Section

To

All State/UT Licensing Authorities and Drug Controllers of AYUSH

Copy for information to:

- i) Principal Secretaries/Secretaries (Health/AYUSH) of all States/UTs.
- ii) ASU Drugs Manufacturers Associations

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(To be Published in the Gazette of India Extraordinary Part-II, Section - 3, Sub-Section (ii))

Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Foreign Trade  
Udyog Bhawan  
New Delhi

**Notification No. 08 /2015-2020**  
New Delhi, Dated: 01 June, 2020

**Subject: - Amendment in Export Policy of Alcohol based Hand Sanitizers.**

S.O. (E) In exercise of powers conferred by Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, the Central Government hereby makes the following amendments to the Notification No. 04 dated 06.05.2020 related to the export policy of Alcohol based Hand Sanitizers, with immediate effect:

S.No	ITC HS Codes	Description	Present Policy
207 D	ex3004 ex3401 ex3402 380894	Alcohol Based Hand Sanitizers in containers with dispenser pumps	Prohibited

**2. Effect of this Notification:**

The Notification No. 04 dated 06.05.2020 is amended to the extent that only "Alcohol based Hand Sanitisers" exported in containers with the Dispenser Pump, falling under any ITC HS Code including the HS Codes mentioned above, are prohibited for export. Alcohol based Hand Sanitisers exported in any other form/packaging are "free" for exports, with immediate effect.

All other items falling under the above HS Codes are freely exportable.

  
(Amit Yadav)  
Director General of Foreign Trade  
Ex-Officio Additional Secretary, Government of India  
E-mail: dgft@nic.in

(Issued from file No. 01/91/180/21/AM20/EC/E-21207)

## Clarification on issue of GST rate on alcohol based hand sanitizers

Posted On: 15 JUL 2020 4:46PM by PIB Delhi

The issue of GST rate on alcohol based hand sanitizers has been reported in few sections of media. .

It is stated that hand sanitizers attract GST at the rate of 18%. Sanitizers are disinfectants like soaps, anti-bacterial liquids, dettol etc which all attract duty standard rate of 18% under the GST regime. The GST rates on various items are decided by the GST Council where the Central Government and all the state governments together deliberate and take decisions.

It is further clarified that inputs for manufacture of hand sanitizers are chemicals packing material, input services, which also attract a GST rate of 18%. Reducing the GST rate on sanitizers and other similar items would lead to an inverted duty structure and put the domestic manufacturers at disadvantage vis-a-vis importers. Lower GST rates help imports by making them cheaper. This is against the nation's policy on Atmanirbhar Bharat. Consumers would also eventually not benefit from the lower GST rate if domestic manufacturing suffers on account of inverted duty structure.

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RM/KMN

(Release ID: 1638769)

CWP No.11474 of 2020

#1#

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

**CWP No.11474 of 2020**

**Date of Decision:-11.08.2020**

**Haryana Ayurvedic Drugs Manufacturers Association(HADMA).**

.....Petitioner.

Versus

**Central Goods & Service Tax & Ors.**

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH  
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present:- Mr. Manik Sethi, Advocate for Petitioner.

Mr. Sunish Bindlish, Senior Panel Counsel for Respondents.

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**JASWANT SINGH, J.**

*[The aforesaid presence is being recorded through video conferencing since  
the proceedings are being conducted in virtual court]*

Petitioner- Haryana Ayurvedic Drugs Manufacturers Association has preferred the instant writ petition seeking quashing of show cause notices (one of them being attached as P-12 dated 09.07.2020) issued by the Taxation authorities to the manufacturers of the "AUS ingredients-bases sanitizer" for depositing the GST at the Tariff Rate of 18% under the HS Coder 3808-94 instead of 12%.

Ld. Counsel for the petitioner has argued that the impugned show cause notices have been wrongly issued by the respondent-authority by misclassifying the same as "alcohol based sanitizer", whereas the sanitizers being manufactured by them are Ayurvedic/ Unani/ Sidha (AUS)



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#2#

ingredient based sanitizers and thus different from alcohol based sanitizers. It is further argued that the sanitizers manufactured by them come within the 12% GST bracket and not 18% as levied by the authorities. It is submitted that a comprehensive representation in this regard has already been made to respondents on 27.07.2020 (P-9), however no action on said representation has been taken till date.

On the last date of hearing Mr. Bindlish had sought a day's adjournment to seek instructions regarding consideration of contents of the representation dated 27.07.2020 (P-9) with regard to re-classification of ASU ingredient based sanitizers.

Today, he on instructions submits that the representation dated 27.07.2020 (P-9), if already submitted, shall be forwarded to the establishment of the GST Council for appropriate consideration in accordance with law.

**Disposed of accordingly.**

It is hoped that the same shall be taken up for consideration by the Council at the earliest, considering the issue involved.

**( JASWANT SINGH )**

**JUDGE**

**( ASHOK KUMAR VERMA )**

**JUDGE**

**August 11, 2020**

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

### **Agenda Item 10: Review of Revenue position**

1. The Table 1 below gives the details of gross revenue collected as Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST), Integrated Goods and Services Tax (IGST) and Cess from April –August, 2020.

**Table 1\*: Gross GST revenue during 2018-19, 2019-20 and 2020-21 (Figures in Rs. Crore)**

(In ₹ Crore)	2018-19 (Apr-Mar)	2019-20 (Apr-Mar)	2020-21 (Apr-Aug)
<b>CGST</b>	<b>2,02,444</b>	<b>2,27,442</b>	<b>66,429</b>
<b>SGST</b>	<b>2,78,817</b>	<b>3,09,231</b>	<b>85,315</b>
<b>IGST</b>	<b>5,98,739</b>	<b>5,86,699</b>	<b>1,77,890</b>
<i>Domestic</i>	<b>3,08,243</b>	<b>3,19,422</b>	<b>93,964</b>
<i>Imports</i>	<b>2,90,495</b>	<b>2,67,277</b>	<b>83,926</b>
<b>Comp Cess</b>	<b>97,369</b>	<b>98,745</b>	<b>29,478</b>
<i>Domestic</i>	<b>87,290</b>	<b>88,303</b>	<b>26,270</b>
<i>Imports</i>	<b>10,080</b>	<b>10,442</b>	<b>3,208</b>
<b>Total</b>	<b>11,77,369</b>	<b>12,22,116</b>	<b>3,59,112</b>

\*Figures rounded to nearest whole number

2. The Table 2 below shows the IGST collected, refunded and settled/apportioned during the current FY (2020-21)

**Table 2: \*IGST Collection/Settlement/Apportionment/Refund from Apr'20-Aug'20 (Figures in Rs. Crore)**

<b>1</b>	Collections (+)	1,77,890
<b>2</b>	Recovery from IGST Ad-hoc apportionment(+)	0
<b>3</b>	Refunds (-)	29,823
<b>4</b>	Settlement (-)	1,22,231
<b>(i)</b>	CGST	66,873
<b>(ii)</b>	SGST	55,358
<b>5</b>	CGST ad hoc (-)	0
<b>6</b>	SGST ad hoc (-)	0
<b>7</b>	<b>Net (1+2-3-4-5-6)</b>	<b>25,836</b>

\* Figures rounded to nearest whole number

### **Compensation Fund**

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

**Table 3: Compensation Cess collected and compensation released**

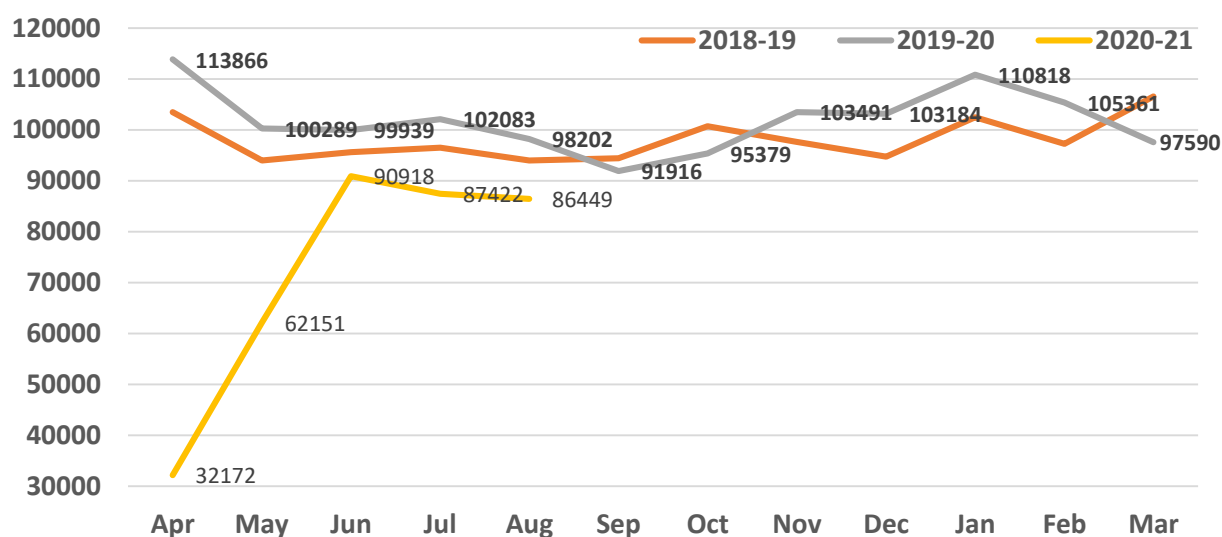
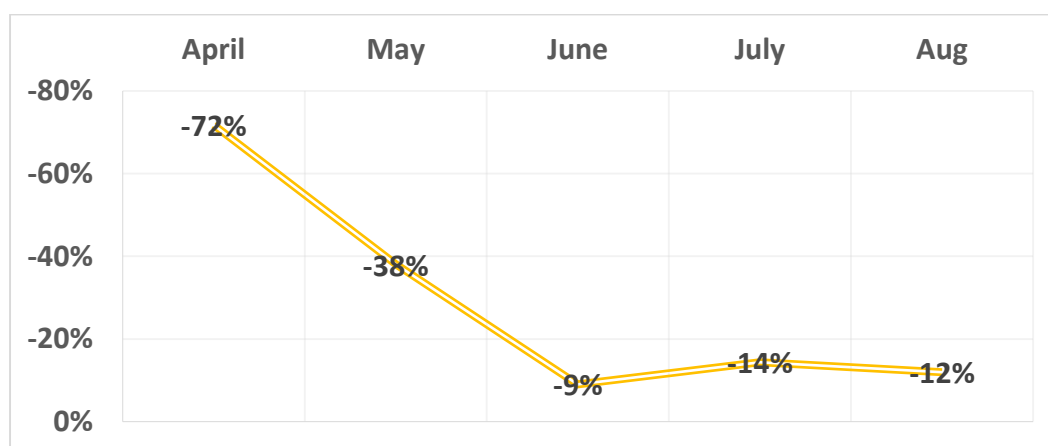
(Figures in Rs. Crore)

	2017-18	2018-19	2019-20	2020-21	Total
Compensation cess collected (Net)	62,612	95,081	95,444	28,236 (till Aug)	2,81,373
Compensation released	41,146	69,275	1,20,498	65,546.20	2,96,465*
<b>Balance</b>	<b>21,466</b>	<b>25,806</b>	<b>(25,054)</b>	<b>(37,310.20)</b>	<b>(15,092)</b>

\*Centre had transferred Rs. 33412 crore from CFI to cess fund as part of an exercise to apportion balance IGST pertaining to 2017-18.

**Trends in Monthly Revenue**

4. Figure 1 shows the trends in gross GST revenue in FY 18-19, FY 19-20 & FY 20-21. Figure 2 shows the month-on-month growth rate for each month since April, 2020 till August, 2020.

**Figure 1: Trends in total gross GST Revenues (₹ crore)****Figure 2: Month-on-Month growth in total gross GST Revenues (April-Aug, 2020)**

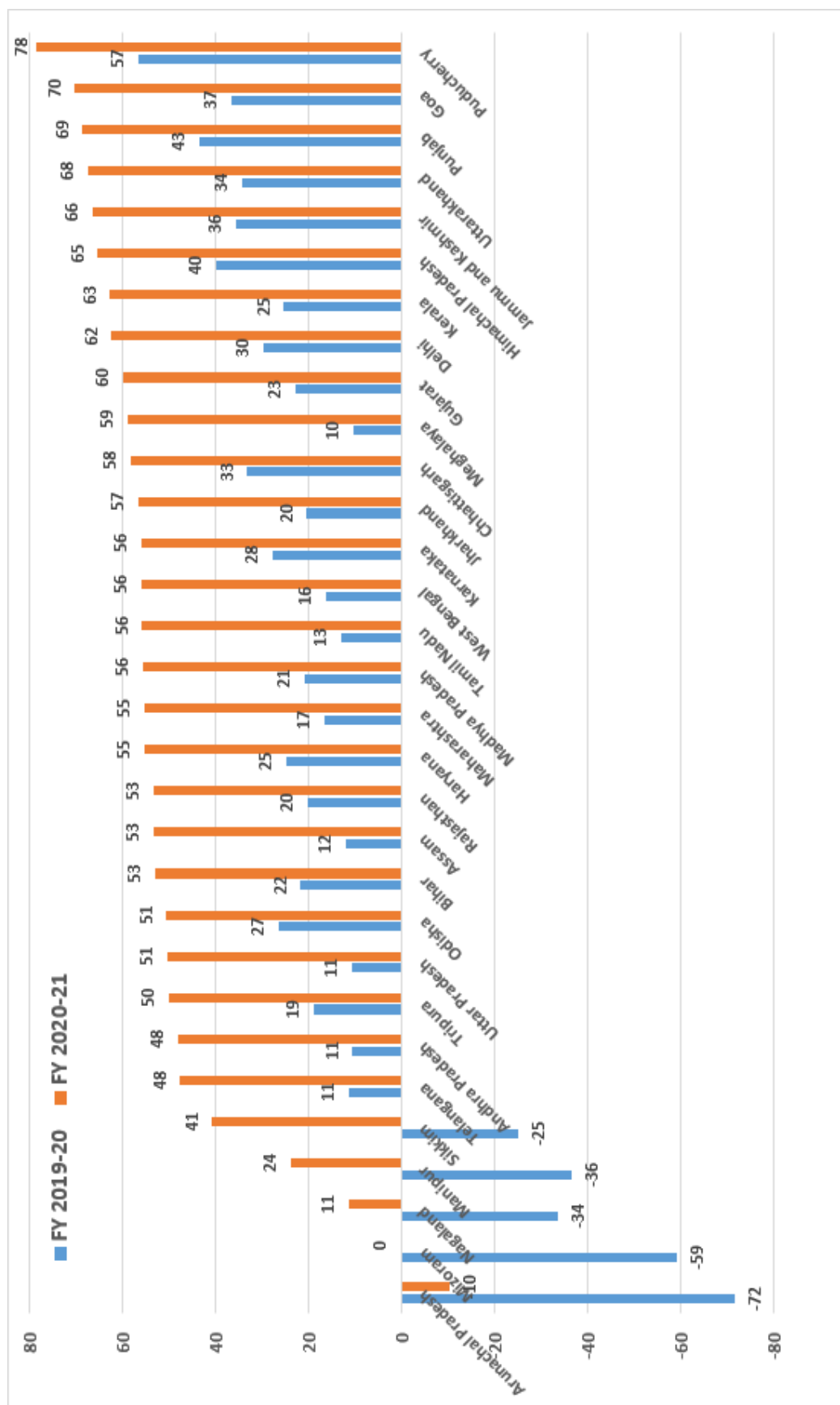
### Gap with respect to base revenue

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

**Table 4: Revenue Gap during the period April-August**

State/UT	2019-20 (%)	2020-21 (%)
Arunachal Pradesh	-72	-10
Mizoram	-59	0
Nagaland	-34	11
Manipur	-36	24
Sikkim	-25	41
Telangana	11	48
Andhra Pradesh	11	48
Tripura	19	50
Uttar Pradesh	11	51
Odisha	27	51
Bihar	22	53
Assam	12	53
Rajasthan	20	53
Haryana	25	55
Maharashtra	17	55
Madhya Pradesh	21	56
Tamil Nadu	13	56
West Bengal	16	56
Karnataka	28	56
Jharkhand	20	57
Chhattisgarh	33	58
Meghalaya	10	59
Gujarat	23	60
Delhi	30	62
Kerala	25	63
Himachal Pradesh	40	65
Jammu and Kashmir	36	66
Uttarakhand	34	68
Punjab	43	69
Goa	37	70
Puducherry	57	78
<b>Average</b>	<b>21</b>	<b>56</b>

Figure 3: Revenue Gap during the period April-Aug



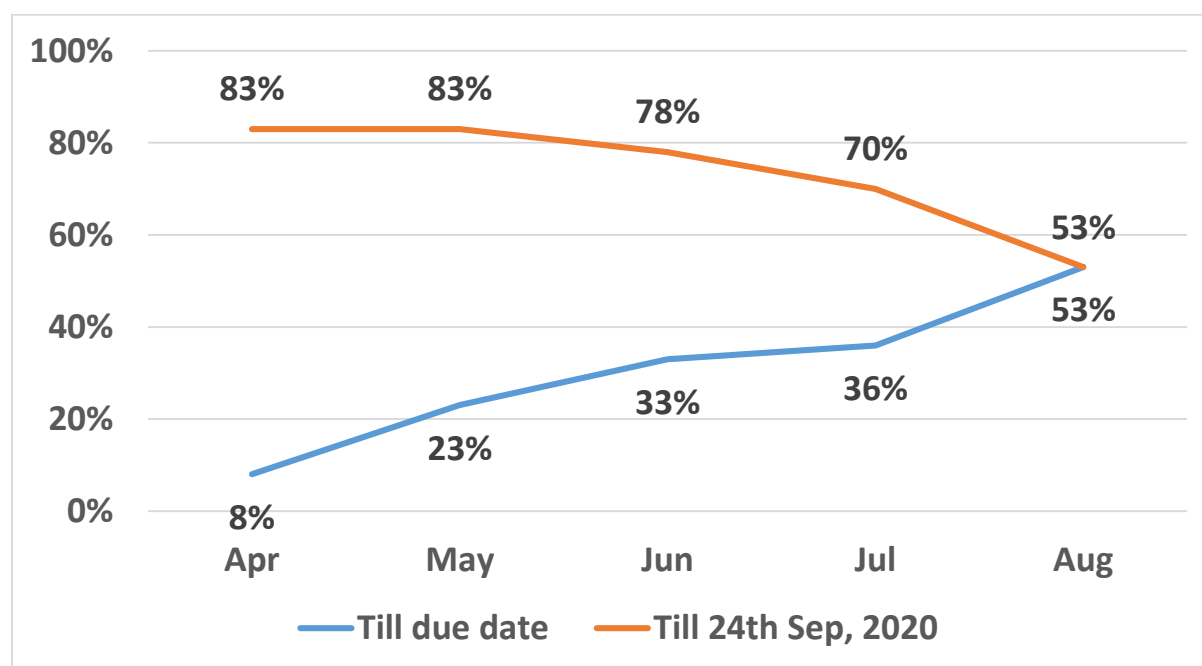
## Trends in Return filing

6. The table below shows the trend in returns in FORM GSTR-3B till due date and till date for return periods up to August, 2020.

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

Return Period	Eligible taxpayers	Till due date		Till 24 <sup>th</sup> Sep, 2020	
		Filed	%	Filed	%
Apr	1,04,14,263	8,63,169	8%	86,94,518	83%
May	1,03,42,810	23,97,512	23%	85,37,097	83%
Jun	1,03,98,099	34,51,281	33%	81,01,697	78%
Jul	1,05,65,995	38,02,548	36%	73,57,861	70%
Aug	1,07,04,873	56,45,602	53%	56,45,602	53%

**Figure 4: GSTR-3B Filing**



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

STATE CD	STATE	April	May	June	July	Aug
1	Jammu and Kashmir	8%	25%	33%	32%	51%
2	Himachal Pradesh	10%	27%	39%	40%	59%
3	Punjab	7%	26%	41%	43%	57%
4	Chandigarh	9%	27%	46%	47%	61%
5	Uttarakhand	13%	28%	36%	39%	54%
6	Haryana	9%	26%	39%	41%	56%
7	Delhi	7%	21%	33%	35%	50%
8	Rajasthan	7%	27%	38%	41%	58%
9	Uttar Pradesh	8%	26%	36%	38%	57%
10	Bihar	8%	23%	22%	25%	46%
11	Sikkim	15%	26%	30%	32%	42%
12	Arunachal Pradesh	11%	17%	20%	23%	33%
13	Nagaland	14%	21%	29%	26%	40%
14	Manipur	7%	13%	21%	15%	27%
15	Mizoram	21%	27%	35%	27%	43%
16	Tripura	12%	27%	34%	35%	53%
17	Meghalaya	17%	33%	35%	35%	52%
18	Assam	10%	22%	22%	25%	40%
19	West Bengal	7%	24%	31%	31%	51%
20	Jharkhand	10%	26%	33%	34%	52%
21	Odisha	13%	27%	29%	31%	52%
22	Chhattisgarh	9%	19%	32%	32%	42%
23	Madhya Pradesh	7%	21%	34%	37%	54%
24	Gujrat	4%	23%	45%	48%	64%
25	Daman and Diu	8%	21%	44%	40%	0.2%
26	Dadra and Nagar Haveli	8%	21%	41%	29%	50%
27	Maharashtra	5%	15%	26%	30%	44%
29	Karnataka	14%	28%	32%	40%	56%
30	Goa	12%	20%	29%	31%	42%
31	Lakshadweep	10%	17%	25%	25%	32%
32	Kerala	8%	17%	24%	27%	40%
33	Tamil Nadu	10%	24%	33%	37%	55%
34	Puducherry	14%	25%	36%	35%	50%
35	Andaman and Nicobar Is.	4%	17%	28%	15%	31%
36	Telangana	12%	24%	33%	32%	47%
37	Andhra Pradesh	11%	25%	33%	33%	52%
38	Ladakh	29%	23%	36%	36%	48%
97	Other Territory	12%	20%	54%	62%	66%
	<b>Grand Total</b>	<b>8%</b>	<b>23%</b>	<b>33%</b>	<b>36%</b>	<b>53%</b>

**Table 7: State-wise Return filing (GSTR-3B) till 24<sup>th</sup> September, 2020**

STATE CD	STATE	April	May	June	July	Aug
1	Jammu and Kashmir	83%	82%	76%	66%	51%
2	Himachal Pradesh	88%	87%	83%	74%	59%
3	Punjab	90%	88%	83%	75%	57%
4	Chandigarh	91%	91%	86%	77%	61%
5	Uttarakhand	83%	82%	78%	69%	54%
6	Haryana	86%	85%	80%	71%	56%
7	Delhi	79%	79%	75%	66%	50%
8	Rajasthan	88%	87%	82%	73%	58%
9	Uttar Pradesh	85%	85%	80%	72%	57%
10	Bihar	80%	79%	70%	62%	46%
11	Sikkim	74%	72%	66%	58%	42%
12	Arunachal Pradesh	57%	56%	51%	44%	33%
13	Nagaland	68%	65%	61%	53%	40%
14	Manipur	51%	49%	44%	36%	27%
15	Mizoram	67%	66%	62%	55%	43%
16	Tripura	79%	78%	73%	67%	53%
17	Meghalaya	69%	68%	66%	61%	52%
18	Assam	72%	69%	63%	54%	40%
19	West Bengal	80%	79%	73%	65%	51%
20	Jharkhand	85%	83%	77%	68%	52%
21	Odisha	86%	84%	77%	68%	52%
22	Chhattisgarh	84%	81%	75%	64%	42%
23	Madhya Pradesh	92%	91%	86%	76%	54%
24	Gujrat	90%	90%	88%	82%	64%
25	Daman and Diu	85%	84%	81%	70%	0%
26	Dadra and Nagar Haveli	84%	83%	80%	46%	50%
27	Maharashtra	79%	78%	73%	64%	44%
29	Karnataka	85%	84%	80%	74%	56%
30	Goa	69%	68%	65%	56%	42%
31	Lakshadweep	51%	50%	48%	42%	32%
32	Kerala	80%	78%	73%	62%	40%
33	Tamil Nadu	85%	84%	81%	73%	55%
34	Puducherry	82%	81%	77%	68%	50%
35	Andaman and Nicobar Island	63%	61%	55%	43%	31%
36	Telangana	75%	74%	70%	63%	47%
37	Andhra Pradesh	81%	81%	77%	70%	52%
38	Ladakh	82%	73%	66%	60%	48%
97	Other Territory	80%	75%	73%	73%	66%
	<b>Grand Total</b>	<b>83%</b>	<b>83%</b>	<b>78%</b>	<b>70%</b>	<b>53%</b>



**Agenda Item 12: Status report of creation of GRC Zone-wise (CBIC) and States / UTs as on 04.09.2020**

Reference is invited to the 38<sup>th</sup> meeting of the GST Council held on 18.12.2019, wherein constitution of Grievance Redressal Committee at Zonal / State level, consisting of both Central tax and State tax officers, representatives of trade and industry and other GST stakeholders for establishing a mechanism to tackle grievances of tax payers was approved.

2. In view of the above decision, an order regarding constitution of Grievance Redressal Committee was issued by the CBIC vide F.No.20/10/16/2018-GST(Pt.1) dated 24.12.2019.

3. Accordingly, OM dated 30.12.2019 was issued by GSTC Secretariat for constitution of Grievance Redressal Committee at Zonal / State level. Reminder was also sent to the pending States / Zones vide OM dated 02.06.2020, 20.07.2020, DO letter dated 24.08.2020 and OM dated 16-09-2020.

4. As a result of the above, the following GRCs have been constituted by the States / UTs / CBIC Zones as on 04-09-2020\*:

S. No.	State / UT	CBIC Zone	Details of Order constituting GRC
1.	Jammu and Kashmir	Chandigarh	Order No. 02/2020 dt. 23.01.2020
2.	Himachal Pradesh		Order No. 04/2020 dt. 23.01.2020
3.	Punjab		Order No. 03/2020 dt. 23.01.2020
4.	Chandigarh		Order No. 01/2020 dt. 23.01.2020
5.	Ladakh		Order No. 02/2020 dt. 23.01.2020
6.	Andhra Pradesh	Vishakhapatnam	Order No. 01/2020 dt. 31.01.2020
7.	Arunachal Pradesh	Guwahati	Order No. 02/2020 dt. 11.03.2020
8.	Assam		Order No. 01/2020 dt. 11.03.2020
9.	Manipur		Order No. 03/2020 dt. 11.03.2020
10.	Meghalaya		Order No. 04/2020 dt. 11.03.2020
11.	Mizoram		Order No. 05/2020 dt. 11.03.2020
12.	Nagaland		Order No. 06/2020 dt. 11.03.2020
13.	Tripura		Order No. 07/2020 dt. 11.03.2020
14.	Bihar	Ranchi	Order No. 01/2020 dt. 21.02.2020
15.	Jharkhand		Order No. 02/2020 dt. 21.02.2020
16.	Chhattisgarh	Bhopal	Order No. NIL dt. 20.01.2020
17.	Madhya Pradesh		Order No. NIL dt. 20.01.2020
18.	Delhi	Delhi	Order No. 01/2020 dt. 10.06.2020
19.	Goa	Pune	Order No. 01/2020 dt. 15.01.2020
20.	Karnataka	Bengaluru	Order No. 01/2020 dt. 10.01.2020
21.	Kerala	Thiruvananthapuram	Order No. 01/2020 dt. 10.02.2020
22.	Lakshadweep		Order No. 01/2020 dt. 03.07.2020
23.	Maharashtra	Mumbai	Order No. 04/2020 dt. 10.01.2020
24.		Pune	Order No. 02/2020 dt. 15.01.2020
25.		Nagpur	Order No. 01/2020 dt. 28.01.2020
26.	Odisha	Bhubaneswar	Order No. NIL dt. 05.03.2020
27.	Rajasthan	Jaipur	Order No. 01/2020 dt. 16.01.2020

28.	Sikkim	Kolkata	Order No. 33/2020 dt. 20.02.2020
29.	West Bengal		Order No. 62/2020 dt. 29.05.2020
30.	Telangana	Hyderabad	Order No. 01/2020 dt. 29.01.2020
31.	Uttar Pradesh	Meerut	Order No. 01/2020 dt. 01.02.2020
32.		Lucknow	Order No. 01/2020 dt. 27.02.2020
33.	Uttarakhand	Meerut	Order No. 01/2020 dt. 01.02.2020
34.	Vadodara	Vadodara	Order No. NIL dt. 05.02.2020

5. Following States / UTs / CBIC Zones have not yet constituted GRC. The GST Council Secretariat has reminded them vide OM dated 02.06.2020, 20.07.2020, DO letter dated 24.08.2020 and OM dated 16-09-2020.

S. No.	State / UT	CBIC Zone	Status of constitution of GRC
1.	Andaman and Nicobar Islands	Kolkata	Pending
2.	Dadra Nagar Haveli, Daman and Diu	Vadodara	Pending
3.	Gujarat	Ahmedabad	Pending
4.	Haryana	Panchkula	Pending
5.	Puducherry	Chennai	Pending
6.	Tamil Nadu		Pending

6. The GSTN has created a specific portal uploading the grievances received in these meetings, for the purpose of escalating the same to the appropriate authority. The CBIC Zones / States / UTs have been requested to take Login credentials for the specific portal where the GRC is constituted.

7. The latest status of the above **constitution of Grievance Redressal Committee at Zonal / State level for redressal of grievance of taxpayers on GST related issues** is placed before the 42<sup>nd</sup> meeting of the GST Council scheduled on 05.10.2020 for information.

**Agenda Item 13: Performance Report of the NAA (National Anti-profiteering Authority) for the 1<sup>st</sup> quarter (April to June, 2020) for the information of the Council**

In terms of provisions of clause (iv) of Rule 127 of the CGST Rules 2017, National Anti-Profiteering Authority (NAA) is required to furnish a performance report to the GST Council by 10th of the closing of each quarter. Anti-profiteering provisions are contained under Section 171 of the CGST Act, 2017 which empowers NAA to determine as to whether benefit of reduced rate of tax or the Input Tax Credit (ITC) has been passed on to the recipient by way of commensurate reduction in the prices and in case of failure, NAA may order reduction in prices, commensurate benefit to recipient, impose penalty and cancel registration, in suitable cases.

2. Anti-profiteering mechanism under GST is a multi-tier mechanism. The methodology of examination of the complaints to determine profiteering is asunder:

- i. State Level Screening Committee (SLSC) examines State level complaint and recommends to the Standing Committee(SC);
- ii. SC, in addition to complaints recommended by SLSC, also receives complaint directly in respect of suppliers having pan India or presence in more than one State/UT;
- iii. SC examines and sends recommendation to the DG, Anti-profiteering (DGAP).
- iv. DGAP then completes investigation, within a period of 3 months, and furnishes a report of its findings to NAA.
- v. Based on the report from DGAP, NAA determines all aspects relating to profiteering, passes its order regarding reduction in prices; return of amount to recipient; imposition of penalty; and cancellation of registration.

3. Accordingly, the performance report of anti-profiteering at various levels for the quarter ending June, 2020 of Financial Year 2020-21, is as under:

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

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (during Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
<b>66</b>	<b>21</b>	<b>21</b>	<b>14</b>	<b>01</b>	<b>06</b>	<b>66</b>

3.2. Performance of DG(Anti-profiteering) for quarter ending March, 2020 & June, 2020:

Opening Balance (No. of cases)	Receipt	Category of cases received					Disposal	Mode of disposal of cases		Closing Balance (No. of cases)
		Construction Services	FMCG	Restaurant Services	Cinema	Others		Report to NAA confirming profiteering	Report to NAA for closure action	
Quarter- January to March, 2020										
91	32	21	6	3	1	1	43	37	6	80
Quarter- April to June, 2020										
80	45	29	5	2	5	4	9	7	2	116

3.3. Performance report of the **Standing Committee** on Anti-profiteering

Quarter	Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
<b>January to March, 2020</b>	<b>165</b>	<b>88</b>	<b>165</b>	<b>88</b>
<b>April to June, 2020</b>	<b>88</b>	<b>58</b>	<b>115</b>	<b>31</b>

3.4. Performance report from the **State Level Screening Committee**:

Quarter	Opening Balance (No. of cases)	Receipt	Disposal		Closing Balance (No. of cases)
			Cases referred to Standing Committee	Cases Rejected	
<b>January to March, 2020</b>	<b>92</b>	<b>107</b>	<b>111</b>	<b>47</b>	<b>41</b>
<b>April to June, 2020</b>	<b>38</b>	<b>38</b>	<b>29</b>	<b>31</b>	<b>16</b>

**Note:** A detailed performance of each State Level Screening Committee is enclosed at Annexure“**A**”.

4. Due to corona pandemic outbreak, the orders in cases where in the limitation was expiring between 20.03.2020 and 29.03.2020 might not be passed within a period of 6 months from the date of receipt of the report from the DGAP due to force majeure. Accordingly, the orders were passed in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020 issued by the Govt. of India, Ministry of Finance (Department of Revenue), CBIC under Section 168A of the CGST Act, 2017 as amended vide the Notification No. 55/2020-Central Tax dated 27.06.2020. Also the hearings scheduled from 01.04.2020 to 31.05.2020 could not be held due to extended lockdowns in Delhi till 31.05.2020. Thereafter, personal hearing has been accorded only on the specific request by the interested parties preferably through video conferencing.

5. The complaints received by the Authority during the Quarter were forwarded to the respective Screening Committee/Standing Committee where allegation of profiteering was there. The complaints related to enforcement issues and where allegation relates to tax-evasion etc., were forwarded to the Jurisdictional Chief Commissioners and CCTs for necessary action.

6. Accordingly, the 1<sup>st</sup> quarterly report of the National Anti-profiteering Authority for the period from **April to June 2020** is placed before the GST Council.

## Annexure A

Performance Report of the State Level Screening Committee for Quarter (January to March 2020)							
S.No	States	Recieved/Not Received	Opening Balance	Reciept	Disposal		Closing Balance
					Standing Committee	Rejected	
1	Andhra Pradesh	✓	4	0	4	0	0
2	Arunachal Pradesh	✓	0	0	0	0	0
3	Assam	✓	0	0	0	0	0
4	Bihar	✓	0	6	4	2	0
5	Chhattisgarh	✓	0	2	1	0	1
6	Goa	✓	0	2	0	2	0
7	Gujarat	✓	6	4	2	4	4
8	Haryana	X					
9	Himachal Pradesh	✓	0	0	0	0	0
10	Jammu and Kashmir	✓	0	0	0	0	0
11	Jharkhand	✓	0	3	0	1	2
12	Karnataka	✓	2	25	17	4	6
13	Kerala	✓	9	0	3	6	0
14	Madhya Pradesh	✓	4	1	1	2	2
15	Maharashtra	✓	3	20	23	0	0
16	Manipur	✓	0	0	0	0	0
17	Meghalaya	✓	0	0	0	0	0
18	Mizoram	✓	0	0	0	0	0
19	Nagaland	✓	0	0	0	0	0
20	NCT of Delhi	✓	7	23	2	14	14
21	Odisha	✓	0	0	0	0	0
22	Puducherry	✓	0	0	0	0	0
23	Punjab	X					
24	Rajasthan	✓	1	0	0	1	0
25	Sikkim	✓	0	0	0	0	0
26	Tamil Nadu	✓	4	1	1	4	0
27	Telangana	✓	14	3	4	5	8
28	Tripura	✓	0	0	0	0	0
29	Uttar Pradesh	✓	29	7	32	0	4
30	Uttarakhand	✓	5	1	6	0	0
31	West Bengal	✓	4	9	11	2	0

		29	92	107	111	47	41
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Performance Report of the State Level Screening Committee for Quarter (April to June 2020)							
S.No	States	Recieved/Not Received	Opening Balance	Reciept	Disposal		Closing Balance
					Standing Committee	Rejected	
1	Andhra Pradesh	✓	0	0	0	0	0
2	Arunachal Pradesh	✓	0	0	0	0	0
3	Assam	✓	0	0	0	0	0
4	Bihar	✓	0	12	0	11	1
5	Chhattisgarh	X					
6	Goa	✓	0	0	0	0	0
7	Gujarat	✓	4	0	0	0	4
8	Haryana	✓	0	0	0	0	0
9	Himachal Pradesh	✓	0	0	0	0	0
10	Jammu and Kashmir	✓	0	0	0	0	0
11	Jharkhand	✓	2	0	0	0	2
12	Karnataka	✓	6	4	9	0	1
13	Kerala	X					
14	Madhya Pradesh	X					
15	Maharashtra	✓	0	0	0	0	0
16	Manipur	✓	0	0	0	0	0
17	Meghalaya	✓	0	0	0	0	0
18	Mizoram	✓	0	0	0	0	0
19	Nagaland	✓	0	0	0	0	0
20	NCT of Delhi	✓	14	14	1	20	7
21	Odisha	X					
22	Puducherry	✓	0	0	0	0	0
23	Punjab	X					
24	Rajasthan	✓	0	0	0	0	0
25	Sikkim	✓	0	0	0	0	0
26	Tamil Nadu	✓	0	0	0	0	0
27	Telangana	✓	8	1	9	0	0
28	Tripura	✓	0	0	0	0	0

29	Uttar Pradesh	✓	4	3	7	0	0
30	Uttarakhand	✓	0	0	0	0	0
31	West Bengal	✓	0	4	3	0	1
		<b>26</b>	<b>38</b>	<b>38</b>	<b>29</b>	<b>31</b>	<b>16</b>