

Confidential



Agenda for 43rd Meeting of the GST Council

28th May 2021

Volume – 3





GST Council Secretariat

New Delhi

Dated: 16th May 2021

Notice for the 43rd Meeting of the GST Council Scheduled on 28th May 2021

The undersigned is directed to refer to the subject cited above and convey that the 43rd Meeting of the GST Council would convene on **28th May 2021 (Friday)** through Video Conference. The schedule of the meeting is as follows:

28th May 2021(Monday) : 1100 Hours onwards

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

(-Sd-)

(Tarun Bajaj)

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 (with legislature) 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/UT 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

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Discussion on Agenda Items

Agenda Item 6 -Ad-hoc Exemptions Orders issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information

Ad hoc IGST Exemption Order No. 4/2021-Customs dated 03.05.2021 for specified imported goods when donated for COVID-19 relief subject to conditions

In continuation of Agenda Item No.6 given in Vol-II, the following information is furnished: Amidst the surging second wave of the COVID-19 pandemic, requests were received for exempting COVID-19 relief material donated from abroad, meant for free distribution, from IGST. Certain COVID related goods such as Remdesivir injection and its API, specified diagnostic markers, medical oxygen, oxygen concentrators and other oxygen storage and transportation equipment, and COVID-19 vaccines had already been exempted from BCD and/or Health cess for limited period, vide Customs notification No. 27/2021-Customs dated 20.04.2021, as amended, and No. 28/2021-Customs dated 24.04.2021.

2. In view of the prevailing situation, Ad hoc exemption Order No. 4/2021-Customs dated 3.5.2021 has been issued granting exemption from IGST on those goods for COVID-19 relief imported free of cost for free distribution, till 30th June, 2021, which are covered under the above mentioned Customs notifications. This exemption Order is anticipated to ease the tax incidence on donated COVID-19 relief material meant for free distribution in the country.

3. During the 26th GST council meeting held on 10.3.2018, the Union Finance Minister was vested with the authority to grant ad hoc exemption under section 25(2) of the Customs Act, 1962, from IGST on imports of goods and services or both under circumstances of an exceptional nature to be stated in such order. It was also decided that each such ad hoc exemption order would be placed before the Council after issue of such order.

4. In the instant case, in the circumstances of exceptional and grave nature, an exemption order covering imports of specified COVID-19 relief material received free of cost from outside India and meant for free distribution was issued, exempting IGST on such imports for a limited period (upto 30.6.2021), subject to certain safeguards, vide Ad hoc exemption Order No. 4/2021-Customs dated 3.5.2021 (copy enclosed). This Order satisfies the ingredients of ad hoc exemptions and is in the spirit of the approval of the GST Council empowering the Union Finance Minister to issue an ad hoc exemption from IGST. The Central Government has also exempted basic customs duty. Consequently, the specified goods listed in the **Annexure-I**, covered by adhoc exemption order shall not attract any Customs duty and IGST. As stated above, IGST exemption applies upto 30.6.2021.

5. The Ad hoc Exemption Order is placed before the GST Council as Annexure-VI at pp.20-21 of Volume-I of the Agenda Note, for information.

Annexure-I

List of goods covered by IGST exemption under Ad hoc Exemption Order No. 4/2021-Customs dated 03.05.2021

S.No.	Chapter or heading or sub-heading or tariff item	Description of goods
(1)	(2)	(3)
1.	29	Remdesivir Active Pharmaceutical Ingredients.
2.	29	Beta Cyclodextrin (SBEB CD) used in manufacture of Remdesivir, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.
3.	30	Injection Remdesivir.
4.	3822, 3002	Inflammatory Diagnostic (marker) kits, namely- IL6, D-Dimer, CRP(C-Reactive Protein), LDH (Lactate De-Hydrogenase), Ferritin, Pro Calcitonin (PCT) and blood gas reagents.
5.	9019 20, 9804	Oxygen concentrator including flow meter, regulator, connectors and tubings.
6.	2804 40	Medical Oxygen
7.	8421 39	Vacuum Pressure Swing Absorption (VPSA) and Pressure Swing Absorption (PSA) oxygen plants, Cryogenic oxygen Air Separation Units (ASUs) producing liquid/gaseous oxygen.
8.	7311	Oxygen canister.
9.	9018	Oxygen filling systems.
10.	7311	Oxygen storage tanks
11.	9018	Oxygen generator
12.	7311	ISO containers for Shipping Oxygen
13.	7311, 8418 or 8419	Cryogenic road transport tanks for Oxygen
14.	7311, 8418 or 8419	Oxygen cylinders including cryogenic cylinders and tanks
15.	Any Chapter	Parts of goods at S.No.1 and 3 to 10 above, used in the manufacture of equipment related to the production, transportation, distribution or storage of Oxygen, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

16.	9019	Any other device from which oxygen can be generated
17.	9018 or 9019	Ventilators, including ventilator with compressors; all accessories and tubings; humidifiers; viral filters (should be able to function as high flow device and come with nasal canula).
18.	9018	High flow nasal canula device with all attachments; nasal canula for use with the device.
19.	6506 99 00	Helmets for use with non-invasive ventilation.
20.	9019	Non-invasive ventilation oronasal masks for ICU ventilators.
21.	9019	Non-invasive ventilation nasal masks for ICU ventilators.
22.	3002	COVID-19 vaccine.

Agenda Item 9A(iv) - Proposal to exempt government departments/entities, governmental authorities/local authorities from the requirement to issue e-invoice

In terms of Notification No. 13/2020 – CT dated 21.03.2020, as amended, provisions related to issuance of e-invoice in respect of B2B supplies were rolled out, in phases, as below:

- a. w.e.f. 01st October, 2020 first phase of e-invoicing was rolled out for the taxpayers having aggregate turnover exceeding Rs. 500 Cr in any preceding financial year from 2017-18 onwards;
- b. w.e.f. 01st January 2021 second phase of e-invoicing was rolled out for the taxpayers having aggregate turnover exceeding Rs. 100 Cr in any preceding financial year from 2017-18 onwards; and
- c. w.e.f. 01st April 2021 third phase of e-invoicing was rolled out for the taxpayers having aggregate turnover exceeding Rs. 50 Cr in any preceding financial year from 2017-18 onwards.

2. In terms of the aforesaid notification, the following registered persons are exempted from issuance of e-invoice, even if their aggregate turnover exceeds Rs 50 crores:

- a. Special Economic Zone Units
- b. Insurers
- c. Banking companies or financial institutions, including a non-banking financial company (NBFC)
- d. Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage
- e. Suppliers of passenger transportation service
- f. Suppliers of services by way of admission to exhibition of cinematograph films in multiplex screens
- g. Persons registered in terms of rule 14 of CGST Rules (OIDAR)

3. A reference was received from Government of West Bengal to exempt Government departments and local authorities from the requirement of issuance of e-invoice for reducing compliance burden of said entities. Accordingly, the issue was deliberated by the Law Committee in its meeting held on 17.03.2021. Law Committee has recommended exempting Government departments and local authorities from the requirement of issuance of e-invoice.

4.1 The impact of proposed exemption has also been analysed in terms of total B2B invoices issued by Government departments and Local authorities vis-à-vis total B2B invoices issued and percentage of input tax credit (ITC) passed on such invoices. The data, for number of such GSTINs based on turnover for FY 2019-20 and for value of B2B supplies and ITC passed by such entities for a sample month of December, 2020, is tabulated below:

Table-1 (No. of GSTINs)

Turnover Slab on F.Y 2019-20	No. of GSTIN			%age of Rest of All against total	%age of GOV+LOC against total
	Governm ent	Local Bodies	Rest of all		
50 to 100 Cr	38	10	31810	99.85%	0.15%
100 to 500 Cr	62	32	26836	99.65%	0.35%
Above 500 Cr	48	17	7016	99.08%	0.92%
Grand Total	148	59	65662	99.69%	0.31%

Table-2 (B2B Supply Value)

(Amounts in Cr.)

Turnover Slab on F.Y 2019-20	B2B Supply Value			%age of Rest of All against total	%age of GOV+LOC against total
	Governm ent	Local Bodies	Rest of all		
50 to 100 Cr	164.71	7.25	1,68,244.82	99.9%	0.1%
100 to 500 Cr	601.91	226.48	3,80,320.77	99.78%	0.22%
Above 500 Cr	13,914.54	647.45	7,23,300.89	98.02%	1.98%
Grand Total	14,681.16	881.18	1271866.47	98.8%	1.2%

Table-3 (ITC Flow)

(Amounts in Cr.)

Turnover Slab on F.Y 2019-20	ITC Flow			%age of Rest of All against total	%age of GOV+LOC against total
	Governm ent	Local Bodies	Rest of all		
50 to 100 Cr	20.48	1.27	22,360.22	99.9%	0.1%
100 to 500 Cr	70.05	36.20	53,534.87	99.8%	0.2%
Above 500 Cr	849.38	102.82	1,05,430.23	99.1%	0.9%
Grand Total	939.91	140.29	1,81,325.32	99.41%	0.59%

- 4.2 Analysis of data shown in Table 1, 2 and 3 above suggests the following:
- a. Out of total GSTINs required to issue e-invoice, number of GSTINs for government departments and local authorities constitute only 0.31%.
 - b. Value of B2B Supply made by such government departments and local authorities is 1.2% of all B2B supplies.
 - c. ITC passed through B2B invoices by such government departments and local authorities is 0.59% of total ITC flow.
- 4.3 Thus considering that contribution of government departments and local authorities to value of B2B supplies as well as ITC flow is a miniscule percentage i.e. 1.2% of value of total B2B supplies and 0.59% of total ITC flow respectively, the proposal to grant exemption to government departments and local authorities from requirement of issuance of e-invoice, as recommended by Law Committee in its meeting dated 17.03.2021, may be considered.
5. The issue is placed before the GST Council for deliberation and approval.

Agenda Item 11: Issues recommended by the Fitment Committee for the consideration of the GST Council

Agenda Item 11(i): Covid-19 related recommendations

This agenda note deals with representations/recommendations received from States, Ministries and other stake holders (trade and individuals) seeking reduction/exemption in GST rates on items being used for Covid-19 relief. These representations/recommendations can be broadly classified under two categories as under, -

- A. Requests for enhancement of the scope of Ad hoc Exemption Order No. 04/2021-Customs dated 03.05.2021 for Covid-19 relief goods received from abroad; and
- B. Requests for reduction in GST rates on Covid-19 related drugs, vaccines and other goods/equipment.

In certain cases, petition for relief has been directly filed before the Hon'ble High Courts, mostly relating to personal import of concentrator.

2. These issues have been considered in detail by the Fitment Committee and are summarised below, -

A. Requests for enhancement of the scope of Ad hoc Exemption Order No. 04/2021-Customs dated 03.05.2021

2.1 Amidst the surging second wave of the COVID-19 pandemic, requests have been received for exempting COVID-19 relief material donated from abroad and meant for free distribution, from customs duties, including IGST. In view of the exceptional circumstances, an Ad Hoc Exemption Order No. 4/2021-Customs dated 3.5.2021 was issued granting exemption from IGST on those goods for COVID-19 relief imported free of cost for free distribution, till 30th June, 2021. The Basic Customs Duty (BCD) and Health Cess has also been exempted on these items vide separate notifications.

2.2 In this regard, representations have been received from various States, Ministries and other offices of Centre as well as other stakeholders to extend the IGST exemption to goods specified in the Ad hoc Exemption Order No. 04/2021-Customs dated 03.05.2021, when these are imported, -

- (a) at own cost by UN and its agencies, especially WHO, UNICEF and UNDP for free distribution to States and other agencies;
- (b) at own cost by donor organisations based in India, whether governmental, non-governmental or purely private, for free distribution or donation to government; and
- (c) by corporates by their Corporate Social Responsibility (CSR) funds, for free distribution either to State or any hospitals/facilities involved in Covid-19 management.

2.3 The above representations were discussed in the Fitment Committee and the Committee was of the view that there was merit in extending the IGST exemption to import of the specified Covid relief material by any entity, at its own cost, for free distribution or donation to government or hospitals/facilities involved in Covid-19 management, subject to such conditions as may be prescribed to prevent misuse of this exemption. This exemption may terminate on the same date as Ad hoc exemption terminates (30.6.2021). The proposal for consideration of the Council is that exemption

from IGST be granted to import by any person if such goods are supplied to Central or State Government or to any not-for-profit hospital/facility involved in Covid 19 management. The condition of this exemption may be that the (i) importer shall submit a letter from the donee that the importer shall be donating the imported goods to them, and (ii) the importer shall, within 3 months from imports, submit a letter from donee that imported goods were received by them.

B. Requests for reduction in GST rates on Covid-19 related drugs, vaccines and other goods/equipment

3.1 Representations have also been received from various stakeholders for reduction in GST rates on specified goods being used in Covid-19 relief in the current wave of the pandemic. These requests are broadly related to reduction in GST Rates on, -

- (a) Covid-19 Vaccine;
- (b) Covid-19 related drugs and medicines; and
- (c) Other goods/equipment being used for Covid management and relief.

3.2 While examining these views, the Fitment Committee was broadly of the view that while there is need for providing relief by way of GST concessions for identified Covid-19 relief items, certain aspect relevant to decision making need consideration, which are as follows:

- (i) Relief may be considered only by way of rate reduction
- (ii) Upfront exemption to manufactured goods is not desirable as exemption adversely impact domestic manufacturing
- (iii) The general lowest rate of GST is 5%. Therefore, on merit 5% rate be considered where concession is to be considered. Any special lower rate may not be opted for considering 5% is a nominal rate, it the lowest standard rate that applies to other lifesaving medicines.
- (iv) The purchase of goods by Government may not require exemption as cost is paid by the Governments. Tax also goes to Government.
- (v) GST concessions should essentially be considered on those items which are critical and are procured by patients.
- (vi) Zero rating of items for domestic consumption is not permissible in law.

3.3 Further, the Fitment Committee also took note of the Writ Petitions being filed in various High Courts of the country seeking IGST exemption on personal imports of Oxygen Concentrators (received as gifts).

3.4 The proposal for reduction in IGST rate on Oxygen Concentrators and other critical goods and equipment for Covid-19 was discussed in detail and the recommendation thereon are mentioned in para 3.7 below.

Covid-19 Vaccine

3.5 With regard to Covid-19 Vaccine, the Committee was of the view that such vaccines are already in the lowest GST rate slab of 5%. These are almost entirely being procured by the Centre and State governments and being provided free of cost. GST paid would ultimately accrue to Centre and the States itself. On the other hand, granting complete exemption would result in increased cost of production because the domestic manufacturers of Covid-19 vaccines would not be able to take Input Tax Credit (ITC) on tax paid on their input goods and services. Accordingly, the Fitment Committee was of the view that Covid-19 vaccines may continue at 5% rate.

Covid-19 related drugs and medicines

3.6 With regard to Covid-19 related drugs and medicines, including anti-body cocktails, the Fitment Committee noted that most of the drugs being used in Covid-19 management are already at a concessional rate of 12% or 5%. Further, the Covid-19 treatment protocol was also undergoing changes based on new learnings and studies on efficacy of drugs and medicines being used. That being so, the committee while in principle arriving at a view that the GST rate on such Covid-19 related drugs and medicines should be lower, it may not be feasible to identify any particular drug that is meant for Covid cure. Committee also observed that recently Remdesivir has also been removed by WHO from official medical list. If, Ministry of Health and Family Welfare, later recommends any medicine specifically the same may be examined for GST concession.

Other goods/equipment being used for Covid management

3.7 The Fitment Committee also discussed the representations on reduction in Other goods/equipment being used for Covid management and relief and recommendations of the Committee in this regard are as under, -

S. No.	Description of Goods	Present GST Rate (%)	GST Rate recommended by Fitment Committee (%)	Comments
A. Recommendation of Fitment Committee for change in GST rate on Goods				
1.	Medical Grade Oxygen	12%	5% till 31.07.2021	<ul style="list-style-type: none">Keeping into account the present situation, Fitment Committee took a view to reduce GST on Medical Oxygen, Oxygen Concentrators and other oxygen generating equipment to 5% until 31st July, 2021.Full exemption from GST is not recommended as that would result in increased cost of production of these goods because their domestic manufacturers would not be able to take ITC on tax paid on their input goods and services.
2.	Oxygen Concentrators/generator	12%	5% till 31.07.2021	
3.	Pulse Oximeters including personal imports	12%	5% till 31.07.2021	

S. No.	Description of Goods	Present GST Rate (%)	GST Rate recommended by Fitment Committee (%)	Comments
				GST Rate to 5% until 31 st July, 2021.
4.	Covid Testing Kits	12%	5% till 31.08.2021	<ul style="list-style-type: none"> Owing to the increased demand for Covid-19 testing during the current wave of the pandemic, the Fitment Committee was of the view that the GST rate on such testing kits be reduced to 5% till 31.08.2021.
B. Items where no change of GST Rate proposed by Fitment Committee				
1.	PPE Kits	5%	No change	<ul style="list-style-type: none"> PPE Kit and mask are already at 5%. There is substantial production of these goods in the country. Hand sanitizer is a common use item. Even soap is at 18%. Masses use soap. Ventilators is not an item for procurement by an individual. It is not as critical and short supply as oxygen concentrator. 12% is a reasonable rate as applies to all medical equipment and hence it may continue at 12% Full exemption from GST is not recommended as that would result in increased cost of production of these goods because their domestic manufacturers would not be able to take ITC on tax paid on their input goods and services
2.	N95 masks/ triple layer masks, Surgical masks	5%	No change	
3.	Ventilators	12%	No change	
4.	Hand sanitizers	18%	No change	
5.	Temperature check equipment	18%	No change	
6.	Ambulances	28%	No change	<ul style="list-style-type: none"> The Fitment Committee did not recommend any change in GST rate as a

S. No.	Description of Goods	Present GST Rate (%)	GST Rate recommended by Fitment Committee (%)	Comments
				majority these ambulances are modified after clearance as normal vehicles. <ul style="list-style-type: none"> Ambulances are for institutional sale.
7.	Portable Hospital Units	18%	No change	<ul style="list-style-type: none"> The Fitment Committee was of the view that such Portable Hospital Units have very limited use in the context of Covid-19 management. The Fitment Committee accordingly did not recommend any change in GST rate on these goods.
8.	Raw materials for manufacture of Covid Testing Kits	Applicable Rate	No change	<ul style="list-style-type: none"> The Fitment Committee was of the view that these are goods are in the nature of inputs and the GST paid on such goods is available as ITC to the buyers thereof. Accordingly, the Fitment Committee did not recommend any change in GST rate on these goods.
9.	RT PCR machines	18%	No change	
10.	RNA extraction machines	18%	No change	
11.	Genome sequencing kits and machines	12% / 18%	No change	
12.	Specified Inflammatory Diagnostic Kit namely D-Dimer, IL-6, Ferritin and LDH	12%	No change	<ul style="list-style-type: none"> The Fitment Committee was of the view that these diagnostic kits are used for diagnosis of diseases other than Covid-19 also. Accordingly, the Fitment Committee did not recommend any change in GST rate on these goods.

3.8 It is also to mention that in a petition filed before the Hon'ble Delhi High Court (WP No. 16554/2021) the Hon'ble Delhi High Court, vide order dated 21.5.2021, has given relief and has interpreted that exemption is available to the petitioner from IGST, on personal import of concentrator as gift, vide an entry 607A of notification 50/2017-Cus. This entry was inserted on the recommendation of GST Council (23rd meeting held on 10.11.2017.). Said entry 607A provides

exemption for lifesaving drugs and medicines for personal use, supplied free of cost by overseas supplier' subject to the similar condition of certification by prescribed medical authorities. In the process, Hon'ble Court has also waived of the condition as prescribed as being impractical and inefficacious and replaced the requirement of certification by medical authority in each case by a self-certification by the importer. Court has stated that drugs include oxygen concentrator and therefore covered under this exemption. It may be mentioned that Court was apprised the GST Council shall be looking at the issues of General exemption from GST on COVID relief items. Hon'ble Council shall be updated of action taken in the matter during the meeting of the Council.

Agenda Item 11(ii): Other recommendations of the Fitment Committee related to changes in rates on goods or issuance of clarifications related to goods

Recommendations made by the Fitment Committee for making changes in GST rates or for issuance of clarification in relations to goods

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
1.	Diethylcarbamazine tablet (DEC) supplied to WHO, India by SEZ unit	30	12%	Nil	<ol style="list-style-type: none"> 1. Diethylcarbamazine tablet (DEC) is a part of treatment regime recommended by World Health Organization (WHO) and is used in the Mass Drug Administration to eliminate Lymphatic Filariasis (LF) as a Public Health problem through its Global Programme to Eliminate Lymphatic Filariasis (an endemic disease). India is also a beneficiary of this programme. It is estimated that 51 million people globally (2018) suffer from this deadly disease, with major share in India. 2. World Health Organization (WHO) has been supporting the LF elimination programme in India by providing drugs, diagnostics and technical support. 3. There is only one company located in an SEZ unit which is the sole donor of this medicine to WHO India 4. In normal course, free supplies when made in the domestic tariff area, no GST is attracted. However, in this particular case the supplier is located in SEZ. 5. As per section 30 of the SEZ Act, 2005, supplies to Domestic Tariff Area from SEZ are chargeable to duties and tax as is leviable on such goods when imported. Hence, even though, the SEZ supply to WHO is free of cost (donation) but being on par with imports, it attracts GST of 12% (as applies to the said medicine). 6. The company has paid GST on donations made to WHO and has put on hold further supplies unless the matter has been sorted. Ministry of Health and Family Welfare has also recommended early resolution of the issue.

					7. Fitment Committee considering the importance of this medicine, and also realising that domestic units when making exempted or gift supplies are also required to reverse Input tax credit, felt that instead of exempting the supply, it would be appropriate to reduce the GST rate on this item from 12% to 5% on Diethylcarbamazine tablet (DEC).
2.	All goods (although specific case pertains to Re-imported aircraft parts)		As applicable	Clarificatory amendment	<p>1. Briefly, the issue is that re-import of goods sent abroad for repair attracts customs duty and IGST on a value equal to the repair value, insurance and freight.</p> <p>2. The method of valuation and exemption to the value in excess of repair, insurance and freight cost has been provided through notification No. 45/2017-Cus.</p> <p>3. In fact the issue of 5% imports on imports of such repaired items for civil aviation industry has been discussed at length in the context of Ministry of Civil Aviation and industry request that credit of this tax is not eligible to them as ITC in view of the restriction imposed on them for taking ITC on input goods. In other words, industry has been fully aware that this levy is attracted.</p> <p>4. However, the CESTAT in the case of Interglobe Aviation Limited vs. Commissioner of Customs, IGI Airport, New Delhi vide its order No. 51226 – 51571/2020 has taken a view that no IGST shall be chargeable on such imports, including on the value of repair, insurance and transport taking technical view on the relevant notification, which has existed since 1996 and was continued in GST, merely citing a reason that while in the preamble, IGST has been mentioned but at other places in the notification, IGST has not been mentioned (but only duties of customs has been mentioned- which is a continuation from Pre-GST regime). Accordingly, it has taken</p>

					<p>a view that the intention is to exempt IGST.</p> <p>5. The intention has clearly been to impose customs duty and IGST on re-import of goods on a value that represents the cost of repair, insurance and freight. In the pre-GST period also, reimport attracted basic customs duty and additional duty equal to excise and the special additional duty of customs in lieu of VAT. As stated above, the pre-GST dispensation was carry forwarded to GST and in place of additional duty of Customs, IGST was duly replaced in the preamble of the notification, while the phrase, “duty of customs” continued as is at the entry level.</p> <p>6. The judgment has been challenged in the Hon’ble Supreme Court.</p> <p>7. In the above background, it would be appropriate if the issue is explicitly clarified, and if required clarificatory amendment be made in the notification in consultation with Law Ministry, along with detailed clarification.</p> <p>8. The Fitment Committee agreed with the proposal and recommends that the decision of the GST Council that re-import of goods sent abroad for repair attracts IGST on a value equal to the repair value, insurance and freight, may be explicitly clarified, making the intention clear, in the light of discussion that has taken place in the Council meetings on the issue.</p>
3.	Parts of the Sprinklers/Drip irrigation system supplied separately if	8424	12%	Clarification / Amendment	<p>1. The issue of GST on sprinkler system including lateral has been discussed in past in the Council. Initially, GST rate on nozzles for sprinkler system was prescribed at 12%.</p> <p>2. Subsequently, in 24th GST council meeting, dated 16th December, 2017, the Hon’ble Minister from Karnataka suggested that rate of tax on the components specifically used for micro irrigation works should be</p>

					<p>brought down from 18% to 12%. The council referred the matter to the fitment committee.</p> <p>3. In 25th GST council meeting, dated 18th January, 2018, the fitment committee recommended concessional 12% GST for micro irrigation systems, namely, sprinklers, drip irrigation system, including laterals, falling under heading 8424. This recommendation was approved by the Council.</p> <p>4. The entry 195B was inserted under Schedule II of notification no. 1/2017- Central Tax (Rate), dated 28th June, 2017. This entry read as below “195B (heading 8424) Sprinklers; drip irrigation system including laterals; mechanical sprayers-12%” Nozzles for sprinkler system (falling under heading 8524) also attract GST of 12% vide entry 195AA.</p> <p>5. However, recently, doubts were raised whether the parts of the sprinklers/drip irrigation system would attract 12% or 18% GST rate, if supplied separately rather than along with the sprinkler/drip irrigation systems.</p> <p>6. To remove these doubts, Fitment Committee recommends issuance of clarification to the effect that the parts of the sprinklers/drip irrigation system falling under heading 8424 (laterals and nozzles) attract GST rate of 12%, whether these are supplied separately or along with sprinklers/drip irrigation system. Other parts and components, falling under headings other than 8424, attract the GST rate as applicable for that respective heading.</p>
4.	Toy balloons made up of natural rubber latex	9503	5%	Clarification / Amendment	<p>1. Ambiguity over the classification of ‘toy balloons made of natural rubber latex’ arose because of the substitution of S. No. 259A of the notification Nos.1/2017- Central Tax (Rate), dated the 28th June, 2017 vide Notification No.</p>

					<p>41/2017- Central Tax (Rate), dated 14th November 2017.</p> <ol style="list-style-type: none"> 2. According to above entry, 'toy balloons made of natural rubber latex' is classifiable under heading 4016 or 9503. 3. However, clause (h) of HSN Explanatory notes to heading 4016 clearly specifies that the said heading does not cover "Toy, games and sports requisites and parts thereof of Chapter 95". 4. Also, clause (vii) under section (D) HSN Explanatory notes to heading 9503 clearly specifies that the said CTH includes 'toy balloons'. 5. Therefore, entries against S. No. 259A of the notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017 needs to be modified to make it applicable for heading 9503 only. 6. Suitable changes in the Customs side have already been done in the Union Budget 2021-22. 7. Fitment committee recommends to issue necessary clarification/ amendment to the notification No. 1/2017-Central Tax (Rate), dated the 28th June, 2017 to provide that 'toy balloons' are classifiable under heading 9503.
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Issues not recommended for change in GST Rate and Issues deferred by the Fitment Committee for further examination in relation to goods

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
1.	Fortified Rice Kernel (Premix)	1904	18%	Rate reduction	<p>1. Fortified rice kernel (premix) is produced at substantive value addition over normal rice. Fortified Rice Kernel (FRK) is a reconstituted rice grain made from rice flour, vitamins, and minerals using hot extrusion technology. Thus, FRK is a value-add product. So exempting it would not be appropriate.</p> <p>2. Fitment Committee deferred the issue on the grounds that the matter will be examined when Fortified rice becomes part of the Public distribution system.</p> <p>3. Also Fitment required that more information be collected from the Department as regards estimated volumes, pricing, input costs, and value addition in the manufacture of fortified rice kernel for taking a view.</p>
2.	Branded Pulses and Food Grains		5%	Nil	<p>1. The GST Council discussed rate on food grains put up in unit container and bearing a brand name in great detail and recommended 5% GST rate on the same.</p> <p>2. Subsequently, to check tax avoidance certain changes were made in the provision, including that if a dealer foregoes an actionable claim against his brand name, no GST will apply.</p> <p>3. There is adequate protection in GST for</p>

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
					<p>small suppliers. Such small suppliers are covered under turnover threshold exemption from GST. Further, small suppliers can opt for the composition scheme and pay tax at the rate of 1% of the turnover. This limit for the composition scheme has been increased by GST Council to Rs 1.5 Crore.</p> <p>4. Presently, due to the rate differential between branded and unbranded food items, the small and medium enterprises get some advantage and thus are benefitted.</p> <p>5. Branded food is sold at a premium over the unbranded food items.</p> <p>6. The issue of rate reduction on branded pulses and food grains was placed before the GST Council in its 31st and 37th meetings, but was not recommended by the Council.</p> <p>7. Fitment Committee accordingly, deferred the issue and desired more information be collected in the matter.</p>
3.	Oil used for lighting divine lamps generally called as Deepam Oil	1515/3307		5%	<p>1. Normally, lamp (Pooja) oil is classified under HS 15180040 and accordingly attracts 12% GST.</p> <p>2. In case of edible oils, 5% GST is leviable on those vegetable oils which are not chemically modified attract 5% GST.</p> <p>3. Therefore this issues requires more information regarding deepam oil that is said to be classified under heading 3307 and attract higher GST rate</p>

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
4.	Baker's Yeast	21021020	12%	5%	<ol style="list-style-type: none"> 1. Baker's yeast is a commercial preparation consisting of dried cells of one or more strains of the fungus <i>Saccharomyces cerevisiae</i>, used as a leavening in baking. It is produced on industrial scale. It is already at concessional GST rate of 12%. 2. The GST rate has been fixed on the pre-GST tax incidence on these goods. 3. Further, all goods in [HS 2102] attract 12% GST. 4. The request to reduce GST on baker's yeast has already been put before the GST Council (28th, 31st and 37th meeting) and has not been recommended. 5. Fitment Committee deferred the issue to deliberate further on the issue.
5.	Scented sweet supari	21069030	18%	5%	<ol style="list-style-type: none"> 1. Pre-GST supari attracted Central Excise duty at the rate of 12.5%. The weighted average VAT rate was around 5%. Therefore, based on the pre-GST tax incidence the rate for supari was kept at 18%. 2. Reducing the GST rates on betel nuts (supari) would reduce protection to the domestic supplier's vis-à-vis the imports. 3. The request to reduce GST on scented sweet supari has already been put before the GST Council (31st and 37th meeting) and has not been recommended. 4. Fitment Committee deferred the issue to deliberate further on the issue

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
6.	De-oiled Rice Bran (DORB)	2306	Nil	5%	<ol style="list-style-type: none"> 1. Rice Bran was initially at Nil rate. The GST Council in its 25th Meeting held on 18.01.2018 decided to levy 5% GST on Rice Bran and Nil GST on De-Oiled Rice Bran. 2. This issue was further discussed in the GST Council in its 26th Meeting held on 10.03.2018. 3. However, as mention by the Department of Food has mentioned, Rice Bran is now being sold as de-oiled rice bran. This is causing revenue loss on one hand and reduced availability of rice bran for oil extraction. 4. Levy of 5% duty on De-oiled-Rice Bran will put it at par with other inputs to cattle feed such as oil meal cakes (other than cotton oil cake) and will also simplify the input chain. 5. Fitment Committee felt that this issue would have ramifications for the agriculture sector and recommended that the matter may be deferred for assessing the implication in detail with further inputs.
7.	Unmanufactured Tobacco	2401	28% + compensation cess 65%/71%	5%	<ol style="list-style-type: none"> 1. GST Council has recommended highest tax rate of 28% on unmanufactured tobacco (except tobacco leaves on which tax rate is 5%) 2. This is in consonance with the policy to tax tobacco and tobacco products at the highest rate as they are sin goods. 3. Further, burden of tax is not on farmers as tax on tobacco leave is 5%

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
					under RCM. 4. As this would have significant revenue implications, the Fitment Committee deferred the issue.
8.	Smokeless tobacco products	2403 99	28% + compensation cess at varying rates	Requested to study the impact of GST rates which leads to evasion of tax on tobacco products	1. The GST Compensation cess rates on smokeless tobacco products were fixed based on the pre-GST tax incidence of tobacco products as recommended by the GST Council. 2. The request was to conduct a study of the impact of GST rates on the extent of evasion of GST. 3. Fitment Committee deferred the issue till the study is conducted.
9.	COVID cess on Tobacco product	24	Nil	Not specified	1. As per Article 279(A)(4)(f) of the Constitution of India, the GST Council may recommend any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster. 2. However, this requires detailed examination and further information as to implication of imposition cesses to the revenue. 3. Further, Fitment may not be in a position to take a view on any new cess.
10.	Raw Tobacco Leaves	2401		Clarification is needed on the tax rate on the sale of "Raw Tobacco Leaves"	1. The issue requires further elaboration as to what is the exact issue for clarification. 2. Accordingly, fitment deferred the issue.
11.	Lime Stone (Calcareous Building stone) whether rough	2515 20 90	18%	5%	1. Napa stone is a variety of dimensional limestone. 2. At the time of initiation of GST, polished Napa

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
	slabs or polished slabs (Polished Napa Stone)				<p>stone tiles attracted 28% GST based on pre-GST tax incidence. Subsequently during the 22nd GST Council meeting held on 6th October, 2017, the GST Council recommended reduction in GST rates on polished Napa stone from 28% to 18%. Subsequently the issue was discussed in the 25th GST Council meeting held on 18th January, 2018, wherein the Council did not agree to the request on the grounds that 18% GST is applicable on types of flooring materials and an ad valorem rate will ensure lower tax in absolute terms on low priced items.</p> <p>3. In the 28th GST Council meeting held on 21st July, 2018 it was decided to reduce GST rates on Kota stone and similar stones (except marble and granite) other than ready to use mirror polished stones. The entry in the notification was drafted in consultation with the State of Rajasthan and Andhra Pradesh.</p> <p>4. Currently all polished stone tiles; including other similarly place stones like Kota stone as well as ceramic tiles attract 18% GST rates.</p> <p>5. Fitment Committee desired that GST Council has taken a conscious view and this issue has been deliberated at length.</p> <p>6. It desired that additional information may be</p>

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
					collected from states about production volumes, revenue implication, other stones similarly placed etc.
12.	Inclusion of ATF and Natural Gas under GST	2710/2711	-	-	<ol style="list-style-type: none"> 1. As per Article 279 A (5) of the Constitution, the Goods and Service Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel (ATF). As per the section 9(2) of the CGST Act,2017, inclusion of these products in GST will require recommendation of the GST Council. So far, the GST Council has not made any recommendation for inclusion of petroleum crude under GST. 2. The Council shall take a view on the issue at opportune time.
13.	Oncology medicine	30	12%	Nil	<ol style="list-style-type: none"> 1. As per serial number 180 of Schedule –I of notification No. 1/2017-Central Tax (Rate), certain drugs, including few used in cancer treatment, attract reduced GST rate of 5%. 2. Most APIs for medicines under Chapter-29 attract GST at rate of 18% and blanket exemption to oncology medicines will further aggravate duty inversion. 3. The request for oncology medicines is too generic for implementation and requests for specific medicines may be

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
					considered as and when received. 4. Fitment Committee observed that such concessions should be granted only on the recommendations of the Ministry of Health and Family Welfare or Department of Pharmaceuticals and accordingly deferred the issue.
14.	Medicines & Pharmaceutical Preparations	29/30	12%	5%	1. As per serial number 180 of Schedule –I of notification No. 1/2017-Central Tax (Rate), certain specified drugs attract reduced GST rate of 5%. 2. The request for reduction in GST for ‘medicinal and pharmaceutical preparations’ is too generic for implementation and requests for specific medicines/ pharmaceutical preparations may be considered as and when received. 3. Fitment Committee observed that such concessions should be granted only on the recommendations of the Ministry of Health and Family Welfare or Department of Pharmaceuticals and accordingly deferred the issue.
15.	Waste, paring and scrap of polyurethanes	3915 90 63	5%	18%	1. The justification given for rate change is that under the guise of waste, paring and scrap of polyurethanes, fresh sheet are being supplied. This is leading to tax evasion. 2. The GST rate on ‘waste,

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
					<p>parings or scrap, of plastics' under CTH 3915 was reduced to 5% from 18% vide S. No. 187A introduced by notification No. 34/2017-C.T (rate) dated 13.10.2017 as per decision taken in 22nd Meeting of GST Council held on 06.10.2017.</p> <p>3. The matter of mis-classification of virgin/fresh goods as waste to avail lower GST rate is an enforcement issue.</p> <p>4. This issue may require general examination of different kind of scrap which are at 5%, and are industrial inputs for goods attracting higher rates, for taking a conscious view. And require examination in some detail.</p> <p>5. Fitment Committee deferred the matter for further examination.</p>
16.	Products of Handloom weavers Association	Any Chapter	5%	Nil	<p>1. Reducing GST to Nil will result in blockage of input tax credits and increased cost for such domestic manufacturers and will not benefit consumer.</p> <p>2. Fitment Committee deferred the matter for further examination and desired that further information for examination of this issue be collected.</p>
17.	Raw silk & other silk weaving materials	50	5%/Nil	Nil	<p>1. Reduction in GST Rate to Nil may not help.</p> <p>2. It increases the cost for manufacturer as his ITC gets blocked.</p> <p>3. Raw Silk is already at nil rate.</p> <p>4. Fitment Committee</p>

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
					deferred the matter for further examination.
18.	Agricultural machinery / implements	8432 / 8433 / 8436	12%	5%	<p>1. The issue was discussed during the 37th GST Council Meeting. The Council did not recommend reducing GST rate on agricultural machinery from 12% to 5% based on following reasons:</p> <p>a. Raw materials for these machineries such as iron steel, plastic, and other metals, in general, attract 18% GST. Reduction in GST from existing 12% to 5% will deepen the duty inversion.</p> <p>b. Lowering rate from GST rate will lead to cascading of input taxes and lower GST rate will result in refund of accumulated ITC with associated carrying cost.</p> <p>c. Lowering rate from GST on manufactured goods will result in negative protection to domestic manufacturers vis-a-vis imports.</p> <p>2. Fitment Committee deferred the matter.</p>
20.	Fountain Pens, Stylograph Pens Parts and components of writing instruments covered under HSN 9608 60 and 9608 91	9608	18%	12%	<p>1. 31st GST Council Meeting did not recommend reduction in GST rate on Fountain pens and stylograph pens as these pens attract GST @18 % based on pre-GST tax incidence [12.5% GST + 4%-5% VAT].</p> <p>2. Whereas all other Pens falling under Heading</p>

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
					<p>9608 are subject to a concessional GST @12%.</p> <p>3. This issue would require more information for examination</p> <p>4. Fitment Committee deferred the matter.</p>
21.	Lithium ion batteries used in electric vehicles and on battery charging service	8507 60 00	18%	Reduce	<p>1. GST Council in its 28th Meeting had recommended reduction of GST rate on lithium-ion batteries from 28% to 18%.</p> <p>2. Other batteries still attract GST at the rate of 28%.</p> <p>3. In addition, Lithium ion batteries for EV are an input and the manufacturer of the EV is eligible for complete ITC and refund of accumulated credit.</p> <p>4. Issue was deferred.</p>
22.	UPS Systems sold along with batteries as integral part	8507 or 8504	28% or 18%	Clarification needed whether to classify the subject goods under 8507 or 8504	<p>1. Fitment Committee felt that exact issue with details and implication be prepared for further discussion.</p> <p>2. Accordingly deferred the issues while noting that UPS system attract 28% as per existing rates.</p>
23.	Parts of pre-used motor vehicles	8708	28%	5%	<p>1. Broadly the fitment's view was that:</p> <p>a. In GST regime, end use based exemption is not feasible and also not desirable.</p> <p>b. Creating more than one rate for same category of goods is also prone to misuse.</p> <p>c. Further, schemes are being designed in order to promote the domestic manufacturing of these parts in India and reducing rate to</p>

S. No.	Description	HSN	Present GST rate	Requested GST rate	Comments
					5% will act against the concept of localisation as lower GST will incentivise the imports.
24.	Branded Fortified Rice	1006	5%	Nil	<ol style="list-style-type: none"> 1. Branded rice fortified with Fortified Rice Kernels (FRK) attracts 5% GST rate, on par with other branded goods. 2. The issue of exemption of fortified staples has been placed before the GST Council in its 37th meeting and was not recommended by the GST Council. 3. Further, specific exemption to Fortified staples will be difficult to implement and may lead to leakages and misclassification. 4. Fitment Committee does not recommend any reduction in present GST rate.

Agenda Item 11(iii): Recommendations of the Fitment Committee on Services

A. Actionable

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
1.	To clarify that supply of food in Schools and Anganwadis by a section 12AA Registered Charitable Institution with the support from government, in the form of grant and subsidy, is not a supply under GST Laws.	<p>The AkshayaPatra Foundation is a charitable trust providing food to nearly 18 lakh students in 16856 government schools and Anganwadis without any consideration either in monetary or non-monetary nature from the students or schools.</p> <p>The input costs are funded by government grants and corporate donations. The charitable activities are affected due to lack of clarity on whether output services are taxable or not.</p> <p>Rajasthan Advance Ruling Authority in its order dated 9th January 2019 held that such grants received from government are a consideration for supplying the charitable activity. Because of the ruling, there is an uncertainty in the taxability of charitable feeding services.</p>	<p>Recommendation:</p> <p>Clarification may be issued by way of a circular that (a) services supplied to an educational institution by way of serving of food including mid- day meals under any midday meals scheme sponsored by the Central Government, State Government or Union territory is exempt from levy of GST irrespective of its funding from government grants or corporate donations, and (b) that educational institutions as defined in the notification include anganwadis as they provide pre-school education.</p> <p>AkshayaPatra Foundation is a charitable trust registered under section 12AA of IT Act which is providing food to students in government schools and Anganwadis identified by the Government. The trust enters into agreement with the Government and Government provides financial support in the form of grant to meet the conversion cost of food. Further, it also receives donation from corporate/ private bodies to meet the cost of running centralized kitchen and distribution of food.</p> <p>From the representation it is seen that in the case of the Mid-day meal scheme, Government has specified the recipients, i.e. the school and anganwadis. Vide sl. No. 66 clause (b)(ii), services provided to an educational institution, by way of catering, including any midday meals scheme sponsored by the Central Government, State Government or Union territory is exempt from levy of GST. Serving of food in schools covered under MDM Scheme would be exempt</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
			<p>irrespective of its funding from government grant or corporate donation.</p> <p>Anganwadis also provide preschool education apart from other facilities and activities for mother and child. Therefore, explanation may be inserted in definition of educational institution that "pre-school education includes education at anganwadis.</p> <p>The definition of consideration provided in clause (b) of section 2(31) in relation to supply of goods or services or both includes the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.</p> <p>Fitment may examine for issuance of clarification in the matter.</p>
2.	<p>i. To clarify whether GST exemption is available on the entrance fee collected by NBE from candidates towards conduct of all India entrance examination for admission to <u>Diplomat National Board (DNB)</u> and <u>Fellow of National Board (FNB)</u> courses offered by hospitals/ medical colleges.</p> <p>ii. To clarify whether GST exemption is available on registration fee collected by NBE from candidates for conduct of NEET-PG, NEET-MDS examinations for admission to MBBS and PG courses offered by hospitals/ medical colleges.</p>	<p>The National Board of Examinations (NBE) is an autonomous organization established by Ministry of Health & Family Welfare (MoH&FW). The Board is entrusted with the task of conducting uniform and high standard post graduate level examination for admission to DNB and FNB medical courses. The governing body of the Board is nominated by MoH&FW and published in Gazette of India from time to time.</p> <p>2. The NBE, inter alia, is responsible for (i) conduct of examinations for admission to Diplomat National Board (DNB) and Fellow of National Board (FNB) courses, (ii) develop patterns of teaching in PG medical education in all its</p>	<p>Recommendation:</p> <p>Clarification may be issued that, -</p> <p>(a) NBE provides services of conducting examinations for admission to Diplomat National Board (DNB) and Fellow of National Board (FNB) courses, prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. Various fees collected by NBE as an educational board towards conduct of examination for students of DNB/ FNB and conduct of entrance examinations, such as registration fee, counseling fee, reevaluation fee for answer sheets evaluation/ research thesis reassessment, issuance of board certificate etc. are</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
	<p>iii. To clarify whether GST exemption is available on registration fee collected by NBE from candidates for conduct of Foreign Medical Graduate Examination (FMGE) screening test towards registration of candidates who have obtained medical qualification from outside India with State Medical Councils and Medical councils of India.</p> <p>iv. To clarify whether GST exemption is available on fees collected by NBE from hospitals/ medical colleges towards granting accreditation or renewal of accreditation.</p> <p>v. To accord NBE the status of an Educational Institute and its courses be exempted from GST like IIMs.</p> <p>vi. Pending decision on the proposal above, it is requested to exempt NBE from payment of GST upto 31.03.2020</p>	<p>branches, (iii) prescribe courses and curricula for PG studies, (iv) hold examinations and grant degrees, diplomas and other academic distinctions and (v) grant accreditation to various courses of medical science.</p> <p>3 MoH&FW has recognised the Diplomate National Board (DNB) and Fellow of National Board (FNB) courses offered by various hospitals/ medical colleges as medical qualification.</p> <p>4 The Board is a self-financing organization solely depends on the examination fee/ registration fee collected from candidates and accreditation fee collected from medical colleges. Annual account of NBE is audited by C&AG of India and placed before the parliament.</p> <p>5 NBE has stated that since all the above activities are mandated by Government of India and the entrance examinations it conduct leads to award of degrees (MD/ MS) recognized by Medical council of India, for the purpose of GST, they are educational institutions and its services provided to students/ candidates are exempt from GST.</p> <p>6 Currently NBE is conducting the following entrance examinations,</p> <p>i. NEET-PG(National Eligibility cum Entrance Test – Post Graduate),</p> <p>ii. NEET-SS (National Eligibility cum Entrance Test – Superspecialty),</p>	<p>exempt from GST in view of explanation 3(iv) and sl. No. 66 (aa) of the notification No. 12/ 2017 CTR. Service provided by similar other central or state educational Boards for conduct of examinations including entrance examination shall accordingly be exempt.</p> <p>(b) Various input services such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc. provided by IT firms or printing/ publishing firms to NBE relating to conduct of DNB, FNB and NEET- PG entrance examinations for student and final examination leading to DNB/ FNB degree is also exempt from GST [sl. No. 66 (b)(iv) refers]</p> <p>(c) Service of conduct of Foreign Medical Graduate Examination is not an entrance examination, nor is it is an examination as part of an educational curriculum. The registration fee collected from candidates towards Foreign Medical Graduate Examination (FMGE) screening test is not exempt from GST.</p> <p>(d) Fees collected by NBE from hospitals/ medical colleges towards granting accreditation or renewal of accreditation are not exempt and taxable @ 18% of GST.</p> <p>NBE is involved in (i) selection of candidates through all India entrance examination; (ii) conducting Final all India DNB/FNB examination; (iii) eventual award of DNB/FNB</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
		<p>iii. NEET-MDS(National Eligibility cum Entrance Test – Masters of Dental Surgery),</p> <p>iv. FET (Fellowship Entrance Test),</p> <p>v. PDCET (DNB Post Diploma Centralized Entrance Test)</p> <p>7. In regards, exemption for the courses run by NBE and awarding of DNB, NBE states that it is providing education as part of curriculum for obtaining a qualification recognized by law. It further adds that since all the educational activities of NBE is related to long duration courses (more than 1 year) which ultimately culminated into award of degree/ qualification recognized by law for time being in force. For this well equipped centers have been identified and accredited by the NBE.</p> <p>8. The NBE has stated in its letter dated 25.08.2020 that the provisional liability on account of these services is around Rs. 106 crores.</p>	<p>qualification. The education is imparted by the accredited hospitals/institute. Since, NBE is not directly responsible for providing education services to students as a part of a curriculum for obtaining a qualification recognised by any law, it is not an educational institution as defined in clause 2(y) of notification No. 12/ 2017- CTR.</p> <p>2.It may be noted that, vide explanation 3(iv) of the notification No. 12/ 2017 CTR, “Central and State Educational Boards” are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students. Therefore, it would be logical to say that NBE is an ‘Educational Institution’ only for limited purpose of providing services by way of conduct of examination to the students.</p> <p>GST on various activities and services undertaken by Educational Institution: Presently, in GST law, vide sl. No. 66 of the notification No. 12/ 2017- Central Tax (Rate) dated 28.06.2017, following services are exempt from GST. Services provided - (a) by an educational institution to its students, faculty and staff; (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;</p> <p>Similarly, services provided to an educational institution, by way of, services relating to admission to, or conduct of examination is also exempt from GST [sl. No. 66 (b)(iv)].</p> <p><u>Exempted output services:</u> 1. According to explanation 3(iv) of notification 12/2017-CT(R), various</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
			<p>fees collected by NBE as an educational board towards conduct of examination for students of DNB/ FNB and conduct of entrance examinations, such as registration fee, counseling fee, reevaluation fee for answer sheets evaluation/ research thesis reassessment, issuance of board certificate etc. would be exempt from GST. [sl. No. 66 (aa) refers].</p> <p><u>Exempted input services:</u></p> <p>2. Various input services such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc. provided by IT firms or printing/ publishing firms to NBE relating to conduct of DNB, FNB and NEET-PG entrance examinations for potential candidates and final examination leading to DNB/ FNB degree is also exempt from GST [sl. No. 66 (b)(iv) refers].</p> <p><u>Taxable output services:</u></p> <p>3. So far as the service of conduct of Foreign Medical Graduate Examination is concerned, it is not an entrance examination, neither it is an examination as part of an educational curriculum. It is merely a screening test, which allows them to practice medicine in India as qualified medical practitioners. The registration fee collected from candidates towards Foreign Medical Graduate Examination (FMGE) screening test does not</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
			<p>appear exempt, thereby appears taxable under GST.</p> <p>4. Accreditation service: Accreditation service is neither a service of education nor provided by an educational institution to its students, faculty and staff. This service is provided to colleges/ institutions or any centers to ensure that the standards of the courses, training facility are maintained upto a certain level. By getting accreditation from a testing/ certifying agency, the recipient organization acquires kind of brand name. During service tax regime, the accreditation service was taxable. The status quo has also been maintained in GST regime. Therefore, fees collected by NBE from hospitals/ medical colleges towards granting accreditation or renewal of accreditation are not exempt and taxable @ 18% of GST.</p> <p>Fitment may take a view for issuance of clarification.</p>
3.	<p>(a) In case of construction of residential complex service, the condition that the tax @ 1% or 5% as the case may be shall be paid only in cash and not through credit may be modified to the extent that the land owner promoter may use the credit of tax charged to him by the developer promoter for payment of tax on apartments booked by him. Otherwise, the credit allowed to the land owner promoter of the tax charged from him by the developer promoter shall become meaningless.</p> <p>(b) to amend Notification No. 06/2019-Central Tax</p>	<p>(a) The land owner-promoter is eligible to take input tax credit of tax charged from him by the developer-promoter. However, as per first proviso applicable to entries at items (i) to (id) against Sl. No. 3 of notification No. 11/2017- CTR dated 28.06.2017, promoter is required to pay GST through debit to Electronic Cash Ledger.</p> <p>(b) As per the Notification No. 6/2019-CTR, the developer-promoter is required to pay GST at the time of issuance of completion certificate. However, the land owner-promoter may be required to pay GST in</p>	<p>Recommendation:</p> <p>Condition of entry 3 in notification No. 11/2017- CTR, dated 28.06.2019 may be amended appropriately to (a) make it explicitly clear that the land owner promoter is eligible to use the credit of tax charged to him by the developer promoter for payment of tax on apartments booked by the land owner-promoter in such project; and (b) the liability of promoter to pay central tax on supply of development rights, FSI or lease of land to him or on supply of construction service against consideration in the form of TDR or FSI shall arise on or before the date of issuance of completion certificate for the project.</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
	(Rate) dated 29th March, 2019 so as to provide that the liability of promoter to pay central tax on supply of development rights, FSI or lease of land to him or on supply of construction service against consideration in the form of TDR or FSI shall arise on or before the date of issuance of completion certificate for the project	<p>accordance with the provisions of Time of Supply earlier that issuance of completion certificate i.e. before the day on which developer-promoter would pay GST in respect of supply of construction service to land owner-promoter. In such circumstances, which is bound to happen in almost all cases, the land owner-promoter will have to pay GST in cash at the time of supply and avail credit subsequently. It may also result in permanent non-utilization of such input tax credit.</p> <p><u>According to State of Gujarat</u>, it is generally found that land owner-promoters may be farmers of middle class and may not be engaged in any business activity. Input tax credit (ITC) may remain unutilized if an appropriate amendment is not made as there is least possibility to adjust these ITC against other output tax liability. This being their one-time business activity.</p>	<p>Residential complex construction service provided by a developer to a person buying under construction houses attract a GST of 5% /1% (affordable housing.). However, this tax is to be paid in cash. The service provider is not entitled to ITC except that a land owner can take ITC of tax charged by the developer on the flats he transfers to the landowner in lieu of development rights/FSI subject to the condition that landowner further sells the houses to customer at under construction stage and pays GST on it. This is to ensure that there is no multiple taxation on flats.</p> <p>However, such land owners are finding it difficult to take and utilize this ITC for the reason that (i) condition of this levy while prescribing payment of tax in cash does not specifically state whether this ITC can be utilized, and (ii) the developer is required to pay tax on construction in lieu of development right/FSI at the time of issuance of completion certificate. But by the time developer may pay tax on construction service provided to land owner, the landowner may have supplied the flat further and may have become liable to pay tax. If land owner is doing only one project, he cannot use the ITC so received after extinguishing his liability</p> <p>It is proposed that these difficulties be removed.</p> <p>(a) For the purpose, notification No. 11/2017-CTR, dated 28.06.2019 it may be additionally be stated in the fourth proviso that “notwithstanding anything contained in the first proviso, the land owner promoter shall be eligible to use the credit of tax charged to him by the developer promoter for</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
			<p>payment of tax on apartments booked by the land owner- promoter in such project.”</p> <p>(b) To address this issue, the fitment Committee made recommendation as above. This ensures that developer pay tax earlier than the period in which he gets completion certificate.</p>
4.	<p>(i) To reduce GST on ship repair services from 18% to 5% in line with MRO for aircrafts.</p> <p>(ii) To consider repair of foreign ships/ vessels in India as export of service and zero-rated.</p> <p>(iii) To reduce GST on all inputs and input services used directly in repair of ships to 5%.</p>	<p>(i) The current rate of 18% creates working capital/ bottom line impact for shipping sector as a whole.</p> <p>(ii) GST on Aircraft MRO has been reduced to 5% with effect from 01.04.2020. Domestic ship repair industry is a similarly placed industry, should also be considered for a reduced rate of 5%.</p> <p>(iii) The tax rate in Sri Lanka and Singapore is Zero. UAE has raised the rate from 0 to 5% in 2017. GST rate should be rationalized in line with competing countries.</p> <p>(iv) No GST is applicable when ships come to India exclusively for repairs and go back without being put to any use in India. However, foreign ships/ vessels do not come to India only for the purpose of repair. They use the window between transportation of goods for seeking repair services. They may carry cargo within and out of India after repairs. PoS in such cases is the place where the service is being performed, i.e. India. Therefore, GST @ 18%</p>	<p>Recommendation:</p> <p>As has been done for civil aviation sector,</p> <p>(a) GST on MRO services in respect of ships may be reduced from 18% to 5% with full ITC.</p> <p>(b) PoS of B2B supply of MRO Services in respect of ships/ vessels may be changed to location of recipient of service, by way of issuing a notification under section 13(13) of the IGST Act.</p> <p>1. Ship repair services supplied by ship repair units in India to Indian shipping lines attract GST @ 18%. As regards repair of foreign flag vessels by ship repair units located in India, the same qualifies as export of service only if the ships are imported into India exclusively for repairs, which is uncommon. Shipping lines generally get MRO done during the window available between commercial voyages. Place of supply of Maintenance, Repair and Overhaul (MRO) services of ships carried out during their routine voyages with cargo is the place where the service is performed, that is, in India and therefore taxable even though such services are supplied to a foreign shipping line and paid for in foreign exchange.</p> <p>2. The aircraft MROs faced identical issue. On similar request received from MoCA, GST Council in its 39th Meeting held</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
		<p>is attracted despite payment for such repair in foreign exchange.</p> <p>Therefore, it may be clarified that in case of repair of foreign ships, PoS would be the location of service recipient and shall be zero rated.</p>	<p>on 14.3.2020 had recommended in respect of aircraft MRO as under:</p> <p>“To reduce GST rate on Maintenance, Repair and Overhaul (MRO) services in respect of aircraft from 18% to 5% with full ITC and to change the place of supply for B2B MRO Services to location of recipient”</p> <p>2.1 Above recommendation of the Council with respect to MRO of aircraft and aircraft engines and other parts was implemented vide notification No. 2/2020-CT(R) dated 26.03.2020 and 2/2020-IT dated 26.03.2020.</p> <p>2.2 Ministry of Civil Aviation has stated, post these changes in GST, that it has helped in developing MRO industry in India.</p> <p>3. It is proposed that in order to address the issue raised by the Ministry of Shipping, the same course of action be adopted as was adopted for aircraft MRO. Accordingly,</p> <ul style="list-style-type: none"> • GST on MRO services in respect of ships may be reduced from 18% to 5% with full ITC. • PoS of B2B supply of MRO Services in respect of ships/ vessels may be changed to location of recipient of service, by way of issuing a notification under section 13(13) of the IGST Act.
5.	Request to clarify that no service is provided by Govt. to the Govt. organisations in guaranteeing loans taken by them as Govt. organisations undertake functions entrusted by the Govt. and loan/credit is taken by them for fulfilment of the said	<p>HSVP is a Govt. authority constituted under the Haryana Shehri Vikas Pradhikaran Act, 1977 for undertaking development of urban areas of the Haryana state.</p> <p>Activities undertaken by HSVP for development of urban areas is exempted from</p>	<p>Recommendation:</p> <p>It may be clarified that service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by PSU from banks and financial institutions is specifically exempt under entry No. 34A of Notification no. 12/2017-CT (R) dated 28.06.2017.</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
	functions.	<p>GST vide entry 4 of Not. No. 12/2017- CT (R) dt. 28.06.2017, which exempts "Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution".</p> <p>The state govt. provides guarantee to the financial institutions for taking loan/additional credit limit. As per the State Govt. policy, HSVP has to deposit 2% of the loan amount with the Govt. against the state guarantee given to it.</p> <p>Govt. provides guarantee to HSVP for taking loan/credit facility from financial institution to carry out the Govt. function of development of urban areas. This is a function entrusted to Municipality, which is exempt from GST vide entry 4 as quoted above.</p> <p>Thus, no GST is leviable on the guarantee provided by Town planning dept. to HSVP.</p> <p>However, the Revenue authorities are contending that service provided to business entities are taxable under RCM. Hence, fee paid by HSVP to Govt. is liable to GST under reverse charge.</p>	<p>HSVP is a statutory body constituted under the Haryana Shehri Vikas Pradhikaran Act, 1977, as a body corporate, for undertaking urban development and local development.</p> <p>Entry no. 34A of Notification no. 12/2017-CT (R) dated 28.06.2017 exempts from GST, services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.</p> <p>Thus, service supplied by Haryana Govt. to HSVP by way of guaranteeing loans taken by HSVP from banks and financial institutions is exempt under the said entry. The same may be clarified to HSVP.</p>
6.	Exemption to The Hybrid Annuity Model Project SPV from GST output tax liability.	1. In HAM Project, NHAI contributes 40% of the Bid Project Cost during construction phase and balance construction cost, invested by private operators is paid back to the concessionaire in 30 defined installments along with	<p>Recommendation:</p> <p>Clarification may be issued by way of a circular that entry 23A of notification No. 12/2017-CT(R) does not exempt annuity paid for construction of roads. It only exempts services provided by way of access to a road or bridge on</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
		<p>interest as may be applicable. The payments made towards balance construction are paid as Annuities. Annuity payment is exempted from GST as per entry 23A, which is now also confirmed by the appellate bench, vide order no RAJ/AAAR/06/2018-19 dated 12.2.2019. However, the following decision in the said order is being contested by the HAM Developers.</p> <p>a) That ONLY 40% of input tax credit used in the construction phase is available to the concessionaire.</p> <p>b) Full ITC of the GST paid on the inputs and input services used in the O&M phase is available to the concessionaires.</p> <p>2. Industries want to have 100% ITC, so that no cash out go is there from the SPV, as sufficient ITC is available it is utilized against GST. The un-utilized portion of the ITC can be potentially utilized during the O&M phase, which may be remote. Eventually, as it is not refundable, it is written off in the books of the SPV as a cost over the O&M period in case of non-utilization.</p> <p>3. HAM projects are at disadvantageous position vis-à-vis EPC and BOT Projects. The input tax credit provisions are clear in both EPC as well as BOT projects. In EPC projects, 100% ITC is available to the contractors during construction. In BOT projects, whole of the project is developed and managed by the Private Partner (referred as Concessionaire).</p>	<p>payment of annuity for it.</p> <p>1 The entry 23A of notification No. 12/2017-CT(R) provides exemption to any service provided for access of road on payment of annuity. This entry reads as below:</p> <p><i>“Service by way of access to a road or a bridge on payment of annuity”.</i></p> <p>2. However, the service being provided by the concessionaire to NHAI is construction service (for which the contract is entered into) covered under service code 995421 - General construction services of highways, streets, roads railways, airfield runways, bridges and tunnels.</p> <p>3. The said entry 23A of the notification No. 12/2017-CT(R) exempts service by way of access to a road or a bridge on payment of annuity. Entry 23 exempts service of access provided in lieu of toll. However, cases where charges are paid, in lump sum or in form of an Annuity, by the Government department or PSU for seeking access to road/bridge for general public were not covered by entry 23. This led to a situation where the toll charges, in form of Annuity, being offset by the Government or PSU, in public interest, to the concessionaire were subjected to GST and consequently it was recommended by the GST Council in its 22nd meeting to exempt service by way of access to road or bridge where payment were in the form of annuity. The Council thus recommended exemption to only such annuities, which are charged for providing access to a road or bridge and otherwise the activity is at par with the activity for which toll is charged.</p> <p>4. In the case referred to in the reference, AAAR vide its order</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
			<p>dated 12.02.2019 had held that the annuity payments received by the petitioner are exempt, however, only 50% of ITC of the inputs and input services used in the construction phase shall be available to the petitioner as the annuity is not taxable. The AAAR did not go into the aspect that for the purposes of exemption annuity should have been in lieu of access to the road and not in lieu of construction of road.</p> <p>5. It would be appropriate if clarification is issued that exemption is available to only such annuities, which are charged for providing access to a road or bridge (at par with toll).</p> <p>6. Fitment Committee may examine and take a view.</p>
7.	Clarify that providing service of crushing of wheat into fortified Atta to District Controller, Food and Supplies, Government of West Bengal, for further distribution to intended beneficiaries under PDS scheme is exempt from GST.	The millers have entered into an agreement with the District Controller, Food and Supplies, Government of West Bengal. According to the agreement, 5kg by-products out of 100 kg wheat (1% refraction for cleaning and 4% for de-branning), is allowed to be retained by the flour mills. The petitioners' premises have been searched by DGGI while making enquiries as to the appropriate payment of GST on the service provided by the petitioners. The millers have requested to issue a clarification that crushing of wheat into flour for PDS falls under the ambit of entry 3A of the Notification no. 12/2017- CT (Rate) dated 28.06.2017, which exempts composite supply of goods and services, in which the value of supply of goods constitutes not more than 25 per cent. of the value of the	<p>Recommendation:</p> <p>A clarification may be issued that,-</p> <p>(a) supply of service by way of milling of wheat into flour (fortified or otherwise) or of paddy into rice to Central Government, State Government, Union territory, local authority, a Governmental authority or a Government Entity for distribution of such flour or rice under PDS would be exempt under entry 3A of the Notification No. 12/2017- CT (Rate) dated 28.06.2017 provided value of goods in the composite supply of goods and services does not exceed 25% of the value of the composite supply. Value of goods supplied in composite service is a matter of fact.</p> <p>(b) In case the supply of</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
		<p>said composite supply, provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution;</p> <p>DGGI has argued that the value of goods involved in this case is more than 25%, hence exemption under S, No, 3A would not be available.</p> <p>Similarly, the A.P. State Civil Supplies Corporation Ltd. has made similar request in case of Custom milling of rice. It has been stated that since both the products, paddy and rice, are exempt there is no point in levying any tax on job work in relation to such products.</p> <p>They have further stated that if the service of custom milling is taxable, then valuation of the by-products will be a major concern.</p>	<p>service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl 3 of notification No. 12/2017-CT@ because it is not a pure supply of service or under 3A because the value of goods in the composite supply exceeds 25%, then if the said supply is provided to a registered person, including a person registered only for the purpose of deduction of tax under section 51 of CGST Act , shall be entitled to the 5% GST rate applicable to job work services in relation to food and food products.</p> <p>1. The entry at Sl. No. 3A of Notification No. 12/2017-Central Tax (Rate) exempts <i>“composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution”</i>.</p> <p>2. It is clear from above that for the exemption to apply, both conditions i.e. (i) value of supply of goods not exceeding 25% of the total value of composite supply, and(ii) that the activity in question is in relation to any function</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
			<p>entrusted to a Panchayat or Municipality are satisfied.</p> <p>3 As regards the proportion of value of supply of goods in the total value of composite supply, it is a question of fact and shall vary from case to case.</p> <p>4. The question that needs to be answered is whether the exemption would be available where the value of goods in the composite supply of milling of wheat into flour or paddy into rice for distribution by the State Government under PDS does not exceed 25%.</p> <p>5. West Bengal has conveyed vide D.O. letter dated 21.02.2021 that "milling services provided by millers to the Government for the purpose of distribution of fortified atta through Public Distribution System has been exempted under Sl. No. 3A of Notification No. 12/2017-Central Tax (rate) dated 28.06.2017. The supply has been provided to the Government of West Bengal for the purpose of distribution through PDS. This is covered vide entry no. 28 of the Eleventh schedule appended to Article 243G of the Constitution of India".</p> <p>6. It appears that the activity of milling of wheat into flour or paddy into rice carried out by milling units for the State Government for distribution by it under Public Distribution System is an activity in relation to the function of "public distribution system", which is one of the functions entrusted to a Panchayat or Municipality under Article 243 G or Article 243 W of the Constitution, and</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
			<p>thus eligible for exemption under Sl. No. 3 A of Notification No. 12/2017-CT (R) dated 28-6-2017 provided value of goods in the composite supply of milling of wheat into flour or paddy into rice does not exceed 25%.<i>[Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243 G of the Constitution.]</i></p> <p>7. Hence. such services shall be exempt where the value of goods supplied by the miller while providing services of milling does not exceed 25% of the total value.</p> <p>8 Other possible entry admissible in such cases is entry 26 of notification No. 11/2017-CT, which <i>inter alia</i> prescribes a rate of 5% on job work service provided in relation to food items. Job work as defined in the CGST Act : <i>"Section 2(68)-job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression —job worker shall be construed accordingly"</i>; Therefore, in case recipient of service is a registered person, the miller would be entitled to claim 5% rate.</p> <p>9. Fitment Committee may examine for making recommendation to the Council.</p>
8.	Clarification regarding rate of tax applicable on construction services provided to a Government Company in relation to construction of a Ropeway on turnkey basis.	1. BSTDC was established in the year 1980 for the development of tourism in the State of Bihar and for commercialization of Tourist Resources available with the State. To achieve this objective various tourist	<p>Recommendation:</p> <p>Clarification may be issued that service provided to State Tourism Development Corporation Ltd. by way of construction of a ropeway are not eligible for the concessional rate (of 12%</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
		<p>infrastructure like Tourist Bungalow, Cafeteria, Restaurant, Transportation facilities and Ropeway are provided at various tourists spots by Bihar State Tourism Development Corporation.</p> <p>2. It has been informed that BSTDC has entered into an agreement with RITES Ltd. for construction, by the latter, of a ropeway on turnkey basis in Nalanda. In this context BSTDC has raised a query with CTD, Bihar as to whether GST would be leviable at the rate of 12% (6%CGST + 6%SGST) or at the rate of 18% (9%CGST + 9%SGST) in respect of the construction service being provided.</p> <p>3. In this context the following issue has been raised:- "Whether the service referred item (vi) of serial number 3 of rate notification number 11/2017 or it would fall under item (xii) of serial number 3 of rate notification number 11/2017).</p> <p>4. Item (vi) of serial number 3 of rate notification number 11/2017 reads as follows:- "Composite supply of works contract as defined in clause (119) of section 2 of the Bihar Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above provided to the Central Government, State Government, Union Territory, a local authority, a Governmental Authority or a Government Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of —</p>	<p>GST)under entry No. 3 (vi) of Notification No. 11/2017- CT (R) dt. 28.06.2017 and the same shall attract GST at the rate of 18% (9%CGST + 9%SGST) as the ropeway is not a civil structure or any original work meant predominantly for use other than for commerce, industry, business or profession. Accordingly supply of construction services to the Government entity for any construction which is for its business or profession etc shall not be covered by said entry.</p> <p>It appears that the activities of BSTDC stand excluded from the scope of item (vi) of serial number 3 of rate notification number 11/2017 dated 28.06.2017, since the exclusion from "business" is limited only to Central/State Government or a Local Authority, in which they are engaged as public authority. It does not extend to a Governmental Authority or a Government Entity, even though the main provision accommodates all of Central/State Government or a Local Authority or a Governmental Authority or a Government Entity;</p> <p>2.That the constructed civil structure (viz. the ropeway) would be used by BSTDC for furthering the cause of tourism which is in the nature of "business" as defined in section 2(17) of the CGST/BGST Act, 2017.</p> <p>3. Fitment Committee may issue clarification that GST would be leviable at the rate of 18% (9%CGST + 9%SGST) in respect of the construction service being provided by RITEs to the BSTDC.</p>

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
		<p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Bihar Goods and Services Tax Act, 2017 (Bihar Act 12 of 2017).</p> <p>Explanation. – For the purposes of this item the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities."</p> <p>5. It may be noted:- (a) that BSTDC is a "Government Entity" within the meaning assigned to the said expression by para 4(x) of the impugned notification and reads as follows:- (x) —Government Entity means an authority or a board or any other body including a society, trust, corporation,—</p> <p>(i) set up by an Act of Parliament or State Legislature; or</p> <p>(ii) established by any Government, with 90 per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority;</p> <p>(b) that the service being</p>	

Sl. No.	Proposal	Justification	Comments and Fitment Committee's recommendation
		provided by RITES Ltd. to BSTDC (a "Government Entity") is a composite supply of works contract wherein a civil structure (viz. a ropeway) would be constructed and that such a structure does not fall within items (i), (ia), (ib), (ic), (id), (ie) or (if) of serial number 3 of the impugned notification; (c) that the aforesaid service would fall under the said item (vi) if the resultant civil structure is used for any purpose other than trade, industry or business/profession; (d) that the substantive provision of the said item number (vi) indicates that such services provided to BSTDC in respect of the construction of ropeway are covered by this entry if only BSTDC were not to use the ropeway for business/industry; (e) that, however, in terms of the Explanation to the said item number (vi) of said serial number 3 the activities/transactions undertaken by Central/State Government or a Local Authority in which such Government/Authority is engaged as a public authority would not constitute "business" for the purposes of this.	

B. Non-Actionable

Sl. No.	Proposal	Justification	Comments
1.	Request for Service Tax/GST exemption from Insurance Regulatory and Development of	CAG has raised an issue of not collecting Service Tax/GST on the services provided by IRDAI to intermediaries, during transaction audit for the FY	Recommendation: May not be accepted. Exemptions should be kept to the minimum possible and existing exemptions

Sl. No.	Proposal	Justification	Comments
	India (IRDAI) on all the services provided, instead of not specifically provided to 'the insurers'.	2018-19. The existing exemptions in Service Tax (vide notification No. 9/2016-ST, dated 1.3.2016) and GST (vide notification No. 12/2017-CTR dated 28.06.2017) provide for exemption on the services provided to 'insurers' alone.	<p>should not be expanded.</p> <p>1. Service Tax exemption was given on the services of IRDAI to insurers alone vide Sl. No. 50 of Notification No. 25/2012-S.T. w.e.f. 01.07.2012 as amended by Notification No. No.9/2016-Service Tax, dated 1.3.2016 as below: -</p> <p><i>50. Services provided by Insurance Regulatory and Development Authority of India (IRDA) to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999);</i></p> <p>2. The above exemption was carried forward in the GST regime vide Sl. No. 32 of notification No. 12/2017-CTR dated 28.06.2017. In GST also, the exemption entry reads similar to the exemption entry in Service Tax i.e.</p> <p><i>Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999).</i></p> <p>3. The word "intermediary or insurance intermediary" includes insurance brokers, reinsurance brokers, insurance consultants, surveyors and loss assessors as per Section 2(f) of IRDAI Act, 1999.</p> <p>4. The existing exemptions in Service Tax and GST applies to services provided by IRDAI to insurers only but does not exempt other output services provided by IRDAI viz. services provided to insurance intermediaries etc.</p> <p>5. GST exemption is available to all the services by the RBI (vide Sl. No. 26 of notification No.</p>

Sl. No.	Proposal	Justification	Comments
			<p>12/2017-CTR) and services provided by the SEBI by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market (vide Sl. No. 33 of notification No. 12/2017-CTR). IRDA has on this ground claimed exemption for all services provided by it.</p> <p>6. It is to mention here that insurance agent may not be able to utilize the ITC of tax charged by IRDA for the reason that their main service, i.e., service provided to insurer is under reverse charge.</p> <p>7. Fitment Committee may take a view.</p>
2.	Request to waive GST on service charges payable by Indian emigrants to the registered Recruiting Agents (RAs). Further, it has been requested to grant GST moratorium on payments made by RAs for a period of 18 months to tide over the crisis situation due to COVID-19	Job-seekers, less educated workers and unemployed Indians take the help of Registered Recruiting Agents (RAs) for getting employment abroad as these RAs have the authentic information about different vacancies in foreign countries. To provide regulatory framework in respect of emigration of Indian workers and to safeguard the interests of Indian workers, Government issues Registration Certificate to eligible entities. This is to help aspiring emigrants not to fall prey to any kind of duping by unscrupulous elements. The Government also authorized the RAs not to charge amount more than RS. 30000/- excluding GST. Now emigrants have to pay GST to RAs for their service when an emigrant emigrates through them. This is an additional burden on poor emigrants, who are bringing valuable foreign remittances to India.	<p>Recommendation:</p> <p>May not be accepted.</p> <p>The services of recruitment agencies were taxable in Service Tax regime at standard rate of 15%. They are taxed in GST also at the standard rate of 18%. In the present case, exempting services of registered recruitment agents will block their ITC. As a result, GST paid on goods and services for setting up the office and other facilities would be a burden on them.</p> <p>Further, acceding to request for exemption to such services in one case would lead to similar requests. As such proliferation of exemptions in GST, except absolutely deserving cases, may not be desirable.</p>
3.	GST be eliminated on management fees or extend the deemed export status for	IVCA has submitted that investment management fee is the biggest expenditure for the AIF industry. Typically, such	<p>Recommendation:</p> <p>Request may not be accepted.</p>

Sl. No.	Proposal	Justification	Comments
	services rendered to AIFs.	<p>investment management fees constitute 2-3% of the value of the assets managed in an AIF per year. While management fees charged to VC/PE fund located in an offshore jurisdiction is exempt from GST, the management fees charged to an onshore fund located in India/ AIF attracts GST@18%. Since an AIF is only a pooling vehicle for investments and does not provide any service, there is no output GST liability and it is not able to utilize input tax credit of GST. Thus, this incremental GST becomes an additional cost for the foreign investors in the AIF and acts as an impediment to onshoring of funds into India via AIFs.</p> <p>2 Further, it is submitted that the impediments to onshoring from an income tax perspective has been addressed and a beneficial treatment from a Foreign Direct Investment (FDI) perspective has already been instituted. Thus, the economic and taxation policy should now address the GST challenge described above which is posing an impediment to onshoring of VCPE funds from overseas jurisdictions due to the incremental GST costs. A suitable clarification be issued under the GST regulations to elucidate the pass-through mechanism on the following bases:</p> <p>(a) The investors to the AIF are considered as the recipients as they bear the cost of fund management services; while the AIF only functionally uses such fund management for the making the investment;</p> <p>(b) The services provided by the Fund Manager are treated to be rendered to the investors who are ultimately liable to be pay</p>	<p>As per regulation 2(b)of the said Regulations, AIF means any fund established or incorporated in India as a trust, company, LLP or body corporate which is a privately pooled investment vehicle and which collects funds from domestic and foreign investors for making investments as per the defined investment policy for benefit of investors.</p> <p>2. Under Regulation 2(q) of the said Regulations, a “Manager” has been defined as any person or entity who is <u>appointed by the AIF</u> to manage its investments and may also be same as the sponsor of the Fund.</p> <p>3. As per Regulation 11 of SEBI (AIF) Regulations, 2012, <u>AIFs shall raise funds by issue of information memorandum or placement memorandum</u>, by whatever name called. Such placement memorandums shall contain all material information about the AIF and the Manager, <u>fees and all other expenses proposed to be charged</u>, the terms and conditions on which the Manager offers investment services, and such other information as may be necessary for the investor to take an informed decision on whether to invest in the AIF.</p> <p>4. It is clear from the above provisions of the regulations that the AIF and the Manager appointed by AIF are two distinct legal persons.</p> <p>5. The manager appointed by AIF supplies services to AIF of managing the funds pooled in it by the foreign and domestic investors. The manager charges management fee for its services. Since both manager and AIF are located in India, the place of supply of the services supplied by manager to AIF is governed</p>

Sl. No.	Proposal	Justification	Comments
		<p>for such services; and</p> <p>(c) The place of supply for the services provided</p> <p>by the Indian Fund Managers is the location of the investors investing in such AIF.</p> <p>3. It is also submitted that the Fund Managers providing the services should be accorded a proportionate export benefit on the fund management fees charged on foreign investments being pooled in the AIF upon meeting the specified conditions. The Fund Manager would need to raise tax invoices as prescribed under the GST law on the offshore investors (being the recipient of services) for claiming this export benefit. The quarterly declaration of foreign and domestic investments made by the AIF to the Securities and Exchange Board of India (SEBI) can be a basis to assess this. A similar approach has been adopted in various countries (especially Singapore), including via offering outright exemptions.</p> <p>4. Parliamentary Standing Committee on Finance in its 12th Report has recommended that the asset management services provided to foreign investors should be treated as an export service and should not be subjected to GST.</p>	<p>by section 13(2) of IGST Act i.e. the place of location of the recipient of the services i.e. the location of AIF. Since the place of supply of the services supplied by manager to AIFs in the taxable territory, it is taxable.</p> <p>6. The AIF could avail ITC of tax so paid by the fund manager.</p> <p>7. Any service provided by AIF to Foreign Investor would be export of service as investor is located outside India. Therefore, in the instant case if AIF bills to foreign investor they could claim zero rating,</p> <p>8. Hence services provided by Fund manager to AIF are taxable The request for treating this transaction (Fund manager to AIF) as pass through, and not imposing tax, may not be feasible in the context of GST levy.</p> <p>9. Earlier, the request of IVCA to reduce GST to 5% from 18% on services of investment manager to an AIF to the extent of foreign investment was rejected by GST Council in its 37th meeting held on 20.09.2020.</p>

C. Deferred

The following points were deferred by Fitment Committee for examinations as it was felt that these would require further information and inputs. Also, there are a number of issues which are similar. Therefore, a comprehensive examination of such issues, with detailed inputs would be required.

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
1.	<p>(a) It may be clarified as whether the phrase “work entrusted to it by Government” means general work mandate of the government entity or a specific work entrusted to the entity with funding for that work, and if later is the meaning of the phrase then what will be the treatment when funding by the Government is partial.</p> <p>A similar question has arisen in case of works contract service procured by BSF from private construction companies.</p>	<p>A State PSU has been mandated by Government of Odisha to create power transmission infrastructure in the state. The PSU claims that it is their mandate to create infrastructure and they are eligible for 12% GST on all inward supplies/ procurements, irrespective of whether funding is by Government or not.</p>
	<p>(b) Request to clarify whether AIIMS, New Delhi is a Government Entity and thus entitled to procure WCS at concessional rate of 12% under notification No. 11/2017-CTR, Sl. No. 3 (vi)?</p>	
2.	<p>Request to clarify whether IIM Ahmedabad is (a) a Governmental Authority or (b) a Government Entity or (c) both and whether as a GA/ GE, it is entitled to procure pure services and composite supply of goods and services (where goods constitute not more than 25%) without payment of GST under notification No. 12/2017-CTR, Sl. No. 3 and 3A?</p> <p>VNIT Nagpur and Kandla Port Trust have also filed applications for advance ruling on the same issue. All these organizations are of view that they are Government Authority/ Government entity. The basis of this contention is that they have been <i>set up to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</i></p>	<p>Government Entity has been defined to mean an authority or a board or any other body including a society, trust, corporation, -</p> <p>(i) set up by an Act of Parliament or State Legislature; or</p> <p>(ii) established by any Government, with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</p> <p>Indian Institute of Management, Ahmedabad is established under IIM Act, 2017 which empowers it to attain standards of global excellence in management, management research and allied areas of knowledge. Amongst other the objective of IIM is to provide management education of high quality and to promote allied areas of knowledge as well as interdisciplinary studies. Powers and functions of the institute is vested under section 7 of the Act.</p> <p>Board of Governors of each IIM is the principal executive body and the Board shall in the exercise of its power and discharge of its functions under IIM Act, 2017 is accountable to the Central Government.</p>

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
		Therefore, IIM Ahmedabad is of the view that they are Governmental authority as well as Government entity and all the concessional benefits prescribed for a government entity are available to them.
3.	<p>Law Committee has referred that matter to Fitment Committee to</p> <p>(a) To prescribe End-use certification system / form for notification number 12/2017-CT (Rate) [entry no. 3], which exempts pure services provided to Government, Local Authority in relation to Municipality functions.</p>	<p>Under notification number 12/2017-CT (Rate) [entry no. 3], “pure services” provided to the Government or Local Authority or a Government authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the Constitution are exempt from levy of GST.</p> <p>Law Committee has decided that the expression “in relation to” has a wide meaning and therefore the exemption would cover all services such as advertisement in the print media for floating a tender for laying water pipeline, contract for counting the number of trees, survey of number of people living below the poverty line, services by consulting engineers, project management consultants for mono-rails, metro rails, roads etc.,</p> <p>As the suppliers of services to the Panchayat or Municipality are not in a position to know whether the services supplied are really in relation to a function entrusted to a Panchayat or Municipality, some sort of end-use certification system / form be devised which will be issued by the Panchayat / Municipality inter-alia declaring that the services supplied to them are in relation to a function entrusted under the Constitution as referred to above.</p>
	<p>(b) Request to clarify that the service of hiring manpower for providing services of Health, Public Garden, Promotion of education etc. which are the functions entrusted to Municipality under Article 243W of the Constitution.</p>	<p>“Pure services” provided to the Government or Local Authority or a Government authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under Article 243W of the Constitution are exempt from levy of GST.</p> <p>‘Cantonment Board’ is a local municipal authority, defined under Section 10(2) of the Cantonment Act, 2006.</p> <p>They hire various manpower for providing</p>

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
		<p>various services in relation to functions entrusted to Municipality under Article 243W of the Constitution such as they hire contractual Doctors, lab attendants, pharmacists, staff nurses etc. for providing health services; mali, chowkidars for providing public gardens; contractual teachers, safaiwala etc. for promoting education; electrician, helpers etc. for providing street lighting.</p> <p>All these functions are delegated to municipality and the services of manpower is received to fulfill these functions by the Cantonment.</p>
	<p>(c) To clarify that the services provided by the implementing agency, i.e. CSC-SPV, provided to MoSPI that activity of “Enumeration & Supervision” is exempt from GST under exemption entry 3 of notification No. 12/2017-CT(R) dated 28.06.2017.</p>	<p>The Ministry of Statistics and Programme Implementation (MoSPI) has engaged the CSC e-Governance Services India Ltd, a Special Purpose Vehicle (hereinafter referred as CSC-SPV) of the Ministry of Electronics and Information Technology, as implementing agency for the conduct of 7th Economic Census (EC).</p> <p>Economic Census is a periodic exercise undertaken to measure the spread and penetration of the economic activities across the country through door to door survey in prescribed questionnaire form.</p> <p>The activities to be carried out by the implementing agency along with approved cost for each of the components are as under:</p> <ol style="list-style-type: none"> 1. Enumeration & Supervision (through door to door visit throughout country). 2. Training and assessment of the Enumerators & Supervisors engaged in field work of EC. 3. Deployment of manpower to assist MoSPI and State/UT Governments in 7th EC activities. 4. Helpdesk and Call-centre support. 5. Awareness and sensitization 6. Project Management Charges (@ 8% of project cost) <p>With respect to tax liability admissible on the</p>

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
		aforementioned components, the implementing agency has informed that the collection of data and supervision component is not liable to draw tax under GST as per notification No.12/2017- Central Tax (Rate) New Delhi dated 28th June, 2017 (Sl. No. 3).
	(d) To clarify that the services of spatial planning study, provided by the institutes to Ministry of Panchayati Raj is exempt from GST under exemption entry 3 of notification No. 12/2017-CT(R) dated 28.06.2017.	<p>The Ministry of Panchayati Raj, in collaboration with 16 architecture as well as engineering institutes has taken up the initiative for Gram Panchayat Spatial Development Planning on pilot basis.</p> <p>The proposed study seeks to set out a framework as to how a particular area in the panchayat can be developed taking into account available resources. It seeks to promote decentralized planning with strengthening of local identity to create a framework for future policy decisions.</p> <p>As the ongoing spatial planning study seeks to enable panchayats to function as institutions of self-government in accordance with Article 243G of the Constitution.</p>
4.	To exempt GST on National Permit Fee paid on the vehicles for granting National Permits for goods carriage	<p>National Permit fee is not a consideration for any service provided and is actually in the nature of a tax.</p> <p>The fee deposited in the National Permit account is distributed on pro rata basis among all states and Union Territories shows that the same is not consideration for any service provided by any state Government /UT for grant of National Permit.</p>
5.	<p>To exempt GST on the following facilities provided to the members and ex-members of the Legislative Assembly, Secretariat, at Bengaluru</p> <ul style="list-style-type: none"> a) Accommodation at Legislators Home Complex at nominal rent b) Conveyance within BBMP agglomeration limits with nominal rate per km c) Health Club for exclusive use of members and ex-members at nominal rate d) Commercial Establishments for essential needs of members like 	Hon'ble Home Minister and GST Council Member from Karnataka State in his note dated: 02-02-2021 has informed that the above facilities are provided by Karnataka Legislative Assembly Secretariat to their Hon'ble Members and ex-members to effectively discharge their constitutional duties and responsibilities as public representative and therefore collecting GST from them does not arise and requested to consider the proposal of exempting income earned by Karnataka Legislative Assembly Secretariat by excluding the above facilities provided to Hon'ble members and ex-members from the ambit of GST with retrospective effect.

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
	laundry, Bookshops, Railway/ KSRTC reservation counters, hotel, bakery given to private parties on rent	<p>The Government is not considered to cover the Legislature as the Parliament and Legislative Assemblies and Council have their own secretariat and are providing services. Services provided by Government (Executive) and the Judiciary are exempted whereas the services provided by Legislature Secretariats are not specifically exempted.</p> <p>Further, the main issue relates to transportation services provided – whether it amounts to renting of vehicles or transportation of passengers.</p>
6.	To exempt GST on entry fee for regional language films screened on single screen.	<p>The Karnataka Film Chamber and Commerce Industry have raised the issue of exemption of GST on regional language films like Kannada, Kodava, Tulu, Konkani and Banjara films in Karnataka. These films were exempted from payment of Entertainment tax prior to the introduction of GST.</p> <p>Representatives of the film industry have informed that due to the Covid-19 pandemic and consequent lock down, the survival of the film industry has become difficult and has requested regional films screened in single screen theatres to be exempted from GST.</p>
7.	To clarify about liability of GST on Man Power Supply Services received by Panchayats, Municipalities and Local Bodies	<p>Notification No 12/2017 Central Tax-Rate dated: 28-06-2017 exempts certain services from the levy of central tax and similar notifications are issued by the state. Entry No. 3 of the said notification reads as under:</p> <p><i>“3.Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority or a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat, under Article 243 G of Constitution or in relation to any function entrusted to Municipality under Article 243-W of Constitution.”</i></p> <p>In this regard any pure service related to those functions entrusted to a panchayat</p>

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
		<p>under Article 243 G of Constitution and those entrusted to Municipality under Article 243-W of Constitution are exempted.</p> <p>Many of Panchayats, Municipalities and Local Bodies are Obtaining Manpower like Computer Operators and office Personnel who are not directly related to service are received by these bodies. Such services has held not to be directly related to the functions entrusted to Panchayat under Article 243 G of Constitution and those entrusted to Municipality under Article 243-W of Constitution and hence tax was collected from such local bodies and Government Departments by the Contractors.</p> <p>In view of the above a clarification may be issued on the scope of the words “ in relation to” in the interest of uniformity across the country</p>
8.	Services provided by Central Government or State Government or Governmental Authority by way of granting of long term lease (exceeding 30 years) should be exempted from GST.	<p>Upfront amount paid towards granting long term lease of industrial plots has been exempt since 01.06.2007 and same has been carried forward from Service Tax regime to GST with significant expansion of scope. The scope of the exemption was expanded to include long term lease of plots supplied by entities having 50% or more ownership of Central Government, State Government or Union Territory in an industrial or financial business area. Subsequently, the scope of the exemption was further expanded and it has included financial business area.</p> <p>2. During 2nd Meeting of the Group of Ministers (GoM) on boosting Real Estate Sector held on 21.11.2019, the issue to exempt GST on long term lease of land by private / semi-private bodies for setting industrial parks was discussed. The Government of Punjab has requested to exempt GST on long term lease of land by private entities for industrial purpose.</p> <p>3. After detailed deliberations, Hon’ble members of the GoM recommended that:</p>

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
		<p>(i) Service by way of grant of long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations / Undertakings or any other entity having 20% or more ownership of Central Government, State Government, Union Territory to (a) industrial units or (b) developers in any industrial or financial business area, may be exempt from GST.</p> <p>(ii) GST @ 5% may be levied on long term lease of land (thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by a *private person or entity, or an entity having less than 20% ownership of the Government. Similar safeguards as at sl. no. (ii) and (iii) above shall apply to this clause as well.</p> <p>4. The recommendations made by GoM were discussed in the 38th GST Council meeting held on 18th December, 2019 at New Delhi. The first recommendation has been accepted. The second proposal relating to rate of GST on long term lease of land of industrial plots or plots for development of infrastructure for financial business, provided by a private person or entity, was referred to the Fitment Committee.</p> <p>5. During the deliberations in the GoM and GST Council, it was believed that the services provided by the Central State Government or State Government or Local Authority or Governmental authority in form of long term lease of land of industrial plots or plots for development of infrastructure for financial business are already exempted in GST because in such cases ownership of</p>

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
		<p>Government is 100%.</p> <p>[Note:</p> <p>(i) Initially, as per amendment made in entry No. 41 vide notification No. 32/2017 – Central Tax (Rate) dt 13.10.2017, supply of services by way of <i>“Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50 per cent. or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.</i></p> <p>(ii) Subsequently, this limit of 50% is reduced to 20% vide Notification No. 28 /2019- Central Tax (Rate) New Delhi, the 31st December, 2019 w.e.f. 1/1/2020.</p> <p>(iii) Therefore, it is firm view that where the ownership of Government is 100%, no tax is leviable.]</p> <p>6. Recently Gujarat Authority for Advance Ruling held that one time long term lease premium payable/paid by the Jinmangal Corporation to Ahmedabad Urban Development Authority is taxable supply and is liable to pay tax under Reverse Charge Mechanism in accordance to Section 9(3) of the CGST Act in light of notification No. 13/2017 as amended by 05/2019.</p>

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
		<p>7. In this regard:</p> <p>(a) it may be clarified that tax shall not be leviable on services provided by the Central State Government or State Government or Local Authority or Governmental authority in form of long term lease of land of industrial plots or plots for development of infrastructure for financial business; or (b) the issue may be deliberated afresh in light of following legal arguments.</p> <p><u>Legal position:</u></p> <p>At present, tax liability under the GST Act on services by way of granting long-term lease transactions above 30 Years (HSN 9972) under different scenario is enclosed in “Annexure”. Looking to the above scenario, services provided by Central Government or State Government or Governmental Authority by way of granting Long term lease is taxable in GST Regime. Reasons for granting exemption: Generally, instead of selling the immovable property directly to industrial units or developers, Government transfers the immovable property in the following manner:</p> <ol style="list-style-type: none"> i. Transfer of the property by way of long term lease ii. Transfer the property by way of long term lease by any authority constituted by the Government (e.g. Ahmedabad Urban Development Authority) iii. Transfer the property by way of long term lease by the Industrial Development Corporation constituted by the Government (e.g. Gujarat Industrial Development Corporation). iv. Such authority charges amount (i.e. upfront amount or lease premium) as per the prevailing market rate at time of entering into lease agreement and subsequent lease rental charges are notional. If the immovable property is sold by any person, there is no tax liability as such transactions are outside the purview of GST (As per entry 5 of Schedule III).

Sl. No.	Proposal	Justification for request- Issues deferred by the Fitment Committee for further discussion
		<p>As stated above, the Government doesn't sell the immovable property and instead transfers the property to industrial unit or other business entity (including promoter) through long term lease. Such transactions cannot be not covered under Notification 14/2017 (Rate) dated 28th June, 2017 as such activities are not in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution and therefore are taxable. Tax liability arises on such transactions under RCM on the recipient, which makes such transactions unviable. There is no level playing field between sales of land by any person viz-a-viz long term lease of land by the Government or Governmental Authority. Therefore, levying tax on such transactions seems unfair and not justifiable.</p> <p><u>Proposal:</u> Therefore, it is proposed to exempt services provided by Central Government or State Government or Governmental Authority by way of granting of long term lease exceeding 30 years</p>

Agenda Item 11(iv): Issues placed before the Council in pursuance of directions of the Court - GST rates on assistive devices

This agenda note is regarding the applicable GST rate on the supplies relating to disability aids and equipment used by persons with disability, consequent to the Order dated 26-10-2020 of Hon'ble Supreme Court of India in the matter of Nipun Malhotra Vs. Union of India [Writ Petition (Civil) No.725 of 2017]).

Background

2.1 Briefly stated, under GST regime, a concessional rate of 5% has been prescribed on goods used by the persons with disability [vide S.No. 256 and 257 of the Schedule I of notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017]. These items are being subjected to the concessional rate of 5% in order to allow the suppliers of these to avail the Input Tax Credit (ITC) and get the refund of accumulated ITC on account of inverted duty structure. In case, these goods were to be exempted, the suppliers of the said goods would not be allowed to avail the ITC and the tax paid by such suppliers on the inputs would become a part of the cost of the final supplies to consumers.

2.2 The issue of taxation of the goods used by the persons with disability was discussed in the 14th GST Council held on 18th and 19th May, 2017 wherein it was discussed that the said items may not be exempted because in that case these items will not be eligible for ITC. Subsequently, the request to exempt GST on assistive devices has considered by the council in its meetings held on 11th June, 2017, 22nd December, 2018, and 20th September, 2019 and it has been decided not to change the tax rate on such devices so as to enable refund of accumulated input tax credit to the manufacturers. Therefore, it was a conscious decision of the GST Council to keep these items in 5% GST bracket.

Writ Petition

3.1 Subsequently, a Writ Petition (Civil) No. 725/2017 has been filed by Shri Nipun Malhotra challenging the imposition of 5% GST on assistive devices for the disabled *inter alia* on the grounds that the imposed GST has the effect of dividing the society amongst the disabled and the able by placing a tax burden on the disabled. This levy violates fundamental right, is at deviation from international practice. Accordingly, it has been pleaded that said tax violated the Fundamental Rights of the disabled.

3.2 The issues raised by the petitioner in his petition was examined in detail and a counter affidavit was filed by the Union Government in the matter. It was apprised by the Union Government to the Hon'ble Court that the extent and rate of taxation is an executive function. If the competence of the legislature stands established, the quantum of tax, conditions of taxation form a part of competence of the legislature. The levy of GST at the lowest rate of 5% was defended on the ground that 5% GST rate enable manufacturer to utilize input tax credit and in case of overflow take refund thereof. Exemption would break ITC chain and thus blockage of ITC. The GST law does not allow refund of accumulated ITC on exempted goods for domestic consumption. Hon'ble Court was also apprised of international practices which vary from country to country. A few impose GST at lower rates while other exempt and a few zero rate certain supplies for physically handicap. Learned Attorney General appeared on behalf of Union of India.

3.3 However, Hon'ble Court in its Order dated 26.10.2020 in the present case has made GST Council as a necessary party in the matter. Court has further directed the petitioner to file a

representation to the GST Council seeking the abolishment of the levy of 5% GST on the goods used by the persons with disability.

3.4 Subsequently, the petitioner has filed a representation dated 25th November, 2020 seeking abolition of the 5% GST imposed on the items used by the persons with disability. The copy of the representation dated 25-11-2020 is placed for consideration of the Council as **Volume-4** of the detailed Agenda Notes.

Ground relied by the Petitioner in the representation dated 25.11.2020

4 Petitioner has stated the following grounds for abolition of the 5% GST on the items used by the persons with disability: -

- (i) The levy of 5% GST on the Disability aids and equipment is incorrectly stated as “beneficial” for the end disabled user by the Respondent No. 1 i.e. Union of India. This argument vests on the false and misleading assumption that the levy of 5% GST allows for the reduction of cost of these products of the end disabled-user in domestic markets as the manufacturers are able to claim Input Tax Credit (ITC) on the inputs used to manufacture these products. This “benefit” is wrongly referenced to a “zero-tax regime”. This so because the benefit accrued from such an ITC accrues only to the manufacturer and not to the disabled consumer.
- (ii) The levy of 5% GST on disability aids and equipment violates the fundamental rights of the person with disability as envisaged under Article 14, 15, 19, 21 and 21A of the Constitution. The Hon’ble SC has in the cases of Jindal Stainless Steel V State of Haryana [(2017) 12 SCC 1], Aashirwad Films v Union of India [(2007) 6 SCC 624] and Indian Express Newspaper v Union of India [(1985) 1 SCC 641] held that the levy of taxes which violate the fundamental rights of a class of persons to be unconstitutional.

Fitment Committee Recommendation

5.1 Fitment Committee discussed this issue at length. The Committee observed that, tax policy in general and indirect tax concessions in particular, do not appear to be the right instrument to provide relief in the instant case. Indirect tax concessions, especially full exemptions, usually result in duty inversions that blocks input tax credits which may lead to increase in costs of the goods required by the beneficiaries. Besides, a minimum level of GST helps in encouraging domestic manufacturing of these items thereby reducing the dependence on international market for these crucial goods. Committee also felt that zero rating for domestic consumption is not permissible in law. As such the goods are at lower rate slab of 5% and this rate has been consciously recommended by the Council. This tax does not impinge on the fundamental right. In fact, the council has consciously kept the GST rate on these items at low rate of 5%. The Committee also noted that there are many schemes which are being run by the Department of Empowerment of Persons with Disabilities (Divyangjan) to empower persons with disabilities (list attached as ‘**Annexure-I**’). Therefore, the Fitment Committee was of the opinion that, instead of tax policy, support through public expenditure, especially in the form of direct subsidy to the beneficiaries and disabled friendly infrastructure creation, was the most effective policy option to provide assistance and relief to the persons with disabilities.

5.2 In the view of above, fitment committee felt that present rate structure on these items merits continuation.

Representation to be placed before GST Council

6. The matter is placed before the GST Council for a decision as directed by Hon'ble Supreme Court vide aforesaid order dated 26.10.2020.

**Schemes being run by the Department of Empowerment of Persons with Disabilities
(Divyangjan)**

1. Deendayal Disabled Rehabilitation Scheme (DDRS)
2. District Disability Rehabilitation Centers (DDRCs)
3. Assistance to Disabled Persons for Purchase/Fitting of Aids/Appliances (ADIP)
4. Scheme for Implementation of Rights of Persons with Disabilities Act, 2016 (SIPDA)
5. Accessible India Campaign / Sugamya Bharat Abhiyan
6. Scheme for Awareness Generation and Publicity
7. Research on Disability Related Technology, Products and Issues
8. Unique Disability ID Project (UDID)
9. Incentive Scheme for providing employment to Persons with Disabilities (PwDs) in the private sector
10. In-Service Training and Sensitization of key Functionaries of Central and State Government, Local Bodies and other Service
11. Scheme of “Support for Establishment/ Modernization/ Capacity Augmentation of Braille Presses”
12. State Spinal Injury Centre
13. Scheme for Financial Assistance to Colleges for Deaf in Five Regions of the country Providers
14. Scholarship Schemes
15. Scheme for providing Financial Assistance under the National Fund for Persons with Disabilities
16. Exhibitions/workshops to showcase the products including paintings, handicraft, etc. made by the PwDs.
17. Support persons with benchmark disabilities who have excelled in sports/ fine arts/music/dance/film/theatre/literature at the State level to participate in the National and International events.
18. Support certain exclusive needs of persons with high support needs as recommended by the Assessment Boards on specific recommendation by the States on a case-to-case basis.
19. Indian Spinal Injury Centre (ISIC)
20. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities
21. National Handicapped Finance and Development Corporation (NHFDC)
22. National Awards for the Empowerment of Persons with Disabilities.

**Agenda Item 11(v): Issues placed before the Council in pursuance of directions of the Court -
Exclusion of ice cream from composition levy**

The agenda note is regarding the direction of Hon'ble High Court of Delhi in the matter of Writ Petition No. 5252/2019, M/s Del Small Ice Cream Manufacturers Welfare's Association Vs. Union of India wherein petitioner had challenged exclusion of Ice Cream from the ambit of composition levy under section 10 of the CGST Act. Hon'ble Court after consideration of issue has directed that matter be placed before Council for a re-look by the Council.

Background

2. Briefly stated, the composition levy covers prescribed on all goods except those notified by the government (section 10(2)(e) of CGST Act 2017). The exclusions from Composition Scheme were deliberated in the GST Council in the 17th Meeting held on 18.06.2017 and is recorded as per Agenda Item 3. After due deliberations above, the Council recommended that the manufacturers of Ice Cream and other edible ice, whether or not containing cocoa [HS 2105 00 00] (along with manufacturers of Pan Masala and Tobacco products). Exclusion of ice cream was made on the grounds that major input for ice cream is milk which is exempt, therefore allowing composition levy on ice cream will lead to significant loss of tax revenue.

Writ Petition (Civil) No. 5252/2019

3.1 A Writ Petition (Civil) No. 5252/2019 was filed by M/s Del Small Ice Cream Manufacturers Welfare Association challenging the exclusion of ice cream from the composition levy under Section 10(2)(e) of the CGST Act 2017 *inter alia* on the grounds that the reasoning for exclusion of ice cream is fallacious as ice cream does comprise of large number of other components on which GST is levied.

3.2 Further, the petitioner also contended that the GST Council, in exercise of powers under Section 10(2)(e) of the Act has clubbed ice cream with pan masala and tobacco which are sin goods very unlike ice cream.

3.3 The Hon'ble Court in its Order dated 09.02.2021 in the present case, has made the following observations:

- (i) A reading of Section 10(2) (e) of the Act shows that no parameters, whatever, on the anvil of which the respondent No.2 GST council may recommend for notification, any goods from the benefit of Section 10(1) of the Act, have been prescribed.
- (ii) On the perusal of minutes of 16th and 17th GST Council meeting, the Hon'ble Court has enquired whether any study has been done by the respondent No.2 GST Council, of the tax effect of extending benefit of Section 10(1) to small scale manufactures of other similar goods and services. The perusal of minutes also shows that the reason as emanating from the 17th meeting viz. of the taxation effect, on benefit of Section 10(1) being permitted to be given to ice cream, being enormous.
- (iii) The court has passed the following direction: -

22. *Only direction which can be issued in this petition is, to direct the respondent no. 2 GST Council to reconsider the exclusion of small scale manufacturers of ice cream from the benefit of Section 10(1) of the Act, including on the aforesaid two parameters i.e. the components used in the ice cream and the GST payable thereon and other similar goods having similar tax effect continuing enjoy the benefit. We direct accordingly.*

23. *The respondent no. 2 GST Council to take up the aforesaid aspect in its next meeting and to take a decision thereon at the earliest, keeping in view that the ice cream season has just begun, and preferably within three months of today.*

3.4 Accordingly, the copy of the Order dated 09-02-2021 is placed for consideration of the Council in **Volume-4** of the Detailed Agenda Notes. Consequent to this order by Hon'ble High Court, the two issues under consideration are as under:

- (a) The components used in the ice cream and the GST payable thereon.
- (b) Other similar goods having similar tax effect continuing enjoy the benefit.

4. As regards the components used in the ice cream and the GST payable thereon, as per the standard for ice cream, kulfi, chocolate ice cream, etc. issued under Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011, Ice-Cream, Kulfi, Chocolate Ice Cream or Softy Ice-Cream means the frozen milk (product conforming to the composition specified in entry (i) of sub-item (c) of item 2 (of the said regulations), obtained by freezing a pasteurized mix prepared from milk or other products derived from milk, or both, with or without addition of nutritive sweeteners and other permitted non-dairy ingredients. The said product may contain incorporated air and shall be frozen hard except in case of softy ice-cream where it can be frozen to a soft consistency.

5. Regarding weight-age of these commodities in ice cream manufacturing, as per the inputs provided by GCMMF Ltd (Amul) the breakup for ice cream is as under:

Constitutions/ Inputs	HSN	Weightage in total inputs for that Brand (Value wise)	Input per unit price (Rs per Kg)	Value wise weightage (percentage)	GST Applicable	Total GST paid on inputs for Rs 100 worth of ice cream inputs used.
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Milk and Cream	040120, 040150	64.99	81.6	53.7	0%	0
Butter	040510	13.56	181.50	24.9	12%	2.99
Skimmed Milk powder	040210	6	255	15.4	5%	0.77
Food Stabilizer	130220	0.3	162	0.5	18%	0.09
Sugar	170113	15	32.81	5	5%	0.25
Flavor	330210	0.15	263.70	0.4	18%	0.07
Total		100		Rs 100		Rs 4.17

6.1 As detailed above, in case of ice cream, approximate costing calculations show that for every ice-cream manufactured of value Rs 100, Rs 54 worth of milk and cream is used which is exempt from GST which is the primary input. As detailed in column (7) in table above, total tax paid on inputs worth Rs 100 is Rs 4.17 which is less than 5% of the value of inputs. Hence, ice cream dealer is required to pay significant portion of his liability in cash (ITC being low).

6.2 As regards other similar goods (edible, non-essential products), exclusion from Composition Scheme are only a few items, as detailed above.

7. The market size of ice cream in India is estimated to be around Rs 15000 Cr at 2019 data. This market is dominated by Amul and Kwality Walls (together account for 75% of the market). Other big players include Vadilal, Naturals, Havmor, Mother Dairy etc. In addition, there are few local brands that enjoy significant turnover. However, there are many small venders operating locally who may have turnover of upto Rs. 1.5 Cr. They may have smaller share of the market but are large in numbers.

8. In the above background, the order of the Hon'ble High Court 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 was prima facie of the view that exclusion of Ice Cream has been well debated in the Council. Revenue implication of inclusion of Ice Cream under composition has significant implication as it has high value addition. Council has decided this exclusion taking relevant factors into account. Even, aerated water exclusion has been made, while it was earlier covered, w.e.f. Oct 2019 on the ground of revenue implication. The Committee observed that even in pre-GST regime it was excluded from composition in a number of states. Under GST regime, the exclusion has been limited only to ice cream, Aerated drinks, Pan Masala and Tobacco. Therefore, the Committee felt that matter be placed before the Council for consideration. It also felt that there is a need for a detailed study of coverage (inclusions and exclusions) from composition scheme, particularly as regards sectors where there is significant value addition and consumption. In this regards direction of the Council be taken.

Agenda Item 12 : Correction of Inverted Rate Structure on textiles and footwear

The Committee of Officers on Augmentation of Revenue identified 'Inverted Rate Structure' as a significant issue that has led to certain distortions in the GST tax regime and need correction. Inversion in rates causes accumulation of input tax credit with a manufacturer producing the goods. The Fitment Committee examined the issue and made the following recommendations on textiles, footwear, mobile and fertilizers. These items were most affected by inverted rate structure:

- i. GST rate on mobile phones and its parts (falling under Chapter 85) may be increased from 12% to 18%.
- ii. GST rate on Chemical fertilizers may be increased from 5% to 12%.
- iii. GST rate on footwear with value upto Rs.1000/- per pair, may be increased from 5% to 12%.
- iv. Following rate structure on textiles: -
 - a. 5% GST on cotton and other natural fibres (except raw jute, silk and wool) and all-natural fibre yarns.
 - b. 12% GST on manmade fibres
 - c. 12% GST on MMF yarns
 - d. 12% GST on all fabrics
 - e. 12% GST on all garments and made-ups
 - f. 12% GST on dyeing services

2. The above recommendations, were placed before the GST Council in its 39th meeting held on 14th March, 2020. The Council deliberated the issue in detail and accepted the recommendations of the Fitment Committee for increasing the GST rates on mobile phones and parts from 12% to 18% and decided to take up the issue of inverted tax structure on textiles, fertilizers, footwear and others in future meetings of the Council. Further, Council was of the view that other items of inversion may also be taken up for discussion at appropriate time.

3. The issue of Inverted Duty Structure was again taken up by the GST Council in its 40th meeting held on 12th June, 2020 wherein the Council agreed in principle that there is a need for correction of the inverted duty structure but owing to the economic situation due to Covid-19, deferred the issue for a later appropriate time.

4. Inverted rates create distortion in GST, as they are a deviation from the basic philosophy of a value added tax. The adverse implications of inverted rates are as follows:

- (i) A manufacturer suffers cash flow issues in case of inverted rate structure, even if refund of accumulated ITC on inputs is eventually refunded.
- (ii) The accumulated ITC on input services and capital goods is not refundable even if rate structure is inverted. Input services constitute significant portion of cost. Thus, accumulated ITC on input services would be significant. Accumulated ITC on capital goods is a burden for exporters too.
- (iii) Small standalone units suffer more on account of inversion (in comparison to a large composite unit).
- (iv) Inverted rate structure makes import more competitive putting domestic units at disadvantage. While domestic unit suffer the adversities of accumulated ITC, the import simply enjoys lower IGST without any inversion or accumulated ITC.

(v) Inversion disincentives capital investment. Acquisition of capital goods for manufacturer of goods suffering inversion (say fabrics) would lead to hardship for a new unit or a unit undertaking expansion of capacity, as ITC on capital goods accumulates and cannot be adjusted with output tax liability. This has been argued by industry.

(vi) A consumer is also unlikely to gain much on account of lower rate on goods suffering inversion. The embedded taxes become cost and likely to be passed on. Further, as new investment is dissuaded in such sectors, customers choices get restricted and sector remain uncompetitive/inefficient leading to adverse consequences in terms of price and availability of goods.

(vii) Even claiming refund of accumulated ITC on inputs requires effort, cost and often marred with litigation.

(viii) With technological advancement and increasing production, net unit value addition at manufacturer's end falls. Manufacturers have been outsourcing more, including the manpower supply. This makes inversion further acute.

(ix) In absence of any standardised input output norms, the inverted rate structure has also led to making fraudulent refund claim that is accumulated on fake invoice in items like footwear.

(x) Inverted rates also have serious implication to revenue as there has been substantial outgo in refund of accumulated ITC on inputs (no refund is given on input services and capital goods).

Thus, overall, inverted rate structure would make domestic industry less competitive, result is cash flow issues besides accumulation of ITC that sticks to cost, lead to unfair practices, creates disincentive for investment in newer technology and expansion, does not really benefit the consumer much in terms of cost reductions and has serious implication to revenue

5. In view of the above, a proposal for correcting the Inverted Rate Structure on Footwear and Textiles is placed before the Council. As regards fertilizers, taking into account the certain concern were expressed on account of implication to agriculture, it is proposed that Council may take up the issue later.

Footwear:

6. India produces more than 2 billion pairs of different categories of footwear. Over the years the percentage of non-leather footwear has been increasing and at present non-leather footwear constitutes about 60% of the total footwears made. Even in leather footwear as significant constituents (like soles, consumable, embellishments etc.) is of non-leather items. Hence, non-leather inputs, as discussed below are the major constituents of footwear industry. There are nearly 15000 units engaged in manufacturing footwear in India with total turnover of these manufacturing unit is estimated at Rs. 70,000 crores. The value addition in this industry is about 15-20%. With post manufacturing (trading) value addition and imports of footwear, the total domestic consumption estimated to be about Rs 80,000 crore a year (met with domestic supply and imports). As the major constituents of footwear industry attract standard rate (except leather-cost which on an average is about 20% in leather footwear), the inversion in footwear with 5% rate is acute.

7. While pre-GST tax incidence on footwear was significantly higher (ranging from 10% to 29%), the GST Council recommended a lower dual rate structure for footwear with 5% rate on footwear with retail sale price up to Rs. 500 and 18% on other footwears. The Council revisited the rate structure on footwear and concessional rate of 5% was extended up to footwear with retail sale price upto Rs. 1000 with effect from August, 2018. Subsequently, w.e.f. 1.1.2019 further concession was given to footwear and GST rate would apply on the supply value rather than on the basis of retail sale price.

8. This has led to inversion in rate structure, as majority of sale of footwear (about 70% in value term) is at concessional GST rate of 5%. This has also led to a refund of about Rs 2000 crore a year. The major inputs of footwear and their typical share in a footwear are as under:

Parts	Material	GST rate	Proportion in Cost
Shoe Sole	Natural/Synthetic Rubber, Precipitated Silica, Elasto Polymer	18%	25%
Shoe Upper	Leather, Technical Textile, Rubber, Plastic	5%/12%/18%	30%
Chemicals, components, embellishments, other Parts, Consumables and other inputs	Adhesives, [PU, polychloroprene, PVA, Acrylics, Isocyanate], Solvents [MEK], Colors and Pigments, Catalysts etc.	18%	15%
Overheads and other expenditures (Capital goods, input services)		18% on capital goods and input services (other than job work)	25%
Margin			5%

Source: Industry data

9. In general dual rate structure needs to be avoided as it creates distortion and leads to mis-declaration/ evasion of taxes. As such an ad valorem rate ensures that in absolute term the lower segment would suffer lesser tax incidence. Therefore, ideal all footwear should be standard rated. However, considering that the items is a mass consumption goods, at this stage 12% rate for footwear with value upto Rs.1000/- per pair may be conducive to correct inversion.

Textiles:

10. The GST rate structure on all goods of the textile value chain was deliberated at length during the 15th meeting of the GST council held on 03.06.2017 and subsequent GST Council meetings. Based on the Pre-GST tax incidence, the GST Council recommended: -

- (a) 18% GST on Man-made fibres
- (b) 18% rate on MMF filaments and yarns,
- (b) 5% GST on cotton, silk, wool and other natural fibre and yarns
- (c) 5% on raw cotton and other vegetable fibres; nil rate on raw silk, raw wool and raw jute.

(d) 5% on all apparel fabrics including Man-made fibre fabrics with restriction on refund of accumulated ITC at fabric stage.

(e) 12% rate on technical and other fabrics such as narrow fabrics.

11. In pre-GST regime fabrics suffered a much higher tax incidence. While cotton fabric had an incidence of about 9%, MMF fabrics had an incidence of about 13.6%. Therefore, a 5% rate in GST was much lower. Taking this into account Council prescribed the restriction of not allowing refund of accumulated ITC on fabrics. After roll out of GST, the textile industry represented that the rate structure resulted in acute inversion in textile sector particularly at fabric stage. It was also argued that the restriction of not allowing refund of accumulated ITC on fabrics favoured large composite mills while standalone power looms suffered. Accordingly, in stages further relief was extended to textile sector. To begin with GST rate on manmade yarn was reduced to 12%. Thereafter, refund of accumulated ITC was allowed on fabrics with prospective effect from 1.8.2018. Job-work services were also brought down to 5%. However, these changes have not been able to sort out the inversion issues. Yarn continues to suffer significant inversion as value addition from fibre to yarn is not significant. Hence, standalone spinning units suffer. Fabric, particularly made on MMF or blended, continues to have inversion on account of higher tax rate on yarn, input services and capital goods. The adverse impact of inverted rate structure has bearing to ready-made garment segment too on account of accumulated ITC on services and capital goods. Also the cost associated with inversion on fabric becomes a cost that is transferred by fabric manufacturer to readymade garments.

12. On ready-made garments the pre-GST incidence was about 13.2%. Hence, 5% rate in GST is significantly lower.

13. Lower rate of 5% on job-work has led to hardship to dyeing units. Their significant inputs like chemicals and dyes attract GST at the rate of 18%. Further critical input services of effluent treatment attract GST at the rate of 12%. These job workers have been representing for correcting inversion even if it requires increasing rate to 12% of dyeing services.

14. Ministry of Textiles has recommended for correcting inverted rate structure so as to unshackle it from the burden of taxes (accumulated ITC etc). It has been stated that liberating this sector will also substantially increase employment opportunities in the textile industry. The differential rates and slow-refunds of accumulated input tax credit has affected the competitiveness of the industry and has proven to be a deterrent for investment in the sector. Ministry of Textile is of the view that for tax uniformity across the value chain, MMF fibres and yarns need to be brought under a uniform tax slab to take care of inversion in tax structure. This will benefit the spinning and power loom sectors, which in turn will boost the garment sector and create huge job opportunities. An inter-Ministerial Group (IMG) consisting of Ministry of Textiles, Commerce and NITI Aayog has also similar views. The IMG has observed that with implied limitation on growing cotton, manmade fibre base needs to grow at least 5 times in next 5 years.

15. The inversion in rate structure of textile sector has led to a refund of more than Rs 4000 crore. This is anticipated to grow considerably in future considering that in the first year, refund of accumulated ITC was not allowed to fabric units.

16. The volumes of quantity produced and sold for textile sectors broadly are as follows. Cotton yarn - 4200 Mn Kg, man-made fibre and yarn- 3600 Mn Kg, fibre being about 1200 Mn Kgs. (Source DC&PC, Textile Commissioner). In coming years, the man-made segment is anticipated to grow faster than natural fibre segment.

17. General view as regards GST rate structure in textile sector is that the 5% rate on fabrics and lower value garments (Rs 1000 per pc) is an anomaly. Manufactured goods should either have higher or equal rate (in comparison to the rate as applicable to key inputs). However, a divergent view offered was that the output tax rate on mass consumption commodities like garments and fabrics should be viewed from the point of view of the consumer interests and not solely from the view of industry hardships or inversion. On this count any increase in rate of fabric and garment may not be justifiable.

18. The experience since the roll out of GST has been that inverted rate structure has led to significant adverse impact as stated above. It has not really benefitted the consumer either. Lower incidence did not lead to reduction of prices of fabrics or garments. In any case, inversion of tax rate meant that a lot of cost on account of accumulated ITC on services, capital goods and the resource cost for seeking refund of accumulated ITC on input sticks to the cost of fabric and garments. This may be 4-5% considering service and capital goods would at least constitute 20-25% of the input cost. Further, removal of inversion would give boost to the garment sector and with increasing production customer would only benefit. Therefore, increase in tax rates may at the most a marginal effect of garment. Besides, there exists a strong economic justification, as argued by Ministry of Textiles, that refined rate structure will help the sector to grow at faster pace.

19. The dyeing industry has also been severely affected by inversion as the output service attract GST rate of 5% while their significant inputs like dyes attract GST at the rate of 18% and significant services like effluent treatment also attract a GST of 12%. This industry has represented for correction of inversion by raising GST rate on the process of dyeing from 5% to 12%. Once the fabrics rate is calibrated to 12%, it would also be feasible to calibrate the GST rate of dyeing industry. Fitment Committee is also of the view that dual rate on readymade garment and made ups be avoided. RMG and made up, irrespective of value be placed at uniform rate of 12%. Ad valorem rate would ensure that lower rate garment suffer lower tax in absolute terms. As stated, rate calibration shall not have any significant implication to consumer. In long run, as sector grows, it would benefit consumers and economy as streamlining of the tax structure textile industry would be able to grow at a more rapid pace and with increased productions and economies of scale, the costs and prices in this sector would naturally go down.

20. In view of the above discussions, the following rate structure on textiles is proposed: -

- (a) 5% GST on cotton and other natural fibres (except raw jute, silk and wool) and all-natural fibre yarns.
- (b) 12% GST on manmade fibres
- (c) 12% GST on MMF yarns
- (d) 12% GST on all fabrics
- (e) 12% GST on all garments and made-up
- (f) 12% GST on dyeing services

Other items which suffer inversion in rates:

21. In the previous deliberation in the Council on the need for correcting inversion, there has been a general consensus that inverted rate structure need correction to the extent feasible and therefore, other items may be identified. In this regard, it is submitted that certain other sectors where significant inversion exists are renewable energy devices, railway parts (though corrected partially by revision of

GST from 5% to 12%), pharmaceuticals, tractors, machineries liking milling, LEDs, agarbatti, ink, pen, utensils, water pumps etc. These items being at lower rate slabs of 5% and 12 [while their input and input services are at 18%]. The extent of inversion in these items shall be examined by Fitment for making recommendation to the Hon'ble Council for consideration and making recommendation in the future meeting.

Agenda Item 13: Applicability of Goods and Services Tax on Extra Neutral Alcohol (ENA)

Briefly stated, an Agenda Note for GST Council on the taxation of rectified spirit/ Extra Neutral Alcohol (ENA) under GST was considered in the 20th Meeting of GST Council held on 05.08.2017, wherein the Council, had recommended:

- a) For the time being status quo should be maintained regarding taxation of ENA for manufacture of alcoholic liquor for human consumption.
- b) legal opinion of the Attorney General of India may be sought regarding whether within the prevailing constitutional provisions, GST can be levied on supply of ENA for manufacture of alcoholic liquor for human consumption or not?
- c) Representatives of States who wish to participate in briefing to the Ld. AG may also be invited for such briefing on the issue before the Ld. AG and may also be invited to attend the same.

2.1 Accordingly, the issue of applicability of GST on supply of rectified spirit/ Extra Neutral Alcohol (ENA) for manufacture of alcoholic liquor for human consumption was referred to Ld. Attorney General. Further, as desired by the Ld. Attorney General, a number of States had sent detailed notes on applicability of GST on rectified spirit/ Extra Neutral Alcohol (ENA) for manufacture of alcoholic liquor for human consumption. Thereafter, representatives of Tamil Nadu, Karnataka, Haryana, West Bengal, Andhra Pradesh, Rajasthan and Maharashtra also briefed the Ld. Attorney General on the issue. The Ld. Attorney General rendered his opinion on the matter, through Ministry of Law and Justice, as under:

- i. There is no dispute between the Centre and the States as to the levy of GST on industrial alcohol (i.e., denatured ENA), there is divergence of opinion in regard to ENA that is used for manufacture of ‘alcoholic liquor for human consumption.’
- ii. A note containing the views received from the State of West Bengal, objects to the levy of GST on ENA by relying on the judgment of the Supreme Court of India in *Bihar Distillery v. Union of India* (1997) 2 SCC 727. The State contends that no GST can be levied on ENA that is used to manufacture alcoholic liquor for human consumption and the power to regulate and impose taxes on ENA is vested exclusively in the States.
- iii. The representations received from the Government of Tamil Nadu, Rajasthan and Andhra Pradesh also place reliance on the judgment of the Supreme Court in *Bihar Distillery (supra)* to contend that no GST can be levied on ENA.
- iv. At the request of the Ministry of Finance, a conference with the representatives of the States of West Bengal, Karnataka, Andhra Pradesh, Tamil Nadu, Rajasthan and Maharashtra. During the conference, these States have once again placed reliance on the judgment of the Supreme Court in *Bihar Distillery* to submit that the power to levy tax on ENA would vest exclusively with the State Governments and therefore, no GST can be levied.
- v. Even though the judgment of the Supreme Court in *Bihar Distillery (supra)* does hold that the States have the power to control rectified spirit removed for manufacturing potable liquors, thus judgment cannot be used as precedent for the proposition that the States have absolute power to impose taxes on ENA that is used to manufacture ‘alcoholic liquor for human consumption’. This is because:
 - a) The court in *Bihar Distillery* was not concerned with the power of the State to levy Excise under Entry 51. To that extent, the court did not deal with the meaning of the words ‘alcoholic liquor for human consumption’ as used in Entry 51. On the other hand, the Court was only concerned with the regulatory power of the State under Entry 8 of List II.

Entry 8 in its entirety reads – ‘intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxication liquors’. Nowhere does Entry 8 use the phrase ‘alcoholic liquor for human consumption’

- b) The meaning of the term ‘alcoholic liquor for human consumption’ has been dealt with categorically in *Synthetics and Chemicals v. State of UP* (1990) 1 SCC 109 (7 judges) and *State of UP v. Modi Distillery* (1995) 5 SCC 753 (3 judges). In *Synthetics*, the Court has held that the expression ‘alcoholic liquor for human consumption’ means that liquor which as it is consumable in the sense capable of being taken by human beings as such as beverage or drinks. In *Modi Distillery*, the Court held that ethyl alcohol (95 per cent) was not an alcoholic liquor for human consumption but could be used as a raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor, etc.
- c) The two judge bench of the Court in *Bihar Distillery* (*supra*) has not referred to the three judge bench decision in *Modi Distillery* where the Court, dealing with the power of the State under Entry 51 List II, clearly held that “by common standards, ethyl alcohol (which had 95 per cent strength) was an industrial alcohol and was not fit for human consumption.”
- d) The Supreme Court has subsequently overruled *Bihar Distillery* on the very question of imposition of excise duty by the State on rectified spirit. In *Deccan Sugar & Abkari Co. Ltd. V. Commissioner of Excise, A.P.*, (1998) 3 SCC 272 the Supreme Court once again dealt with the question of the power of the State to levy Excise duty on rectified spirit and after noticing the judgment in *Bihar Distillery*, the Court referred the matter to a larger bench for consideration of the question whether any excise duty can be levied by the State on the manufactured rectified spirit which may ultimately be used for production of potable liquor. At Para 4 of the judgment, the Court held:

‘4. It is to be kept in view that the aforesaid decision rendered in *Bihar Distillery* case [(1997) 2 SCC 727] by a bench of two learned Judges of this Court was strictly concerned with the question whether the State could cancel licenses given to a distillery manufacturing rectified spirit on the grounds as alleged to be relevant for such cancellation. Therefore, strictly speaking there was no occasion for this Court in *Bihar Distillery* case [(1997) 2 SCC 727] to consider the wider question whether any excise duty can be levied by the State on the manufactured rectified spirit which may ultimately be used for production of potable liquor. Even that apart the aforesaid observations made in *Bihar Distillery* case [(1997) SCC 727] by the Division Bench of this Court *prima facie* run counter to the scheme of legislative competence as examined by the Constitution Bench of this Court as well as in the three-Judge Bench of this Court in *Modi Distillery* [(1995) 5 SCC 753] . Consequently, in our view these matters are required to be placed for decision before a larger Bench of three learned Judges of this Court for reconsideration of the judgment in *Bihar Distillery* case [(1997) 2 SCC 727]. We therefore direct the Registry to place all these appeals for disposal before a larger Bench of three learned Judges....’
- e) Thereafter, a three judge bench of this Court was constituted. This bench considered the matter on 13th February 2002 and in a judgment reported in (2004) 1 SCC 243 it held that “the state can levy excise duty only on potable liquor fit for human consumption and as rectified spirit does not fall under that category the State Legislature cannot impose any excise duty”.

- f) Lastly, in *State of Bihar v. Industrial Corporation*, (2003) 11 SCC 465, the Supreme Court, while dealing with the question of the power of the State to levy a penalty for loss or wastage of molasses, rejected the argument of the State that molasses were diverted towards manufacturing liquor which is fit for human consumption and held that ‘no penal duty could have been imposed on rectified spirit’. At Para 23 of the judgment, the Court, after referring to *Bihar Distillery (supra)* has held:

“24. How far and to what extent the said observations are correct need not be considered by us but suffice it to point out that this decision had not noticed the earlier decision given by a Bench of three learned Judges in Modi Distillery. Modi Distillery applies on all fours to the facts of the present case and we are bound thereby...”

- vi. ENA typically contains 95% alcohol by volume and as such, is not fit for human consumption. Under Article 246A (1) read with 366 (12A), GST cannot be levied on the ‘supply’ of ‘alcoholic liquor for human consumption’. ENA that is used for the manufacture of alcoholic liquor is not supply for the purpose of human consumption as it is not consumed directly, but goes through a process of manufacture.

2.2 For the reasons mentioned above, Ld. AG is of the opinion that the judgment of the Court in *Bihar Distillery* does not denude the Centre or the States of the power to levy GST on ENA that is used to manufacture ‘alcoholic liquor for human consumption’.

3. The abovementioned opinion of the Ld. Attorney General was circulated among States vide GST Council email dated 16.01.2018.

4. The above issue was discussed in the GST Core Group Meeting held on 1st March, 2018, where it was decided that in view of the opinion of the Ld. Attorney General, the issue may be placed before the GST Council for its considerations and necessary recommendations. The applicability of GST on ENA was also one of the agenda points for discussion for the 26th GST Council meeting. However the same could not be discussed due to the paucity of time.

5. In the interim, further comments have been received from the States of West Bengal, Rajasthan and Uttar Pradesh. Their comments are at the **Annexure-I**.

6. The issue was placed before the GST Council in its 37th meeting held on 20th September, 2019 and it was decided that as the larger issue of applicability of GST on ENA is pending before the Council, in the interim period, status-quo be maintained and the States may go by the decision of GST Council as recorded in the minutes of the 20th meeting of the GST Council meeting held on 5th August 2017.

7. Due to lack of clarity on the issue, divergent practices are being adopted by distilleries, while supplying Extra Neutral Alcohol (ENA). There is divergence in interpretation by States too. Accordingly, there is different tax treatment for ENA in different states. Units paying GST on ENA have been served demand notices for non-payment of VAT, whereas units paying VAT have been served notices for non-payment of GST. During enquiries, it has been observed by Directorate General of GST Intelligence (DGGI) that different practices are being adopted in different States and even within the State of Uttar Pradesh, various distilleries are following different practices, such as:

- a. Some Distilleries are discharging GST on the supplies of ENA. Consequently, they are not paying VAT or State Excise Duty on the supplies of ENA;
- b. Some of the Distilleries are paying VAT or State Excise Duty on the supplies of ENA; and

- c. Some of the Distilleries are neither paying VAT nor State Excise Duty nor are they discharging GST on the supplies of ENA.

7.1 It has also been observed that some distilleries are adopting a dual practice i.e. paying GST @ 18% on ENA cleared to the manufacturers of 'liquor for human consumption', but not paying any GST on similar products namely Grain Neutral Spirits (GNS) etc. when supplying to a bottling unit.

7.2 Further, various writ petitions have also been filed on this issue as well. Illustratively, Writ Petition No. 1031 of 2017 and Writ Petition No. 1031 of 2017 were filed in the High Court of Judicature at Bombay Civil Appellate Jurisdiction on the issue of taxability of ENA.

8. In view of the different practices being followed and difficulty faced by the trade, it is proposed that the GST Council take up the matter for discussion as it has wider revenue implications.

9. Accordingly, the GST Council may like to consider the issue of applicability of GST on rectified spirit / Extra Neutral Alcohol (ENA) for manufacture of alcoholic liquor for human consumption and make recommendations as it considers appropriate for early resolution of this issue.

1. Comments received from the State of West Bengal

The State is of the view that ENA is outside GST. Their views are based on the opinion of Shri Mukul Rohtagi, Senior Counsel who had opined that ENA for potable alcohol is within the purview of the States. Their views are based on the following

- (a) Mr. Rohtagi had relied on the following three case laws:
 - (i) **R.S. Rekhachand Mohta Spinning and Weaving Mills Private Limited vs. State of Maharashtra (1997)** where the Hon'ble Supreme Court held that any entry in the Constitution should be taken in the widest possible construction.
 - (ii) **Hoechst Pharmaceuticals Limited vs. State of Bihar (1983)** judgment of the Hon'ble Supreme Court which speaks of the exclusive nature of the taxation entries in Central List and State List and the fact that there are no taxation entries in the Concurrent List, thereby implying that there is no confusion in the matter of jurisdiction as far as levy of tax is concerned.
 - (iii) **Amrut Distilleries Limited vs. Nandagopalan and Others (2008)** where the two judge bench of the Hon'ble Supreme Court had directed that division bench of the High Court to decide the matter in the light of Bihar Distilleries case. The case was regarding the whether a distillery lies in the exclusive purview of the Centre or the States.
- (b) The Industrial (Development and Regulation) Act, 1951 was amended in the light of the Bihar Distilleries Judgement in 2016, and retained only Fermentation Industries (other than potable alcohol) in the purview of the act. Therefore the Central government itself kept fermentation industries producing potable alcohol (ENA/RS) under the jurisdiction of the state.
- (c) Further, between the judgement of Constitutional bench in the Synthetics and Chemicals vs. State of UP and present, the state has never levied any excise duty on ENA/RS, recognizing that this falls in the jurisdiction of the state.

2. Comments received from the State of Rajasthan

The State is of the view that ENA is outside GST. Their views are as under:

- (a) It is to be noted that taxation entry 8 of list II (state list) does not qualify "alcohol to be fit for human consumption" but uses the phrase "for human consumption" and thus ENA would fall under the State List and thus be outside the purview of GST.
- (b) Where ENA is utilized for manufacture of potable alcohol, the entire credit gets blocked as there is no GST on output. The tax so paid cannot be utilized for the payment of VAT on the final product thereby creating huge cascading effect in the potable alcohol sector, whereas in the earlier regime the credit of VAT paid was available.
- (c) Further, it is to be noted that differential treatment on the basis of end-use will lead to different rates on the same product. This in itself is a huge incentive for tax evasion as the differences in the tax rates will be substantial. Further, monitoring and supervision of end use

of the product will also be difficult. Therefore, it is advised that taxation on ENA should be left entirely in the hands of State Govt. chargeable to VAT.

3. Comments received from the State of Uttar Pradesh

The State is of the view that as per the current law, ENA is not fit for human consumption in its form and hence is chargeable at 18% rate in GST. However, it must be noted that ENA is primarily used in order to produce liquor and this includes manufacture of country liquor. If ENA is kept at 18% rate in GST, country liquor will become exceedingly expensive and this will lead to increase in manufacture and sale of illegal country liquor which can lead to loss of human lives. Hence, it is requested that ENA should be kept at 12% rate in GST.

Agenda Item 14: GST Revenue Augmentation

1. Prior to introduction of GST, Government had appointed a committee to recommend possible tax rates under GST that would be consistent with the existing level of revenue collection of Centre and States, i.e. revenue neutral rate or RNR. The Committee headed by the then Chief Economic Advisor, Dr. Arvind Subramanian, was of the view that the range of RNR should be between 15% and 15.5% (Centre and states combined). This was in the backdrop of a two-rate structure, a standard rate close to RNR at which maximum tax base would be taxed; and a higher, demerit or sin rate. The RNR recommendation was also based on the assumption that on introduction of GST, collection efficiency would move up.
2. In the 3rd and 4th GST Council meeting, the broad principles on the basis of which GST Rates were to be determined were finalised, the most important among those being that the GST rate should be closest to present combined tax incidence (including cascading). In the 14th and 15th GST Council meeting, goods and services were fit in one of the four GST slabs (5%, 12%, 18% and 28%) in addition to the exempted category.
3. Since the introduction of GST, several rate revision and rationalization have been done. Several other factors such as increase in the threshold limit for exemption and changes in composition scheme have impacted GST revenue and there is a widening gap between the projected revenue collection and the fund requirement which calls for measures for revenue augmentation. Broadening of tax base, additional resource mobilization and improved tax compliance will help achieve the desired outcome of revenue augmentation.
4. A Committee of Officers was constituted for the above purpose with terms of reference including *inter-alia*, suggestions of measures for expansion of tax base. States were also requested to provide specific suggestions on GST and compensation cess rates to be levied on various items, review of current exemptions, rate calibration for addressing inverted duty structure, introduction of compliance measures other than those already in existence and any other measures for revenue augmentation.
5. The Committee of Officers so constituted had come out with recommendation suggesting measures for augmenting revenue.
6. A detailed presentation containing recommendations of the revenue Augmentation Committee was made before the GST Council Meeting in its 38th meeting held on 18th December, 2019. Council deliberated on the issue at length. The issue of correction of inverted tax rate was also taken separately in the 39th and the 40th meeting. Council recommended correction of inversion in mobile by raising rates on mobile and specified parts to 18%. On other issues, like rate slabs, pruning of exemptions, review of rates no view was taken and the agenda was deferred for future meetings. Accordingly, it is a pending agenda for examination by the Council and making recommendation.
7. In this meeting it is only put up for information of the Council. A detailed agenda on the matter shall be placed before the Council in its future meeting.

Agenda Item 15: Decisions/recommendations of the 14th meeting of IT Grievance Redressal Committee

The 14th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 4th March, 2021 to resolve grievance of the taxpayers arising out of technical problems faced by them on GSTN portal in relation to filing of TRAN-1, TRAN-2 and migration to GST along with a case of non-technical nature.

2. The agenda for the 14th ITGRC meeting had a total of 66 cases pertaining to TRAN-1/Tran-2/migration comprising 43 Nodal officer cases, 22 court cases (including one migration case of M/s Guru Shoes Components) and 1 non-technical case of M/s Veliath Steel Agencies.

- Out of the total cases, the 64 cases of TRAN 1/ TRAN 2 had been categorized broadly reason-wise in two major categories as 'A' and 'B'. Category 'A' includes cases in which the taxpayer could not apparently file TRAN 1/TRAN 2 because of technical glitches and category 'B' includes cases where no technical issues were found from the system logs in filing TRAN 1/TRAN 2 as per the analysis of GSTN.
- In the migration case of M/s Guru Shoes Components, the petitioner had obtained provisional ID but the migration was not completed due to invalid PAN. The Hon'ble HC vide order dated 03.06.2020 directed to allow migration and directed GSTN to permit access to the GST Portal for uploading of returns.
- M/s Veliath Steel Agencies case is a case of transposition of column and is covered as error apparent on face of record as per the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues.

3. Recommendations of the ITGRC

3.1 Summary of ITGRC decisions in court cases

The ITGRC recommended the **5** court cases of **TRAN-1** falling under category A1 and **1** case of **TRAN-2** falling under category A1 The **migration** case of M/s Guru Shoes components (**1**) and **non-technical** issue case of M/s Veliath Steel Industries (**1**) have also been recommended.

The ITGRC rejected the 14 cases of TRAN-1 falling under categories B1/B3, and 1 case of TRAN-2 falling under the category B.

3.2 Summary of ITGRC Decision in Cases forwarded by the nodal officers

The committee decided that both the cases i.e., court cases as well as the nodal officer cases, are at par as long as the parameters applied in the past in the ITGRC meetings are uniform i.e. the assessee had attempted to file the TRAN-1 before the due date and there is a clear evidence of technical glitch faced by the taxpayer post analysis by GSTN, merit acceptance. In this scenario, the **16** cases falling under category A1 out of 43 cases merit acceptance and remaining 27 cases falling under category B1, B2, B3, B4, B8 are liable to be rejected as no technical glitch was noticed by the GSTN in these cases post technical analysis.

3.3 The Committee approved on merit 24 cases (6 court cases (TRAN-1/2) and 1 migration case and 1 non-technical case and 16 nodal officers cases) subject to placing before the GST council. The ITGRC was of the view that they meet the requirements for considering the cases and fall in the four walls, however, as the due date of 31.08.2020 is already over, the same be placed before the GST council for their view and recommendations.

The GSTN has provided the data regarding the date of receipt of said cases by GSTN /nodal officers (**Annexure-B**). It is observed that the nodal officers have received the said 16 cases falling in category A before 31.8.2020.

3.4 Issue regarding reopening of cases already decided by ITGRC

One State raised the issue that various taxpayers, whose TRAN-1 applications have been rejected in previous ITGRC meetings based on technical analysis by the GSTN, are resubmitting their TRAN-1 applications to field nodal officers with fresh set of evidences for technical glitches. The ITGRC stated that the past cases once decided by the ITGRC and approved by the GST Council shall not be reopened.

3.5 Issue regarding cases pending with nodal officers

GSTN requested that clarity is required whether the cases still pending with nodal officers are to be taken up by GSTN for processing as the last date for submitting the declaration electronically has lapsed on 31.08.2020. GSTN also requested to provide clarity whether the nodal officer should stop accepting fresh application from taxpayer in TRAN-1 and TRAN-2 cases.

In this regard, the Committee stated that in regard to the cases pending with the nodal officers as well as with GSTN received after the due date, the GSTN should compile how many of such cases are there. GSTN has informed vide mail dated 19.5.2021 that 4 cases have been received by it from nodal officers. (Annexure C) The date of receipt of these cases by the nodal officers is prior to 31.8.2020.

The Committee further seeks the final decision from GST Council about the further agenda of the ITGRC and whether the cases received after/ before due date by nodal officers and which are still lying with the Nodal Officers or with GSTN, should be considered at all or not by the ITGRC.

4. The recommendations of ITGRC as per attached Minutes of the 14th ITGRC Meeting (**Annexure A**) are placed for information of the Council. The GST council may also give its decision/ directions regarding cases recommended by ITGRC in para 3.3 and in respect of the clarity sought by ITGRC as mentioned in para 3.5 above.

Minutes of the 14th IT Grievance Redressal Committee (ITGRC) meeting dated 04/03/2021 held in online mode over WebEx Platform

The 14th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 4th March, 2021 at 11.30 am. The list of Committee officers who attended the meeting is attached as **Annexure-1**.

2. Ms. Ashima Bansal, Joint Secretary, GST Council Secretariat, initiated the proceedings of the meeting with the approval of the Chair. She welcomed the Chairman of the committee, members of the committee and gave a briefing about the agenda of the 14th ITGRC meeting. She informed that 14th ITGRC meeting is being held with the approval of the competent authority in the wake of the pending TRAN-1/TRAN-2 cases involving writ petitions before various High Courts. She further informed that there are **22 court cases** pertaining to TRAN-1, TRAN-2 and Migration which are being presented in the 14th ITGRC for decision. Out of these 22 cases, **19 cases pertain to TRAN-1, 2 cases pertain to TRAN-2 and 1 case pertains to migration (enclosed as Annexure-2)**.

3. She also informed that besides these cases, there is one case pertaining to M/s Veliath Steel Industries, Kerala subsequent to High Court of Kerala decision which is of non-technical nature and would be presented before the ITGRC with the permission of the Chair as per extended scope of the ITGRC approved during the 32nd GST Council meeting. (enclosed as **Annexure-4**).

4. Ms. Ashima Bansal then invited Sh. Dheeraj Rastogi, Executive Vice President, GSTN to carry forward the proceedings and discuss the agenda of the meeting in detail.

5. Sh. Dheeraj Rastogi, Executive Vice President, GSTN made a power point presentation on the background of the ITGRC meetings conducted so far and agenda of the present ITGRC in detail which is summarized in below paragraphs and tables. Shri Dheeraj Rastogi presented a table listing all the cases received by GSTN. They presented 65 cases, out of which 43 cases have been forwarded to them by the nodal officers and 22 cases pertain to court matters.

Brief Background and Updates:

6. **The cases of TRAN-1 / TRAN-2 / TRAN-3/migration cases have been received from the Nodal officers of Centre and the States for consideration by the ITGRC. These cases excluding the court cases were received in two phases i. e.**

(A) **Based on SOP issued by GSTN in pursuance of Circular No. 39/13/2018 dated 3rd April, 2018:** - A total of **2655** cases of TRAN-1, **213** cases of TRAN-2 and **18** cases of TRAN 3 were received from the Nodal officers of Centre and the States until 31st March, 2019 for consideration by ITGRC. These cases were received from the Nodal Officers either through the email or by post though a few cases have been received in GSTN office even after due date i.e. 31st March, 2019. Further, a few cases, which were received by GSTN Nodal officer containing all the relevant information but were not in the format prescribed in SOP (issued by GSTN in April 2018) have also been placed before ITGRC meetings.

(B) Cases received in terms of Letter F. No. CBEC-20/10/16/2018-GST (Pt. I)/352 dated 04/02/2020 issued by Commissioner, GST and O. M. dated 06/02/2020 issued vide F. No. 71/Expansion-ITGRC/GSTC/2019 : - As per the directions contained in the letter issued by CBIC and the O.M. issued by GSTC, jurisdictional Tax Administrators and Nodal Officers were requested to forward representations of the taxpayers to GSTN where filing/revision of TRAN-1/TRAN-2 could not be done by due date owing to technical glitches on common portal (excluding already approved / not approved cases in ITGRC Meetings), after ascertaining the following:

- i. Whether there appeared to be a demonstrable technical glitch due to which filing could not be completed on the common portal.
- ii. the evidences which may identify the bona fide attempts on the part of the taxpayer for attempting to file TRAN 1 on or before 27.12.2017.

The jurisdictional Nodal officers nominated by Central and States Tax authorities were also required to compile and collate the applications of the taxpayers along with evidences and send the same to GSTN Nodal officer in prescribed template (Excel) at email ID- tran.extscope@gstn.org.in **not later than 15th February 2020**. However, due to continuing delayed submission by the Nodal officers as well as extension in terms of CBIC vide Notification No. 35/2020-CT dated 03.04.2020 read with Notification No.55/2020-CT dated 27-06-2020, the cases are still being received. As per the instructions, the representations of taxpayers, forwarded by the jurisdictional Nodal Officers, are processed by GSTN for consideration and decision by ITGRC.

Cases forwarded by Nodal Officers

7. **A total of 741 cases were received** from jurisdictional Nodal officers in terms of **clause (B)** above until 13th January, 2021 for consideration by the ITGRC. A summary view of these cases, excluding court cases, is given below:

Sr. No.	Status	Cases forwarded by Nodal Officers
i.	Cases decided by 11 th and 12 th ITGRC	361
ii.	Cases under consideration of 13th ITGRC (Minutes awaited)	47
iii.	Cases being presented before 14th ITGRC	43
iv.	Cases Returned to Nodal Officers due to non-compliance with SOP.	290
v.	Total Cases (i to iv)	741

Sh. Dheeraj Rastogi further informed that **290** cases were returned to jurisdictional Nodal officers due to following reasons:

- a) Some cases were already received and presented before the previous ITGRCs or

- b) Information was not received as per the SOP and the same were returned back or
- c) Incomplete details furnished by the Nodal Officer.

Presently, **43 cases** (attached as **Annexure-3**) of TRAN-1/TRAN-2, processed by GSTN are being presented before the ITGRC for consideration and decision. However, GSTN would like to have a decision on this issue as upto which date the cases have to be processed for consideration by ITGRC.

Court Cases Received through GSTN Nodal Officers and other Sources:

8. A total of 482 writ petitions have been received by GSTN pertaining to TRAN-1/TRAN-2/Migration as on 13.01.2021. These include the court cases received by GSTN Nodal officer at email ID (tran.extscope@gstn.org.in) as well as cases received through other sources. The details of cases received are as below.

- a) 403 Court cases were processed till 12 ITGRC meetings.
- b) 57 Court cases were processed in 13th ITGRC meeting (**Minutes awaited**).
- c) 22 Court cases of TRAN-1/TRAN-2/Migration have been processed at GSTN level and are being presented before 14th ITGRC for decision.

As detailed below, thirteen meetings of ITGRC have been held so far. A total of **3620** TRAN-1/TRAN-2/TRAN-3 cases (**including court cases**) were presented before ITGRC in these meetings. Out of these, **a total of 1260 cases have been approved for filing** TRAN-1/TRAN-2 while 104 cases were placed for decision of 13th ITGRC (**Minutes awaited**). The decisions of ITGRC regarding approval/non-approval of these cases has also been communicated to the jurisdictional Nodal officers for onward transmission to the taxpayers.

The detail of TRAN-1, TRAN-2 & TRAN 3 cases (including court cases) **approved/not approved/withdrawn** up to 13th ITGRC, are given below:

ITGRC Meetings	Meeting Date	Approved	Not Approved	Withdrawn by GSTN	Grand Total
1 st	22.06.2018	122	48		170
2 nd	21.08.2018	213	127		340
3 rd	26.10.2018	70	198		268
4 th	12.02.2019	165	296		461
5 th	05.03.2019	80	144		224
6 th	26.05.2019	172	510		682
7 th	11.06.2019	98	151		249

8 th	13.08.2019	137	352	2	491
9 th	02.12.2019	72	194	13	279
10 th	22.01.2020	11	52		63
11 th	18.03.2020	82	193		275
12 th	26.05.2020	38	80		118
Total		1260	2345	15	3620
13 th	01.09.2020	Minutes Awaited	Minutes Awaited	-	104
Grand Total					3724

Sh. Dheeraj Rastogi further informed that the approved TRAN-1/TRAN-2 cases have been enabled for filing at GST Portal. The taxpayers who have been enabled for filing TRAN-1/TRAN-2 have been informed through e-mails for filing their TRAN-1 and/or TRAN-2 with in-depth procedure of filing. Further, reminders have also been given to those taxpayers who had either not attempted to file TRAN-1/TRAN-2. The taxpayers who failed to file their TRAN-1/TRAN-2 even after reminders, have been contacted telephonically by the Officers of GSTN and guided appropriately for filing of the same.

Proposal by GSTN for 14th ITGRC Meeting

9. Proposal of GSTN for 14th ITGRC meeting:

- (1) As explained above, a total of 43 cases (enclosed as Annexure-3) received from Nodal officers along with 22 court cases after technical examination by GSTN have been presented before 14th ITGRC for decision.
- (2) Presently, total of **22 court cases** pertaining to TRAN-1, TRAN-2 and Migration are being presented in this ITGRC. Out of these 22 cases, **19 cases pertaining to TRAN-1, 2 cases pertaining to TRAN-2 and 1 case pertaining to migration (enclosed as Annexure 2)** are being presented before 14th ITGRC for decision.
- (3) Considering the fact that the taxpayer has made an effort to file a Writ Petition alleging technical glitches, for further examination an email dated 14.09.2020, an email dated 22.10.2020, email dated 28.12.2020 and an email dated 07.01.2020 was sent by GSTN to the taxpayers in cases falling under category "B" for further examination requesting for the following details:
 - i. GSTIN
 - ii. Exact technical glitch faced by you while filing TRAN-1
 - iii. Nature of error noticed

- iv. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The taxpayers were requested to share the above-mentioned details to substantiate their claims by end of day 16.09.2020, 24.10.2020, 30.12.2020 and 09.01.2021 respectively. Replies were received in 11 cases (Sl. Nos. 6, 8, 9, 12, 13, 14, 15, 16, 17, 19 for TRAN-1 cases and case at Sl. No. 2 for TRAN-2 cases). The taxpayers did not share any screen shots evidencing any technical glitches of the GST Portal. The specific details of each case have been provided in detail in Annexure-2.

10. Category-wise analysis of 64 TRAN-1 and TRAN-2 cases received from Nodal officers and court cases and 1 migration case totalling to 65 are given below:

i) The cases where the taxpayers could not file TRAN 1/TRAN-2 because of technical issues:

A1. Processed with error- In this category, the taxpayer have received error message as “Processed with Error”. The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details. **A total of 16 cases received from Nodal officers and 05 cases received as court cases are falling in this category.**

A5. TRAN-1 filed and error in TRAN-2: - As per Logs TRAN-1 filed successfully. Error recorded in database while attempting to file TRAN-2. **A total of 01 case received as court case is falling in this category.**

Accordingly, 22 cases of TRAN-1/TRAN-2 Type ‘A1’ & ‘A5’ were presented before 14th ITGRC for consideration.

ii) Categories in which no evidence of technical glitches have been found after analysis of System logs: (Total 43 cases)

B1. Cases in which, there are no evidences of error on submission/filing of TRAN1, as per GST System log- As per GST System log, there are no evidences of error or submission/filing of TRAN-1. **A total of 13 cases received from Nodal officers and 13 cases received as court cases are falling in this category.**

B2. Cases in which filing of TRAN-1 Fresh/Revision Attempted with No error/ No valid error reported. - As per GST System logs, the taxpayers have claimed that they tried to save/submit for the first time or for revision of TRAN-1 but analysis of logs show that there is no system error. **A total of 03 cases received from Nodal officers are falling in this category.**

B3. Cases in which TRAN-1 have been filed successfully as per logs with no valid error reported- The taxpayer has successfully filed TRAN-1 and no technical errors have been found in the examined technical logs. **A total of 04 cases received from Nodal officers and 01 cases received as court cases are falling in this category.**

B4. TRAN-1 filed once but credit not received. - Cases where the taxpayer has filed TRAN-1 once and claims that no credit has been posted. No technical issues have been observed in the logs. A total of **04 cases received from Nodal officers** falling in this category.

B8. TRAN-1 filed and TRAN-2 not attempted and no error in logs. -As per Logs TRAN-1 filed successfully. User neither submitted nor filed TRAN-2 and there are no logs of save as well. A total of **03 case received from Nodal officers** and **01** cases received as court case are falling in this category.

Category-wise Summary of Cases sent by Nodal Officers of Centre/States

Category No.	Category	Count of Taxpayers
A1	Processed with error.	16
B1	As per GST system log, there are no evidences of error on submission/filing of TRAN-1.	13
B2	TRAN-1 Fresh/Revision Attempted with No error/ No valid error reported.	03
B3	TRAN-1 Successfully filed as Per Logs with No Valid Error reported.	04
B4	TRAN-1 filed once but credit not received.	04
B8	TRAN-1 filed and TRAN-2 not attempted and no error in logs.	03
	Grand Total	43

Case wise Discussion by ITGRC in matters of Writ Petition:

The Agenda contained Category-wise count of Orders passed in court cases and their current status vis-à-vis the pendency status of the Writ before Hon'ble Court.

Sr.No	Court Order/WPs	Category A (TRAN-1 & TRAN-2)	Category B (TRAN-1& TRAN-2)	Migration	Total
1	Direction to allow filing of TRAN-1/TRAN-2 manually/electronically	0	1	0	1
2	No specific order passed	4	9	0	13
3	Direction to Respondents/Nodal Officer to pass appropriate orders	2	5	1	8

	Total	6	15	1	22
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11. Category A1: Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN-1 but could not file because of errors.

11.1 W.P. No. 13864/2020 M/s Cotton Impex v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
06AAGHM4778M1ZK	Haryana	Proprietorship

(i) **Sh. Dheeraj Rastogi informed that** the Petitioner claims that he is entitled to claim of Rs. 13, 97,013/-on account of excess VAT credit. However, due to technical glitch on the portal, he was not able to claim the same.

(ii) He further informed that GSTN is party in this matter. GSTN vide email dated 08.09.2020 apprised the status of case to the Central Government Standing Counsel and the CGST Commissionerate (Rohtak) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble High court of Punjab & Haryana and the next date of hearing has not been updated on the website. No effective order is available on the Court's website.

(iii) He stated that on completion of technical analysis conducted by GSTN, it was observed that the Taxpayer had opened form GST TRAN-1 and attempted to save the data. However, the same was not processed due to a submission error reported due to validation for Registration no. 065442914799 which was invalid. The Registration number was later added in the Petitioner's profile post 27.12.2017. Thus, he submitted that the petitioner's case may be considered as having faced Technical difficulties.

Discussion-

(i) Sh. Anil Kumar Jha, Special Secretary, Revenue raised a query that that when the registration number was added to the taxpayer's profile after the due date of filing the TRAN-1, then how GSTN can consider such a case as a technical glitch within the due date. The EVP, GSTN clarified that in such cases, attempts were made by the taxpayer to file the Tran-1 within the due date and they could not complete the action due to non-updating of profile. Also, that the taxpayer was not prompted by the system to first update the profile and then attempt to file the TRAN-1 thereafter. The Chairman of the ITGRC, Sh. Vivek Johri, Member, CBIC then asked GSTN to inform that whether such cases have been taken up by the GSTN earlier and considered by the ITGRC. Sh. Manish Kumar Sinha, CEO, GSTN informed that such cases have been approved by the previous ITGRCS. Shri Khalid Anwar, Commissioner of Commercial Taxes, West Bengal, also supported that the Portal did not prompt the reason why there was an error in filing the Tran-1 and hence profile could not have been rectified by the taxpayer and he stated that as such cases have been considered positively in the previous ITGRC meetings, such cases should be treated on par now also. Ms. Ashima Bansal, Joint secretary, GSTC Secretariat stated that in this case, the assessee attempted to file the TRAN-1 in contrast to B category cases in which the assessee made no attempt to submit or to file TRAN-1/2 and the attempt to save and submit TRAN-1 was faced with submission error due to a technical issue of non-updation of registration profile. The Chairman proposed that in the interest of being consistent with what ITGRC have done in the past and considering that the system was not indicating the nature and cause of error while filing the TRAN-1, the ITGRC may consider it

as a technical glitch and recommend the matter to the GST council to which the Committee concurred.

(ii) Shri Anil Jha raised a query that whether the cases which were merely pending before the court with no final decision can be taken up by the ITGRC. Shri Manish Kumar Sinha informed that as a matter of practice such cases where decision of the court is pending, have been taken up and recommended in ITGRC. EVP, GSTN clarified that such distinction prior to Aug 2020 was irrelevant as the ITGRC was considering even the cases forwarded by Nodal officers. Hence, both the types of cases were put on par and whenever technical glitch was found, the ITGRC allowed those cases. Post discussion, the view was formed that once it is established that the assessee had attempted to file the TRAN-1/Tran-2 within due date and technical glitch has been confirmed during analysis by GSTN, the cases can be taken up. The Committee concurred with the view.

Decision

In view of the detailed discussion, as above, it was decided that the committee may consider it as a technical glitch and recommend such cases to the GST Council.

11.2 W.P. No. 15168/2020 M/s Medreich Limited v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
36AABCM1458Q1Z1	Telangana	Public Limited Company

(i) Sh. Dheeraj Rastogi informed that this case is similar in nature to the case of M/s Cotton Impex V. Union of India and ors. in W.P. No. 13864/2020 just discussed. He stated that petitioner had submitted TRAN-1 and ARN was also generated. **However, the same was reflecting as filed on the GST portal. The Petitioner then attempted to file revised TRAN-1 but credit was not getting reflected on the Portal.**

(ii) He further stated that GSTN is not a party in this matter. GSTN vide letter dated 04.11.2020 has apprised the status of case to the Principal Chief Commissioner CGST (Hyderabad Zone) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Telangana and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

(iii) It was further informed by him that on completion of technical analysis conducted by GSTN, it was observed that the Taxpayer had filed TRAN-1. However, the same was not processed due to a submission error reported for validation for Registration Nos. AABCM1458QEM009 and AABCM1458QEM011 which were invalid. The Registration number AABCM1458QEM009 was added in the Petitioner's profile before filing of TRAN-1. However, Registration No. AABCM1458QEM011 has not been added to the Petitioner's profile till date. The Petitioner's ITC Ledger has been updated and ARN has also been generated for the respective attempts. The Petitioner has not attempted any revision. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

Discussion-

The Committee noticed that this matter was similar in nature to case of M/s Cotton Impex V. Union of India and ors. in W.P. No. 13864/2020 discussed before.

Decision-

It was decided that in the interest of being consistent with the practice by the ITGRC in the past and considering that the system was not prompting the exact nature of technical issue to the taxpayer while filing the TRAN-1 and taxpayer had actually attempted to file the TRAN-1 before the due date, the committee considered it as a technical glitch and recommend the case to the GST Council.

11.3 W.A. No. 788/2020- The Commissioner of GST & CE v. Checkpoint Apparel Labelling Solution Pvt. Ltd.

GSTIN/ Provisional ID	State	Constitution of Business
33AAGCS9485A1ZA	Tamil Nadu	Private Limited Company

(i) Sh. Dheeraj Rastogi informed that the Petitioner has stated that they had uploaded TRAN-1 on 13.09.2017 and received an email stating that the Petitioner had successfully filed TRAN-1 with time stamp 13/09/2017, 19.07 and received ARN AA370913729P. However, the GST Portal showed the same as “Processed with Error” and the Electronic Credit Ledger was not reflecting the CENVAT Credit.

(ii) He further informed that GSTN is a party in this matter. GSTN vide email dated 29.10.2020 has apprised the status of the case to the CGST Commissionerate (Chennai North) in terms of CBIC’s Circular No. 39/13/2018 dated 03.04.2018. The appeal has been disposed by the Hon’ble Madras High Court. The Court vide judgment dated 23.09.2020 which upheld the impugned order dated 14.02.2020 in W.P. No. 3328/2020 directing the Respondents to do the needful to enable the Petitioner to upload the requisite form TRAN-1 in order to avail unutilised credit.

(iii) The Petitioner in this case vide their Letter dated 14.11.2019 addressed to the Commissioner, Chennai North (Principal Nodal Officer for IT Grievances, Chennai Zone), under endorsement to Commissioner of GST & CE, Chennai Outer, had stated that they had faced technical glitches in the GST Common portal while filing Form GST Tran-1 before the due date i.e. 27.12.2017, however they do not have any proof/screenshot having faced technical glitch. The representation regarding TRAN-1 credit was **rejected by Chennai Outer Commissionerate, vide Letter C.No: IV/16/88/2019-GSTST-TRAN1 dated 01.01.2020** as it was not conforming to Board’s Circular No: 39/13/2018 dated 03.04.2018 i.e. there was no technical glitch **and was not forwarded to GSTN**. The same was informed to taxpayer by Chennai Outer Commissionerate vide letter C.No.IV/16/88/2019-GSTSK-TRAN-1 dated 01.01.2020. Against this, the Taxpayer preferred a Writ Petition No: 3328 of 2020 in the Hon’ble Madras High Court and the Hon’ble Madras High Court vide Order dated 14.02.2020 in WP No:3328 of 2020 has directed the respondents to do the needful forthwith to enable the petitioner to upload the requisite forms (TRAN-1/2). However, since the nodal Officer (Chennai Outer Commissionerate) had found that there was no proof for the claims made by the taxpayer for any technical glitches, rejected the request. The department therefore filed Writ Appeal the Division bench of High Court of Madras against the High Order dated 14.02.2020 in WA No. 788/ 2020.

(iv) The Commissionerate approached GSTN vide email dated 15.10.2020 with a request to examine whether the Petitioner had made any attempt to file Form GST TRAN-1 in the portal on or before 27.12.2017 and had actually faced any technical glitches as claimed by them. Technical Analysis in this matter was therefore conducted by GSTN upon receipt of the abovementioned email from Commissionerate.

(v) GSTN has informed that on completion of technical analysis conducted by GSTN, it was observed that the Petitioner had opened form GST TRAN-1 and attempted to file the data on 26th Oct

2017 at 12:34 PM and subsequently on 26th Dec 2017. Subsequently, the Petitioner attempted to file revision which was successfully filed but a submission error was reported for Registration no. AAFCG5452JEM001. The Registration No. AAFCG5452JEM001 has been added to the Petitioner's profile post 27.12.2017. The Petitioner's ITC Ledger has not been updated, but ARN has been generated for the respective attempts. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

Discussion and Decision:

Post discussion, the ITGRC approved the proposal of the GSTN being similar to the earlier 2 cases as per technical analysis report and recommended the case for approval by the GST Council.

11.4 WPT 6316/2020-M/s GSR Eco Bricks Private Limited v. Union of India

GSTIN/ Provisional ID	State	Constitution of Business
37AAFCG5452J1ZD	Andhra Pradesh	Private Limited Company

(i) **Issue:** The Petitioner has stated that they had uploaded TRAN-1 on 13.09.2017 and received an email stating that the Petitioner had successfully filed TRAN-1 with time stamp 13/09/2017, 19.07 and received ARN AA370913729P. However, the GST Portal showed the same as "Processed with Error" and the Electronic Credit Ledger was not reflecting the CENVAT Credit.

(ii) **Status:** GSTN is a party in this matter. GSTN vide email dated 19.11.2020 has apprised the status of the case to the CGST Commissionerate (Guntur) in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Andhra Pradesh and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

(iii) On completion of technical analysis conducted by GSTN, it was observed that the Petitioner had opened form GST TRAN-1 and attempted to file the data. However, the same was not processed due as it got stuck on "FRZ". Subsequently, the Petitioner attempted to file revision which was successfully filed but a submission error was reported for Registration no. AAFCG5452JEM001. The Registration No. AAFCG5452JEM001 has been added to the Petitioner's profile post 27.12.2017. The Petitioner's ITC Ledger has not been updated, but ARN has been generated for the respective attempts. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

Discussion and Decision:

The ITGRC approved the proposal of the GSTN in view of the technical analysis report and recommended the case for approval by the GST Council.

11.5 WP No. 8583/2020 Genext International v. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
07AAPFG1341R1ZW	Delhi	Partnership

(i) Sh. Dheeraj Rastogi informed that the Petitioner has claimed that they had filed their Form TRAN-1 for claiming VAT credit of Rs. 4,17,042 and CENVAT credit of Rs. 14,50,716 (total credit of Rs. 18,67,758). However, it was later noticed that the Petitioner's Electronic Cash Ledger was only reflecting VAT credits i.e. 4,17,042 and did not show credits amounting to CENVAT Credit worth Rs. 14,50,716.

(ii) He further informed that the GSTN is not a party in this matter. GSTN vide letter dated 04.12.2020 apprised the status of case to the GST Policy Wing in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The Hon'ble High Court of Delhi has reserved judgment in this case on 21.12.2020. The judgment is not available on the Court's website.

(iii) He further stated that on completion of technical analysis conducted by GSTN, it was observed that the Taxpayer had opened form GST TRAN-1 and attempted to file the data. However, the same was not processed due to a submission error reported for validation for Registration no. AAPFG1341REM001 which was invalid. The Registration number has still not been added in the Petitioner's profile. The Petitioner's ITC Ledger has been updated and ARN has also been generated for the respective attempts. The Petitioner has not attempted any revision. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

Discussion and Decision:

The ITGRC approved the proposal of the GSTN as per technical analysis being similar to other 4 cases and recommended the case for approval by the GST Council.

12. Category-B1:-As per GST system log, there are no evidences of error or submission/filing of TRAN-1:

Sh. Dheeraj Rastogi presented the 14 cases of TRAN-1 under category- B1/B3.

12.1 CWP-6585/2020-Bhatia Tyre Works. v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
08ARTPB2446F1ZS	Rajasthan	Proprietorship

Issue: The Petitioner could not file TRAN-1 within the prescribed time due to constant technical difficulties faced by the Petitioner on GST portal. Resultantly Petitioner was also unable to file TRAN-2

Status: GSTN is a party in this matter. GSTN vide letter dated 07.09.2020 shared comments with the CGST Commissionerate (Jaipur) apprising the status of case to the in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Rajasthan at Jaipur and the next date of hearing is 16.04.2021. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 14.09.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1.
- ii. Nature of error noticed.
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 16.09.2020. The Petitioner replied vide email dated 16.09.2020 explaining that when they attempted to upload TRAN-1 and TRAN-2

the portal showed them an error of under process. The Petitioner shared details of ticket number 20200316903171 and copy of letter dated 16.09.2019 addressed to the Assistant Commercial Taxes Officer, Circle-A, Commercial Taxes Department, Sri Ganganagar.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.2 W.P. No 3988/2020 M/s. Kalpatru Enterprises through its Proprietor Neeraj Jain v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
07ACRPJ4269P1ZP	Delhi	Proprietorship

Issue: The Petitioner attempted to file TRAN-1 on the GST portal on 21.12.2017, 23.12.2017, 24.12.2017, 26.12.2017 and 27.12.2017 but could not file the same because of technical glitches on the GST Portal which the Petitioner could not understand.

Status: GSTN is a party in this matter. GSTN vide email dated 17.09.2020 apprised the status of case to the CGST Commissionerate (Delhi-North) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. Judgment has been reserved in this matter on 21.12.2021. The copy of the judgment is not available on the website.

Further investigation by GSTN: An email dated 14.09.2020 was sent to the Petitioner requesting for the following information:-

- Exact technical glitch faced by you while filing TRAN-1.
- Nature of error noticed.
- Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 16.09.2020. However, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.3 WP No. 14791/2020 M/s Shah Electronics & Home Appliances Pvt. Ltd. v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
36AAECS5488F1Z1	Telangana	Private Limited Company

Issue: The Petitioner was not able to file FORM GST TRAN-01 by 27.12.2017 due to technical glitches and thereafter portal was closed. As a result, the subsequent filing of FORM GST TRAN-2 also could not be filed by the Petitioner.

Status: GSTN is party in this matter. GSTN vide letter dated 17.09.2020 apprised the status of case to the Commissioner of Central Tax (Medchal) and the Assistant Commissioner of Central Tax and GST (Ramgopalpet III Range, Secunderabad Division) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble High court of Telangana and the next date of hearing is not available on the website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 22.10.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 24.10.2020. The Petitioner responded vide email dated 23.10.2020. The Petitioner did not provide any screen-shot evidencing technical glitches of the GST Portal. Further, the exact issue faced by the Petitioner was also not provided.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. There are no logs for "save". ITC ledger has also not been updated. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.4 Writ Tax No. 418/2019 M/s Bhagwan Motors v. UOI & Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AAHFB9939J1ZT	Uttar Pradesh	Partnership

Issue: The Petitioner made several attempts to file TRAN-1 on the GST Portal till 27.12.2017 however, could not do so because of apparent technical fault in the GST system.

Status: GSTN is a party in this matter. GSTN vide email dated 18.09.2020 shared comments with the CGST Commissionerate (Meerut) apprising the status of case to the in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The Hon'ble High Court of Allahabad vide order dated 04.04.2019 has disposed off the matter with direction to the Assistant Commissioner/Commissioner GST to consider the Petitioner's application and pass appropriate order in accordance with law.

Further investigation by GSTN: An email dated 22.10.2020 was sent to the Petitioner requesting for the following information:-

- i.Exact technical glitch faced by you while filing TRAN-1.
- ii.Nature of error noticed.
- iii.Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 24.10.2020. The Petitioner replied vide email dated 24.10.2020 explaining that they could not log in the portal despite trying several

times during the period 20th December, 2017 and 27th December, 2017. The Petitioner shared a screenshot of his GST Portal Dashboard taken on 12.02.2020 which showed the message "*The filing of declaration in TRAN-1 is not available now as the due date is over*". This is a valid system message as the due date for filing TRAN-1 is now over. The Petitioner also shared a letter explaining their grievance addressed to the Assistant Commissioner, Goods and Service Tax, Range Saraswa.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. There are no logs for "save". ITC ledger has also not been updated. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.5 WP (C) No. 17174/2020-M/s ValethHightech Composites (P) Ltd. v. STO &Ors

GSTIN/ Provisional ID	State	Constitution of Business
32AAACV1999E1ZC	Kerala	Private Limited Company

Issue: The Petitioner was not able to upload Form TRAN-1 on account of various computer glitches with respect to the website of the department before 27.12.2017.

Status: GSTN is a party in this matter. GSTN vide email dated 23.09.2020 apprised the status of case to the CGST Commissionerate (Kochi) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kerala and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 22.10.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1.
- ii. Nature of error noticed.
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 24.10.2020. However, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. There are no logs for "save". ITC ledger has also not been updated. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.6 W.P. No. 3427/2020- M/s Jain Medical (Prop.) Manoj Kumar Mehta v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
08ABMPM0042K1ZM	Rajasthan	Proprietorship

Issue: The Petitioner faced technical glitch while filing TRAN-1.

Status: GSTN is a party in this matter. Writ Petition in this matter has not been received by GSTN only GSTIN was received from GST Council Secretariat vide letter in F.No.505/SB Civil Writ No. 3427/20/Jain Medical/GSTC/2020/3593 dated 13.08.2020 wherein GSTN was requested to verify Petitioner's claim of technical glitch while filing TRAN-1. GSTN vide letter dated 23.09.2020 has requested for a copy of the Writ Petition from the Commissioner of Central Taxes (Jaipur) and the Principal Commissioner, CGST (Jaipur). The matter has been disposed off by the Jodhpur Bench of the Hon'ble Rajasthan High Judgment dated 19.03.2020 with the following directions:-

"1. The respondents shall permit the petitioner to submit online GST TRAN-1 form, subject to furnishing a proof that he had tried to upload GST TRAN-1 form prior to 27.12.2017 and such attempt failed due to technical fault/glitch on the common portal. Needless to mention that petitioner will be required to submit a certificate/recommendation issued by GST Council in this regard.

2. In case all the three requirements enumerated in para no.12 of the judgment of Jodhpur Truck Pvt. Ltd. (supra) are met/satisfied, the petitioner's online GST TRAN-1 form shall be accepted, of course, if it is filed by 31.03.2020 or extended period (if any).

3. For the purpose aforesaid, the petitioner may submit an application before the GST Council to issue the requisite certificate/recommendation, along with requisite particulars, evidence and a certified copy of the order instant, within a period of 15 days from today. If the petitioner's assertion is found correct, the GST Council shall issue the recommendation/certificate to the petitioner within a period of three weeks from placement of such application and certified copy of this order.

4. In case the GST Council is of the view that petitioner is not entitled for certificate/recommendation, they shall pass an order giving brief reasons and communicate the same to the petitioner assessee.

5. Needless to observe that the petitioner shall be free to take appropriate remedy against such order."

Further investigation by GSTN: An email dated 22.10.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 24.10.2020. However, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. There are no logs for "save". ITC ledger has also not been updated. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.7 8240/2020-Macro Furnaces Private Limited, Faridabad v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
06AAACM5608H1ZO	Haryana	Private Limited Company

Issue: The Petitioner has claimed that they could not file form GST TRAN-1 either due to some technical glitches on the GST Portal or lack of knowledge on the part of the Petitioner or pendency of VAT Assessment upto 2017-18, only after completion of which the dealer could assess its Input Tax Credit available to be carried forward.

Status: GSTN is party in this matter. GSTN vide email dated 06.10.2020 apprised the status of case to the CGST Commissionerate (Faridabad) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble High court of Punjab &Haryana and the next date of hearing is not updated on the Court's Website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 28.12.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 30.12.2020. The Petitioner replied vide email dated 30.12.2020 sharing a letter addressed to the proper officer explaining that notice of motion has been issued by the Hon'ble High Court in the present case. The Petitioner also shared their GST Registration certificate. However, no screenshots were shared.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.8 W.P. No. 12184/2020 M/s Guru Kripa Lubricant v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
23AEIPJ9886M1ZP	Madhya Pradesh	Proprietorship

Issue: The Petitioner could not file GST TRAN-1 on the common portal as they were facing technical difficulties on the GST Portal. The GST Council vide letter no. F.No.556/W.P. No. 12184 of 2020 /Guru Kripa/GSTC/2020/3802-3805 dated 11.09.2020 has requested that the Petitioner's claim be verified.

Status: GSTN is a party in this matter. GSTN vide letter dated 15.10.2020 shared comments with the CGST Commissionerate (Bhopal) apprising the status of the case in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The Gwalior Bench of the Hon'ble High Court of Madhya Pradesh disposed the Petitioner's case vide order dated 27.08.2020 with directions to the Jurisdictional Commissionerate to pass a reasoned and speaking order within a period of four weeks.

Further investigation by GSTN: An email dated 28.12.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 30.12.2020. The Petitioner replied vide email dated 29.12.2020 explaining despite numerous attempts the said TRAN-1 Form could not be uploaded on the common portal. The Petitioner shared a copy of the representations explaining the technical problems to the concerned authorities, a copy of the TRAN-1 for manual filing and a copy of the ticket number generated (G-20200303773449) on the portal. Ticket no. G-20200303773449 raised by the Petitioner on **03.03.2020** and the Petitioner had raised the following issue

"Dear sir subject: - Regarding Tran-1 form when I trying to file my tran-1 form so I got this message that tran1 is not available as the due is over. I also complained for this query in my jurisdiction so I requested to you that please active my Tran-1 form in my GST profile and I also attached my complained copy which done my me to my jurisdiction thank you".

The abovementioned ticket was closed on 13.03.2020 due to no response received on "Awaiting Customer Input", the following message was sent to the Petitioner

"This is in reference to your query; we would like to inform you that we are unable to process your request further due to unavailability of adequate information. We have not received the requisite information even after three reminders. Therefore, we are closing this docket from our end."

It may be noted that GST Portal allowed filing of TRAN-1 till the due date i.e. 27.12.2017.

The petitioner has not shared any screenshots and has relied on the judgements of the Hon'ble Delhi High Court in A.B Pal Electrical Private Ltd. v. Union of India &Ors wherein it is observed by the Court that *"It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it - such as, by taking a screen shot..."*. The Petitioner has also placed reliance on the judgment of the Hon'ble High Court of Madras in the case of "Tara Exports v. Union of India &Ors. (WP (MD) No. 18532/2018) for the same.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.9 WPT 70/2019-M/s Dhamtari Krishi Kendra v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
22ACMPR1282P1Z3	Chhattisgarh	Proprietorship

Issue: The Petitioner tried to submit form GST TRAN-1 on the common Portal, however, because of the technical glitch faced by the Petitioner it could not be submitted. The Petitioner immediately reported this matter to the authorities in the Department on 26.12.2017.

Status: GSTN is not a party in this matter. GSTN vide email dated 22.10.2020 apprised the status of case to the GST Council Secretariat in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 17.07.2020. The Court vide order dated 17.07.2020 has directed that "it is expected that the Commissioner, Commercial Tax shall take a decision at the earliest preferably within an outer limit of 60 days from the date of receipt of copy of this order. In the event, if the Commissioner, Commercial Tax makes a reference to the GSTC, it is expected that the Council also, in turn, takes an early decision on the reference made by the Commissioner preferably within a period of 90 days from the date of receipt of reference by the Commissioner."

Further investigation by GSTN: An email dated 28.12.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 30.12.2020. The Petitioner replied vide email dated 29.12.2020 explaining that when their tax consultant tried to login to the common portal but was not able to login and the site was busy. The Petitioner has not shared any screenshots and has stated that due to lack of knowledge, we did not capture any screenshot of the glitch faced and also did not raise any grievance with GSTN or helpdesk.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.10 Writ Tax No. 420/2020 Kamal Agencies v. UOI & Ors

GSTIN/ Provisional ID	State	Constitution of Business
09AMEPK9117A1ZA	Uttar Pradesh	Proprietorship

Issue: The Hon'ble Allahabad High Court vide order dated 01.09.2020 has directed the Additional Commissioner, CGST and Nodal Officer ITGRC to look into the grievance raised by the Petitioner.

Status: The Copy of the Writ Petition is not available. GSTN vide email dated 28.10.2020 requested a copy of the Writ Petition from the CGST Commissionerate (Lucknow) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed by the Hon'ble High Court of

Allahabad vide order dated 01.09.2020 has directing the Additional Commissioner-CGST and Nodal Officer-ITGRC to look into the grievance raised by the Petitioner.

Further investigation by GSTN: An email dated 28.12.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1.
- ii. Nature of error noticed.
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 30.12.2020. The Petitioner replied vide email dated 29.12.2020 sharing their GST registration certificate and explained that despite several attempts, due to poor network service of Portal of GSTN for filing TRAN-1, the Applicant failed to open TRAN-1 and were unable to file TRAN-1 on time. The Petitioner has stated that they have made these submissions earlier before the Additional Commissioner, Nodal Officer for IT Grievance Redressal. However, no screenshots have been shared by the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.11 CWP 10593/2020- M/s JDA India Co. v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
08AATHS4942L1Z9	Rajasthan	Hindu Undivided Family

Issue: The Petitioner has claimed that due to various technical glitch/system error on the common portal, the petitioner failed to file FORM GST TRAN-1 on the GST common portal throughout the period during which FORM GST TRAN-1 was available.

Status: GSTN is party in this matter. GSTN vide letter dated 04.12.2020 apprised the status of case to the CGST Commissionerate (Jodhpur) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble High court of Rajasthan and the next date of hearing has not been updated on court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 07.01.2021 was sent to the Petitioner requesting for the following information:-

- iv. Exact technical glitch faced by you while filing TRAN-1
- v. Nature of error noticed
- vi. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 09.01.2021. The Petitioner replied vide email dated 08.01.2021. The Petitioner did not provide any screen-shot evidencing technical glitches of the GST Portal. Further, the exact issue faced by the Petitioner was also not provided. The Petitioner has simply provided that the Common Portal was not working.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.12 WP (C) No. ____/2020-M/s Khemka Marketing

GSTIN/ Provisional ID	State	Constitution of Business
22ABRPA0008N1ZZ	Delhi	Proprietorship

Issue: The Petitioner was not able to file TRAN-1 & TRAN-2 electronically for the reason of law being new and the Petitioner not being well conversant with the functioning of the common portal. Therefore, the Petitioner faced technical glitches/snags while filing the form. The GST Council Secretariat vide letter F.No. 248/TRAN-1 Rep./Khemka/GSTC/2020/4675 dated 13.11.2020 has forwarded GSTN as Respondent No. 3.

Status: GSTN is a party in this matter. GSTN vide email dated 04.12.2020 apprised the status of case to the GST Council Secretariat and the CGST Commissionerate (Ranchi) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Delhi and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 07.01.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed.
- iii. shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 09.01.2021. The Petitioner replied vide email dated 10.01.2021 sharing representation 13.02.2020 addressed to the CEO, GSTN. The Petitioner stated that they attempted to file TRAN-1 several times within the stipulated period. However, despite repeated attempts, the same could not be filed due to technical glitches on the GST Portal. The Petitioner states that the portal did not accept the submission and showed the message "error occurred in submit". They further stated that since the Petitioner was unable to connect with the system and submit TRAN-1, the fact of failed attempt at filing the return may not have been even registered in the system. The Petitioner has relied on the judgments passed by the Delhi High Court in W.P. (C) No. 6537/2019 titled A.B. Pal Electricals Pvt. Ltd. v. UOI & Ors. and the judgement of the Madras High Court in W.P. No. 3328/2020 titled Checkpoint Apparel Labelling Solutions India Pvt. Ltd. v. Commr. of GST & Central Excise, Chennai. However, the Petitioner did not provide any screen-shot evidencing technical glitches of the GST Portal.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

12.13 WP No. 5402/2020-Vasudev Tracto Rollers v. Nodal Officer &Ors

GSTIN/ Provisional ID	State	Constitution of Business
19AACFV4959M1ZD	West Bengal	Partnership

Issue: The Petitioner has claimed that they could not file Form GST TRAN-1 within due date as the tax consultant of the petitioner had come faced certain technical glitches while filing of form GST TRAN-1 on the common portal.

Status: GSTN is a party in this matter. GSTN vide email dated 11.12.2020 apprised the status of case to the GSTC in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 07.01.2021 was sent to the Petitioner requesting for the following information: -

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 09.01.2021. However, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Further the claim of the petitioner is contradictory in itself as on one hand he says that there was message "error occurred in submit" and on the other hand he states that he was unable to connect to the system. Both can't be true at the same time. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

Category B3: Successfully Filed as Per Logs with No Error reported.

12.14 Writ Tax 362/2020-SKJ Metals Company v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09ACQPJ5004M1Z9	Uttar Pradesh	Proprietorship

Issue: The Petitioner faced technical glitch while filing TRAN-1.

Status: Writ Petition in this matter has not been received by GSTN only GSTIN was received from GSTC Secretariat vide their letter no. 526/W.P. 362 of 2020/SKJ/GSTC/2020/3572 dated 11.08.2020 wherein GSTN was requested to verify Petitioner's claim of technical glitch while filing TRAN-1. GSTN vide letter dated 28.08.2020 apprised the status of case to the GST Council Secretariat and the

concerned CGST Commissionerate (Lucknow Zone) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018 and requested for a copy of the Writ Petition. The same was requested again vide GSTN's email dated 02.09.2020 and letter dated 09.09.2020. The matter is pending before the Hon'ble Allahabad High Court and the next date of hearing has not been updated on Court's Website. The Hon'ble High Court vide interim order dated 07.07.2020 directed the respondents to consider reopening the portal and in the event the same is not feasible the respondents would entertain the GST TRAN-1 of the Petitioner manually and pass orders thereon after due verification of the credits as claimed by the Petitioner.

Further investigation by GSTN: An email dated 14.09.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 16.09.2020. The Petitioner replied vide email dated 16.09.2020 sharing a manual copy of TRAN-1 and explaining that while filing Form Tran-1 online they were unable to find the exact column where the Customs Duty eligible for Input was to be entered. However, they did not share any screenshot/ticket number.

On completion of technical analysis conducted by GSTN, it was observed in the logs that the Taxpayer has tried to save TRAN-1 which was processed. There were no Error reported in logs and Revision was not attempted by the Taxpayer. During course of submission error related to invalid registration reported for no.09627500834 which has been added before first successful attempt. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

Sh. Dheeraj Rastogi also presented the 2 cases of TRAN-2 under category A1 and B8 as below:

TRAN-2 Court Cases

Category No.	Category	Detailed Description	Count of Taxpayer
A. Category-1	TRAN-1 filed and error in TRAN-2.	As per Logs Tran-1 filed successfully. Error recorded in database but no corresponding error reported in logs.	1
B Category-8	TRAN-1 filed and TRAN-2 not attempted and no error in logs	As per Logs Tran-1 filed successfully. User neither submitted nor filed TRAN-2 and there are no logs of save as well.	1
	Total		2

13. Category A1: TRAN-1 filed and error in TRAN-2.

13.1 W.P. No. 1327/2020 M/s Capital Enterprises v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
21AAOPA1368F1Z6	Orissa	Proprietorship

Issue: The Petitioner successfully filed TRAN-1 on 27.12.2017. While filing TRAN-2 the Petitioner faced technical difficulties which prevented them from uploading TRAN-2. The GST Portal displayed Petitioner the message "Errors encountered while uploading the file."

Status: GSTN is a party in this matter. GSTN vide email dated 08.09.2020 apprised the status of case to the CGST Commissionerate (Bhubaneswar) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 05.03.2020 with the direction to Respondent no. 4 (DC, Commercial Tax) and 6 (Commissioner of Sales Tax) to take decision on the representation filed by the Petitioner vide Annexures 6 & 9 and pass appropriate order in accordance with law within a period of 3 months from the date of production of certified copy of this order.

On completion of technical analysis conducted by GSTN/, it was observed that the Taxpayer successfully filed GST TRAN-1 successfully on 27/12/2017 and declared values in Table 7B of 7a & 7d. The taxpayer was eligible for filing TRAN-2 and filed the same for period July 2017 and August 2017 on 30/06/18 & 01/07/2018 respectively. However, the same were not processed due to an error reported relating to invalid HSN. There were errors recorded in database but no corresponding error reported in logs. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

Discussion and Decision-

The ITGRC approved the proposal of the GSTN in view of the technical analysis report and recommended the case for approval by the GST Council.

14. Category B8: TRAN-1 filed and TRAN-2 not attempted and no error in logs

14.1 WP (C) No. ___/2020-M/s Khemka Marketing

GSTIN/ Provisional ID	State	Constitution of Business
22ABRPA0008N1ZZ	Delhi	Proprietor

Issue: The Petitioner was not able to file TRAN-1 & TRAN-2 electronically for the reason of law being new and the Petitioner not being well conversant with the functioning of the common portal. Therefore, the Petitioner faced technical glitches/snags while filing the form. The GST Council Secretariat vide letter F.No. 248/TRAN-1 Rep./Khemka/GSTC/2020/4675 dated 13.11.2020 has forwarded GSTN as Respondent No. 3.

Status: GSTN is a party in this matter. GSTN vide email dated 04.12.2020 apprised the status of case to the GST Council Secretariat and the CGST Commissionerate (Ranchi) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Delhi and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 07.01.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed

- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 09.01.2021. The Petitioner replied vide email dated 10.01.2021 sharing representation 13.02.2020 addressed to the CEO, GSTN. The Petitioner stated that they attempted to file TRAN-1 several times within the stipulated period. However, despite repeated attempts, the same could not be filed due to technical glitches on the GST Portal. The Petitioner states that the portal did not accept the submission and showed the message “error occurred in submit”. They further stated that since the Petitioner was unable to connect with the system and submit TRAN-1, the fact of failed attempt at filing the return may not have been even registered in the system. The Petitioner has relied on the judgments passed by the Delhi High Court in W.P. (C) No. 6537/2019 titled A.B. Pal Electricals Pvt. Ltd. v. UOI &Ors. and the judgement of the Madras High Court in W.P. No. 3328/2020 titled Checkpoint Apparel Labelling Solutions India Pvt. Ltd. v. Commr. of GST & Central Excise, Chennai. However, the Petitioner did not provide any screen-shot evidencing technical glitches of the GST Portal

On completion of technical analysis conducted by GSTN/, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner’s case may be considered as not having faced any Technical difficulties.

Discussion and Decision:

The ITGRC concluded that since there is no evidence of any technical glitch after technical analysis by the GSTN, this case is rejected by the ITGRC.

15. MIGRATION CASE

15.1 WP.No.31285 of 2019 - M/s Guru Shoes Components. v. UOI &Ors.

Provisional ID	New GSTIN
34AADFG2604B1Z8	34AADFG2604B2Z7

Issue: -Petitioner received the PID 34AADFG2604B1Z8. The migration of the Petitioner was not completed due to an invalid PAN. In the meantime, the Petitioner had also applied for new registration GSTIN 34AADFG2604B2Z7 with effective date of registration as 22.08.2017. However, the Petitioner could not report the transactions made by him for the period 01.07.2017 to 21.08.2017 in the new registration as the Petitioner had conducted their business on their PID. Therefore, the Petitioner applied for completion of the migration process in August 2018 and again in January 2019 since the Petitioner had already taken a new registration the application was not processed.

The Court vide order dated 3.06.2020 disposed off the Writ Petition with the direction to the appropriate authority to issue the necessary positive recommendations for migration/transition of credit available in the account of the R2 (GSTN) within a period of 4 weeks from the date of receipt of a copy of this order and R2 (GSTN) will, in turn, will in turn within 4 weeks from receipt thereof issue necessary intimation to the Petitioner permitting it to access the portal and upload returns.

The Commissioner, Puducherry Commissionerate (State taxes) has requested to provide a user ID and password to M/s Guru Shoes (PID-34AADFG2604B1Z8) for accessing GST Portal.

Examination of records by GSTN: - The matter has been examined at GSTN's end and it is observed that no migration request for PID 34AADFG2604B1Z8 was received by GSTN. It's relevant to mention here that the process of migration on the GST Portal started on 08.11.2016 and continued till 06.02.2018. Thereafter, another window to complete the migration process was granted to the taxpayers vide notification no. 31/2018-Central Tax dated 06.08.2018. In notification no. 31/2018-Central Tax dated 06.08.2018 the following procedure was prescribed for taxpayers who did not file the complete FORM GST REG 26 but received only a Provisional Identification Number (PID) (hereinafter referred to as "such taxpayers"):

- The details as per abovementioned notification were required to be furnished by the taxpayer to the jurisdictional nodal officer of the Central Government or State Government.
- On receipt of an e-mail from the Goods and Services Tax Network (GSTN), such taxpayers were required to apply for registration by logging onto <https://www.gst.gov.in/> in the "Services" tab and filling up the application in FORM GST REG-01 of the Central Goods and Services Tax Rules, 2017.
- After due approval of the application by the proper officer, such taxpayers received an email from GSTN mentioning the Application Reference Number (ARN), a new GSTIN and a new access token.
- Upon receipt, such taxpayers were required to furnish the following details to GSTN by email, to migration@gstn.org.in:—
 New GSTIN;
 Access Token for new GSTIN;
 ARN of new application;
 Old GSTIN (PID).

Upon receipt of the above information from such taxpayers, GSTN was to complete the process of mapping the new GSTIN to the old GSTIN and inform such taxpayers. Such taxpayers were required to log onto the common portal www.gstn.gov.in using the old GSTIN as "First Time Login" for generation of the Registration Certificate. Such taxpayers were deemed to have been registered with effect from the 1st July, 2017.

Further, the last date for applying for migration in terms of Notification. No 31/2018 read with Notification. No 67/2018 dated 31/12/2018 was 28th February 2019.

Discussion and Decision

During the course of discussion, Shri Dheeraj Rastogi stated that the Commissionerate has recommended the migration of the case as per the Court directions and that as per the information gathered, the taxpayer is not willing to claim TRAN-1 credit. The ITGRC concurred with the implementation of the court directions.

16. Category-wise Summary of Cases sent by Nodal Officers of Centre/States

Category No.	Category	Count of Taxpayers
A1	Processed with error.	16
B1	As per GST system log, there are no evidences of error on submission/filing of TRAN1.	13

B2	TRAN-1 Fresh/Revision Attempted with No error/ No valid error reported.	03
B3	TRAN-1 Successfully Filed as Per Logs with No Valid Error reported.	04
B4	TRAN-1 filed once but credit not received.	04
B8	TRAN-1 filed and TRAN-2 not attempted and no error in logs.	03
	Grand Total	43

Discussion and Decision:

The GSTN presented the cases forwarded by the nodal officers as above for the consideration of the ITGRC. The committee opined that both the cases i.e. court cases as well as the nodal officer, cases are at par as long as the parameters applied in the past ITGRC meetings are uniform i.e. the assessee had attempted to file the TRAN-1 before the due date and there is a clear evidence of technical glitch faced by the taxpayer post analysis by GSTN, merit acceptance. In this scenario, the 16 cases falling under category A1 out of 43 cases merit acceptance and remaining 27 cases falling under category B1, B2, B3, B4, B8 are liable to be rejected as no technical glitch was noticed by GSTN in these cases post technical analysis. Thus, technically all these 22 cases (6 court cases and 16 nodal officers cases), the ITGRC approves on merit subject to placing before the GST council. They meet the requirements for considering the cases and fall in the four walls of the criteria set out by ITGRC. However, as they have been received by the GSTN/nodal officers after the cut off date, we may place them before the GST council for their view.

In this connection, the committee asked GSTN to update the list of cases forwarded by the nodal officers in regard to dates on which they were received by the nodal officer in the field and the date on which they were received by the GSTN for processing. Sh. Manish Kumar Sinha, CEO of the GSTN committed to update the list of cases forwarded by the nodal officers in this regard and share with GSTC Secretariat.

17. Additional agenda case of M/S Veliath Steel Agencies as per the Kerala High Court order and covered by the extended scope of ITGRC as per the 32nd meeting of the GSTC.

Ms. Ashima Bansal, JS, GSTC Secretariat presented the non-technical case of rectification of TRAN-I in case of M/s Veliath Steel Agencies as per the Kerala High Court order dated 03.07.2020 in Writ Petition Number 12930/2020. She submitted that it is a case of transposition of column and is covered by the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues. It was proposed with the permission of the chair that this case may also be taken up by the ITGRC.

In this case, the High Court has stated that-

"I am of the view that the 4th respondent has already received such request on consideration of the matter, in case it requires the petitioner or representative, take a call and thereafter, as per the circular and the procedure invoked, would send it to SGST network. The SGST network on consideration of the matter would take a call on request by applying the principles of natural justice...and thereafter would strictly adhere the procedure in the circular for onward transmission to ITGRC."

Accordingly, as there are directions of the High Court and the recommendation of the jurisdictional SGST Commissioner that it is an error apparent on record involving transposition of the column and further the TRAN-I has been filed on time, the conditions pertaining to non technical cases are fulfilled and the case may be considered by ITGRC as per the guidelines. The Committee concurred with the view.

Discussion and decision:

All the committee members agreed that the case should be recommended on merit as per the extended scope of ITGRC approved by the 32nd GST Council meeting.

18. Decision of ITGRC on all Agenda points

18.1 Summary of ITGRC decisions in court cases

The ITGRC recommended the 5 W.P cases of Tran-1 falling under category A1 and one case of Tran-2 falling under category A1 and rejected the 14 cases of Tran-1 falling under categories B1/B3, and one case of Tran-2 falling under the category B8. The ITGRC decided to proceed with the one migration case as per the High Court directions. The Committee directed that the above recommendations of the ITGRC are to be placed before the GST council in the next meeting for acceptance or otherwise.

18.2 Summary of ITGRC Decision in Cases forwarded by the nodal officers

The committee decided that both the cases i.e., court cases as well as the nodal officer cases, are at par as long as the parameters applied in the past in the ITGRC meetings are uniform i.e. the assessee had attempted to file the TRAN-1 before the due date and there is a clear evidence of technical glitch faced by the taxpayer post analysis by GSTN, merit acceptance. In this scenario, the 16 cases falling under category A1 out of 43 cases merit acceptance and remaining 27 cases falling under category B1, B2, B3, B4, B8 are liable to be rejected as no technical glitch was noticed by the GSTN in these cases post technical analysis.

Thus, on technical grounds, all these 22 cases (6 court cases and 16 nodal officers' cases), the ITGRC accepted on merit subject to placing before the GST council. They meet the requirements for considering the cases and fall within the criteria set out by ITGRC. However, as they have been received by the GSTN/nodal officers after the due date, we may place them before the GST council for their view. The committee asked GSTN to update the list of cases forwarded by the nodal officers in regard to dates on which they were received by the nodal officer in the field and the date on which they were received by the GSTN for processing.

The ITGRC decided that the 22 cases falling under the category A1 post analysis by the GSTN (6 Court cases and 16 cases forwarded by the nodal officers) , the ITGRC approves on merit subject to placing before the GST Council for directions.

18.3 Decision in the case of non-technical nature matter of M/s Valiath Steel Agencies, Kerala(Writ Petition Number 12930/2020)

All the committee members decided that it was an error apparent on the face of record and the case is recommended on merit as per the extended scope of ITGRC approved by the 32nd GST Council meeting.

18.4 Additional discussions with the permission of the chair

18.4.1 Haryana State raised the issue that various taxpayers whose Tran-1 applications have been rejected in previous ITGRC meetings based on technical analysis by the GSTN, are resubmitting their

Tran-1 applications to field nodal officers with fresh set of evidences for technical glitches. They sought clarity on treatment of such cases.

Discussion and decision:

The ITGRC decided that the past cases once decided by the ITGRC and approved by the GST Council **shall not be reopened**.

18.4.2 Sh. Dheeraj Rastogi, VP, GSTN requested that a clarity is required whether the cases still pending with nodal officers are to be taken up by GSTN for processing as the last date for opening the portal has lapsed. He also requested to provide clarity whether the nodal officer should stop accepting fresh application from taxpayer in TRAN-1 and TRAN-2 cases.

Discussion and decision-

In this regard, ITGRC stated that in regard to the cases pending with the nodal officers as well as with GSTN received after the due date, the GSTN should compile how many of such cases are there and further decided to request the GSTC Secretariat that while putting up the minutes of this meeting before the GST Council for approval, **the final decision shall be sought from GST Council about the further agenda of the ITGRC and to take a conscious call whether the cases received after due date and which are still lying with the Nodal Officers as well with GSTN should be considered at all or not by the ITGRC.**

18.4.3 Sh. Manish Kumar Sinha, CEO, GSTN mentioned that an additional agenda for **data fixes and proposal for resolution of these data fixes has been moved by the GSTN which is under discussion with GST policy wing and GST Council Secretariat. The same should be taken up in the next meeting to which the Committee concurred.**

Annexure-1

GST Council Secretariat:

1. Mrs Ashima Bansal, Joint Secretary, GSTC

CENTRE:

2. Sh. Vivek Johri, Member, CBIC
3. Sh. Sandeep Kumar, Member and Principal Director General, DG Systems
4. Sh. Anil Kumar Jha, Special/Additional Secretary, DOR

States:

5. Sh. Sidharth Jain, Haryana
6. Sh. Prayag Shah, State Tax, Gujrat
7. Sh. Rasal Dors Soloman J, State Tax, Tamil Nadu
8. Sh. Khalid Anwar, Commissioner, State Tax, West Bengal

Special Invitee:

9. Sh Manish Sinha, CEO, GSTN
10. Sh. Dheeraj Rastogi, VP, GSTN

Writ Petition Cases

TRAN-1

Category No.	Category	Detailed Description	Count of Taxpayer
A. Category-1	Processed with error	Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN1 but could not file because of errors.	5
B. Category-1	As per GST system log, there are no evidences of error or submission/filing of TRAN-1.	As per logs User neither submitted nor filed the form. No logs of save as well. ITC ledger also not updated. No Valid Error reported.	13
B. Category-3	Successfully Filed as Per Logs with No Valid Error reported.	The Taxpayer has successfully filed TRAN-1 and no technical errors had been found in the examined technical logs.	1
	Total		19

Category A1: Cases where the taxpayer received the error 'Processed with error.' As per GST system logs the taxpayer has attempted to submit first time/fresh or revise TRAN1 but could not file because of errors.

1. W.P. No. 13864/2020 M/s Cotton Impex v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
06AAGHM4778M1ZK	Haryana	Proprietorship

Issue: The Petitioner claims that he is entitled to claim of Rs. 13, 97,013/-on account of excess VAT credit however, due to technical glitch on the portal, he was not able to claim the same.

Status: GSTN is party in this matter. GSTN vide email dated 08.09.2020 apprised the status of case to the Central Government Standing Counsel and the CGST Commissionerate (Rohtak) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble High court of Punjab & Haryana and the next date of hearing is 26.11.2020. No effective order is available on the Court's website.

On completion of technical analysis conducted by GSTN/Infosys, it was observed that the Taxpayer had opened form GST TRAN-1 and attempted to save the data. However, the same was not processed due to a submission error reported for validation for Registration no. 065442914799 which was invalid. The Registration number has been added in the Petitioner's profile post 27.12.2017. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

2. W.P. No. 15168/2020 M/s Medreich Limited v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
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36AABCM1458Q1Z1	Telangana	Public Limited Company
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Issue: The Petitioner submitted TRAN-1 and ARN was also generated. However, the same was reflecting as filed on the GST portal. The Petitioner then attempted to file revised TRAN-1 but it was not getting reflected on the Portal.

Status: GSTN is not a party in this matter. GSTN vide letter dated 04.11.2020 has apprised the status of case to the Principal Chief Commissioner CGST (Hyderabad Zone) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Telangana and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

On completion of technical analysis conducted by GSTN/Infosys, it was observed that the Taxpayer had filed TRAN-1. However, the same was not processed due to a submission error reported for validation for Registration Nos. AABCM1458QEM009 and AABCM1458QEM011 which were invalid. The Registration number AABCM1458QEM009 was added in the Petitioner's profile before filing of TRAN-1. However, Registration No.AABCM1458QEM011 has not been added to the Petitioner's profile till date. The Petitioner's ITC Ledger has been updated and ARN has also been generated for the respective attempts. The Petitioner has not attempted any revision. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

3. W.A. No. 788/2020- The Commissioner of GST & CE v. Checkpoint Apparel Labelling Solution Pvt. Ltd.

GSTIN/ Provisional ID	State	Constitution of Business
33AAGCS9485A1ZA	Tamil Nadu	Private Limited Company

Issue: The Petitioner has stated that they had uploaded TRAN-1 on 13.09.2017 and received an email stating that the Petitioner had successfully filed TRAN-1 with time stamp 13/09/2017, 19.07 and received ARN AA370913729P. However, the GST Portal showed the same as "Processed with Error" and the Electronic Credit Ledger was not reflecting the CENVAT Credit.

Status: GSTN is a party in this matter. GSTN vide email dated 29.10.2020 has apprised the status of the case to the CGST Commissionerate (Chennai North) in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The appeal has been disposed by the Hon'ble Madras High Court. The Court vide judgment dated 23.09.2020 which upheld the impugned order dated 14.02.2020 in W.P. No. 3328/2020 directing the Respondents to do the needful to enable the Petitioner to upload the requisite form TRAN-1 in order to avail unutilised credit.

The Petitioner in this case vide their Letter dated 14.11.2019 addressed to the Commissioner, Chennai North (Principal Nodal Officer for IT Grievances, Chennai Zone), under endorsement to Commissioner of GST & CE, Chennai Outer, had stated that they had faced technical glitches in the GST Common portal while filing Form GST Tran-1 before the due date i.e. 27.12.2017, however they do not have any proof/screenshot having faced technical glitch. The representation regarding TRAN-1 credit was **rejected** by **Chennai Outer Commissionerate, vide Letter C.No: IV/16/88/2019-GSTST-TRAN1 dated 01.01.2020** as it was not conforming to Board's Circular No: 39/13/2018 dated 03.04.2018 i.e. there was no technical glitch **and was not forwarded to GSTN**. The same was informed to taxpayer by Chennai Outer Commissionerate vide letter C.No.IV/16/88/2019-GSTSK-TRAN-1 dated 01.01.2020. Against this, the Taxpayer preferred a Writ Petition No: 3328 of 2020 in the Hon'ble Madras High Court and the Hon'ble Madras High Court vide Order dated 14.02.2020 in

WP No:3328 of 2020 has directed the respondents to do the needful forthwith to enable the petitioner to upload the requisite forms (TRAN-1/2). However, since the nodal Officer (Chennai Outer Commissionerate) had found that there was no proof for the claims made by the taxpayer for any technical glitches, rejected the request. The department therefore Writ Appeal the Division bench of High Court of Madras against the High Order dated 14.02.2020 in WA No. 788/ 2020.

The Commissionerate approached GSTN vide email dated 15.10.2020 with a request examine whether the Petitioner had made any attempt to file Form GST TRAN-1 in the portal on or before 27.12.2017 and had actually faced any technical glitches as claimed by them. Technical Analysis in this matter was therefore conducted by GSTN upon receipt of the abovementioned email from Commissionerate.

On completion of technical analysis conducted by GSTN/Infosys, it was observed that the Petitioner had opened form GST TRAN-1 and attempted to file the data on 26th Oct 2017 12:34 PM and subsequently on 26th Dec 2017. Subsequently, the Petitioner attempted to file revision which was successfully filed but a submission error was reported for Registration No. Registration no. AAFCG5452JEM001. The Registration No. AAFCG5452JEM001 has been added to the Petitioner's profile post 27.12.2017. The Petitioner's ITC Ledger has not been updated, but ARN has been generated for the respective attempts. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

4. WPT 6316/2020-M/s GSR Eco Bricks Private Limited v. Union of India

GSTIN/ Provisional ID	State	Constitution of Business
37AAFCG5452J1ZD	Andhra Pradesh	Private Limited Company

Issue: The Petitioner has stated that they had uploaded TRAN-1 on 13.09.2017 and received an email stating that the Petitioner had successfully filed TRAN-1 with time stamp 13/09/2017, 19.07 and received ARN AA370913729P. However, the GST Portal showed the same as "Processed with Error" and the Electronic Credit Ledger was not reflecting the CENVAT Credit.

Status: GSTN is a party in this matter. GSTN vide email dated 19.11.2020 has apprised the status of the case to the CGST Commissionerate (Guntur) in terms of CBIC's Circular No. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Andhra Pradesh and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

On completion of technical analysis conducted by GSTN/Infosys, it was observed that the Petitioner had opened form GST TRAN-1 and attempted to file the data. However, the same was not processed due as it got stuck on "FRZ". Subsequently, the Petitioner attempted to file revision which was successfully filed but a submission error was reported for Registration No. Registration no. AAFCG5452JEM001. The Registration No. AAFCG5452JEM001 has been added to the Petitioner's profile post 27.12.2017. The Petitioner's ITC Ledger has not been updated, but ARN has been generated for the respective attempts. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

5. WP No. 8583/2020 Genext International v. UOI and Ors.

GSTIN/ Provisional ID	State	Constitution of Business
07AAPFG1341R1ZW	Delhi	Partnership

Issue: The Petitioner has claimed that they had filed their Form TRAN-1 for claiming VAT credit of Rs. 4,17,042 and CENVAT credit of Rs. 14,50,716 (total credit of Rs. 18,67,758). However, it was later noticed that the Petitioner's Electronic Cash Ledger was only reflecting VAT credits i.e. 4, 17,042 and did not show credits amounting to CENVAT Credit worth Rs. 14, 50,716.

Status: GSTN is not party in this matter. GSTN vide letter dated 04.12.2020 apprised the status of case to the GST Policy Wing in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The Hon'ble High Court of Delhi has reserved judgment in this case on 21.12.2020. The judgment is not available on the Court's website.

On completion of technical analysis conducted by GSTN/Infosys, it was observed that the Taxpayer had opened form GST TRAN-1 and attempted to file the data. However, the same was not processed due to a submission error reported for validation for Registration no. AAPFG1341REM001 which was invalid. The Registration number has still not been added in the Petitioner's profile. The Petitioner's ITC Ledger has been updated and ARN has also been generated for the respective attempts. The Petitioner has not attempted any revision. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

Category-B1:- As per GST system log, there are no evidences of error or submission/filing of TRAN-1

6. CWP-6585/2020-Bhatia Tyre Works. v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
08ARTPB2446F1ZS	Rajasthan	Proprietorship

Issue: The Petitioner could not file TRAN-1 within the prescribed time due to constant technical difficulties faced by the Petitioner on GST portal. Resultantly Petitioner was also unable to file TRAN-2

Status: GSTN is a party in this matter. GSTN vide letter dated 07.09.2020 shared comments with the CGST Commissionerate (Jaipur) apprising the status of case to the in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Rajasthan at Jaipur and the next date of hearing is 19.09.2020. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 14.09.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 16.09.2020. The Petitioner replied vide email dated 16.09.2020 explaining that when they attempted to upload TRAN-1 and TRAN-2 the portal showed them an error of under process. The Petitioner shared details of ticket number 20200316903171 and copy of letter dated 16.09.2019 addressed to the Assistant Commercial Taxes Officer, Circle-A, Commercial Taxes Department, Sri Ganganagar.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

7. W.P. No 3988/2020 M/s. Kalpatru Enterprises through its Proprietor Neeraj Jain v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
07ACRPJ4269P1ZP	Delhi	Proprietorship

Issue: The Petitioner attempted to file TRAN-1 on the GST portal on 21.12.2017, 23.12.2017, 24.12.2017, 26.12.2017 and 27.12.2017 but could not file the same because of technical glitches on the GST Portal which the Petitioner could not understand.

Status: GSTN is a party in this matter. GSTN vide email dated 17.09.2020 apprised the status of case to the CGST Commissionerate (Delhi-North) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Delhi and the next date of hearing is 14.09.2020. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 14.09.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 16.09.2020. However, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

8. WP No. 14791/2020 M/s Shah Electronics & Home Appliances Pvt. Ltd. v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
36AAECS5488F1Z1	Telangana	Private Limited Company

Issue: The Petitioner was not able to file FORM GST TRAN-01 by 27.12.2017 due to technical glitches and thereafter portal was closed. As a result, the subsequent filing of FORM GST TRAN-2 also could not be filed by the Petitioner.

Status: GSTN is party in this matter. GSTN vide letter dated 17.09.2020 apprised the status of case to the Commissioner of Central Tax (Medchal) and the Assistant Commissioner of Central Tax and GST (Ramgopalpet III Range, Secunderabad Division) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble High court of Telangana and the next date of hearing is 02.11.2020. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 22.10.2020 was sent to the Petitioner requesting for the following information:-

- iv.Exact technical glitch faced by you while filing TRAN-1
- v.Nature of error noticed
- vi.Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 24.10.2020. The Petitioner responded vide email dated 23.10.2020. The Petitioner did not provide any screen-shot evidencing technical glitches of the GST Portal. Further, the exact issue faced by the Petitioner was also not provided.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. There are no logs for “save”. ITC ledger has also not been updated. Thus, the Petitioner’s case may be considered as not having faced any Technical difficulties.

9. Writ Tax No. 418/2019 M/s Bhagwan Motors v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09AAHFB9939J1ZT	Uttar Pradesh	Partnership

Issue: The Petitioner made several attempts to file TRAN-1 on the GST Portal till 27.12.2017 however, could not do so because of apparent technical fault in the GST system.

Status: GSTN is a party in this matter. GSTN vide email dated 18.09.2020 shared comments with the CGST Commissionerate (Meerut) apprising the status of case to the in terms of CBIC’s Circular no. 39/13/2018 dated 03.04.2018. The Hon’ble High Court of Allahabad vide order dated 04.04.2019 has disposed off the matter with direction to the Assistant Commissioner/Commissioner GST to consider the Petitioner’s application and pass appropriate order in accordance with law.

Further investigation by GSTN: An email dated 22.10.2020 was sent to the Petitioner requesting for the following information:-

- i.Exact technical glitch faced by you while filing TRAN-1
- ii.Nature of error noticed
- iii.Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 24.10.2020. The Petitioner replied vide email dated 24.10.2020 explaining that they could not log in into the portal despite trying several times during the period 20th December 2017 and 27th December 2017. The Petitioner shared a screenshot of his GST Portal Dashboard taken on 12.02.2020 which showed the message *“The filing of declaration in TRAN-1 is not available now as the due date is over”*. This is a valid system message as the due date for filing TRAN-1 is now over. The Petitioner also shared a letter explaining their grievance addressed to the Assistant Commissioner, Goods and Service Tax, Range Saraswa.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. There are no logs for “save”. ITC ledger has also not been updated. Thus, the Petitioner’s case may be considered as not having faced any Technical difficulties.

10. WP (C) No. 17174/2020-M/s ValethHightech Composites (P) Ltd. v. STO &Ors

GSTIN/ Provisional ID	State	Constitution of Business
32AAACV1999E1ZC	Kerala	Private Limited Company

Issue: The Petitioner was not able to upload Form TRAN-1 on account of various computer glitches with respect to the website of the department before 27.12.2017.

Status: GSTN is a party in this matter. GSTN vide email dated 23.09.2020 apprised the status of case to the CGST Commissionerate (Kochi) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kerala and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 22.10.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 24.10.2020. However, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. There are no logs for "save". ITC ledger has also not been updated. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

11. W.P. No. 3427/2020- M/s Jain Medical (Prop.) Manoj Kumar Mehta v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
08ABMPM0042K1ZM	Rajasthan	Proprietorship

Issue: The Petitioner faced technical glitch while filing TRAN-1.

Status: GSTN is a party in this matter. Writ Petition in this matter has not been received by GSTN only GSTIN was received from GST Council Secretariat vide letter in F.No.505/SB Civil Writ No. 3427/20/Jain Medical/GSTC/2020/3593 dated 13.08.2020 wherein GSTN was requested to verify Petitioner's claim of technical glitch while filing TRAN-1. GSTN vide letter dated 23.09.2020 has requested for a copy of the Writ Petition from the Commissioner of Central Taxes (Jaipur) and the Principal Commissioner, CGST (Jaipur). The matter has been disposed off by the Jodhpur Bench of the Hon'ble Rajasthan High judgment dated 19.03.2020 with the following directions:-

"1.The respondents shall permit the petitioner to submit online GST TRAN-1 form, subject to furnishing a proof that he had tried to upload GST TRAN-1 form prior to 27.12.2017 and such attempt failed due to technical fault/glitch on the common portal. Needless to mention that petitioner will be required to submit a certificate/recommendation issued by GST Council in this regard.

2. In case all the three requirements enumerated in para no.12 of the judgment of Jodhpur Truck Pvt. Ltd. (supra) are met/satisfied, the petitioner's online GST TRAN-1 form shall be accepted, of course, if it is filed by 31.03.2020 or extended period (if any).

3. For the purpose aforesaid, the petitioner may submit an application before the GST Council to issue the requisite certificate/recommendation, along with requisite particulars, evidence and a certified copy of the order instant, within a period of 15 days from today. If the petitioner's assertion is found correct, the GST Council shall issue the recommendation/certificate to the petitioner within a period of three weeks from placement of such application and certified copy of this order.

4. In case the GST Council is of the view that petitioner is not entitled for certificate/recommendation, they shall pass an order giving brief reasons and communicate the same to the petitioner assessee.

5. Needless to observe that the petitioner shall be free to take appropriate remedy against such order."

Further investigation by GSTN: An email dated 22.10.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 24.10.2020. However, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. There are no logs for "save". ITC ledger has also not been updated. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

12. 8240/2020-Macro Furnaces Private Limited, Faridabad v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
06AAACM5608H1ZO	Haryana	Private Limited Company

Issue: The Petitioner has claimed that they could not file form GST TRAN-1 either due to some technical glitches on the GST Portal or lack of knowledge on the part of the Petitioner or pendency of VAT Assessment upto 2017-18, only after completion of which the dealer could assess its Input Tax Credit available to be carried forward.

Status: GSTN is party in this matter. GSTN vide email dated 06.10.2020 apprised the status of case to the CGST Commissionerate (Faridabad) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble High court of Punjab & Haryana and the next date of hearing is not updated on the Court's Website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 28.12.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 30.12.2020. The Petitioner replied vide email dated 30.12.2020 sharing a letter addressed to the proper officer explaining that notice of motion has been issued by the Hon'ble High Court in the present case. The Petitioner also shared their GST Registration certificate. However, no screenshots were shared.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any technical difficulties

13. W.P. No. 12184/2020 M/s Guru Kripa Lubricant v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
23AEIPJ9886M1ZP	Madhya Pradesh	Proprietorship

Issue: The Petitioner could not file GST TRAN-1 on the common portal as they were facing technical difficulties on the GST Portal. The GST Council vide letter no. F.No.556/W.P. No. 12184 of 2020 /Guru Kripa/GSTC/2020/3802-3805 dated 11.09.2020 has requested that the Petitioner's claim be verified.

Status: GSTN is a party in this matter. GSTN vide letter dated 15.10.2020 shared comments with the CGST Commissionerate (Bhopal) apprising the status of the case in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The Gwalior Bench of the Hon'ble High Court of Madhya Pradesh disposed the Petitioner's case vide order dated 27.08.2020 with directions to the Jurisdictional Commissionerate to pass a reasoned and speaking order within a period of four weeks.

Further investigation by GSTN: An email dated 28.12.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 30.12.2020. The Petitioner replied vide email dated 29.12.2020 explaining despite numerous attempts the said TRAN-1 Form could not be uploaded on the common portal. The Petitioner shared a copy of the representations explaining the technical problems to the concerned authorities, a copy of the TRAN-1 for manual filing and a copy of the ticket number generated (G-20200303773449) on the portal. Ticket no. G-20200303773449 raised by the Petitioner on **03.03.2020** and the Petitioner had raised the following issue

*"Dear sir subject: - Regarding Tran-1 form when I trying to file my tran-1 form so I got this message **that tran1 is not available as the due is over.** I also complained for this query in my jurisdiction so I requested to you that please active my Tran-1 form in my GST profile and I also attached my complained copy which done my me to my jurisdiction thank you".*

The abovementioned ticket was closed on 13.03.2020 due to no response received on "Awaiting Customer Input", the following message was sent to the Petitioner

"This is in reference to your query, we would like to inform you that we are unable to process your request further due to unavailability of adequate information. We have not received the requisite information even after three reminders. Therefore, we are closing this docket from our end."

It may be noted that GST Portal allowed filing of TRAN-1 till the due date i.e. 27.12.2017.

The petitioner has not shared any screenshots and has relied on the judgements of the Hon'ble Delhi High Court in A.B Pal Electrical Private Ltd. v. Union of India &Ors wherein it is observed by the Court that *"It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it - such as, by taking a screen shot..."*. The Petitioner has also placed reliance on the judgment of the Hon'ble High Court of Madras in the case of "Tara Exports v. Union of India &Ors. (WP (MD) No. 18532/2018) for the same.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any technical difficulties.

14. WPT 70/2019-M/s Dhamtari Krishni Kendra v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
22ACMPR1282P1Z3	Chhattisgarh	Proprietorship

Issue: The Petitioner tried to submit form GST TRAN-1 on the common Portal, however, because of the technical glitch faced by the Petitioner it could not be submitted. The Petitioner immediately reported this matter to the authorities in the Department on 26.12.2017.

Status: GSTN is not a party in this matter. GSTN vide email dated 22.10.2020 apprised the status of case to the GST Council Secretariat in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 17.07.2020. The Court vide order dated 17.07.2020 has directed that "it is expected that the Commissioner, Commercial Tax shall take a decision at the earliest preferably within an outer limit of 60 days from the date of receipt of copy of this order. In the event, if the Commissioner, Commercial Tax makes a reference to the GSTC, it is expected that the Council also, in turn, takes an early decision on the reference made by the Commissioner preferably within a period of 90 days from the date of receipt of reference by the Commissioner."

Further investigation by GSTN: An email dated 28.12.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 30.12.2020. The Petitioner replied vide email dated 29.12.2020 explaining that when their tax consultant tried to login to the common portal but was not able to login and the site was busy. The Petitioner has not shared any screenshots and has stated that due to lack of knowledge, we did not capture any screenshot of the glitch faced and also did not raise any grievance with GSTN or helpdesk.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

15. Writ Tax No. 420/2020 Kamal Agencies v. UOI & Ors

GSTIN/ Provisional ID	State	Constitution of Business
09AMEPK9117A1ZA	Uttar Pradesh	Proprietorship

Issue: The Hon'ble Allahabad High Court vide order dated 01.09.2020 has directed the Additional Commissioner, CGST and Nodal Officer ITGRC to look into the grievance raised by the Petitioner.

Status: The Copy of the Writ Petition is not available. GSTN vide email dated 28.10.2020 requested a copy of the Writ Petition from the CGST Commissionerate (Lucknow) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed by the Hon'ble High Court of Allahabad vide order dated 01.09.2020 has directing the Additional Commissioner-CGST and Nodal Officer-ITGRC to look into the grievance raised by the Petitioner.

Further investigation by GSTN: An email dated 28.12.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1

- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 30.12.2020. The Petitioner replied vide email dated 29.12.2020 sharing their GST registration certificate and explained that despite several attempts, due to poor network service of Portal of GSTN for filing TRAN-1, the Applicant failed to open TRAN-1 and were unable to file TRAN-1 on time. The Petitioner has stated that they have made these submissions earlier before the Additional Commissioner, Nodal Officer for IT Grievance Redressal. However, no screenshots have been shared by the Petitioner.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Petitioner neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

16. CWP 10593/2020- M/s JDA India Co. v. UOI &Ors

GSTIN/ Provisional ID	State	Constitution of Business
08AATHS4942L1Z9	Rajasthan	Hindu Undivided Family

Issue: The Petitioner has claimed that due to various technical glitch/system error on the common portal, the petitioner failed to file FORM GST TRAN-1 on the GST common portal throughout the period during which FORM GST TRAN-1 was available.

Status: GSTN is party in this matter. GSTN vide letter dated 04.12.2020 apprised the status of case to the CGST Commissionerate (Jodhpur) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before Hon'ble High court of Rajasthan and the next date of hearing is 14.01.2021 No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 07.01.2021 was sent to the Petitioner requesting for the following information:-

- iv. Exact technical glitch faced by you while filing TRAN-1
- v. Nature of error noticed
- vi. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 09.01.2021. The Petitioner replied vide email dated 08.01.2021. The Petitioner did not provide any screen-shot evidencing technical glitches of the GST Portal. Further, the exact issue faced by the Petitioner was also not provided. The Petitioner has simply provided that the Common Portal was not working.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

17. WP (C) No. ___/2020-M/s Khemka Marketing

GSTIN/ Provisional ID	State	Constitution of Business
22ABRPA0008N1ZZ	Delhi	Proprietorship

Issue: The Petitioner was not able to file TRAN-1 & TRAN-2 electronically for the reason of law being new and the Petitioner not being well conversant with the functioning of the common portal. Therefore, the Petitioner faced technical glitches/snags while filing the form. The GST Council

Secretariat vide letter F.No. 248/TRAN-1 Rep./Khemka/GSTC/2020/4675 dated 13.11.2020 has forwarded GSTN as Respondent No. 3.

Status: GSTN is a party in this matter. GSTN vide email dated 04.12.2020 apprised the status of case to the GST Council Secretariat and the CGST Commissionerate (Ranchi) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Delhi and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 07.01.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 09.01.2021. The Petitioner replied vide email dated 10.01.2021 sharing representation 13.02.2020 addressed to the CEO, GSTN. The Petitioner stated that they attempted to file TRAN-1 several times within the stipulated period. However, despite repeated attempts, the same could not be filed due to technical glitches on the GST Portal. The Petitioner states that the portal did not accept the submission and showed the message "error occurred in submit". They further stated that since the Petitioner was unable to connect with the system and submit TRAN-1, the fact of failed attempt at filing the return may not have been even registered in the system. The Petitioner has relied on the judgments passed by the Delhi High Court in W.P. (C) No. 6537/2019 titled A.B. Pal Electricals Pvt. Ltd. v. UOI & Ors. and the judgement of the Madras High Court in W.P. No. 3328/2020 titled Checkpoint Apparel Labelling Solutions India Pvt. Ltd. v. Commr. of GST & Central Excise, Chennai. However, the Petitioner did not provide any screen-shot evidencing technical glitches of the GST Portal.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

18. WP No. 5402/2020-Vasudev Tracto Rollers v. Nodal Officer & Ors

GSTIN/ Provisional ID	State	Constitution of Business
19AACFV4959M1ZD	West Bengal	Partnership

Issue: The Petitioner has claimed that they could not file Form GST TRAN-1 within due date as the tax consultant of the petitioner had come faced certain technical glitches while filing of form GST TRAN-1 on the common portal.

Status: GSTN is a party in this matter. GSTN vide email dated 11.12.2020 apprised the status of case to the GSTC in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Kolkata and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 07.01.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed

- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 09.01.2021. However, no reply was received from the Petitioner.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

Category B3: Successfully Filed as Per Logs with No Error reported. Successfully Filed as Per Logs with No Error reported.

19. Writ Tax 362/2020-SKJ Metals Company v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
09ACQPJ5004M1Z9	Uttar Pradesh	Proprietorship

Issue: The Petitioner faced technical glitch while filing TRAN-1.

Status: Writ Petition in this matter has not been received by GSTN only GSTIN was received from GSTC Secretariat vide their letter no. 526/W.P. 362 of 2020/SKJ/GSTC/2020/3572 dated 11.08.2020 wherein GSTN was requested to verify Petitioner's claim of technical glitch while filing TRAN-1. GSTN vide letter dated 28.08.2020 apprised the status of case to the GST Council Secretariat and the concerned CGST Commissionerate (Lucknow Zone) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018 and requested for a copy of the Writ Petition. The same was requested again vide GSTN's email dated 02.09.2020 and letter dated 09.09.2020. The matter is pending before the Hon'ble Allahabad High Court and the next date of hearing has not been updated on Court's Website. The Hon'ble High Court vide interim order dated 07.07.2020 directed the respondents to consider reopening the portal and in the event the same is not feasible the respondents would entertain the GST TRAN-1 of the Petitioner manually and pass orders thereon after due verification of the credits as claimed by the Petitioner.

Further investigation by GSTN: Further investigation by GSTN: An email dated 14.09.2020 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 16.09.2020. The Petitioner replied vide email dated 16.09.2020 sharing a manual copy of TRAN-1 and explaining that while filing Form Tran-1 online they were unable to find the exact column where the Customs Duty eligible for Input was to be entered. However, they did not share any screenshot/ticket number.

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Taxpayer has tried to save TRAN-1 which was processed. There were no Error reported in logs and Revision was not attempted by the Taxpayer. During course of submission error related to invalid registration reported for no.09627500834 which has been added before first successful attempt. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

TRAN-2

Category No.	Category	Detailed Description	Count of Taxpayer
A. Category-1	TRAN-1 filed and error in TRAN-2.	As per Logs Tran-1 filed successfully. Error recorded in database but no corresponding error reported in logs.	1
B Category-8	TRAN-1 filed and TRAN-2 not attempted and no error in logs	As per Logs Tran-1 filed successfully. User neither submitted nor filed TRAN-2 and there are no logs of save as well.	1
	Total		2

Category A1: TRAN-1 filed and error in TRAN-2.

20. W.P. No. 1327/2020 M/s Capital Enterprises v. UOI &Ors.

GSTIN/ Provisional ID	State	Constitution of Business
21AAOPA1368F1Z6	Orissa	Proprietorship

Issue: The Petitioner successfully filed TRAN-1 on 27.12.2017. While filing TRAN-2 the Petitioner faced technical difficulties which prevented them from uploading TRAN-2. The GST Portal displayed Petitioner the message "Errors encountered while uploading the file."

Status: GSTN is a party in this matter. GSTN vide email dated 08.09.2020 apprised the status of case to the CGST Commissionerate (Bhubaneswar) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter has been disposed off vide order dated 05.03.2020 with the direction to Respondent no. 4 (DC, Commercial Tax) and 6 (Commissioner of Sales Tax) to take decision on the representation filed by the Petitioner vide Annexures 6 & 9 and pass appropriate order in accordance with law within a period of 3 months from the date of production of certified copy of this order.

On completion of technical analysis conducted by GSTN/Infosys, it was observed that the Taxpayer successfully filed GST TRAN-1 successfully on 27/12/2017 and declared values in Table 7B of 7a & 7d. The taxpayer was eligible for filing TRAN-2 and filed the same for period July 2017 and August 2017 on 30/06/18 & 01/07/2018 respectively. However, the same were not processed due to an error reported relating to invalid HSN. There were errors recorded in database but no corresponding error reported in logs. Thus, the Petitioner's case may be considered as having faced Technical difficulties.

Category B8: TRAN-1 filed and TRAN-2 not attempted and no error in logs

21. WP (C) No. ___/2020-M/s Khemka Marketing

GSTIN/ Provisional ID	State	Constitution of Business
22ABRPA0008N1ZZ	Delhi	Proprietor

Issue: The Petitioner was not able to file TRAN-1 & TRAN-2 electronically for the reason of law being new and the Petitioner not being well conversant with the functioning of the common portal. Therefore, the Petitioner faced technical glitches/snags while filing the form. The GST Council Secretariat vide letter F.No. 248/TRAN-1 Rep./Khemka/GSTC/2020/4675 dated 13.11.2020 has forwarded GSTN as Respondent No. 3.

Status: GSTN is a party in this matter. GSTN vide email dated 04.12.2020 apprised the status of case to the GST Council Secretariat and the CGST Commissionerate (Ranchi) in terms of CBIC's Circular no. 39/13/2018 dated 03.04.2018. The matter is pending before the Hon'ble High Court of Delhi and the next date of hearing is not updated on the Court's website. No effective order is available on the Court's website.

Further investigation by GSTN: An email dated 07.01.2021 was sent to the Petitioner requesting for the following information:-

- i. Exact technical glitch faced by you while filing TRAN-1
- ii. Nature of error noticed
- iii. Screen-shots of technical error/emails sent to help-desk along with ticket numbers.

The Petitioner was requested to provide the details by 09.01.2021. The Petitioner replied vide email dated 10.01.2021 sharing representation 13.02.2020 addressed to the CEO, GSTN. The Petitioner stated that they attempted to file TRAN-1 several times within the stipulated period. However, despite repeated attempts, the same could not be filed due to technical glitches on the GST Portal. The Petitioner states that the portal did not accept the submission and showed the message "error occurred in submit". They further stated that since the Petitioner was unable to connect with the system and submit TRAN-1, the fact of failed attempt at filing the return may not have been even registered in the system. The Petitioner has relied on the judgments passed by the Delhi High Court in W.P. (C) No. 6537/2019 titled A.B. Pal Electricals Pvt. Ltd. v. UOI & Ors. and the judgement of the Madras High Court in W.P. No. 3328/2020 titled Checkpoint Apparel Labelling Solutions India Pvt. Ltd. v. Commr. of GST & Central Excise, Chennai. However, the Petitioner did not provide any screen-shot evidencing technical glitches of the GST Portal

On completion of technical analysis conducted by GSTN/Infosys, it was observed in the logs that the Taxpayer neither submitted nor filed form TRAN-1. Thus, the Petitioner's case may be considered as not having faced any Technical difficulties.

MIGRATION CASE

22. WP.No.31285 of 2019 - M/s Guru Shoes Components. v. UOI & Ors.

Provisional ID	New GSTIN
34AADFG2604B1Z8	34AADFG2604B2Z7

Issue: -Petitioner received the PID 34AADFG2604B1Z8. The migration of the Petitioner was not completed due to an invalid PAN. In the meantime, the Petitioner had also applied for new registration GSTIN 34AADFG2604B2Z7 with effective date of registration as 22.08.2017. However, the Petitioner could not report the transactions made by him for the period 01.07.2017 to 21.08.2017 in the new registration as the Petitioner had conducted their business on their PID. Therefore, the Petitioner applied for completion of the migration process in August 2018 and again in January 2019 since the Petitioner had already taken a new registration the application was not processed.

Status:- The Court vide order dated 3.06.2020 disposed off the Writ Petition with the direction to the appropriate authority to issue the necessary positive recommendations for migration/transition of credit available in the account of the R2 (GSTN) within a period of 4 weeks from the date of receipt of a copy of this order and R2 (GSTN) will, in turn, will in turn within 4 weeks from receipt thereof issue necessary intimation to the Petitioner permitting it to access the portal and upload returns.

Recommendation of Commissionerate, GSTN and GSTC Secretariat:-The Commissioner, Puducherry Commissionerate (State taxes) vide letter no. 3603/CTD/RC/2020 dated 21.10.2020 (Annexure-A) have written to GSTN with a request to provide a user ID and password to M/s Guru Shoes (PID-34AADFG2604B1Z8) for accessing GST Portal. Further GSTN vide letter no File No. GSTN/2019/Legal/482 dated 18.12.2020 (Annexure-B) addressed to Commissioner, GST Policy Wing with a copy marked to GSTC Secretariat sought whether GSTN should comply with the direction issued by the Hon'ble High Court or the Government would be preferring an appeal against it.

The GSTC Secretariat vide its letter dated 31.12.2020 with F.No 729/WP/31285/Guru/GSTC/2020 (Annexure-C) addressed to the Commissioner, GST Policy Wing, CBIC (As Co-Convenor of Law Committee) North Block, New Delhi ,requested for the resolution of the issue of the Petitioner, pursuant to passing of Hon'ble Madras High Court order. The GSTC Secretariat vide this letter has given its opinion that the may be considered for acceptance and this specific case of the migration of petitioner may be allowed by following the special procedure given in Notification No.31/2018 CT dated 06.08.2018 subject to the conditions that:

- (a) Migration of taxpayer's PID 34AADFG2604B1Z8 may be completed by GSTN and after migration it may be mapped with the new GSTIN 34AADFG2604B2Z7 taken by the taxpayer (as in para 2(v) of Notification No.31/2018 CT dated 06.08.2018) for facilitating filing of returns for the period from 1st of July 2017 to 21st of August 2017.
- (b) As reported by jurisdictional office, the taxpayer had no closing VAT credit and he was also not registered under the Central Excise prior to GST. Hence, no such claim of transitional credit arises. Also the due date of claiming Transitional credit under Rule 117(1A) is over. Thus the taxpayer can't file TRAN-I at this stage.
- (c) No ITC on the invoices pertaining to inward supplies for this taxpayer during the period of July 2017 to 21st of August 2017 can be allowed as the last date for taking the input tax credit in respect of these invoices is over as per the time limit prescribed under Section 16(4) of the CGST Act 2017.
- (d) The details of outward supplies declared by this taxpayer in GSTR-I for the period from 1 of July 2017 to 21st of August 2017 shall not be reflected in GSTR-2A and GSTR- 2B of the recipients in order to avoid the recipients taking ITC again, if any.

Examination of records by GSTN: - The matter has been examined at GSTN's end and it is observed that no migration request for PID 34AADFG2604B1Z8 was received by GSTN. It's relevant to mention here that the process of migration on the GST Portal started on 08.11.2016 and continued till 06.02.2018. Thereafter, another window to complete the migration process was granted to the taxpayers vide notification no. 31/2018-Central Tax dated 06.08.2018. In notification no. 31/2018-Central Tax dated 06.08.2018 the following procedure was prescribed for taxpayers who did not file the complete FORM GST REG 26 but received only a Provisional Identification Number (PID) (hereinafter referred to as "such taxpayers"):

- The details as per abovementioned notification were required to be furnished by the taxpayer to the jurisdictional nodal officer of the Central Government or State Government.
- On receipt of an e-mail from the Goods and Services Tax Network (GSTN), such taxpayers were required to apply for registration by logging onto <https://www.gst.gov.in/> in the “Services” tab and filling up the application in FORM GST REG-01 of the Central Goods and Services Tax Rules, 2017.
- After due approval of the application by the proper officer, such taxpayers received an email from GSTN mentioning the Application Reference Number (ARN), a new GSTIN and a new access token.
- Upon receipt, such taxpayers were required to furnish the following details to GSTN by email, to migration@gstn.org.in:–
 New GSTIN;
 Access Token for new GSTIN;
 ARN of new application;
 Old GSTIN (PID).

Upon receipt of the above information from such taxpayers, GSTN was to complete the process of mapping the new GSTIN to the old GSTIN and inform such taxpayers. Such taxpayers were required to log onto the common portal www.gstn.gov.in using the old GSTIN as “First Time Login” for generation of the Registration Certificate. Such taxpayers were deemed to have been registered with effect from the 1st July, 2017.

Further, the last date for applying for migration in terms of Notification. No 31/2018 read with Notification. No 67/2018 dated 31/12/2018 was 28th February 2019.

A decision is being sought in this matter on further action required to be taken by GSTN.

Annexure-3**Cases sent by Nodal Officers of Centre/States**

	Category	Detailed Description	Count of Taxpayer
A1	Processed with error.	The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details.	16
B1	As per GST system log, there are no evidences of error or submission/filing of TRAN-1.	As per GST System Logs there is no evidence that the taxpayer has tried for Saving / Submitting / Filing TRAN-1	13
B2	TRAN-1 Fresh/Revision Attempted with No error/ No valid error reported.	As per GST System Logs, the taxpayer tried to save / submit / File for first time or for revision of TRAN-1 but there are no evidences of system errors in the logs.	03
B3	TRAN-1 Successfully Filed as Per Logs with No Valid Error reported.	The taxpayer has successfully filed TRAN-1 and no technical error has been found.	04
B4	TRAN-1 is filed but credit not received.	Cases where the taxpayer has filed TRAN1 once and claims that no credit has been posted. No technical issues have been observed in the logs.	04
B8	TRAN-1 filed and TRAN-2 not attempted and no error in logs.	As per Logs TRAN-1 filed successfully. User neither submitted nor filed the TRAN-2 and there are no logs of save as well.	03
	Total		43

Category A1: Cases where the taxpayer received the error ‘Processed with error. The taxpayer could not claim transitional credit as the line items requiring declarations of earlier existing law registration were processed with error since the taxpayer had not added them in his registration details.

S. N o.	GSTIN	Legal Name	Constit ution of Busines s	Amoun t of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designa tion of Nodal Officer	Sta te/ Ce ntr e	Email ID of Nodal Officer
1	18AABCS9450Q1ZL	Sunrise Biscuit Company Private Limited	Private Limited Company	Rs. 768131/-	Assam	Sh. B. S. Suhag, Additonal Commissioner	Center	suhag104@yahoo.in bhupender.suhag@gov.in
2	26AAACE3622P1ZJ	Everest Holovisions Ltd.	Public Limited Company	Rs. 13,98,004/-	Dadra and Nagar Haveli	Satish Dhavale , Commissioner	State	commr-cexvdr2@nic.in
3	02ATXPS7463H1Z0	AMAR SINGH	Propriet orship	SGST : Rs. 44966/-	Himac hal Pradesh	Gopal Dass Dogra, Asstt. Commissioner	State	gopaldass.dogra@mailhptax.gov.in
4	27AAFCA9533J1ZE	Addon retails Private Ltd.	Private Limited Company	Rs. 436375/-	Mahar ashtra	Sanjeev V. Chetule, Assistant Commissioner	Center	sanjeev.chetule@nic.in
5	27AAFCEM2000E1Z5	Mehta Infocom Pvt Ltd	Private Limited company	CGST Rs. 66,74,374/-	Mahar ashtra	Anagha R. Jakhadi , Superintendent	Center	Anagha.Jakhadi@icagate.gov.in

6	27AACCA3 162C1Z7	A R THERM OSETS PRIVAT E LIMITE D	Private Limited Compa ny	CGST: Rs. 20,30,4 68.47/-	Mahar ashtra	Mrs. Kalyane shwari B. Patil	Stat e	gstit.state@mahagst .gov.in
7	27AAHFN2 405R1ZW	NEXUS POLYC HEM	Partersh ip	CGST: Rs. 799407 3/-	Mahar ashtra	Mrs. Kalyane shwari B. Patil	Stat e	gstit.state@mahagst .gov.in
8	27AABCI45 68D1ZM	INDOFI L INDUST RIES LIMITE D	Public Limited Compa ny	CGST: Rs. 10,06,0 4,152/-	Mahar ashtra	Mrs. Kalyane shwari B. Patil	Stat e	gstit.state@mahagst .gov.in
9	03AAVPM6 375R1ZN	GAURA V MAHAJ AN	Propriet orship	Rs. 224794/ -	Punjab	Pawan Garg, Deputy Commis sioner	Stat e	detcldh@punjab.go v.in
1 0	36ATLPM1 278L1Z5 **Received after 31.03.2020 by the Nodal Officer / Field formation	SONI MURAH ARI	Propriet orship	SGST : Rs. 3,60,98 0/-	Telang ana	Shri. B. Raghu Kiran, Joint Commis sioner	Cen tre	raghu.batchali@gov .in
1 1	36AAHFT82 55F1ZW	T V PLASTI CS	Partners hip	CGST : 2,04,44 7/-	Telang ana	Shri. B. Raghu Kiran, Joint Commis sioner	Cen ter	raghu.batchali@gov .in
1 2	36AAHFC1 808R1Z3	CLASSI C PLASTO CRAFTS	Partners hip	CGST : 7,27,87 3/-	Telang ana	Shri. B. Raghu Kiran, Joint Commis sioner	Cen ter	raghu.batchali@gov .in

13	36AUBPT7440C1ZP	SIRISH A TALLA DA	Proprietorship	CGST : 8,07,516/-	Telangana	Shri. B. Raghu Kiran, Joint Commissioner	Center	raghu.batchali@gov.in
14	36AAACG7441A1Z2	Golden Streak Drugs and Pharmaceuticals Limited	Public Limited Company	SGST : Rs. 8,93,131/-	Telangana	Shri. B. Raghu Kiran, Joint Commissioner	Centre	cgst.adclhydcommte@gov.in
15	09AAJHM8433Q1ZB	MOHAN LAL AGARWAL (HUF)	Hindu Undivided Family	Rs. 236366/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu-up@nic.in
16	09AAACB2250J1ZW	BANARAS MARBLES & GRANITES LIMITED	Public Limited Company	CGST- Rs. 139333 1.50/- SGST- Rs. 139333 1.50/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu-up@nic.in

Category B1: Cases in which, as per GST system log, there are no evidences of error or submission/filing of TRAN-1. As per GST System Logs, the taxpayer has neither tried for saving / submitting or Filing TRAN-1.

S. No.	GSTIN	Legal Name	Constitution of Business	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State/ Centre	Email ID of Nodal Officer
1	33AACCL1161E1Z4	Linux Laboratories Private Limited	Private Limited Company	CGST : Rs. 5,00,000 /-	Tamil Nadu	J Rasal Doss Solomon, Joint Commissioner	State	jcit@ctd.tn.gov.in

2	36ABTFS245 2G1ZU	SYNERGY LUBES & OILS	Partnership	CGST: Rs. 20,15,617/-	Telangana	Shri. B.Raghu Kiran, Joint Commissioner	Centre	raghu.batchali @gov.in
3	09AABCN03 76N1Z4	NIRMAL FIBRES PRIVATE LIMITED	Private Limited Company	CGST Rs. 62,10,063/-	Uttar Pradesh	Pr. Commissioner	Centre	
4	09AMQPK91 01L1ZJ	WASEEM KHAN	Proprietorship	SGST Rs. 63657.55/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu- up@nic.in
5	09ABFPK945 0J1Z9	SARFARAZ WALI KHAN	Proprietorship	SGST Rs. 76812.74/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu- up@nic.in
6	09AAUPJ158 5F1ZA	SANJEEV JAIN	Proprietorship	SGST- Rs. 1063759/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu- up@nic.in
7	09BJAPS813 1A1ZF	SANDEEP	Proprietorship	CGST- Rs. 694843.50/- SGST- Rs. 694843.50/-	Uttar Pradesh	Shri Arvind Kumar	Centre	ctithqlu- up@nic.in
8	09AABFZ029 1K1ZU	3A ELECTRONICS AGENCY	Partnership	Value- Rs. 4504112.00/- Eligible dutes paid Rs. 563383.00/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu- up@nic.in
9	09AADCK60 13F1ZS	KIRTIKUNJ AUTOMOBILES PRIVATE LIMITED	Private Limited Company	Rs. 1397656.3/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu- up@nic.in

10	09ABEPG5972E1ZM	BRAJENDRA KUMAR GUPTA	Proprietorship	Rs. 2500/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu-up@nic.in
11	09APTPG6720P1Z3	Manish Grover	Proprietorship	Rs. 282347.17/-	Uttar Pradesh	Arvind Kumar, Additional Commissioner	State	ctithqlu-up@nic.in
12	09AABFG0320L1ZP	Gopal Dal Mills	Partnership	Rs. 12273/-	Uttar Pradesh	Shri P. K. Katiyar, Commissioner	State	commr-cexkpr@nic.in
13	09AAEFD2894H1Z7	Devendra Dal Industries	Partnership	Rs. 339100.9/-	Uttar Pradesh	Shri P. K. Katiyar, Commissioner	Centre	commr-cexkpr@nic.in

Category B2: Cases where TRAN 1 Fresh/Revision Attempted with No error or No valid error reported: As per GST System Logs, the taxpayer tried to save / submit / File for first time or for revision of TRAN 1 but there are no evidences of system errors in the log.

S. No.	GSTIN	Legal Name	Constitution of Business	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State/ Centre	Email ID of Nodal Officer
1	07AAIPK8660N1Z2	SUBHASH CHANDER KALIA	Proprietorship		Delhi		Centre	

2	27AACCB1409R1ZH	VIDEO CON D2H LIMITED	Public Limited Company		Maharashtra	Ganapati T. Chougule, Assistant Commissioner	Center	d08.mumwest@gmail.com
3	09AAVPJ4836C1ZF	MANEE SHA JAIN	Proprietorship	SGS T-Rs. 319841/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu-up@nic.in

Category B3: Cases where the taxpayer has Successfully Filed as Per Logs with No Valid Error reported: The taxpayer has successfully filed TRAN-1 and no technical errors has been found.

S. No.	GSTIN	Legal Name	Constitution of Business	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State / Centre	Email ID of Nodal Officer
1	07AAIPK8660N1Z2	SUBHASH CHANDER KALIA	Proprietorship		Delhi		Center	
2	27AACCB1409R1ZH	VIDEOCON D2H LIMITED	Public Limited Company		Maharashtra	Ganapati T. Chougule, Assistant Commissioner	Center	d08.mumwest@gmail.com
3	09AAVPJ4836C1ZF	MANEESH JAIN	Proprietorship	SGST-Rs. 319841/-	Uttar Pradesh	Shri Arvind Kumar	State	ctithqlu-up@nic.in

Category B4: Cases where TRAN-1 is filed but credit not received. In these cases the taxpayer has filed TRAN-1 once but no credit has been posted. No technical issues has been observed in the logs.

S. No.	GSTIN	Legal Name	Constitution of Business	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State / Centre	Email ID of Nodal Officer
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1	24AASF8005M1ZO	Suraj Impex	Partnership	Rs. 51,95,606/-	Gujarat	Dr.JeeteshNagori, Commissioner	Center	commr-cexamd3@nic.in
2	08ABQPM2801C1ZW	RAKESH MAHESHWARI	Proprietorship		Rajasthan	Mahendra Pal, Commissioner	Center	commr-cexjpr@nic.in
3	36ACZPN0228L1Z1	DEVENDRA KUMAR NAHATA	Proprietorship	CGST; 4,36,419/-	Telangana	L. Radha Sindhiya, Asst. Commissioner	State	ac_gstn@tgct.gov.in
4	09AAECR5457P1ZL	Rudra Real Estate Ltd.	Public Limited Company	Rs. 1606984/-	Uttar Pradesh	Arvind Kumar, Additional Commissioner	State	ctithqlu-up@nic.in

CATEGORY B8: TRAN-1 filed and TRAN-2 not attempted and no error in logs: As per Logs TRAN-1 filed successfully. User neither submitted nor filed the TRAN-2 and there are no logs of save as well.

S. N o.	GSTIN	Legal Name	Constitution of Business	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Name and Designation of Nodal Officer	State/ Centre	Email ID of Nodal Officer
1	24ADBPK5700D1Z9	JagdishkumarDayal Kotak	Proprietorship	Rs. 1,51,885/-	Gujarat	Dr.Jeetesh Nagori, Commissioner	Center	commr-cexamd3@nic.in
2	24AKIPB7808D1ZJ	AnilkumarHansraj bhaiBhuva	Proprietorship	Rs. 5,97,785.80/-	Gujarat	Dr.Jeetesh Nagori, Commissioner	State	commr-cexamd3@nic.in
3	02AAEFG5148H1ZP	GAINDA MULL HEMRAJ AGENCIES	Partnership	CGST : Rs. 586000/-	Himachal Pradesh	Gopal Dass Dogra, Asstt. Commissioner	State	gopaldass.dogra@mailhptax.gov.in

Annexure-4

Subject: Agenda Note for ITGRC in case of M/S Veliath Steel Agencies as per the High Court order and covered by the extended scope of ITGRC as per the 32 meeting of the GSTC.

Rectification of Tran-I in case of M/S Veliath Steel Agencies as per the High Court order dated 03.07.2020 in Writ petition Number 12930/2020. It is a case of transposition of column and is covered by the decision of the 32nd GSTC meeting which extended the scope of the ITGRC for non-technical issues. It is proposed that this case may also be taken up by the ITGRC.

In this case, the High Court has stated that

"I am of the view that the 4th respondent has already received such request on consideration of the matter, in case it requires the petitioner or representative, take a call and thereafter, as per the circular and the procedure invoked, would send it to SGST network. The SGST network on consideration of the matter would take a call on request by applying the principles of natural justice...and thereafter would strictly adhere the procedure in the circular for onward transmission to ITGRC."

Accordingly, as per the directions of the High Court and the recommendation of the jurisdictional SGST Commissioner that it is an error apparent on record involving transposition of the column and further the TRAN-I has been filed on time, the case may be considered by ITGRC.

Annexure-B**Cases forwarded by nodal officers and recommended to the GSTC by the 14th ITGRC**

S. No.	GSTIN	Legal Name	Amount of Credit to be claimed in TRAN-1 (in Rs.)	State	Date of receipt@GSTN	Date of receipt@Nodal Officer
1.	18AABCS9450Q1ZL	Sunrise Biscuit Company Private Limited	Rs. 768131/-	Assam	25.09.2020	13.03.2020 & 15.06.2020
2.	26AAACE3622P1ZJ	Everest Holovisions Ltd.	Rs. 13,98,004/-	Dadra and Nagar Haveli	20.10.2020	27.12.2019
3.	02ATXPS7463H1Z0	Amar Singh	SGST : Rs. 44966/-	Himachal Pradesh	14.08.2020	Before 31.03.2020
4.	27AAFCA9533J1ZE	Addon Retails Private Ltd.	Rs. 436375/-	Maharashtra	31.03.2020	04.03.2020
5.	27AAFCM2000E1Z5	Mehta Infocomm Pvt Ltd	CGST Rs. 66,74,374/-	Maharashtra	24.09.2020	21.04.2018 & 24.08.2020
6.	27AACCA3162C1Z7	A R Thermosets Private Limited	CGST: Rs. 20,30,468.47/-	Maharashtra	26.11.2020	14.12.2018
7.	27AAHFN2405R1ZW	Nexus Polychem	CGST: Rs. 7994073/-	Maharashtra	26.11.2020	18.11.2019
8.	27AABCI4568D1ZM	Indofil Industries Limited	CGST: Rs. 10,06,04,152/-	Maharashtra	26.11.2020	25.05.2018
9.	03AAVPM6375R1ZN	Gaurav Mahajan	Rs. 224794/-	Punjab	14.02.2020	25.04.2018

10.	36ATLPM1278L1Z5 **Received after 31.03.2020 by the Nodal Officer / Field formation	Soni Murahari	SGST : Rs. 3,60,980/-	Telangana	08.07.2020	May-20
11.	36AAHFT8255F1ZW	T V Plastics	CGST : 2,04,447/-	Telangana	24.08.2020	26.05.2020
12.	36AAHFC1808R1Z3	Classic Plasto Crafts	CGST : 7,27,873/-	Telangana	24.08.2020	26.05.2020
13.	36AUBPT7440C1ZP	Sirisha Tallada	CGST : 8,07,516/-	Telangana	24.08.2020	26.05.2020
14.	36AAACG7441A1Z2	Golden Streak Drugs And Pharmaceuticals Limited	SGST : Rs. 8,93,131/-	Telangana	04.11.2020	16.03.2020
15.	09AAJHM8433Q1ZB	Mohan Lal Agarwal (Huf)	Rs. 236366/-	Uttar Pradesh	Resubmitted on 29.10.2020. Earlier received on 14.02.2020 with incomplete details	Before 14.02.2020
16.	09AAACB2250J1ZW	Banaras Marbles & Granites Limited	CGST- Rs. 1393331.50/- SGST- Rs. 1393331.50/-	Uttar Pradesh	Resubmitted on 29.10.2020. Earlier received on 05.03.2020 with incomplete details	Before 05.03.2020

Annexure C**Cases forwarded by nodal officers and pending with GSTN**

S.No	GSTIN	LegalName	State	Date of receipt@GSTN	Date of receipt@Nodal Officer
1.	36AAGCA1556JIZN	Anu Advance Composite Products Private Limited	Telangana	19.01.2021	07.02.2019
2.	09ACVPK6803AIZJ	Rajeev Kumar	Uttar Pradesh	19.01.2021	19.02.2020
3.	24AAACK8850DIZQ	Kevin process Technologies Pvt ltd	Gujarat	25.02.2021	06.12.2019
4.	37AAACL2937JIZD	Lifestyle International private limited	Andhra Pradesh	20.04.2021	02.07.2020

Agenda Item 16– Review of revenue position under Goods and Services Tax

1. The GST revenues have seen a positive trend in last few months and reached ₹ 1.4 lakh crore by April 2021. The Figure below shows the trend and the table 1 shows the details of the collection in last few months.

Figure 1: Monthly gross GST collection (in ₹ lakh crore) from October '20 to April '21

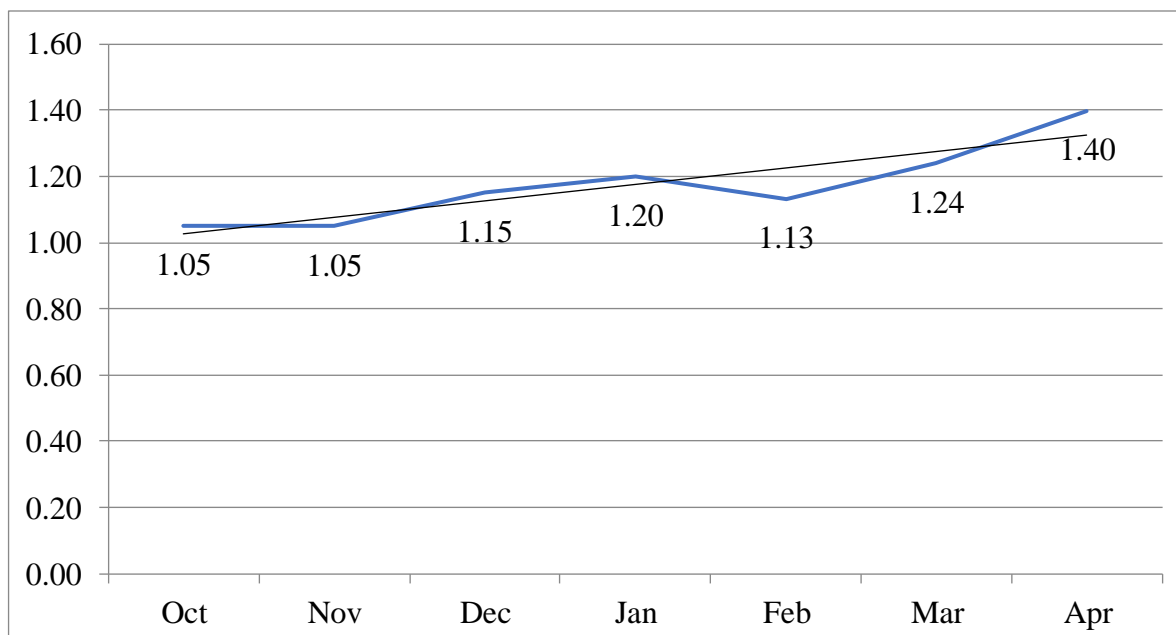


Table 1: Monthly gross GST collection from October '20 to April '21

(₹ crore)							
MONTH	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21
CGST	19,193	19,189	21,365	21,932	21,092	22,973	27,837
SGST	25,411	25,540	27,804	29,025	27,273	29,329	35,621
IGST	52,540	51,992	57,426	60,293	55,253	62,842	66,878
Domestic	29,165	29,913	30,375	32,869	30,871	31,745	38,882
Imports	23,375	22,078	27,050	27,424	24,382	31,097	27,996
Comp Cess	8,011	8,242	8,579	8,626	9,525	8,757	9,372
Domestic	7,079	7,432	7,608	7,739	8,865	7,822	8,464
Imports	932	809	971	886	660	935	908
Total	1,05,155	1,04,963	1,15,174	1,19,875	1,13,143	1,23,902	1,39,708

2. Table 2 shows the IGST collected, refunded and settled/apportioned during the FY (2020-21).

Table 2: IGST Collection/Settlement/Apportionment/Refund in FY2020-21*

(Figures in Rs. Crore)

1.	Collections (+)	5,65,719
2.	Recovery from IGST Ad-hoc apportionment (+)	0
3.	Refunds (-)	83,800
4.	Settlement (-)	4,07,485
	<i>i. CGST</i>	2,27,601
	<i>ii. SGST</i>	1,79,884
5.	Ad-hoc Settlement	76,000
	<i>i. CGST ad hoc</i>	38,000
	<i>ii. SGST ad hoc</i>	38,000
6.	Net (1+2-3-4-5)	-1,565

*These figures are provisional and subject to final accounts

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 April 2021 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	2021-22[#]
Opening Balance		21,466	47,272	55,737	3,940
Compensation Cess collected (Net)	62,612	95,081	95,551	85,191	9,100
Compensation released	41,146	69,275	1,20,498	1,36,988	
Balance	21,466	47,272	55,737*	3940	13,040

* Centre had transferred Rs. 33,412 crore from CFI to Compensation Cess Fund as part of an exercise to apportion balance IGST pertaining to FY 2017-18

[#] till 30.04.2021

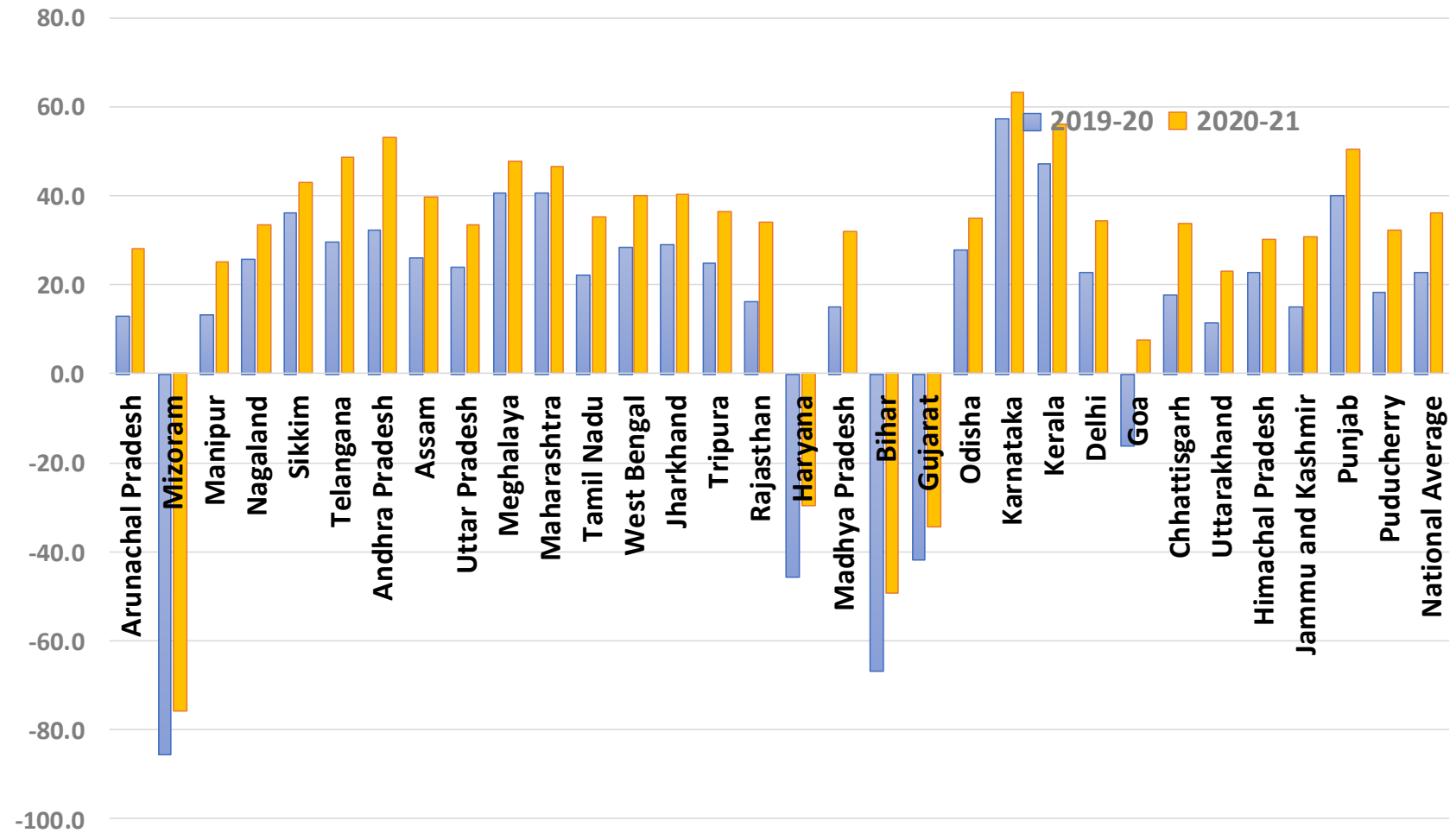
Gap with respect to base Revenue

4. The State-wise details of gap between the protected revenue and the post settlement gross SGST revenue (including ad-hoc settlement) for FY 2020-21 as compared to FY 2019-20 may be seen in the Table 4. This information is also depicted in the graph placed at Figure 2.

Table 4: Revenue Gap

	GST REVENUE SHORTFALL	2019-20	2020-21
1	Andhra Pradesh	13.2	28.2
2	Arunachal Pradesh	-85.6	-75.7
3	Assam	13.3	25.2
4	Bihar	25.8	33.5
5	Chhattisgarh	36.2	43.1
6	Delhi	29.9	48.7
7	Goa	32.6	53.2
8	Gujarat	26.3	39.8
9	Haryana	24.3	33.4
10	Himachal Pradesh	40.8	47.9
11	Jammu and Kashmir	40.8	46.7
12	Jharkhand	22.2	35.2
13	Karnataka	28.5	40.1
14	Kerala	29.3	40.5
15	Madhya Pradesh	25.1	36.4
16	Maharashtra	16.4	34.2
17	Manipur	-45.5	-29.7
18	Meghalaya	15.3	32.1
19	Mizoram	-66.8	-49.4
20	Nagaland	-41.6	-34.5
21	Odisha	27.9	35.0
22	Puducherry	57.4	63.3
23	Punjab	47.4	56.1
24	Rajasthan	23.0	34.5
25	Sikkim	-16.2	7.7
26	Tamil Nadu	17.8	33.9
27	Telangana	11.5	23.1
28	Tripura	22.9	30.3
29	Uttar Pradesh	15.3	30.8
30	Uttarakhand	40.3	50.6
31	West Bengal	18.4	32.3
	All India	23.0	36.3

Figure 2: Revenue Gap comparison



Trends in Return filing

5. The table 4 shows the trend in return filing in FORM GSTR-3B till due date and till date for return periods upto March, 2021. Table 5 and 6 show the State wise filing for these months.

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

Return Period	Till due date		Till 18 th May, 2021	
	Filed	%	Filed	%
Sep-20	71,17,796	65.60	97,15,019	89.53
Oct-20	72,64,970	66.22	97,94,646	89.27
Nov-20	77,81,761	70.68	98,65,082	89.60
Dec-20	82,35,446	74.98	99,17,413	90.29
Jan-21	37,95,899	60.61	52,91,791	84.50
Feb-21	41,60,872	67.80	52,63,336	85.77
Mar-21	71,71,924	66.53	87,97,900	81.62

Figure 3: GSTR-3B Filing till due date and till 18th May'2021

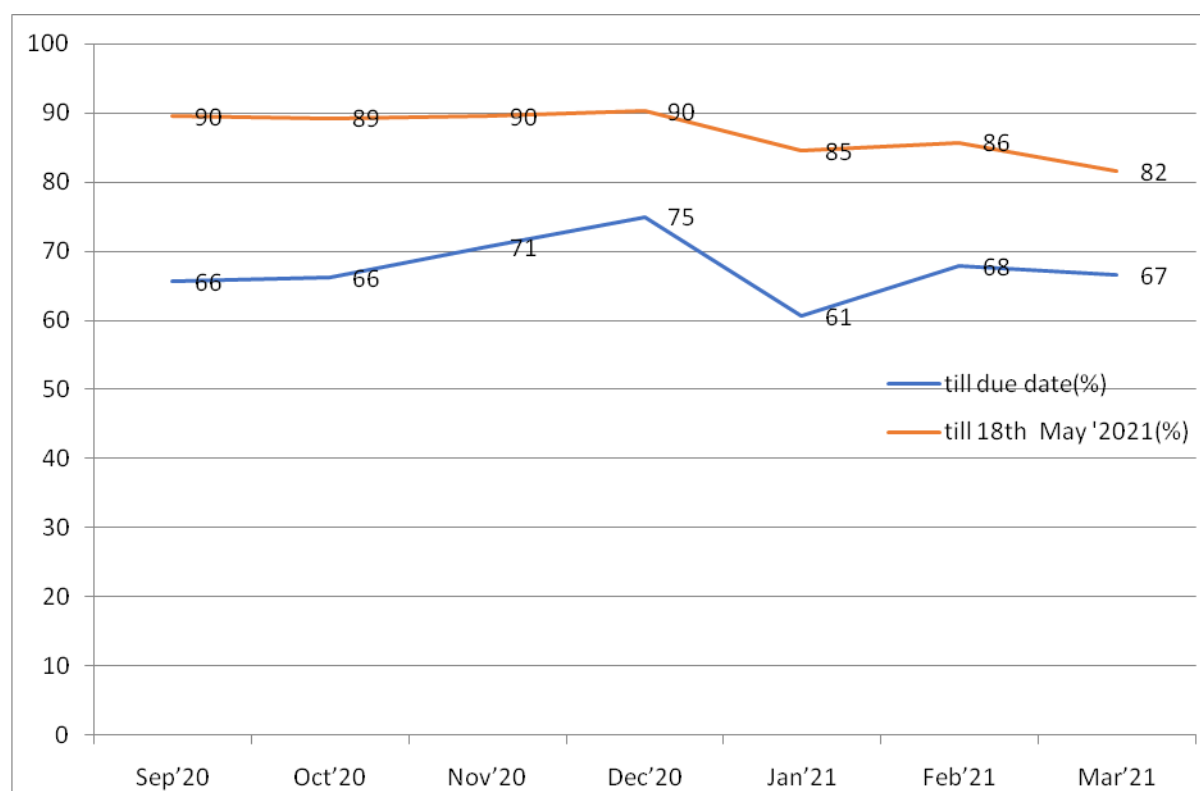


Table 6: State-wise Return filing (GSTR-3B) till due date (Sep'20-Mar'21)

STATE	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21
Jammu and Kashmir	65%	68%	74%	78%	61%	70%	72%
Himachal Pradesh	73%	74%	77%	78%	60%	68%	73%
Punjab	75%	77%	79%	81%	66%	72%	77%
Chandigarh	73%	75%	79%	82%	70%	77%	77%
Uttarakhand	67%	68%	73%	76%	56%	64%	68%
Haryana	67%	69%	72%	75%	58%	66%	70%
Delhi	62%	64%	68%	74%	54%	63%	65%
Rajasthan	72%	73%	77%	80%	60%	69%	66%
Uttar Pradesh	70%	71%	75%	78%	62%	72%	68%
Bihar	62%	58%	65%	70%	49%	59%	60%
Sikkim	58%	55%	61%	64%	47%	56%	59%
Arunachal Pradesh	40%	42%	44%	48%	33%	37%	42%
Nagaland	49%	49%	53%	56%	48%	54%	50%
Manipur	33%	35%	40%	46%	35%	42%	42%
Mizoram	46%	48%	51%	56%	42%	52%	56%
Tripura	65%	67%	68%	70%	52%	60%	63%
Meghalaya	58%	58%	60%	63%	45%	50%	62%
Assam	53%	55%	58%	61%	44%	53%	52%
West Bengal	66%	68%	70%	73%	51%	59%	68%
Jharkhand	66%	64%	71%	75%	60%	69%	64%
Odisha	68%	69%	72%	75%	53%	65%	67%
Chhattisgarh	56%	56%	61%	69%	52%	59%	40%
Madhya Pradesh	68%	67%	73%	79%	62%	69%	53%
Gujrat	74%	70%	78%	82%	70%	76%	75%
Daman and Diu	0%	0%	0%	0%	0%	0%	0%
Dadra and Nagar Haveli	58%	59%	63%	70%	61%	65%	63%
Maharashtra	61%	62%	67%	73%	56%	64%	63%
Karnataka	66%	67%	71%	76%	67%	72%	71%
Goa	52%	53%	55%	61%	45%	51%	57%
Lakshadweep	39%	42%	45%	49%	40%	47%	46%
Kerala	57%	62%	66%	70%	61%	67%	62%
Tamil Nadu	66%	67%	72%	76%	72%	76%	72%
Puducherry	62%	63%	67%	72%	67%	69%	67%
Andaman and Nicobar Islands	40%	43%	47%	56%	47%	50%	51%
Telangana	53%	54%	58%	63%	56%	60%	59%
Andhra Pradesh	60%	64%	66%	69%	63%	68%	63%
Ladakh	56%	62%	68%	73%	54%	64%	72%
Other Territory	67%	73%	68%	73%	69%	75%	67%
All India	66%	66%	71%	75%	61%	68%	67%

Table 7: State-wise Return filing (GSTR-3B) till 18th May, 2021

STATE	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21
Jammu and Kashmir	91%	91%	93%	95%	90%	92%	88%
Himachal Pradesh	93%	92%	93%	93%	85%	86%	87%
Punjab	93%	93%	93%	93%	87%	88%	90%
Chandigarh	95%	95%	96%	96%	94%	95%	91%
Uttarakhand	89%	89%	90%	91%	83%	85%	81%
Haryana	90%	90%	90%	90%	84%	85%	84%
Delhi	86%	85%	85%	87%	80%	82%	78%
Rajasthan	93%	93%	93%	93%	87%	88%	82%
Uttar Pradesh	90%	90%	91%	92%	86%	89%	83%
Bihar	85%	84%	84%	84%	73%	75%	73%
Sikkim	84%	83%	82%	82%	72%	74%	75%
Arunachal Pradesh	71%	70%	70%	69%	57%	57%	57%
Nagaland	81%	80%	80%	80%	75%	74%	69%
Manipur	68%	67%	68%	68%	61%	61%	57%
Mizoram	73%	72%	72%	74%	68%	71%	69%
Tripura	85%	84%	84%	85%	76%	76%	79%
Meghalaya	79%	78%	78%	78%	66%	65%	72%
Assam	82%	81%	81%	81%	72%	75%	70%
West Bengal	87%	87%	87%	87%	75%	76%	81%
Jharkhand	90%	90%	90%	91%	86%	87%	79%
Odisha	90%	90%	90%	91%	82%	86%	83%
Chhattisgarh	91%	90%	90%	90%	83%	82%	58%
Madhya Pradesh	94%	94%	94%	95%	89%	90%	72%
Gujarat	95%	94%	94%	95%	91%	92%	89%
Daman and Diu	0%	0%	0%	0%	0%	0%	0%
Dadra and Nagar Haveli	90%	89%	89%	89%	85%	84%	82%
Maharashtra	90%	90%	90%	91%	85%	86%	80%
Karnataka	90%	90%	91%	91%	89%	88%	84%
Goa	80%	79%	79%	79%	68%	69%	71%
Lakshadweep	65%	64%	65%	68%	60%	61%	59%
Kerala	89%	89%	89%	89%	86%	87%	82%
Tamil Nadu	89%	90%	90%	92%	90%	91%	88%
Puducherry	88%	88%	88%	89%	88%	87%	83%
Andaman and Nicobar Islands	86%	85%	84%	84%	77%	75%	69%
Telangana	82%	81%	82%	82%	78%	79%	76%
Andhra Pradesh	87%	87%	87%	88%	84%	85%	81%
Ladakh	91%	90%	90%	90%	81%	86%	87%
Other Territory	80%	80%	79%	80%	81%	83%	75%
All India	90%	89%	90%	90%	85%	86%	82%

Agenda Item 17– Issues related to GST Compensation Cess

1. As per Section 7 of the GST (Compensation to States) Act, 2017, the States are required to be compensated for loss of revenue due to implementation of GST (w.e.f. 01.07.2017) for 5 years' period. For the purpose of paying such compensation to States, as per section 8 of the GST (Compensation to States) Act, 2017, there is provision for levy of cess on certain luxury items and demerit goods and this cess collected is to be credited into a Public Account known as GST Compensation Fund. The bi-monthly payment of GST Compensation to States is released from Compensation Fund during the transient period.

2. As per Section 10 (2) of this Act, all amounts payable to the States under Section 7 shall be paid out of the GST Compensation Fund. While the compensation in full could be released till March 2020, due to the impact of Covid-19 on GST revenues, the compensation requirement for 2020-21 increased and at the same time the cess collections fell down. This created a gap in the resources available for payment of compensation to States.

3. This matter was discussed in detail in the 41st meeting of the GST Council wherein various legal provisions and the opinion of the Ld. Attorney General were also placed before the Council.

4. The provision for compensation for loss of the revenue due to implementation of GST emanates from the section 18 of the Constitution (One Hundred and First Amendment) Act, 2016, which states as under:

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.

5. Accordingly, Goods and Services Tax (Compensation to States) Act, 2017 was legislated which provides for payment of compensation to States on account of loss owing to the loss of revenue due to implementation of the GST. The law provides for a formula for calculation of the compensation amount, a compensation fund from which the compensation shall be paid and a compensation cess levied for the purpose of payment of compensation. In this context, sub-sections (1) and (2) state as under:

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.

6 Thus, it was pointed out that the compensation to States can only be paid from the Compensation Fund and not from any other source. The compensation fund shall be credited with the compensation cess.

7. This matter was referred to the Ld. Attorney General of India for his opinion. On the issue of Central Government's liability to release compensation from Consolidated Fund of India over and

above the amount of Cess collected, Ld. AG opined that “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 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.”

8. On the issue of borrowings on the strength of future receipts from the compensation cess, Ld AGI has opined that “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.”

9. AG has further opined that “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.”

10. Various options for raising resources through borrowings and their pros and cons were analysed and on 29.08.2020, Department of Expenditure communicated the details of two options to the States for borrowing. The details of the two options were further discussed between the Centre and the States in a meeting between the Union Finance Secretary, Secretary (Expenditure) and the Finance Secretaries of the States. The two options and the status of their adoption was also presented in the 42nd GST Council meeting held on 5th & 12th October 2020.

11. Eventually, after detailed consultation with States, a mechanism was evolved wherein the Central Government decided to raise certain amounts through borrowing and pass it on to the States on a back-to-back basis to make additional resources to States. This borrowing is to be repaid out of the future cess receipts. For this purpose, the GST Council in its 42nd meeting approved the proposal to extend the levy of compensation cess beyond June 2022 till the entire shortfall is covered.

12. To work out the amount for each State, a normative approach was adopted wherein the notional revenue for 2020-21 for each State was estimated on the basis of 2019-20 revenues by providing a 7% annual growth. The unmet gap between this amount and the protected revenue after estimated release of compensation was taken as the amount to be borrowed and passed on to the States. Under this calculation, it was estimated that an amount of ₹1.1 lakh crore will have to be borrowed as shown in the table below:

	(₹ crore)
1. Protected Revenue for 2020-21	7,66,004
1a. Protected Revenue for Apr 20 - Jan 21	6,38,337
2. SGST Revenue for Apr 19 - Jan 20	4,30,147
3. Normative Revenue for Apr 20 - Jan 21 [7% above (2)]	4,60,257
4. Gap to be compensated [(1a) - (3)]	1,78,080
5. GST Compensation Cess available	68,700
6. Amount to be met through borrowings [(4) - (5)]	1,09,380

13. The details of amounts borrowed and passed on to the States on back-to-back basis during 2020-21 is shown in the **Annexure-1**.

14. It is estimated that while the GST revenues may see a recovery in the current financial year 2021-22, there will still be a gap between the compensation requirement and the compensation cess available. If a view is taken to extend the same arrangement as last financial year in the current financial year 2021-22 as well on the same principles as last year, with an annual growth of 7%, the table below provides an estimate for the amount that would have to be borrowed and passed on to the States on a back-to-back basis:

	(₹ Crore)
1. Protected Revenue for 2020-21	7,66,004
2. Protected Revenue for 2021-22 [14% over (1)]	8,73,245
3. Feb-21 to Jan-22 protected revenue [2 months of (1) and 10 months of (2)]	8,55,371
4. SGST for Apr-19 to Jan-20	4,30,147
5. SGST for Feb-20 to Mar-20	86,935
6. SGST for Feb-21 to Jan-22 [(4)*1.07*1.07+(5)*1.07]	5,85,496
7. Compensation payable	2,69,876
8. Cess available	1,11,608
9. Gap to be funded through borrowings	1,58,267

15. In the Budget Estimates for the year 2021-22, it has been assumed that the GST revenues will grow at 17% over the previous year's low base. This translates to average monthly gross GST revenue of ₹1.1 lakh crore. Based on this assumption, it is estimated that for the period Feb-21 to Jan-22, the gap between protected revenue and the actual revenue after release of compensation would be around ₹1.6 lakh crore, which is lower than the amount calculated in para 12 above. Similarly, if it is assumed that the monthly gross GST revenues would be ₹ 1.15 lakh crore, the actual gap would be ₹ 1.25 lakh crore. Therefore, in both the scenarios, the borrowed amount would go on to fund even a part of the previous year's gap.

16. The compensation cess amount collected during the year will be released in accordance with the provisions of the GST (Compensation to States) Act 2017. The decision on the borrowing, the exact amount and the timing would be taken based on the above principles in consultation with the Reserve Bank of India, Department of Economic Affairs, Department of Expenditure and the States.

Details of payment of back to back loan in lieu of GST Compensation Shortfall

		(Rs. in crore)
S.No	Name of State/UT	Amount released under Special borrowing scheme in FY 2020-21
1	Andhra Pradesh	2311.00
2	Arunachal Pradesh	0.00
3	Assam	994.00
4	Bihar	3905.00
5	Chhattisgarh	3109.00
6	Goa	840.00
7	Gujarat	9222.00
8	Haryana	4352.00
9	Himachal Pradesh	1717.00
10	Jharkhand	1689.00
11	Karnataka	12407.00
12	Kerala	5766.00
13	Madhya Pradesh	4542.00
14	Maharashtra	11977.00
15	Manipur	0.00
16	Meghalaya	112.00
17	Mizoram	0.00
18	Nagaland	0.00
19	Odisha	3822.00
20	Punjab	8359.00
21	Rajasthan	4604.00
22	Sikkim	0.00
23	Tamil Nadu	6241.00
24	Telangana	2380.00
25	Tripura	226.00
26	Uttar Pradesh	6007.00
27	Uttarakhand	2316.00
28	West Bengal	4431.00
29	UT of Delhi	5865.00
30	UT of J&K	2272.00
31	UT of Puducherry	742.00
	Total	110208.00