**Confidential** 



## Agenda for

## 48th GST Council Meeting

17<sup>th</sup> December 2022

Volume – I



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### **GST** Council Secretariat

### New Delhi

5<sup>th</sup> Floor, Tower-II, Jeevan Bharti Building, New Delhi 25<sup>th</sup> November, 2022

### **OFFICE MEMORANDUM**

Subject: Notice for the 48<sup>th</sup> Meeting of the GST Council scheduled to be Convened on 17<sup>th</sup> December, 2022

The undersigned is directed to refer to the subject stated above and to convey that the 48<sup>th</sup> Meeting of the GST Council will be held on 17<sup>th</sup> December, 2022 through virtual mode (Video Conferencing). The schedule of the Meeting is as follows:

• Saturday, 17<sup>th</sup> December, 2022: 11:00 A.M. onwards

2. In addition, an **Officers Meeting** will be held on 16<sup>th</sup> December, 2022 as per the following schedule:

• Friday, 16<sup>th</sup> December, 2022: 11: 00 A.M. onwards

3. The agenda item and other details for the  $48^{th}$  Meeting of the GST Council will be communicated in due course of time.

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

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

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

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

5. Chairman, GST Network.

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## Discussion on Agenda Items

### Agenda Item 1: Draft Minutes of the 47<sup>th</sup> Meeting of GST Council held on 28<sup>th</sup> & 29<sup>th</sup> June, 2022

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

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

	Confirmation of Minutes of GST Council Meetings
	commution of windles of OST coulder weetings
1	
	i. 45 <sup>th</sup> Meeting of GST Council held on 17 <sup>th</sup> September, 2021
	ii. 46 <sup>th</sup> Meeting of GST Council held on 31 <sup>st</sup> December ,2021
	Ratification of the Notifications, Circulars and Orders issued by the GST Council and
2	decisions of GST Implementation Committee for the information of the Council
	Issues recommended by the Law Committee for the consideration of the GST Council
	i. Issuance of clarification on issue of claiming refund under inverted duty structure
	8
	<ul><li>where the supplier is supplying goods under some concessional Notification</li><li>ii. Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017</li></ul>
	1
	for calculation of refund of unutilized Input Tax Credit on account of inverted duty structure
	iii. Authority to issue recurring SCN in case of an enforcement action initiated by the
	Central authorities against a taxpayer assigned to State and vice versa
	iv. Clarification on various issues relating to applicability of demand and penalty
	provisions under the Central Goods and Services Tax Act, 2017 in respect of
	transactions involving fake invoices
	v. Notifying clause (c) of Section 110 and Section 111 of the Finance Act, 2022
	vi. Issuance of clarification on various issues pertaining to GST
3	vii. Issue of compulsory registration for supplier supplying goods or services through
	ECOs under Section 24(ix) of the CGST Act, 2017 and allowing Composition
	dealers to use e-Commerce platforms
	viii. Refund of unutilized Input Tax Credit on account of Export of Electricity
	ix. Annual Returns for FY 2021-22
	x. Clarification on mandatory furnishing of correct and proper information of inter-
	State supplies and amount of ineligible/blocked Input Tax Credit and reversal
	thereof in return in FORM GSTR-3B and statement in FORM GSTR-1
	xi. Comprehensive changes/amendments in FORM GSTR-3B
	xii. Proposal for amendments to CGST Rules, 2017
J	xiii. Re-credit of amount in electronic credit ledger after recovery of erroneous refund
	xiv. Extension of limitation under Section 168A of the CGST Act, 2017
	xv. Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and
	extension of due date for filing FORM GST CMP- 08 for Q1 of FY 2022-23
	xvi. Refund of accumulated ITC to Duty-Free Shops
	xvii. Exemption from IGST and Cess on imports/domestic procurement of goods by
	AA/EPCG/ EOU and for doing away with e-Wallet

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	viii. Amendment in CGST Rules for handling of pending IGST refund claims
	xix. Errata
	xx. Consent based data sharing for non-GST purposes
	Issues recommended by the GSTN
	i. Development of New Return System
4	ii. Extension of REAP and LEAP Projects beyond 31.03.22 for FY 2022-23
	iii. Status of Establishing Multiple Invoice Registration Portals (IRPs) to cater to the
	requirement of extending e-Invoicing to all the Businesses
	Performance Report of the NAA (National Anti-profiteering Authority) for the 2 <sup>nd</sup>
5	quarter (July to September, 2021), 3 <sup>rd</sup> quarter (October to December, 2021) and 4 <sup>th</sup> quarter
	(January to March, 2022) for the information of the Council
	Jacours recommended by the Eitment Committee
	Issues recommended by the Fitment Committee
	a) Recommendations made by the Fitment Committee for making changes in GST rates or
	for issuance of clarification in relation to goods - Annexure I to the Agenda
	b) Issues where no change has been proposed by the Fitment Committee in relation to
	goods - Annexure II to the Agenda
	c) Issues deferred by the Fitment Committee for further examination in relation to goods -
	Annexure III to the Agenda
	d) Recommendations made by the Fitment Committee for making changes in GST rates or
	for issuance of clarification in relation to services - Annexure IV to the Agenda
	Recommendations made by the Fitment Committee on issues related to Tour and
	Hospitality Sector, and on positive list of services to be specified in Sr. No. 3/3A of
	Notification No. 12/2017-CT(R) as given at Annexure-IVA and Annexure-IVB,
	respectively to the Agenda
6	e) Issues where no change has been proposed by the Fitment Committee in relation to
	services - Annexure V to the Agenda
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	f) Issues deferred by the Fitment Committee for further examination in relation to services
	-Annexure VI to the Agenda
7	C-PACE Project for Ease of Doing Business in India
,	
8	Review of revenue position under Goods and Services Tax
9	Report of Group of Ministers on feasibility of implementation of e-way bill requirement
	for movement of gold and precious stones.
10	Proposal to apportion IGST amount of Rs.27,000 crore for the financial year 2022-23 on
10	ad hoc basis
11	Amendments to provisions relating to GSTAT in CGST Act, 2017
12	Ad-hoc Exemption Orders issued under Section 25(2) of Customs Act, 1962 for

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	information
13	Recommendations of the 16th IT Grievance Redressal Committee for approval/decision of the GST Council
14	Interim Report of the Group of Ministers (GoM) on Rate Rationalisation for consideration of the GST Council
15	Report of Group of Ministers (GoM) on GST System Reforms
16	Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

### Preliminary discussion

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

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

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

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

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

3.4 The Secretary stated that the GST Council in its 45<sup>th</sup> meeting at Lucknow, formed a GoM on GST System Reforms under the Chairmanship of Shri Ajit Pawar, Hon'ble Deputy Chief Minister, Maharashtra, to analyse, study and come up with ways and means to minimize tax evasion and offer

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other suggestions that can help avoid frauds in GST. The GoM comprised Hon'ble Members from Haryana, Assam, Tamil Nadu, Delhi, Andhra Pradesh, Chhattisgarh and Odisha. The GoM had submitted its interim report which was placed before the Council for deliberations in the present agenda. The Secretary thanked all the Hon'ble Members of this GoM for their valuable recommendations.

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

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

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

### Agenda Item 1: Confirmation of the Minutes of the 45<sup>th</sup> and 46<sup>th</sup> Meeting of the GST Council

4. The first agenda item pertained to confirmation of the minutes of the 45<sup>th</sup> GST Council meeting held on 17<sup>th</sup> September, 2021 and the 46<sup>th</sup> meeting of the GST Council held on 31<sup>st</sup> December, 2021. The Secretary stated that some comments had been received from few States which were basically editorial changes and had been carried out.

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

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

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

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

5 The Secretary stated that the second agenda item pertained to ratification of the Notifications, Circulars, and Orders issued by the GST Council and the decisions of the GST Implementation

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

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

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

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

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

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

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

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

**7.2** The Principal Commissioner, GST Policy Wing informed that the Hon'ble Supreme Court of India in case of UOI v. M/s VKC Footsteps vide its Order dated 13.09.2021 had upheld the vires of Rule 89(5) of the Central Goods and Services Tax Rules, 2017 but had taken cognizance of the anomalies in the formula prescribed under Rule 89(5) of CGST Rules, 2017. The Hon'ble Supreme Court had upheld the exclusion of ITC availed on input services from the computation of Net ITC. However, the Apex Court had noted that the formula prescribed in Rule 89(5) assumed that the tax payable on inverted rated supply of goods and services had been paid by utilising input tax credit on inputs only and that there had been no utilisation of the ITC on input services, such assumption skewed the formula in favour of revenue. The Apex Court had, therefore, urged the GST Council to reconsider the formula.

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

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

### The Council agreed with the recommendation of the Law Committee.

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

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

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

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

7.7 The Hon'ble Member from Andhra Pradesh gave the suggestion that information on investigation initiated against any taxpayer should be provided on the GSTN portal. Further, he stated that if investigation was already initiated against a taxpayer by State officials then instead of initiating a new investigation, information should be passed on by the Centre to the concerned State and vice-versa.

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He stated that this will ensure greater efficiency and would also eliminate parallel investigations and thus would make the tax administration more taxpayer friendly.

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

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

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

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

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

7.11 The Principal Commissioner, GST Policy Wing clarified that the proposal did not prohibit prosecution and the people issuing fake invoices would continue to be liable for penalty and prosecution. The Circular clarifies the applicability of legal provisions in cases where only fake invoices are issued without corresponding supply of any goods or services. In such situations, GST cannot be levied as there is no supply. But simultaneously, it is proposed that penal actions can be taken under Section 122 of the Act. Further, such person is liable for prosecution under Section 132 where the amount involved is more than the specified amount under the said provision.

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

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

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

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

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

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

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

7.17 He stated that vide Section 110 (c) of the Finance Act, 2022, Section 49 (10) of CGST Act was substituted to provide for transfer of any balance of CGST/IGST in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person. As there is no provision of transfer of any amount from or to SGST / UTGST electronic cash ledger, the amendment is required to be notified only by the Centre at the earliest. The relevant changes in Form GST PMT-09 have been elucidated in the Agenda. Further, to implement the said amendment Law Committee recommended insertion of a new sub-rule (14) in Rule 87 of CGST Rules to allow for transfer of unutilized balance in CGST & IGST cash ledger to a distinct person, without going through refund procedure, subject to the condition that such transfer will not be allowed if unpaid liability exists in the electronic liability register of the said registered person.

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

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

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

### The Council agreed to the proposal that -

- a. Section 111 and clause (c) of Section 110 of Finance Act, 2022 may be notified by the Centre at the earliest.
- b. new rule 88B with effect from 01.07.2017, may be inserted for providing for method of calculation of interest [for Section 111].
- c. sub-rule 87(14) may be inserted [for clause (c) of Section 110]
- d. 01.10.2022 to be date of Notification of the other provisions of Finance Act 2022

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

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

### 7.22 <u>Clarification on the issues pertaining to refund claimed by the recipients of supplies regarded as</u> deemed export

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

### 7.23 <u>Clarification on various issues of Section 17(5) of the CGST Act</u>

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

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

7.23.3 Another issue was whether various perquisites provided by employer to its employees as per contractual agreement, were liable for GST. The Law Committee clarified that any perquisites provided by employer to its employees in accordance with the terms of contract were in lieu of services provided by the employee and as per Schedule III of the CGST Act, the same would not be subjected to GST.

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

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

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

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

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

These issues were discussed in the Law Committee and it was observed that the requirement of 7.26 mandatory registration was made because registration is required for any inter-state supply, irrespective of the threshold turnover. Now, inter-state supply is also possible through Electronic Commerce Operators (ECOs) but it would require mandatory registration. Thus, the proposal was that the suppliers having turnover less than the threshold limit can be considered for waiver of mandatory registration, if they are making only intra-state supply. However, they would be required to declare their PAN and principal place of business so that it can be verified from the PAN that the turnover is less than the threshold limit. After getting the PAN and place of business declared, a system would be put in place so as to communicate the same to Electronic Commerce Operators (ECOs) so that they ensure these suppliers make only intra-state supply. The details of these supplies made by the unregistered persons through their PAN will be given in the GSTR 8 filed by the Electronic Commerce Operators (ECOs). In cases where the total supply approaches the threshold limit, it would be flagged to the concerned supplier to take registration and to officers for information. Further, the suppliers would not be required to pay any tax upto supplies of specified threshold limits and Electronic Commerce Operators (ECOs) would not deduct TCS till the suppliers cross the threshold limit. Further, the agenda note also proposes that composition dealers be allowed to make intra state supplies through Electronic Commerce Operators (ECOs), which is presently restricted.

7.27 The Principal Commissioner, GST Policy Wing sought in principle approval of the Council regarding these agendas and stated that post approval, the Law Committee could be authorized to work out further modalities. Also, corresponding changes in GSTN portal would be required. In the officers' meeting, it was decided that if the Council approves, 1st January, 2023 would be notified as date of

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implementation. Further, the Law Committee recommended a condition that for each PAN, only one principal place of business in one State can be declared. There was a view that that an offline person can carry out business in 2 or 3 states making intrastate supplies within those states and his threshold limit will be considered by aggregating all places of business.

7.28 The Secretary informed that if the agenda gets approved it would be a significant decision for small traders. He further informed that MSMEs had been approaching with the request to allow them to do business online without registration and that post-COVID online mode has become the prevalent mode for doing business. The change would address the concern of MSMEs and also bring parity between offline and online suppliers. Regarding the proposal of calculation of threshold turnover of a person registered in 2 or 3 states by aggregating all his supplies, the Secretary informed that this was not part of the agenda but requested the Council to consider the same. He informed that a small offline dealer can give PAN details in different states and can do business without registration provided the aggregate turnover in all states does not exceed the threshold limit. The Secretary requested the Council that the same modality may be allowed in online mode as the aggregate turnover can be calculated through online mechanism provided, they make only intra-state supply. He further informed that reservations were raised by some officers that this may be done later. The Secretary requested that if Council agrees, in-principle approval may be given as it would take around 6 months to implement and to put necessary safeguards in place to prevent any misuse.

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

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

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

7.32 The Hon'ble Member from Karnataka raised the issue of using multiple PANs by different members of same household. The Secretary stated that the same situation exists in the offline mode also. The Hon'ble Member stated that in offline mode, there is a possibility of physical verification whereas the same doesn't exist online mode. The Secretary stated that in these cases principal place of business is declared. Therefore, if different PANs are catering to same principal place of businesses, it Page **19** of **531** 

can be checked. He also requested GSTN to ensure that the principal place of businesses are geo-tagged while updating the system, so as to address the concerns of Hon'ble Member from Karnataka.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The GST Council approved the agenda item and recommended –

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

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

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

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

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

7.45 A sub-committee of officers were constituted by the Law Committee to deliberate on issues pertaining to IGST settlement and ITC reversals. The said sub-committee of officers submitted its report on various data requirement for the purpose of IGST settlement under Section 17 of the IGST Act, 2017. A note was also received from Gujarat on issues relating to unutilized balance in IGST fund and changes in format of GSTR-3B required for the purpose of IGST settlement. Amendments in CGST Act were recommended by the GST Council in its 43<sup>rd</sup> meeting to align the GST law with the GSTR-1/2B/3B return filing system. Accordingly, based on the recommendations of GST Council, amendments have been made in the return related provisions of the CGST Act, through the Finance Act, 2022 and will come into effect once the said provisions of the Finance Act, 2022 are notified. The proposed changes ensure that the GSTR1-GSTR 2B linkage remains intact and as far as possible, the GSTR-3B should be auto-generated consequent to furnishing details in GSTR-1.

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

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

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

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

7.46.1 Regarding Rule 21A, it was informed to the Council that there was a provision for centralized system-based suspension of registration in case of registered persons who had not filed 6 or more returns and whose turnover was more than Rs.50 lakhs. Further, there would be a large number of people whose turnover was below the Rs.50 lakhs limit but were not filing the returns and action in this regard needs to be taken. However, it was considered imperative that that there should be automatic revocation of suspension when all the returns get filed. Law Committee discussed this and suggested changes in Rule 21A providing for automatic revocation of suspension in all cases of automatic suspension once all the returns get filed. After bringing in automatic revocation of suspension, the limit for automatic suspension is proposed to be lowered to Rs.20 lakhs immediately and then to Rs.5 lakhs after three months and to NIL after another 3 months. It was stated that this would expedite the return filing and would also help in cleaning the tax payer base.

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

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

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

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

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

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

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

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

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

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

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

7.53 The Principal Commissioner, GST Policy Wing mentioned that requests were made to extend the period of limitation under Sections 73/74 and Sections 54/55 on account of problems being faced by the taxpayers as well as tax administration in respect of demands and refunds getting time barred due to long period of lockdown/restrictions. He informed that the issue was deliberated by the Law Committee in its meeting held on 11.04.2022 and 07.05.2022. The Law Committee observed that Centre as well as State governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices, from time to time during COVID period. Further, it was a conscious policy decision not to do enforcement actions in the initial period of implementation of GST Law, thereby no action for scrutiny, audit etc. could be undertaken during initial period of GST implementation. Since the due date of filing Annual return for FY 2017-18 was 5th/7th February, 2020, based on which limitations for demand under the Act are linked, and since the onset of COVID happened immediately after that, thereby, audit and scrutiny for FY 2017-18 were impeded due to various restrictions during COVID period. The Law Committee, accordingly, recommended that limitation under Section 73 for FY 2017-18 for issuance of order in respect of demand linked with due date of annual return, may be extended till 30th September, 2023 under the powers available under Section 168A of CGST Act. Law Committee further took a view that no such extension is required for timelines under Section 74 of the Act, as the Act provides for sufficient limitation time of 5 years in respect of such cases, i.e. much beyond the period affected by COVID-19.

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

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

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

7.55 Every registered composition taxpayer is required to furnish a return for every FY in GSTR-4 besides furnishing a quarterly statement containing the details of payment of self-assessed tax in GST CMP-08. The self-assessed tax paid by the taxpayer and declared in quarterly statements is autopopulated on the portal in table 5 of GSTR-4. If no liability is declared in table 6, it was presumed that no liability is required to be paid, even though taxpayer may have paid the liability through GST CMP-08. In such cases, liability paid through GST CMP-08 was treated as excess tax paid and was moved on the portal to Negative Liability Statement for utilization of same for subsequent tax period's liability. The Law Committee took a view that amount in negative liability statement needs to be debited on the portal as a remedial action and it was also decided wherever the amount available in negative liability

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statement had been utilized by the taxpayer for paying the liability of subsequent financial year, such amount needs to be debited from electronic cash ledger (ECL) of the concerned taxpayer. In case the liability had already been paid through challan or by adding in the liability of the subsequent period, the same was advised to be claimed as refund.

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

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

The Council agreed with the recommendations of the Law Committee along with the proposed draft Notifications. GSTN has also been asked to expeditiously resolve the issue of negative balance in Electronic Cash Ledger being faced by some of the composition taxpayers.

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

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

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

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Committee and the following recommendations of the Law Committee were placed for deliberations and approval by the GST Council:

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

### The GST Council approved the proposal of the Law Committee.

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

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

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on the imports made under AA/EPCG/EOU schemes may be continued and E-wallet scheme may not be pursued further.

The Council agreed to the proposal and accordingly recommended that-

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

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

7.61 The Principal Commissioner, GST Policy Wing mentioned that at present, the processing of refund of IGST paid on account of export of goods under provisions of Section 16(3)(b) of IGST Act is system based and is done in accordance with Rule 96 of CGST Rules. Rule 96(4) provided for withholding of refunds only in two specified situations and it does not provide for withholding the refund on account of exporter having being identified as a risky exporter by the system. The Law Committee recommended amendment in Rule 96(4) to include this scenario. Further, Rule 96(5) provided for transmission of intimation of withholding of IGST refunds to the jurisdictional proper officer, applicant and the common portal only in case where it is withheld under sub-section (10) or (11) of Section 54 and not in other cases. The Law Committee recommended to omit sub-rule (5) and to insert new sub-rules to provide for transmission of intimation of all IGST refunds withheld to the jurisdictional proper officer through common portal. Further, under Rule 96(1) the shipping bill filed by exporter is deemed to be an application of refund and therefore, any mismatch in the data furnished by the exporter in GSTR-1 results in the refund getting processed only on rectification of such mistake. In such cases, the refund claims get pending due to mistake made by exporter. Law Committee recommended adding a proviso to Rule 96(1) to provide that shipping bill may be deemed to be an application for refund under this sub-rule only when there are no mismatches in the data furnished in shipping bill and GSTR-1. Further, it was also recommended by the Law Committee that the proposed amendments may be carried out retrospectively w.e.f. 01.07.2017.

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

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

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

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

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

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

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

### The Council approved the recommendation of Law Committee.

### Agenda Item 4: Issues recommended by GSTN

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

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

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

The agenda item was unanimously approved by the Council.

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

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

The agenda item was unanimously approved by the Council.

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

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

### The agenda item was unanimously approved by the Council.

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

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

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

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

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

10.2 Joint Secretary, TRU started the discussion with item No.6. He stated that there was a request for limited period exemption from IGST for defense items imported by the private vendors, since the procurement by Government for defense and defense PSUs were also exempt. He explained that this was a very small list of specified items and this exemption would be only for a period of five years lapsing in 2024. He clarified that this is an end use- based exemption where Joint Secretary from Ministry of Defense certifies that these imports are for defense forces and they fall under the specified list.

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

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

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

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

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

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

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

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

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

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

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

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

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

10.13 He further stated that the other issue involved is of reverse charge on scrap. There is significant evasion in scrap and scrap traders vanish without paying the taxes on the tax invoice. The manufacturers complain that they are suffering on this account that their suppliers were not paying the tax and corresponding ITC became ineligible. So they requested for the reverse charge mechanism on scrap. On this matter, the Fitment Committee was of the view that the reverse charge mechanism was not possible. Reverse charge could apply only at the beginning of supply chain. However, it was suggested that a meeting with the industry could be held for the issue requires re-examination. After the 45<sup>th</sup> Council meeting, the Fitment Committee examined this issue in great length over three meetings. The trade submitted that if Reverse Charge Mechanism (RCM) is there, they would be able to take the credit and it would not create any additional obligation if suppliers were not filing GST return. So, they would be absolved of any liability that may arise on account of non-payment of taxes by the scrap dealer. However, Fitment Committee examined the issue and found that scrap entailed a supply chain with number of suppliers involved. There was a lot of aggregation which happens in supply chain of scrap. It was not the case here that only one scrap dealer would supply to one manufacturer but there were number of scrap dealers collecting scrap and they would give it to the dealer who aggregated and then it would go to some other dealer for further aggregation. Therefore, there were multiple supply chains some of which originated from imports. On imports the taxes were paid by the importer. So, if importer had paid tax of 18% and again if manufacturer would be asked to pay on reverse charge, then this would lead to a 36% tax on the scrap, out of which on about 18%, ITC would be available but other 18% would become the absolute cost. So, bringing scrap under reverse charge was not possible. Accordingly, when this was examined by Fitment Committee, it was ab initio opined that it was not feasible to introduce reverse charge in case of scrap. Another aspect was that the iron and steel were such items that if scrap dealers were taken out of this chain then there would issues with ITC in the subsequent supply chain and the compliance issue would also be there. Continuing with forward charge on scrap has help GST administration keep a check on supply chain. These were the prime factors on the basis of which the Fitment Committee had opined that reverse charge on any supply in the chain after the first stage was not feasible.

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

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leading to large amount of tax evasion. He exhorted to the Council to give a serious thought for the reverse charge mechanism so that the tax evasions on scrap could be checked.

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

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

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

10.17 Joint Secretary, TRU introduced the next item in the Agenda (Annexure- IV to Agenda) of the Fitment Committee. He stated that Nepal and Bhutan were landlocked countries, and their imports and exports took place from the Indian ports and seaports. In the case of imports to Nepal and Bhutan, the containers moved from the seaport to Nepal and Bhutan and after the cargo had been offloaded, then empty containers moved out from these countries and came back to the port in India. Here, the issue was regarding the applicability of GST on activities associated with transit cargo to Nepal and Bhutan. The exemption Notification exempts the supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) but when the empty container come from Nepal after dropping the cargo, services related to transport of such containers were not being exempted because the Notification wording only specifies onward cargo to Nepal. However, the intention was to exempt both inward and outward cargo to Nepal and Bhutan as this was only transiting in India for the purpose of import and export. All the empty containers which came from Nepal/Bhutan after dropping import consignment and any service relating to them should not be taxed. He informed the Council that this matter was discussed in Officer's meeting and there was in principle agreement, but the issue was raised as to what was transit cargo and how it was happening. He further informed the Council about the procedure in Custom to deal with the cargo and it could be looked into, as the issue raised is more of enforcement rather than a policy issue.

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

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

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

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

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

10.23 Joint Secretary, TRU proceeded with item number 11 pertaining to Goods Transport Agency (GTA) services and informed that the previous day some issues were raised about Goods Transport Agency services. It currently attracted 5% tax rate without Input Tax Credit (ITC) when on reverse charge and 12% with ITC on forward charge. But when a GTA service provider availed the route of paying GST with ITC at 12%, he was barred from taking 5% under Reverse Charge Mechanism route ever again. So, the issue was being raised about providing flexibility to GTA so that in a particular year if they wanted to shift to 5% tax rate without ITC from the 12% rate, they could do so. This flexibility was there in other services also. So, the Fitment Committee recommended that this flexibility should be there in this sector also to facilitate the trade. Fitment Committee had proposed that a GTA can opt both the routes- to operate under forward charge or under Reverse Charge Mechanism but he had to express his intention before the beginning of a financial year. A GTA opting to pay GST under forward charge may be allowed to pay GST@ 12% with ITC on some consignments while simultaneously availing 5% rate without ITC on the other consignments during a financial year provided he pays GST on forward charge basis on all its services during that financial year. This modality would provide greater flexibility to GTAs while not compromising the revenue.

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

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

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

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

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

### The Council agreed on this.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13.1 Hon'ble Member from Kerala thanked the Secretary and informed the Council in the 37<sup>th</sup> GST Council meeting held on 20.09.2019, a GoM consisting of Finance Minister of Kerala as the convener, the Hon'ble Deputy Chief Minister of Bihar, Gujarat, Finance Minister of Punjab, West Bengal and Minister for Home from Karnataka was constituted by the GST Council Secretariat vide O.M. dated 22.11.2019 and the mandate of the GoM was to examine the feasibility of implementation of e-Way bill requirement for movement of gold and precious stones or to suggest alternative ways and mechanism for controlling tax evasion.

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

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

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

13.5 Hon'ble Minister from Odisha suggested that prescribing a minimum threshold should be left to the States. The Secretary clarified that the implementation was being left to the States and the States had the option to fix the threshold limit at Rs.5 lakhs or Rs.10 lakhs also. He further clarified that Centre was

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giving liberty to the respective States and that it was up to the states to implement or not to implement the recommendations.

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

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

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

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

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

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

15. The Secretary introduced Agenda item 11 which was a note on amendments to provisions relating to GSTAT in CGST Act, 2017. He stated that the Courts, the Standing Committee on Finance and other Committees had emphasised the need to set up the Tribunals. In the absence of Tribunals, people were being forced to file Writ Petitions and a number of cases had been decided by the High Courts and by the Hon'ble Supreme Court in place of Tribunals. He further informed that since the GST Tribunals would decide on matters pertaining to CGST, SGST and IGST which would affect the States and Centre and therefore, parity had to be maintained in the membership between States and Centre. The Secretary informed that that process would still take time because the Act needed to be amended and then the Rules were to be formulated and the process of selection of Members would take place. He invited JS DoR to make a presentation.

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

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

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

- a. Section 109(3): The constitution of members of Principal Bench reflects inadequate representation to the States,
- b. Section 109(6): There should be provision of one default Bench in States in the Law itself (sans Council nod afterwards) with further expansion in Benches requiring Council recommendation,
- c. Section 109(10): Increasing limit of 5 Lakh for a Single member bench.
- d. Section 109(12): Transfer to Technical Members (State) by President of PB should be within the State,
- e. Section 110(1) (d) :
  - i. The qualifying criteria for Technical Member (State) require a relook, especially with respect to selection from State cadre Group A officers.
  - ii. Also, States should be given liberty to decide the rank of the candidate for the purpose of appointment as Technical Member (State). This is especially because for Technical Member (Centre) no qualifying rank is specified.
  - iii. Further, "..or in the field of finance and taxation:" requires relook because, the word 'finance' includes treasury department, whose inclusion may not be intended. 'Taxation' should include VAT and GST.
- f. Section 110(2A): The selection of Technical Members (State) should mandatorily be from home State.
- g. Section 110(3): The balance between appointments of the number of Technical Members from the Centre and States and their balance at the location, within State and within country should be maintained from the inception of the Tribunal.
- h. Section 110(4): The Chief Secretary as a member of Search cum Selection Committee (ScSC), should be from the State of the Bench to which appointment of Technical Members of that State is being considered,
- i. Section 110(5A): Instead of recommendations of Panel of two names for one post of Technical Members, the ScSC should recommend only one name for one post of Technical Members,
- j. Section 110(9): There should be no reappointment of Technical members, the reason being that it would not give enough opportunity to others. Moreover, tenure period of 4-year as a Technical Member is fairly long period.

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

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

15.6 Hon'ble Member from Delhi stated that Council was formed by the GST Law and the spirit of the GST Law was federal. That everything or any decision that they took, the outcome had to be Federal and not Central oriented. Regarding the formation of State level benches of Tribunals, he raised few observations such as whether the Technical Member would be from State or Centre Services, whether the Technical Member would be transferable from one state to another which appears to be Central not federal in structure. He also sought clarification regarding re-appointment of the Members. He further supported the view of the Hon'ble Member from Tamil Nadu to form a GoM which could consider all aspects specially how to keep the structure and character of the Tribunal Federal rather than Central and give its report in 3 months' time.

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

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

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

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

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

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

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

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

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

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

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

17.2 Additional Agenda on legal issues (refund issues),

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

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

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

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

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

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

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

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

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

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

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approach, suggestions to correct inverted duty structure on certain items had been recommended by the GoM.

18.4 He further stated that on the issue of works contract services, the GoM observed that there was a need to correct the inverted duty structure, however, the increase of six percent GST rate on works contract services provided to the Government may strain on the budget of the States and the GST Council might take a final view on that issue considering that present rate structure in works contract is causing inverted duty structure and has compliance issues. On the issue of review of exemptions, he stated that exemptions on goods and services also led to disruption of credit chain and blockage of ITC and therefore all the exemptions under GST were examined by the GoM; that exemption on a few items which had consumer sensitivity viz. bread, tea, coffee, poultry feed etc. were retained; that certain exemptions on goods and services had been suggested to be rationalized and the proposed rate on such goods would be the same as applies to the respective HSN code; that one of the majority category of exemptions reviewed was exemption on unbranded food items including cereals. Currently, only branded food items attracted tax and revenue from those items had fallen as compared to the pre-GST regime. Therefore, the GoM was of the view that this could be simplified by replacing the term branded with 'pre-packaged and labelled' and this would be in accordance with the Legal Metrology Act & Rules; that in other cases, no rate change was being suggested and such items sold loose and unlabelled would continue to remain exempt and hence majority of consumers buying loose food grains would remain unaffected.

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

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

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

18.8 Hon'ble Member from Goa thanked the Convenor of the GoM and all members. Supporting the proposal given by the Hon'ble Member from Delhi, he stated that the GoM had given such a good report after due deliberations on the inputs received from the Members, Fitment Committee, officers and that it may not be prudent to discuss each item as the discussion might turn State specific rather than being focused on revenue. He mentioned that considering all the aspects, the interim report as proposed would Page **45** of **531** 

help in correcting inversion in rates, rationalisation of exemption and also augmentation of revenue, though the GoM needed more time to analyse how much increase in revenue would be there. He then requested the Council to accept the interim report as suggested by GoM.

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

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

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

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

18.13 Hon'ble Member from Haryana thanked the Hon'ble Chief Minister of Karnataka and convenor of GoM for giving his detailed presentation on all suggestions recommended by the GoM. However, on the proposal of withdrawal of exemptions on renting of residential dwelling for residential use [when supplied to business], he stated that if we tax this supply, the business establishments which provided house facility to their small employees would stop doing the same and suggested that there might be a threshold of the house rent amount for taxing; the rent below that threshold limit might be exempted.

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

18.15 The Joint Secretary, TRU explained that there was a threshold exemption for services also and the objective to exempt residential dwelling was to exempt the rent paid by the individuals or non-commercial person as there should not be any tax burden on him. He further stated that corporates were

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taking a number of other services for their employees also and were paying tax on the same. There was no such differentiation there.

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

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

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

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

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

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

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

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

19.2 The first issue on the subject was regarding the new registration and the biometric authentication, second issue was to study the profile of new registrants from the system and compulsory physical verification of these registrations, third was to check the existing tax payers whether they were doing fake invoicing or not with the help of the system and take them up for physical verification. Fourth item

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

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

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

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

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

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

19.8 The second last item was about the use of incorrect bank accounts at the time of registration. It was observed in almost all the States that many of the bank accounts filled at the time of registration were incorrect in the sense that the name of the bank accounts did not match with the registrants. Therefore, it was proposed that GSTN would tie up with the NPCI, so that a check would be done. All that information would be fetched from the GSTN system and would be submitted to NPCI and they

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would respond for each request and that could be verified how many bank accounts were false. Some trials had been done by the GSTN and the numbers were quite huge so some kind of methodology had to be devised.

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

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

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

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

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

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

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

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

19.17 The representative from GSTN stated that for fast tag integration, NIC had done some work and an App had been given to the officers wherein live data was being shared. Regarding covering a situation wherein if on the same route, a vehicle had moved multiple times as indicated by the fast tag

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payments, they would look into developing the said analytic and as and when developed, that would be presented before the Council.

19.18 The Deputy Chief Minister of Delhi stated that there was substantial information in BIFA which by default issued a Red Alert and that fast tag data could also be an innovative way to add to BIFA analytics. So that an inspector sitting in his office could also see the links and by default from the fast tag data, he could do random cross checking.

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

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

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

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

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

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

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

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

19.27 The representative from GSTN stated that he would start with integrating e-waybill data sharing and as they moved along, they would take guidance of the GoM on IT, which was a standing GoM and

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whatever was required to be shared, over a period of time, they would develop the module. The Secretary observed that the Council agreed on the proposal of Tamil Nadu and Uttar Pradesh pertaining to sharing of e-waybill data.

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

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

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

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

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

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

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

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activities though all had a sense of betting and gambling but the way they were run was very different. That GoM needed to find some uniformity in the rates and valuation while understanding each of those games.

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

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

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

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

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

20.4.4 Valuation:

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

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

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

20.7 Hon'ble Member from Tamil Nadu stated that two things need to discussed extensively. That the regulation of those activities varied from state to state because gambling sector was under the state regulatory ambit and all states retained the right to ban that, but taxation was independent of the activity being allowed or not. That the second was regarding improvement of the infrastructure, the technology, the data capture and identification models to bring the betting into the light and avoid the likelihood of

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its moving into a grey or black market. He further stated that all the Members sought to maximize revenue while reducing those types of activities and having compliance to law. That it may not be relatively exorbitant and there was still some scope of review.

20.8 Hon'ble Minister from West Bengal submitted that Rule 31A had already been upheld by the Hon'ble Supreme Court. Two judgments were presented by Hon'ble Chief Minister of Meghalaya i.e. one of M/s Sunrise Associates and other of M/s Skill Lotto; that the Hon'ble Supreme Court had held that these three activities are actionable claims which could be taxed under GST. Therefore, if they took into consideration the Skill Lotto case, they could not fix separate system, the principle of valuation or rates for separate games having different actionable claims. Further, right to participate and right to win were not separable; that was what Supreme Court had said in M/s Sunrise Associates case, so while deciding the issues, that principle had to be taken into consideration. She stated that from lottery, west Bengal received a huge amount of GST and that was almost 4,000 crores. Lottery had already been decided in M/s Skill Lotto case; so while deciding the issues in case of casino, online gaming etc. that principal had to be taken into consideration.

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

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

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

20.12 Hon'ble Member from Tamil Nadu stated that there are some profound issues such as enforcement and movement of the activities into the grey market. The identification of locus is easy in casino, hard in racing, least in online gaming. That all the three games had that risk. He further submitted that if the GoM had already submitted a report, like in the earlier case of rate rationalization, either the Council should look into it entirely all over again or not at all. That there were bigger issues there but if the GoM was to reopen, that should not be opened for just one of the three industries rather it should be opened for all the three industries.

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

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

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

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

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

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

20.19 Hon'ble Member from Haryana stated that he totally agreed with what Hon'ble Chief Minister of Karnataka had said. As regards place of supply he stated that either the address had to be the permanent address where the player was registered or the place of the transaction or the place of initializing the

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transaction. He further submitted that GoM could have a re-look in case of casino but the Council might go ahead with the recommendations of GoM on horse racing and online gaming.

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

20.21 The Chairperson stated that the spirit of taking decisions in the Council had always been consensus in the interest of the country. That some states yielded, some sectors yielded, some industries yielded and some did not, but eventually, the Council arrived at something which could effectively be implemented with reasonable surety. That the Council corrected the faults which were observed on implementation of various provisions. That the clubbing on these activities together was because all the three games were gaming, betting and gambling and that common thread between the three was betting and gambling. That the common thread was not contentious at all and that was gambling and therefore, she would not want anything that undermine the efforts made by the GoM. However, if some Members had differing views, these may require examination by GoM to assess if there is a need to bring in a certain calibration into the final recommendations. This may have to be done, taking into account the point raised more than once by minister of Tamil Nadu such as need for a better regulation, better technology etc. The Chairperson requested the Convenor of the GoM, and the Chief Minister of Meghalaya, to elicit the information from Goa, Tamil Nadu, Telangana, for their respective areas to put everything together and submit the report by 15<sup>th</sup> of July.

## 21. <u>State Specific Issue raised by Hon'ble Member from Telangana</u>

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

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

## 22. General Discussion on Compensation

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

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

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

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

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

22.6 The Secretary further clarified that Rs.64000/- crore was distributed in advance to help the States and for any difference in calculation, the State must submit the certificate from AG. That all the compensation due was paid to the States who had submitted the AG Certificate and that Rajasthan had not submitted the AG certificate. On submission of such a certificate, the dues would be paid immediately.

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

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

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

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

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

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

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

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

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

22.16 Hon'ble Member from Uttar Pradesh stated that introduction of GST had worked well and that their State had taken steps to control the expenses but the Covid had spoiled the finances of the States. He submitted to look at the taxation structure on certain items and to devise strategies to achieve the pre GST revenue on these items. He further stated that though in principle, they did not seek compensation and wanted to be self-reliant but due to special circumstances, the State requested to continue the compensation.

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

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

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

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

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

## Annexures to the Draft Minutes of The 47th Meeting of GST Council

Annexure-1

List of Hon'ble Ministers from States/UTs attending the 47<sup>th</sup> Meeting of the GST Council on 28<sup>th</sup>& 29<sup>th</sup> June, 2022

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S. No	Centre/States/UTs	Name of Hon'ble Minister	Charge
1	Govt. of India	Smt. Nirmala Sitharaman	Union Finance Minister
2	Govt. of India	Shri Pankaj Chaudhary	Minister of State for Finance
3	Andhra Pradesh	Shri BugganaRajendranath	Minister for Finance, Planning, Commercial Taxes, Skill Development & Training and Legislative Affairs
4	Arunachal Pradesh	Shri Chowna Mein	Deputy Chief Minister-cum- Finance Minister
5	Bihar	Shri Tarkishore Prasad	Deputy Chief Minister
6	Delhi	Shri Manish Sisodia	Deputy Chief Minister

7	Goa	Shri MauvinGodinho	Minister for Transport and Panchayat Raj, Housing, Protocol and Legislative Affairs
8	Gujarat	Shri Kanubhai Desai	Minister for Finance, Energy & Petrochemicals
9	Haryana	Shri Dushyant Chautala	Deputy Chief Minister
10	Himachal Pradesh	Shri Sukh Ram Chaudhary	Minister for MPP and Power
11	Jammu & Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Hon'ble Lieutenant Governor, Union Territory of Jammu and Kashmir
12	Karnataka	Shri Basavaraj Bommai	Chief Minister of Karnataka
13	Kerala	Shri K.N. Balagopal	Finance Minister

14	Madhya Pradesh	Shri Jagdish Devda	Minister for Commercial Tax, Finance, Planning & Statistics
15	Manipur	Dr. Sapam Ranjan Singh	Minister for Medical, Health & Family Welfare Department and Publicity & Information Department
16	Meghalaya	Shri Conard K. Sangma	Chief Minister
17	Meghalaya	Shri James K.Sangma	Finance Minister
18	Odisha	Shri Niranjan Pujari	Minister for Finance & Parliamentary Affairs Minister

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19	Puducherry	Shri Lakshminarayanan	Hon'ble Minister for Public Works
20	Punjab	Shri S. Harpal Singh Cheema	Finance Minister
21	Rajasthan	Shri Shanti Kumar Dhariwal	Minister of Urban Development & Housing Department
22	Sikkim	Shri B. S. Panth	Minister to Tourism & Civil Aviation and Commerce & Industries
23	Tamil Nadu	Dr. PalanivelThiagaRajan	Minister for Finance and Human Resources Management
24	Telangana	Shri T Harish Rao	Minister for Finance, Medical and Health

25	Tripura	Shri Jishnu Dev Varma	Deputy Chief Minister
26	Uttarakhand	Shri Prem Chand Aggarwal	Minister of Finance, Urban Development, Housing, Legislative & Parliamentary Affairs, Re-organisation and Census
27	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs
28	West Bengal	Smt. Chandrima Bhattacharya	Minsiter of State (Independent Charge), Finance Department

Annexure-2

## List of the Officers from the Centre and the States/Union Territories attending the 47th GST Council Meeting on 28-29 June 2022

S. No	Centre/ State/UTs	Name of the Officer	Designation/Charge	
1	Govt. of India	Shri Tarun Bajaj	Revenue Secretary	
2	Govt. of India	Shri Vivek Johri	Chairman, CBIC	
3	Govt. of India	Shri D.P. Nagendra Kumar	Member (GST), CBIC	
4	Govt. of India	Shri Sandeep Kumar	Member (Tax Policy), CBIC	
5	Govt. of India	Shri Sanjay Kumar Agarwal	Member (Compliance Management), CBIC	
6	Govt. of India	Shri Vivek Aggarwal	Additional Secretary, DoR& GST Council Secretariat	
7	Govt. of India	Shri Rajesh Malhotra	DG (Media & Comm.), PIB, MoF	
8	Govt. of India	Smt. Mamta Varma	Addl. Director General, PIB, MoF	
9	Govt of India	Shri Ritvik Pandey	Joint Secretary, DoR	
10	Govt of India	Shri Sanjay Mangal	Principal Commissioner (GST PW), CBIC	
11	Govt. of India	Shri G.D. Lohani	Joint Secretary, TRU	
12	GSTN	Shri Manish Kumar Sinha	CEO	
	1			

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13	GSTN	Shri Dheeraj Rastogi	EVP( Support ) & SVP (Services)
14	Govt. of India	Dr. (Smt.) Shankari Murali	Pr.CCA, CBIC
15	Govt. of India	Smt. Chandan Mishra	CCA, CBIC
16	GST Council Secretariat	Ms. Ashima Bansal	Joint Secretary
17	Govt. of India	Shri S. S. Nakul	PS to Minster of Finance and Corporate Affairs
18	Govt. of India	Shri Karma S. Z. Lhasungpa	Additional PS to FM
19	Govt. of India	Shri Kumar Ravikant Singh	PS to MoS (Finance)
20	Govt. of India	Shri Rajesh Gupta	PA to MOS( Finance)
21	Govt. of India	Shri Debashis Chakraborty	OSD to Revenue Secretary
22	Govt. of India	Shri N. Gandhi Kumar	Director (State Tax), DoR
23	Govt. of India	Shri Amaresh Kumar	Additional Commissioner, GST PW, CBIC
24	Govt. of India	Shri Pramod Kumar	Director, TRU
25	Govt. of India	Shri Vinay V Nayak	Deputy Commissioner, TRU
26	Govt. of India	Shri Syed Wasif Haider	OSD, TRU
27	Govt. of India	Shri Rahul Kumar	Deputy Commissioner (TRU)

28	Govt. of India	Shri D. P. Misra	OSD to Chairman, CBIC
29	Govt. of India	Shri Alok Kumar	Additional Commissioner, GST PW CBIC
30	Govt of India	Ms. Neha Yadav	Deputy Commissioner, GST PW, CBIC
31	Govt of India	Shri Amit Samdariya	Deputy Commissioner, GST PW, CBIC
32	GST Council Secretariat	Ms. B. Sumidaa Devi	Director
33	GST Council Secretariat	Shri Kshitendra Verma	Director
34	GST Council Secretariat	Shri Harish Kumar	Deputy Secretarty
35	GST Council Secretariat	Shri S. S. Shardool	Deputy Secretarty
36	GST Council Secretariat	Ms. Reshma R Kurup	Under Secretary
37	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary
38	GST Council Secretariat	Shri Manish Wadhwa	Superintendent
39	GST Council Secretariat	Shri Manoj Kumar	Superintendent
40	GST Council Secretariat	Shri Sachin Goel	Superintendent
41	GST Council Secretariat	Ms. Priya Sethi	Superintendent
42	GST Council Secretariat	Shri Rakesh Joshi	Inspector

44	GST Council Secretariat	Shri Tarun	Assistant Section Officer
45	GST Council Secretariat	Shri Padam Singh	Inspector
46	Andaman & Nicobar	Shri Kuldip Singh Thakur	Special Resident Commissioner
47	Andhra Pradesh	Shri Gulzar. N	Secretary to Government (RM & FP) & (CT) Finance Department
48	Andhra Pradesh	Shri S. Ravi Shankar Narayan	Chief Commissioner of State Tax, Andhra Pradesh
49	Andhra Pradesh	Shri K Ravi Shankar	Commissioner (GST)
50	Andhra Pradesh	Shri S Sekhar	Additional Commissioner (IT)
51	Andhra Pradesh	Shri L. Chandra Obul Reddy	O.S.D to Finance and CT Minister
52	Arunachal Pradesh	Shri Kanki Darang	Commissioner State Taxes
53	Arunachal Pradesh	Shri Tapas Dutta	Deputy Commissioner (GST)
54	Arunachal Pradesh	Shri Ajay Saring	PRO to DCM
55	Assam	Shri Jayant Narlikar	Commissioner & Secretary to the Govt of Assam , Finance Department
56	Assam	Shri Rakesh Agarwala	Principal Commissioner of State Tax

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57	Bihar	Dr. Pratima	Commissioner cum Secretary, Commercial Taxes Department
58	Bihar	Shri Arun Kumar Mishra	Tax Expert, Commercial Taxes Department
59	Bihar	Binod Kumar Jha	JCST
60	Chandigarh	Shri Vijay NamdeoraoZade	Finance Secretary-cum-Secretary Excise & Taxation, Excise & Taxation Department, U.T., Chandigarh
61	Chandigarh	Shri Vinay Pratap Singh	Excise and Taxation Commissioner, U.T., Chandigarh
62	Chhattisgarh	Shri Gaurav Dwivedi	Principal Secretary,Commercial Tax(State Tax)
63	Chhattisgarh	Shri KhemrajJharia	Additional Commissioner of State Tax, HQ
64	Delhi	Shri Ashish Chandra Verma	Principal Secretary Finance
65	Delhi	Dr. S.B. Deepak Kumar	Commissioner, State Tax
66	Delhi	Shri Anand Kumar Tiwari	Special Commissioner, State Tax
67	Goa	Shri Shashikant Kandolkar	P.A to Hon'ble Minister
68	Goa	Smt. Ruchika Katyal	Commissioner of State Tax

69	Gujarat	Shri J P Gupta	Principal Secretary to Government, Finance Department	
70	Gujarat	Shri Milind Torawane Secretary to Government (Eco Affairs), Finance Department of Chief Commissioner of State T		
71	Gujarat	Shri Rajendra Kumar Patel	PA to Minister of Finance, Energy& Petrochemicals	
72	Gujarat	Shri Riddhesh Rawal	Joint Commissioner	
73	Haryana	Shri Simarpal Singh	Special Secretary to Deputy CM	
74	Haryana	Shri Anurag Rastogi	Addl. Chief Secretary to Government of Haryana, Excise and Taxation Department	
75	Haryana	Shri Shekhar Vidyarthi	Excise & Taxation Commissioner- cum-Secretary to Government, Haryana	
76	Haryana	Shri Siddarth Jain	Additional Commissioner	
77	Himachal Pradesh	Shri Subhasish Panda	Principal Secretary (STE)	
78	Himachal Pradesh	Shri Yunus	Commissioner of State Taxes & Excise	
79	Himachal Pradesh	Shri Rakesh Sharma	Advisor to the Hon'ble Member( Additional Commissioner)	

80	Jammu & Kashmir	Shri Vivek Bharadwaj	Additional Chief Secretary, Finance Department, Government of J&K	
81	Jammu & Kashmir	Dr.Rashmi Singh	Commissioner State Taxes Department, J&K	
82	Jharkhand	Smt. Aradhana Patnaik	Secretary, Commercial Taxes Department	
83	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner, Commercial Taxes Department	
84	Karnataka	Shri Manjunath Prasad	Principal Secretary to Hon'ble Chief Minister	
85	Karnataka	Shri Rohan Biradar	OSD to Hon'ble Chief Minister	
86	Karnataka	Smt. C. Shikha	Commissioner of Commercial Taxes, Karnataka	
87	Karnataka	Dr. M.P. Ravi Prasad	Additional Commissioner of Commercial Taxes, Karnataka	
88	Kerala	Shri Rajesh Kumar Singh	Additional Chief Secretary (Finance & Taxes Department)	
89	Kerala	Shri Abraham Renn S.	Additional Commissioner-1, State GST Department	
90	Kerala	Dr.Shyjan	PS to FM	
91	Madhya Pradesh	Shri Dilipraj Dwivedi	OSD to Minister	
92	Madhya Pradesh	Smt. Deepali Rastogi	Pricipal Secretary	

93	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, Commercial Taxes
94	Madhya Pradesh	Shri Manoj Kumar Choubey	JC GST
95	Madhya Pradesh	Shri Harish Jain	AC, GST
96	Maharashtra	Shri Rajeev Kumar Mital	Commissioner, State Tax
97	Maharashtra	Smt. A. Shaila	Govt Nominee and Secretary (Financial Reforms)
98	Maharashtra	Smt. VishakhaBorse	Joint Commissioner, State Tax
99	Manipur	Smt. Mercina R. Panmei	Commissioner of Taxes, Manipur
100	Manipur	Shri YumnamIndrakumar Singh	Asst. Commissioner of Taxes, Manipur
101	Meghalaya	Smt.S.A.Synrem	Commissioner &Secretary,Taxation ETC Meghalaya
102	Meghalaya	Shri.L.Khongsit	Additional Commissioner State Tax Etc, Meghalaya
103	Meghalaya	Shri Mukesh Kumar	OSD To CM
104	Meghalaya	Mr ShanborlangWarjri	Under Secretary to CMO
105	Meghalaya	Mr. G. Nongrum	Communications Executive , CMO

106	Mizoram	Shri R. Zosiamliana	Additional Commissioner of State Tax	
107	Mizoram	Shri Hrangthanmawia	Assistant Commissioner	
108	Nagaland	Shri WochamoOdyuo	Additional Commissioner of State Taxes	
109	Odisha	Shri Sushil Kumar Lohani	Commissioner of Commercial Taxes & GST	
110	Odisha	Shri Nihar Ranjan Nayak	Additional Commissioner of Commercial Taxes & GST	
111	Puducherry	Shri. L. Kumar	Commissioner of State Tax, Puducherry	
112	Puducherry	Shri. B. Balamourthy	Asst. CTO, Commercial Taxes Department, Puducherry	
113	Punjab	Shri KAP Sinha	Additional Chief Secretary (Taxation)	
114	Punjab	Shri Kamal Kishor Yadav	Commissioner of State Taxes	
115	Punjab	Sh. Ravneet Singh Khurana	Additional Commissioner of State Taxes (Audit)	
116	Rajasthan	Dr. Ravi Kumar Surpur	Chief Commissioner, State Tax	
117	Rajasthan	Shri Arvind Mishra	Additional Commissioner, State Tax	
118	Rajasthan	Shri Ashok Agarwal	PA/PS to Minister	
119	Sikkim	Shri Manoj Rai	Commissioner, Commercial Taxes	

120	Sikkim	Shri Keshab Subba	Joint Commissioner, Commercial Taxes	
121	Tamil Nadu	Shri N. Muruganandama	Additional Chief Secretary, Finance	
122	Tamil Nadu	Shri Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes	
123	Tamil Nadu	Shri S. Subhash Chardra Bose	Joint Commissioner	
124	Telangana	Shri K Ramakrishna Rao	Special Chief Secretary, Finance	
125	Telangana	Smt. Neetu Prasad	Commissioner, Commercial Taxes	
126	Telangana	Shri N Sai Kishore	OSD to Minister (Additional Commissioner of State Taxes)	
127	Tripura	Shri Brijesh Pandey	Secretary, Finance Department	
128	Tripura	Ms. Rakhi Biswas	TCS-SSG, Chief Commissioner of State Tax	
129	Uttarakhand	Smt. Sowjanya	Secretary, Finance	
130	Uttarakhand	Dr. Ahmed Iqbal	Commissioner, State Tax	
131	Uttarakhand	Shri Anurag Mishra	Joint Commissioner, State Tax	
132	Uttarakhand	Shri BhartenduShanker Pandey	OSD to the Hon'ble Minister	
133	Uttar Pradesh	Shri Nitin Ramesh Gokarn	Principal Secretary, State Tax, U.P.	
134	Uttar Pradesh	Ms. Ministhy S	Commissioner, State Tax, U.P.	

135	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner (GST)
136	Uttar Pradesh	Shri Amit Pandey	PS to FM
137	West Bengal	Dr. Manoj Pant	Additional Chief Secretary, Finance Department
138	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
139	West Bengal	Shri Shantanu Naha	OSD to Minister

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#### Annexure -3



# Ratification of Notifications and Circulars

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# Agenda 2 : Ratification of Notifications, Circulars, Orders etc. (1/2)

[Vol 1- Pg. 120-152]

Act/Rules	Notification/Circular/O rder Nos.	Description/Remarks
CGST Act / CGST Rules	Thirteen (13) Central Tax Notifications issued (No. 35/2021 to 40/2021, 01/2022 and 03/2022 to 08/2022) & nineteen (19) Central Tax (Rate) Notifications issued (No. 06/2021 to 22/2021 and 01/2022 to 02/2022)	<ul> <li>1st April 2022;</li> <li>to extend the due date of filing FORM GSTR-3B for the month of April, 2022;</li> <li>to extend the due date of payment of tax, in FORM GST PMT-06, for the month of April, 2022 by taxpayers who are under QRMP scheme;</li> <li>to waine off late for under action 47 for the neriod from 01.05 2022 till 30.06 2022 for delay in</li> </ul>
UTGST Act		

# Agenda 2 : Ratification of Notifications, Circulars, Orders etc. (1/2) [Vol 1- Pg. 120-152]

Act/Rules	Notification/Circular/O rder Nos.	Description/Remarks
IGST Act	Nineteen (19) Integrated Tax (rate) Notifications issued (No. 06/2021 to 22/2021 and 01/2022 to 02/2022)	Notifications to implement of various decisions of 45 <sup>th</sup> meeting of GST Council & to implement other GIC decisions.
Circulars	Ten (10) circulars issued (Circular No. 159/15/2021- GST dated 20.09.2021 to Circular No. 168/24/2021- GST dated 30.12.2021)	19(1) of the IGST Act; v. Clarification regarding GST rates & classification (goods)

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# Recommendations of the Law Committee

# Law Committee Recommendations for Trade facilitation and Reducing litigation

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Agenda 3(I): Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification [Vol 1- Pg. 153-157]

#### Ізяце:

- ٠ Hon'ble High Court of Guwahati in its order dated 02.09.2021 in the case of M/s BMG Informatics Pvt Ltd. v. Union of India has observed that
  - para 3.2 of the Circular No. 135/05/2020-GST dated 31.03.2020, is unsustainable in law as it bars . refund of unutilized ITC on account of inverted rated structure when the petitioner has supplied goods at concessional rate under the Concessional Notification of the Government of India;
  - . Such cases are covered under section 54(3)(ii), whereas para 3.2 of impugned circular bars it.

#### Proposal

- LC has recommended to clarify through a circular that:
  - the refund of accumulated input tax credit on account of inverted structure as per clause (ii) of first proviso to sub-section (3) of section 54 of the CGST Act is admissible in cases where though input and output goods are same, but the accumulation of input tax credit is on account of rate of tax on inputs being higher than the rate of tax on output supplies (at the same time) due to a concessional notification issued by the Government,
    - o other than cases where output supply is either Nil rated or fully exempted; and
    - o also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under said clause.
- This would provide clarity to the trade and field formations and would reduce litigation on the issue.

#### Agenda 3(II): Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted rated structure (1/2) [Vol 1- Pg. 158-163] Issue:

- In case of M/s VKC Footsteps, the vires of Rule 89(5), providing for calculation of refund of unutilized ITC on account of inverted duty structure, were challenged in the Hon'ble Supreme Court of India on the ground that though clause (ii) of the 1st proviso to Section 54(3) provides for refund of ITC availed on both inputs and inputs services, however, rule 89(5) does not allow the refund of ITC availed on input services.
- Hon'ble SC in its judgment dated 13.09.2021 has upheld the vires of rule 89(5). However, while upholding the vires of said rule, Hon'ble Court has observed that the formula prescribed in Rule 89(5) seeks to deduct the total output tax on account of inverted rated supplies from only one component of the ITC, namely ITC on input goods.
- Accordingly, Hon'ble SC has requested GST Council to have a re-look into the formula as the formula makes a presumption that the output tax payable on inverted rated supplies has been entirely discharged from the ITC accumulated on account of input goods and there has been no utilisation of the ITC on input services.
- Hon'ble SC has suggested that the rule can provide for a deeming fiction or statutory assumption for certain % utilization of ITC on input services for payment of output tax.

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Agenda 3(II): Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted rated structure Proposal: (2/2) [Vol 1- Pg. 158-163]

- LC Recommendations:
  - In absence of any empirical data of percentage of ITC of inputs and inputs services utilized for payment of output tax, it may not be possible to suggest any actual or deeming percentage of ITC on inputs and input services for payment of output tax on inverted rated supplies for the purpose of formula under rule 89(5);
  - LC has recommended to consider utilisation of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period and to use this objective criteria to revise the formula prescribed in rule 89(5) as suggested by Hon'ble SC.
  - Accordingly, LC has recommended the following amendment in formula prescribed in rule 89(5):

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

> This would bring more objectivity to the formula for calculation of refund of ITC on account of inverted duty structure.

## Agenda 3(VI) : Issuance of clarification on various issues pertaining to GST (1/3) [Vol 1- Pg. 176-184]

#### Issue 1:

- Circular No. 147/03/2021-GST dated 12.03.2021, vide which the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 was amended, provides to remove the restriction from availing the ITC of the tax paid on the deemed export supply by the recipient when the refund of tax paid on such deemed export is claimed by the recipient.
- The said restriction was removed in order to enable the recipient of the deemed export supply to file refund due to the requirement of portal to debit the amount claimed as refund from the electronic credit ledger.
- Doubts have been raised by the field formations regarding applicability of the provisions of Chapter V of the CGST Act, 2017 for such availment of ITC by the recipient on the tax paid on deemed export supply and regarding the calculation of "Net ITC" under the provisions of rule 89(4) and rule 89(5) of the CGST Rules, in such cases where the recipient of deemed export supply claims ITC on the tax paid on such supply, for the purpose of claiming refund of such tax paid.

#### Proposal:

- LC has recommended that these issues may be clarified through a circular -
  - ITC of tax paid on deemed export supplies allowed to the recipients for claiming refund of such tax paid is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017; and
  - As the ITC of tax paid on deemed export supplies allowed to the recipients for claiming refund of such tax paid is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017, therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

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## Agenda 3(VI): Issuance of clarification on various issues pertaining to GST (2/3) [Vol 1- Pg. 176-184]

#### Issue 2:

- Doubts have been raised regarding interpretation of section 17(5)(b), as to whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act (providing for availability of ITC where it is obligatory for the employer to provide the same to the employees under any law) is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of clause (b).
- Further, in the context of section 17(5)(b), clarification has been sought as to whether the provisions of sub-clause (i) bar availment of ITC on input services by way of leasing of motor vehicles, vessels or aircraft or whether ITC on input services by way of any type of leasing is barred under the said provisions.

#### Proposal:

- LC has recommended to clarify through a circular that-
  - Proviso after sub-clause (iii) of section 17(5)(b) of CGST Act is applicable for all subclauses (i), (ii) & (iii) of section 17(5)(b);
  - "Leasing" referred in sub-clause (i) of clause (b) of sub-section (5) of section 17 refers to leasing of motor vehicles, vessels and aircrafts only and <u>not</u> to leasing of any other items;

#### Agenda 3(VI) : Issuance of clarification on various issues pertaining to GST (3/3) [Vol 1- Pg. 176-184]

#### Issue 3:

Doubts have also been raised regarding the taxability of various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee.

#### Proposal:

- LC Recommendation:
  - The issue may be clarified through a circular, on the lines of earlier clarification made through Press Release dated 10.7.2017, i.e. supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

#### Issue 4:

Representations have been received seeking clarification on utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities in terms of the provisions of the CGST Act.

#### Proposal:

- LC Recommendation:
  - Issue a clarification through a Circular on usage of electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities in terms of the provisions of the CGST Act.
- ▶ The proposal will bring clarity on the above mentioned issues and will reduce litigations.

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Agenda 3(VII) : Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use E-Commerce platforms(1/3) [Vol 1- Pg. 185-191]

#### Issue:

- It has been represented that the mandatory registration requirement for every supplier supplying goods through ECOs under section 24(ix) of the CGST Act, 2017, has resulted in huge disparity between online and offline sellers. The online sellers, even if having turnover well below the threshold limit, are required to get compulsorily registered under the existing provisions, irrespective of their turnover.
- The composition scheme available as per Section 10 of CGST Act cannot be opted by sellers selling on e-commerce platforms, by virtue of exception carved out under Section 10(2)(d). As a result, there is again lack of parity between online and offline sellers, thereby discouraging small sellers from operating on e-commerce platforms.
- Similar issue has been raised by Ministry of MSME, Ministry of Textiles, Department for Promotion of Industry & Internal Trade (DPIIT) and NITI Aayog, etc.

Agenda 3(VII) : Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use E-Commerce platforms(2/3) [Vol 1- Pg. 185-191] Proposal:

- LC has recommended for giving exemption from compulsory registration under section 24(ix) for specified class of persons making supplies of goods through e-commerce operators using powers conferred under section 23(2) of the CGST Act, subject to conditions that-
  - The exemption is available upto aggregate turnover on all India basis not exceeding the turnover specified under sub-section (1) of section 22 of the CGST Act and notifications issued thereunder.
  - They shall not make any inter-State taxable supply;
  - They would be mandatorily required to declare their Permanent Account Number (PAN) and Principal place of business.
  - For each PAN, such unregistered person shall be restricted to declare principal place of business in only One State.
  - The ECO would be required to -
    - declare the supplies made by unregistered persons through them through GSTR-8 statement (by inserting a suitable table in it).
    - to ensure that no inter-State supply through them is allowed in respect of such unregistered persons by making necessary checks and validations on their system/platform; failing which the penalty would be imposable on the ECO.
  - ECO will not be required to deduct any TCS in respect of such supplies made by unregistered persons through them.

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Agenda 3(VII) : Issue of compulsory registration for supplier supplying goods or services through ECOs under section 24(ix) of the CGST Act, 2017 and allowing Composition dealers to use E-Commerce platforms(3/3) [Vol 1- Pg. 185-191]

- LC has also recommended modalities for intra-state supplies of goods by unregistered persons through ECOs.
- LC has further recommended that a special procedure under section 148 may be notified to allow composition taxpayers to make intra-State supply through e-commerce operators subject to the following conditions:
  - he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;
  - he is not engaged in making any inter-State outward supplies of goods or services;
  - he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council;
  - he is neither a casual taxable person nor a non-resident taxable person.
- Based on the in-principal approval by the GST Council, the detailed amendments/ notifications/special procedures will be finalized by the Law Committee.
- Council may like to decide on the date of implementation of the proposal, keeping in consideration time required for preparedness by GSTN as well as ECOs.
- The proposal will bring parity between online and offline sellers of goods and has the potential of providing tremendous spurt in the growth of MSMEs, thus facilitating trade.

## Agenda 3(VIII) : Refund of unutilised Input Tax Credit on account of Export of Electricity [Vol 1- Pg. 192-198]

#### Issue:

- Ministry of Power has represented about the difficulty being faced by the exporters of electricity in claiming refund under GST on export of electricity.
  - 'Electrical energy' is wholly exempted from levy of GST. As electricity is classified as goods, supply of electricity to a country outside India is a zero-rated supply. Being exempt, the exporter of electricity has only one option available for claiming refund i.e. the refund of unutilised ITC.
  - Being intangible in nature, there is no requirement for filing of Shipping Bill/ Bill of Export in respect of export of electricity.
  - However, the extant provisions under Rule 89 of CGST Rules, 2017 provide for requirement of furnishing the details of shipping bill/ bill of export for claiming refund of unutilised ITC in respect of export of goods, which is causing difficulty in claiming such refunds.

#### Proposal:

- LC has recommended:
  - to make amendment in Rule 89(2) of the CGST Rules, 2017 to provide for a new statement for claiming refund of unutilised ITC on account of export of electricity; and
  - to issue a circular prescribing SOP for refund of unutilised ITC on account of export of electricity till system related changes are carried out on portal.
- This would facilitate the exporters of electricity in claiming refund of utilised ITC on zero rated supplies.

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Agenda 3(IV): Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices [Vol 1- Pg. 166-170]

#### **Issue:**

There appears to be lack of clarity in respect of various issues pertaining to demand of tax and for penal provisions in cases involving issuance of tax invoices without underlying supply of goods or services, and/ or availment of ITC in respect of such fake invoices, leading to different practices by different authorities.

#### **Proposal:**

- LC has recommended to issue a circular in form of FAQs:
  - to clarify various issues pertaining to demand of tax and for penal provisions in various scenarios where a registered person issues a tax invoice without underlying supply of goods or services or both and/ or where a registered person receives a tax invoice without any underlying supply.
- > The proposal will bring uniformity in notices for demand and penalty issued on completion of pending investigation in cases of fake invoices, thus reducing ambiguity and litigation.

#### Agenda 3(V): Notifying clause (c) of section 110 and section 111 of the Finance Act, 2022 [Vol 1- Pg. 171-175]

Issue:

- Vide section 111 of Finance Act 2022, section 50(3) of CGST Act is amended with effect from 01.07.2017 to provide that interest will be payable on the wrongly availed ITC only when the same is utilized.
  - · It is desirable that to provide clarity on the issue of payment of interest and to avoid litigations, section 111 of Finance Act may be notified by the Centre at the earliest.
  - Also, the method of calculation of interest under section 50 of CGST Act needs to be prescribed through the rules.
- Vide clause (c) of section 110 of Finance Act 2022, sub-section (10) of section 49 of CGST Act is substituted to provide for transfer of any balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person.
  - · As there is no provision of transfer of any amount from or to SGST electronic cash ledger, the amendment is required to be notified only by the Centre and is not required to be notified by States/UTs.
  - · It is proposed that the same may be notified by the Centre at the earliest based on the readiness of functionality by GSTN.

**Proposal:** 

- ♦ LC Recommendations:
  - Section 111 and clause (c) of section 110 of Finance Act, 2022 may be notified by the Centre at the earliest.
  - Insertion of new rule 88B with effect from 01.07.2017 for providing for method of calculation of interest [for section 111].
  - Insertion of a sub-rule 87(14) [for clause (c) of section 110]
- ♦ The council may also decide the date from which other provisions of the Finance Act 2022 may be notified by the Centre and the States/UTs.
- > The proposal will remove ambiguities regarding levy of interest on wrongly availed ITC and will also provide for transfer of balance in CGST and IGST cash ledgers between distinct persons, thereby improving liquidity and cash flows of such taxpayers.

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## Agenda 3(XIII) : Re-credit of amount in electronic credit ledger through FORM GST PMT-03A [Vol 1- Pg. 238-245]

#### Issue:

- Difficulties are being faced by the taxpayers in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund sanctioned to them on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services, in contravention of rule 96(10) of the CGST Rules, 2017, had been paid back by them either on their own or on being pointed by the tax officer.
- The present provisions provide for re-credit of amount in electronic credit ledger only in two situations, which are rejection of refund of unutilised ITC and sanction of refund of excess payment of tax.
- GSTN has recently developed a new functionality of FORM GST PMT-03A which allows proper officer to re-credit the amount in the electronic credit ledger of the taxpayer, in situations other than those during sanction of refund.

#### Proposal:

- LC has recommended that in the following cases, if the erroneous refund amount is deposited by the taxpayer along with interest and penalty, wherever applicable, the amount of refund so deposited can be re-credited in the ECL of the taxpayer:
  - Refund of unutilised ITC on account of export of goods/services without payment of tax.
  - Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without payment of tax.
  - · Refund of unutilised ITC due to inverted tax structure.
  - · Cases where IGST refund is granted on zero rated supply of export of goods or services in contravention of rule 96(10)
- LC has also recommended that to implement the above decisions:
  - · insert sub-rule (4B) to rule 86 to provide for such re-credit.
  - · issue a circular to clarify the procedure for such re-credit.
- The proposal will enable the taxpayers to get re-credit of the amount of erroneous refund paid back by them in their electronic credit ledger, and thus will facilitate the taxpayers.

#### Agenda 3(XV) : Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and extension of due date for filing FORM GST CMP-08 for Q1 of FY 2022-23 (1/2) [Vol 2- Pg. 07-10] Issue

- In cases where no liability was declared by the composition taxpayer in table 6 of FORM GSTR-4, it was presumed (by the system) that no liability is required to be paid, even though taxpayer may have paid the liability through FORM GST CMP-08. In such cases, liability paid through FORM GST CMP-08 was treated as excess tax paid by the system and was moved on the portal to Negative Liability Statement for utilization of same for subsequent tax period's liability.
- The issue of treating the same as Negative Liability Statement was deliberated by the Law Committee earlier and LC took a view that amount in negative liability statement needs to be debited on the portal as a remedial action. It was also decided wherever the amount available in negative liability statement had been utilized by the taxpayer for paying the liability while filing statement in FORM GST CMP-08 or return in FORM GSTR-4 of subsequent tax period, such amount needs to be debited from electronic cash ledger of the concerned taxpayer.
- However, large number of representations were received from the taxpayers stating that due to the debit made by the system in electronic cash ledger, resulting in negative balance in the said ledger, they were suddenly facing cash crunch for paying the remaining due amount as per GSTR-4 return.
- The issue was deliberated by the Law Committee in its meeting held on 07.05.2022 and LC recommended that late fee under section 47 may be waived for the period 01.05.2022 till 30.06.2022 for delay in filing FORM GSTR-4 for FY 2021-22. The said recommendation of the Law Committee was subsequently approved by the GST Implementation Committee (GIC) and implemented vide issuance of Notification No. 07/2022-GST dated 26th May, 2022.
- A large number of representations are still being received from the taxpayers and various trade associations regarding difficulty being caused due to negative balance in electronic cash ledger. It has also been represented that in some cases, the amount of negative liability has already been paid through DRC-03 challans, or by adjustment in subsequent CMP-08/ GSTR-4.
- The status of the issue was accordingly placed by GSTN before the Law Committee, in the meeting held on 08.06.2022.
- It was informed by GSTN that as on 08.06.2022, approximately 85,000 taxpayers still had negative entries in their electronic cash ledger amounting to approximately Rs 168 crores.

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Agenda 3(XV) : Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and extension of due date for filing FORM GST CMP-08 for Q1 of FY 2022-23 (2/2) [Vol 2- Pg. 07-10]

#### Proposal:

LC Recommendations:

- The negative balance in cash ledger in respect of those taxpayers having negative balance in electronic cash ledger as
  on date may be nullified by passing a credit entry of equal amount by running a utility in the System.
- The list of all such cases may be sent to tax authorities for necessary verification and recovery, if any, in cases wherein taxpayer has neither paid the amount utilised out of negative liability statement through CMP-08/GSTR-4 nor through DRC-03.
- An e-mail may also be sent by GSTN to these taxpayers (approximately 85,000) to pay the tax, if any, in case they have utilised the negative liability.
- Where the taxpayer has paid the liability twice, he may seek refund from the jurisdictional officer under the category excess tax paid.
- In order to implement the aforesaid recommendations of the Law Committee, GSTN has sought time upto 08.07.2022 for deployment of the said functionality (present waiver of late fee for filing of GSTR-4 for FY 2021-22 is only upto 30.06.2022).
- In view of the above, Council may approve:
  - To extend the waiver of late fee under section 47 for delay in filing FORM GSTR-4 for FY 2021-22 by approximately four more weeks, i.e. till 28.07.2022 (the existing waiver is for the period from 01.05.2022 till 30.06.2022)
  - To extend the due date of filing of FORM GST CMP-08 for the 1st quarter of FY 2022-23 from 18.07.2022 to 31.07.2022.
- The proposal will facilitate and benefit a large number of composition taxpayers who are affected by the said issue of negative balance in electronic cash ledger.

# Agenda 3(XVIII) : Amendment in CGST Rules for handling of<br/>pending IGST refund claims[Vol 3- Pg. 9-13]

#### Issue:

- Rule 96 (1) of the CGST Rules, 2017, provides that Shipping Bill filed by the exporter would be deemed to be an application for refund of integrated tax paid on account of export of goods subject to filing of EGM and return in FORM GSTR-3B. Further, these IGST refunds are processed by the proper officer of customs in completely automated manner as per the provisions of rule 96(3).
- However, in some cases where the exporter is identified as risky exporter requiring verification by GST officers, or where there is a violation of provisions of Customs Act, the refund claims in such cases are suspended/ withheld and such refunds remain pending for processing, as the proper officer of Customs is not empowered to reject the refund, fully or partially.

#### Proposal:

- LC Recommendations:
  - To make necessary amendments in rule 96 of the CGST Rules -
    - to provide for transmission of such refunds on the portal in a system generated FORM GST RFD-01 to the jurisdictional GST authorities; and
    - to provide for such refunds to be dealt by jurisdictional GST officer in a manner similar to refunds filed in FORM GST RFD-01 to enable processing of such pending refunds.
  - Further, it has been recommended to make such changes retrospectively w.e.f. 01.07.2017.
- This would result in expeditious disposal of such IGST refund claims, after due verification by GST officers, thus benefitting the taxpayers.

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#### Agenda 3(XVII): Issues in implementation of e-Wallet

#### Issue:

- An e-Wallet scheme was proposed by GST Council in its 22<sup>nd</sup> meeting held on 06.10.2017 to prevent capital blockage of exporters on account of tax amount involved in procurement of goods and services.
- In the e-wallet scheme, 'virtual credit' was proposed to be provided to the exporters for passing on the same to their supplier so that the suppliers can use the 'virtual credit' while making payment against supplies made to the exporters. These 'virtual credits' could also be utilised for procurement of goods/services/capital goods under AA/EPCG/EOU schemes.
- Till the scheme comes into operation, GST council has allowed for exemption of IGST on import of goods under AA/EPCG/EOU scheme time and again and the same is presently extended till 30.06.2022.

Proposal:

- LC observed that the e-Wallet scheme was mainly envisaged to get over the issue of capital blockage due to delay in GST refunds in the initial phases of implementation of GST.
  - However, the same does not appear to be relevant now as the issue of working capital blockage of exporters is being very well taken care of by exemption from tax/concessional rate available to AA/EPCG/AA license holders and merchant exporters and by faster refunds both under IGST route and as well as that pertaining to un-utilized input tax credit on account of zero-rated supply.
- LC, therefore, recommended:
  - Present refund mechanism to exporters have been stabilised and streamlined, with exporters now being fairly acquainted with the refund processing under GST. Present Exemption Notifications may be continued.
  - E-wallet scheme may not be pursued further.
- > The proposal will provide assurance and stability to the exporters.

# Law Committee Recommendations relating to Compliance and Administrative measures under GST

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# **Agenda 3(XII):** Proposal for amendments to CGST Rules, 2017 (1/3) [Vol 1- Pg. 223-237]

#### Amendment to rule 21A :

- At present, centralized suspension of registration is being done by the system, for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29, based on annual turnover (AATO>Rs 50 lakhs).
- To facilitate centralized suspension in such cases by the system irrespective of turnover threshold, there is a need to have provisions for automatic revocation of suspension, once all the pending returns are filed on the portal by the taxpayer.
- Accordingly, LC recommended amendment in sub-rule (4) of rule 21A to provide that in cases of centralized suspension of registration for non-compliance of clause (b) or clause (c) of sub-section (2) of section 29, the suspension shall be automatically revoked once all the pending returns are filed on the portal by the taxpayer.
  - Council may also allow for centralized suspension of registration under rule 21A(2A) for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29, irrespective of for annual turnover (below Rs. 50 Lakh also).

#### Amendment to Explanation 1 after rule 43 :

- Duty Credit Scrip (DCS) are transferrable and GST was required to be paid on its sale / supply. However, w.e.f. October, 2017, the said supply was exempted from GST. Various representations have been received from field formations and trade and industry as to whether exporters of goods who sale / supply such DCS, being transferrable, are required to reverse ITC under rule 42 on common inputs and input services used for both taxable (including zero-rated) as well as exempted supply.
- The Law Committee opined that though supply of Duty Credit Scrip by the exporters is an exempt supply under GST, the credit availed on inputs and input services by the exporters for making taxable supplies, including zero rated supplies, should not be considered as common credit on such taxable supplies and the exempted supply of DCS.
- LC, therefore, recommended that Explanation 1 after rule 43 may be amended to provide that there is no requirement of reversal of input tax credit for such exempted supply of DCS by the exporters.

## Agenda 3(XII): Proposal for amendments to CGST Rules, 2017 (2/3) [Vol 1- Pg. 223-237]

#### Amendment to rule 46 :

- The enablement has been done on the Invoice Registration Portal (IRP) for e-invoicing on the basis of the turnover declared by the taxpayers in FORM GSTR-3B.
- Presently, as per various notifications of e-invoicing, certain entities/ sectors of taxpayers are exempted from the mandate of e-invoicing. These taxpayers, who are otherwise not required to generate e-invoice, have also got enabled on the portal and are now requesting for their e-invoice status to be disabled as their recipients seek e-invoice from them instead of regular invoices.
- The Law Committee recommended that rule 46 of the CGST Rules, which provides for particulars to be declared in an invoice, may be amended to specify that invoice shall contain a declaration by the registered person to the effect that invoice is not required to be issued in the manner prescribed under rule 48(4) of the CGST Rules, in all cases where an invoice is issued, other than in the manner under rule 48(4), by the taxpayer having AATO more than the threshold notified for issuance of e-invoice.

#### Amendment to rule 87:

- GST Council, in its 42<sup>nd</sup> meeting, has approved "UPI & IMPS" as a payment option for payment of Goods and Services Tax in addition to the four modes of payment as specified under Rule 87(3) of CGST Rules, 2017.
- Law Committee has recommended amendment in rule 87(3), rule 87(5), FORM PMT-06 and FORM PMT-07 so that appropriate action for implementation of new payment mode may be initiated.

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# Agenda 3(XII): Proposal for amendments to CGST Rules, 2017 (3/3) [Vol 1- Pg. 223-237]

#### Amendment to rule 89 :

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- There is persistent confusion among the field formations regarding the meaning of the term "export value" declared in the corresponding shipping bill under the Customs Act – whether the same has to be taken as FOB value or CIF value or invoice value.
- Law Committee was of the view that the term export value declared in the corresponding shipping bill under the Customs Act mentioned in the clarification issued vide para 47 of the Circular No. 125/44/2019-GST dated 18.11.2019 refers to FOB value only.
- Law Committee recommended that to remove any ambiguity in the matter and to ensure uniformity in processing of
  refunds of unutilised ITC on account of export of goods, an explanation may be inserted under rule 89(4) of CGST
  Rules to clarify that for purpose of rule 89(4), value of goods exported has to be taken as the FOB value declared in
  Shipping bill or the invoice value, which ever is lower. Corresponding amendments in Statement 3 of RFD-01 may
  also be carried out.
- "specified officer" in case of SEZ supplies:
  - As per second proviso to rule 89(1), in respect of refunds pertaining to supplies to SEZ Developer/Unit, receipt of such supply of goods or services by SEZ should have been endorsed by the specified officer of the Zone. However, "specified officer" mentioned in the above proviso has not been defined or clarified in CGST Rules, leading to confusion and rejection of refund claims in some cases.
  - Law Committee recommended that to clarify the matter and to align the provisions of sub-rule (1) of rule 89 of CGST Rules with those pertaining to supplies by DTA to SEZ in SEZ Rules, 2006, an explanation may be inserted at the end of sub-rule (1) of rule 89 to clarify the term "specified officer".

#### Amendment in FORM GSTR-3B required:

- In light of Notification No. 17/2021-Central Tax (Rate) to capture the details of supplies notified under section 9(5);
- Label changes in terms of Agenda 3(X) placed before the GST Council relating to clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B to facilitate settlement of IGST amount.

#### Agenda 3(X) : Clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1 [Vol 1- Pg. 203-209 and Vol. 3- pg.14]

#### Issue:

- The process of return filing has been simplified over a period of time. W.e.f. December, 2020, FORM GSTR-3B is getting auto-generated on the portal by way of auto-population of ITC from FORM GSTR-2B and auto-population of liabilities from FORM GSTR-1, with an editing facility to the registered person.
- However, it has been observed that there still are some infirmities in information being furnished by the registered person in relation to inter-State supplies effected to unregistered person, registered person paying tax under section 10 of the CGST Act (composition taxable persons) and UIN holders.
- Also, there appears to be lack of clarity regarding reporting of information about reversal of ITC as well as ineligible ITC in Table 4 of FORM GSTR-3B.
- Representations have also been received from States for settlement of IGST amount based on various reversals of ITC.

#### Proposal:

- LC Recommendations:
  - Issuance of a circular to explain the manner of reporting of the information about inter-state supplies to
    unregistered persons, UIN holders & composition taxpayers and also about reversals of ITC and ineligible ITC
    in Table 4 of FORM GSTR-3B, along with illustrations.
  - Settlement of reversals of ITC and ineligible ITC to be done by Department of Revenue & GSTN on the basis of Table 4(B)(1) and 4(D)(2) of FORM GSTR-3B.
  - Necessary label changes may be done in FORM GSTR-3B accordingly.
- The proposal will bring clarity and uniformity in reporting of information in return and will also help in settlement of IGST amount based on various reversals of ITC.

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# Agenda 3(XI): Comprehensive changes/amendments in FORM GSTR-3B [Vol 1- Pg. 210-222]

#### Issue:

- In the 42<sup>rd</sup> GST Council meeting, it was recommended that the present system of GSTR-1/3B return filing to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system. Based on the recommendations of the GST Council in its 43<sup>rd</sup> meeting, amendments have been made in return filing provisions through Finance Act, 2022 to align GST laws as per GSTR-1/3B return filing system.
- Modifications are required in the format of GSTR-3B, due to the following factors:
  - Representations have been received from trade and industry to allow amendment in FORM GSTR-3B, to allow reporting of negative
    values in GSTR-3B and to provide solution to the difficulty in reconciling various reversals and subsequent reclaims of ITC.
  - Tax officers require more granular information in GSTR-3B for effectively undertaking scrutiny, assessment and audit work.
  - · The demand of States is for streamlining the process of settlement of IGST revenues arising by way of reversals of ITC.

#### Proposal:

- ♦ LC Recommendations:
  - Modification in Table 3 of GSTR-3B: for allowing auto-population of values from GTSR-1 into GSTR-3B in specific rows;
  - Modification in Table 4 of GSTR-3B: for capturing line wise reversals for streamlining the process of settlement of IGST revenues;
  - GSTR-3B to provide for amendment tables for reporting of various amendments in outward supplies, input supplies liable to
    reverse charge and ITC for the previous tax periods;
  - To allow negative values in tables of GSTR-3B and carrying forward of negative values to GSTR-3B of next tax period;
  - GSTR-1 to capture the details of supplies made through ECOs in separate Table 14, 15, 16.
- LC has further recommended to place the said draft of GSTR-3B & changes in GSTR-1 before the Council for in-principle approval and for seeking directions to place the proposed change in GSTR-3B in public domain for seeking inputs/suggestions of the stakeholders.
- The proposal will address the long pending demand of trade and industry and at the same times, will also address the needs of tax administrations for effective intervention in scrutiny and audit process, besides facilitating settlement of IGST.

# Agenda 3(IX) : Annual Returns for FY 2021-22

#### [Vol 1- Pg. 199-202]

#### Issue:

- The Annual Return in FORM GSTR 9 & Annual Reconciliation Statement in FORM GSTR 9C were simplified for the FY 2017-18, 2018-19, 2019-20 and 2020-21 21 by making few entries/tables optional.
- It has been suggested that in a long run, the annual return should cover the features of proposed changes in FORM GSTR-3B, as suggested by the Law Committee and detailed in Agenda 3(XI). However, as the FY 2021-22 is over, there is demand to notify the Annual Return forms for FY 2021-22 at the earliest.
- A sub-committee of the Law Committee examined the relaxations provided in FY 2020-21 and has recommended modifications / continuation / discontinuation of such relaxations based on their present relevance as detailed in the agenda note.

#### Proposal:

- LC Recommendations:
  - To continue with most of the relaxations as provided for FY 2020-21, barring a few detailed in agenda note, such as seeking HSN details in Table 17 of GSTR-9, as requirement of reporting HSN in invoices were changed w.e.f. 01.04.2021.
  - AATO threshold for granting exemption from filing annual return in FORM GSTR-9/9A, which was Rs. 2 crores for FY 2020-21, may be continued for FY 2021-22 also.
  - The proposal will lead to continuity in annual return filing regime, with least changes in Form and threshold turnover for filing of annual return.

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# Agenda 3(III): Authority to issue recurring SCN in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to State and vice versa [Vol 1- Pg. 164-165]

#### Issue:

- Due to cross-empowerment, an enforcement action against a taxpayer assigned to State Tax authorities can be initiated by the Central Tax authorities and vice versa. In such cases, various consequential action relating to such cases such as appeal, review, adjudication, rectification, revision, etc. need to be taken. Clarity is being sought about some of the consequential action like refunds.
- Clarity is also being sought by the field formations as to which is the competent administration or authority who will issue the recurring Show Cause Notices arising out of investigation initiated and finalized by Central Tax authorities to taxpayers under State Administration and vice versa.

#### **Proposal:**

- LC Recommendations:
  - Since issuance of recurring SCNs does not involve any fresh investigation as the subject matter as well as ground of SCN remain the same, it may be desirable that such further/ recurring SCNs are issued by the jurisdictional authorities (which is responsible for assessment of returns of the taxpayer), as they will be in a better position to access the records and returns of the taxpayers, and to check whether the grounds of SCN still exist or not and take a view/ action for issuance of recurring SCN, based on facts in the said period (on the issue of authority to issue recurring SCN)
  - A taxpayer located within a State is open to enforcement action by both authorities. For example, a enforcement action against a taxpayer assigned to State can be initiated by the Central authorities (and vice versa). In such cases, all consequential action relating to such case including, but not limited to, appeal, review, adjudication, rectification, revision will lie with the authority which had initiated the enforcement action i.e. the Central authorities in the instant case. However, the refund claim in respect of any taxpayer is to be decided by the jurisdictional tax authority only. (on the issue of various consequential action)
- The proposal will bring clarity to the field formations about the competent authority to take an action in case of an enforcement action initiated by the Central authorities against a taxpayer assigned to State and vice versa.

# Agenda 3(XIV) : Extension of limitation under section 168A of the CGST Act, 2017

[Vol 2- Pg. 05-06]

#### Issue:

Law Committee deliberated on the problems being faced by the taxpayers as well as tax administration in respect of demands and refunds getting time barred due to long period of lockdown/restrictions on account of Covid-19 pandemic. A request was made to consider extension of timelines in respect of aforementioned proceedings.

#### Proposal:

- LC Recommendations:
  - Imitation under section 73 for FY 2017-18 for issuance of order in respect of recoveries linked with due date of annual return, may be extended till 30<sup>th</sup> September, 2023, under the powers available under section 168A of CGST Act.
  - Further, no such extension may be allowed for timelines under section 74 of the Act, as the Act provides for sufficient limitation time of 5 years in respect of such cases, i.e. much beyond the period affected by COVID-19.
  - Time period from 01.03.2020 to 28.02.2022 may be excluded from calculation of the limitation period for filing refund claim by an applicant under section 54 and 55 of CGST Act, as well as for issuance of demand/ order (by proper officer) in respect of erroneous refunds under section 73, by exercising power under section 168A of CGST Act.
- The proposal will help the taxpayers in filing the refund claims which they could not file in time due to Covid-19 pandemic. The proposal will also enable the tax officers to issue demands and orders in case of scrutiny, assessment and audit proceedings, which were delayed due to Covid-19 pandemic.

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# Agenda 3(XVI): Refund of accumulated ITC to Duty-FreeShops (1/2)[Vol 2- Pg. 11-15]

#### Issue:

- A view was earlier taken that the sale from DFS outlets is not 'export of goods' and therefore, the DFS operator is not entitled to refund of unutilized ITC of inputs/ input services on supplies made to outgoing passengers, by treating them as zero-rated supplies, under Section 54(3) of CGST Act, 2017.
- W.e.f. 01.07.2019, refund of taxes paid on inward supply of indigenous goods, which are supplied to outgoing International Tourists by Duty Free Shop (DFS) and Duty Paid Shop (DPS) in departure area of international airport, was notified under Section 55 and Rule 95A was inserted. Correspondingly, notifications and circulars were issued to implement the same.
- However, the Hon'ble High Court of Bombay in its judgment dated 7.10.2019 (followed by Hon'ble High Court of Kerala in judgment dated 22.09.2020) has held that supply of goods by DFS to outgoing passenger is in the nature of zero-rated supply and therefore, refund provisions as mentioned in Section 54(3) of CGST Act, 2017 and Rule 89 of CGST Rules, 2017 are applicable. Hon'ble Court has also taken a view that refund under section 54(3) is also available in respect of supply of goods by DFS to arriving passengers.
- The above judgment of Hon'ble High Court of Bombay was duly examined in consultation with the Additional Solicitor General (ASG) and based on the advice of the ASG, it was decided not to file an SLP in the matter. On the same grounds, the judgement of Hon'ble High Court of Kerala was also accepted by the government.
- The issue was deliberated by the Law Committee in respect of apparent anomaly between the law pronounced by the Hon'ble High Courts vis-a-vis the existing legal provisions.

# Agenda 3(XVI): Refund of accumulated ITC to Duty-FreeShops (2/2)[Vol 2- Pg. 11-15]

#### Proposal:

- LC Recommendations:
  - To align rules and notifications with the decision of Hon'ble High Courts to treat the supply of goods by Duty Free Shops to outgoing international passengers as zero-rated supply by:
    - rescinding rule 95A of the CGST Rules, 2017 and Circular No. 106/25/2019-GST dated 29.06.2019 ab initio
    - rescinding notification No. 10/2019-Integrated Tax (Rate), notification No. 11/2019-Central Tax (Rate) and notification No. 11/2019-Union territory Tax (Rate) all dated 29.06.2019;
  - For future, there is a need to exclude refund in respect of ITC on inputs/ input services pertaining to DFS at Arrival Terminal by amending Explanation to sub-section (3) of section 17 of CGST Act by including certain transactions under paragraph 8(a) of Schedule III of CGST Act in the value of exempt supply. LC recommended
    - To amend sub-section (3) of section 17 of CGST Act, 2017, by substituting the existing Explanation as detailed in Agenda Note
    - Post amendment, the supplies from DFS at arrival terminal to the incoming passengers to be prescribed through the Rules so that value of such supply are not excluded for calculation of "value of exempt supply" for the reversal of ITC.
- The proposal will remove the existing and anticipated litigation on the issue and will provide clarity to tax payers as well as tax officers.

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# Notifying the provisions of section 123 of the Finance Act, 2021 relating to amending section 16 of the IGST Act and to notify the class of supplies

and class of persons who can export on payment of IGST (1/2) Issue:

- Vide section 123 of Finance Act, 2021, sub-section (3) of section 16 of the IGST Act has been proposed to be amended to:
  - make the export under LUT as the default route.
  - restrict the export/zero-rated supply on payment of integrated tax only to a notified class of taxpayers
    or notified supplies of goods or services
- This was placed before the GST Council in its 45<sup>th</sup> meeting held on 17.09.2021 vide Agenda 3 (XV) for notifying the Section 123 of the Finance Act, 2021

#### Council's recommendation:

- However, during discussion in the 45<sup>th</sup> meeting of GST Council, the following view emerged:
  - When proposal to amend section 16 of IGST Act to restrict IGST route was approved by Council in 39<sup>th</sup> Meeting (March 2020), a number of cases of fraudulent refunds through IGST route were noticed due to fraudulent availment of ITC.
  - Since then, a number of measures have been taken, either through REAP project of GSTN, or through
    policy interventions to discipline return filing system and also to restrict availment of ineligible ITC.
  - Accordingly, it was felt that there may be a need to re-examine whether restriction of IGST route to
    such large extent needs to be undertaken at this stage, when the country needs a push to export, and
    such proposed measure to restrict IGST route to only 10% of the present exporters using IGST route,
    may cause disruption in exports for a large number of exporters.

Notifying the provisions of section 123 of the Finance Act, 2021 relating to **amending section 16 of the IGST Act** and to notify the **class of supplies** and **class of persons** who can export on payment of IGST (2/2)

- GOM in its interim report on capacity based taxation and special composition scheme for certain sectors placed before 45<sup>th</sup> GST Council meeting on 17.09.2021 has recommended that IGST refund route to be closed for Mentha oil as and when amended section 16 is notified and the said recommendation was approved by the GST Council.
- There are also reports of misuse of facility of IGST refund by a unscrupulous elements in respect of items of HSN Chapter 24, including tobacco and tobacco products.
- Proposal before the Council:
  - To notify Section 123 of the Finance Act, 2021 for amendment in Section 16 of the IGST Act.
  - ✓ Class of supplies: All supplies of goods and services, except for Mentha oil and goods of HSN Chapter 24 (including tobacco and tobacco products), may be notified as class of supplies under clause (ii) of sub-section (4) of amended Section 16 of IGST Act, 2017.
- The proposal will help in implementing the decision of GST Council with respect to closure of IGST refund route to mentha oil and in preventing the misuse of IGST refund in case of export of tobacco and tobacco products.

# **Agenda 9:** Final Report of the Group of Ministers to examine the feasibility of implementation of E-way bill requirement for movement of gold and precious stones(1/2) [Vol 2- Pg. 193-279]

- In pursuance of the decision taken in 37<sup>th</sup> GST Council Meeting held on 20<sup>th</sup> September, 2019, a Group of Ministers (GoM) was constituted by the GST Council Secretariat vide O.M issued vide F.No. 591/GoM/Mvmt of Gold & Pre. Stones /GSTC/ 2019/9221-9225 dated 22.11.2019
  - mandate to examine the feasibility of implementation of e-way bill requirement for movement of Gold and other precious stones.

#### **GoM Recommendations:**

- E-way bill for intra-state movement of gold and precious stones:
  - The states should be allowed to decide about imposition of the requirement of e-way bill for intra-state movement of gold and precious stones within their states.
  - There will be a minimum threshold of Rs 2 Lakh, and the states can decide any amount including or above this
    amount as minimum threshold for generation of E-way bill for intra-state movement of gold/ precious stones in
    their state.
  - Only Part 'A' on the e-way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.
  - Once e-way bill requirement for movement of Gold and Precious Stones is decided, the corresponding suitable amendment in CGST Rules, 2017 would have to be carried out.
  - While finalizing amendment in Rules, it is to be ensured that in case of supply of gold by registered persons to unregistered buyers, the requirement of e-way bill generation is mandated on registered supplier only.

**Agenda 9:** Final Report of the Group of Ministers to examine the feasibility of implementation of E-way bill requirement for movement of gold and precious stones(2/2) [Vol 2- Pg. 193-279]

#### GoM Recommendations:

- E-invoicing for Gold and precious stones:
  - E-invoicing should be made mandatory for B2B transactions by all taxpayers supplying gold/ precious stones (goods of HSN 71) and having annual aggregate turnover above Rs 20 crore.
    - ✓ Threshold for issuance of e-invoice for B2B transactions has already been reduced to Rs 20 crore for all taxpayers, including those supplying gold and precious stones, with effect from 01.04.2022.
- Levy of GST on RCM basis on Old Gold:
  - The issue of levy on GST on reverse charge mechanism (RCM) basis on purchase of old gold by registered dealers/ jewellers from unregistered persons may be referred to Fitment Committee for detailed examination.
- The recommendations of GoM are placed before GST Council for deliberations and decision.

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# Agenda 3(XX): Consent based data sharing

Issue:

- GST eco-system captures valuable data in electronic data that has use cases other than tax administration
- There are some platforms that provide various value added services based on financial data obtained from various sources
- GST data can be used for such value added services like flow based lending to MSME TReDS platform and Account Aggregator framework of RBI
- Currently GST law has a blanket bar on sharing of data submitted by taxpayer

Proposal:

- Law Committee recommendation:
  - Law may be amended to provide for sharing of data of various taxpayers based on the consent of the supplier and recipient, where applicable.
- It is proposed to insert a new section 158A in CGST Act for this purpose, as detailed in agenda note.
- This proposal will help in facilitating flow based lending to MSMEs through TReDS platform and Account Aggregator Framework of RBI, thus helping MSMEs get timely credits.

# THANK YOU

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Annexure-4

47th GST Council Meeting

# Presentation of GSTN



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Agenda : Status of development of Return System



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#### New return system : GST RET-1/2/3

- Proposal for NRS
  - Approved in 27th GST Council Meeting
  - · Effective date Oct 2022 Postponed later
- Scheme of New Return System: FORM GST RET-1, RET-2 (Sugam), RET-3 (Sahaj)
  - > GST ANX-1 : For declaring outward B2B, B2C, Zero rated supplies
  - GST ANX-2 : Auto-population of ITC for recipient from
    - · GST ANX-1, GSTR-5, GSTR-6 of suppliers
    - · Import data : Bill of Entry, Courier imports, Import from SEZ to DTA
  - · Option for quarterly return filing for smaller taxpayers (upto Rs. 5 crore turnover)
- 39<sup>th</sup> GST Council meeting
  - · Avoid big-bang change Adopt incremental approach to Return enhancements
  - Import Features of the New Return system
  - · Link of the existing returns like GSTR-1, GSTR-2A with GSTR-3B
  - · Bring other significant changes, as may be needed New GSTR-2B, Nil filing by SMS etc
- "REAP"- Returns Enhancement and Advancement Project started on 1st April 2020 on a Time & Material (T&M) basis.

# **Return Enhancements Implementation Status**



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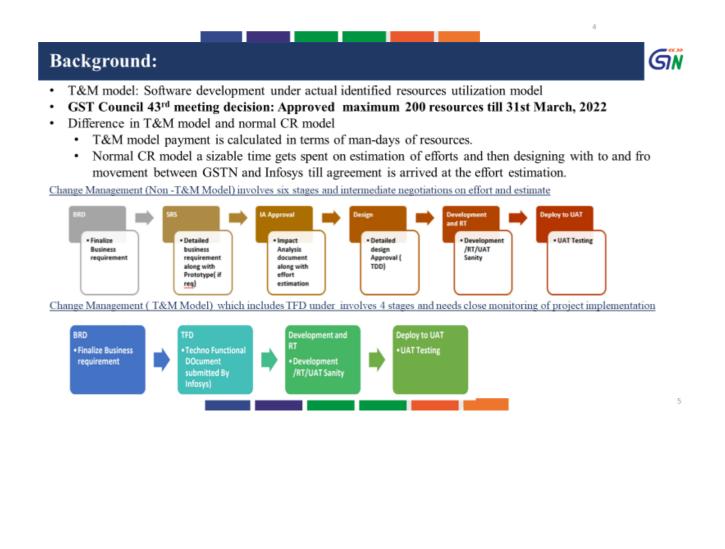
Sl. No.	Feature	New Return System Design	Present return system
1.	Auto-population of liability to return	$\checkmark$	$\checkmark$
2.	Statement of auto-populated credit (GSTR-2B/ GST ANX-2)	$\checkmark$	$\checkmark$
3.	Auto-population of ITC to return	$\checkmark$	$\checkmark$
4.	Quarterly filing of return for smaller taxpayers	$\checkmark$	$\checkmark$
5.	Auto-population of import data for ITC	$\checkmark$	$\checkmark$
6	Auto-population of e-invoice data in GSTR-1	×	$\checkmark$
7	Nil filing of GSTR-1, GSTR-3B by SMS	×	$\checkmark$
8	Option to keep ITC pending or Reject invoice by recipient	$\checkmark$	Under development
9	Separate Amendment Return	$\checkmark$	Under development
10	No change allowed in auto-populated values	$\checkmark$	Capability developed

Proposal: Final decision on stopping News Return Development may be taken

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#### Agenda : Extension of T & M for LEAP and REAP



#### Current Methodology used in GSTN for implementation of Change Request:



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Currently GSTN uses 2 models for implementation of Change Request:

- All critical changes, where time bound implementation required: taken up under T&M model.
- All other changes related to other modules: Non T&M model
- Analysis of Regular Process (Non T&M) and T&M Process shows that T&M is better model:
  - Normal CR route process has 6 stages however (T&M) model have 4 stages only.
  - Comparison of changes of similar magnitude under two models
    - Similar scale of payment to vendor, changes completed in about 30% of time of CR model.
    - · New modules and IT improvements stabilised system and improved revenue.

#### **Proposal:**

- Extension of current T&M model from 1st April 2022- till 30th March 2023 (Max resources not exceeding 200)
- Conversion of existing Change Management (Non -T&M Model) model into T&M model with max. number of
- resources: not exceeding 100 at any given point of time till 30th March 2023

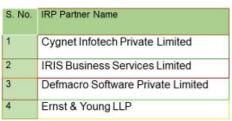
 Extension of T&M and flexibility to increase/ decrease manpower be delegated to GSTN, as it is a commercial decision. GST council would be kept informed of budget impact, if any.

#### Agenda : Developments in Multiple IRP



#### Status of Multiple IRPs

- Proposal for Multiple IRP
  - Approved in 43<sup>rd</sup> GST Council Meeting
  - RFP floated on 17.12.2021, Registrations closed on 15.01.22
  - 71 parties registered
  - 30 parties shortlisted as satisfying criteria.
  - · 17 parties participated in detailed evaluation
  - 4 parties finally Agreement Signed for IRP
  - Expected date of operation 1st October, 2022
- > NIC Proposal for IRP 2 received
  - GSTC may agree for IRP 2 of NIC





# Goods And Services Tax Network

04-07-2022

GoM on GST system Reforms

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**Annexure-5** 

# Amendments in provisions relating to GSTAT

# Triggers for amendments

- Judgment of Madras High Court
  - Composition of each Bench with one judicial member but two technical members dilutes judicial balance
- Judgement of Supreme Court in various cases leading to Tribunal Reforms Act, 2021
  - Related to composition of Search and Selection Committee to be headed by Chief Justice of India or a Judge of Supreme Court nominated by him
  - Removal etc on recommendation of the Committee
  - Tenure, retirement age, salary allowances etc.
  - GSTAT Rules, 2019 are already under challenge for being not in line with these judgements.

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# Bench Composition

- Currently, one Judicial Member, two Technical Members one from Centre and one from State
- Proposed one Judicial and one Technical Member
- 50% of Technical Members from States and 50% from Centre
- Will be in compliance with the Madras High Court Judgement and will ensure proper judicial balance in the benches of the GST Tribunal

# Selection Committee

- Currently different Selection process for Judicial Members, Technical Member (State) and Technical Member (Centre)
- Supreme Court in Madras Bar Association Vs Union of India (2020) has directed that the Search cum Selection Committee should consist
  - Chief Justice of India or a Judge of SC nominated by CJI as chairperson
  - Chairperson of Tribunal concerned
  - Two Secretaries
- It is proposed to have ScSC on the same lines, with CJI or his nominee Judge as Chairperson and President of Tribunal, one Secretary from Centre and Chief Secretary of one State nominated by Council as Members
- All appointments are removal on the recommendations of this Committee

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# Structure of Benches

- Since all selections have to be done by the same committee, it is proposed to have uniform nature of Benches everywhere.
- Administrative functions to be exercised by the President and such number of Vice Presidents as may be prescribed through Rules on the recommendations of Council.
- Vice President shall perform such functions of President as may be prescribed through Rules on the recommendations of Council.

# Qualifications

- Supreme Court, in R Gandhi Vs Union of India has specified that since Tribunals exercise appellate jurisdiction that would have otherwise been exercised by High Courts – officers not below the level of Additional Secretary should not be eligible
  - Judicial Members are either High Court Judges or District Judges eligible for appointment as High Court judge
- Proposed to have 25 years of experience in Group A service of Centre and State – provision to reduce this requirement in case some States do not have any officer
- Preference of officers of a State in Benches located in that State

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# Term and retirement age

	President	Judicial Member	Technical Member
Existing			
Term	Three years	Three years	Five Years
Retirement	Seventy years	Sixty-five years	
Proposed			
Term		Four years	
Retirement	Seventy Years	Sixty-seven years	

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Annexure-6

# Group of Ministers (GoM) on Rate Rationalization

47<sup>th</sup> GST Council Meeting 28<sup>th</sup> – 29<sup>th</sup> June, 2022

### Contents

- Background
- Terms of reference
- Proceedings of the GoM
  - Inverted duty correction
  - **Review of exemptions**
- Interim report of the GoM
- Future road map

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#### **Background & constitution of the Group of Ministers**

#### Deliberations during the 45<sup>th</sup> GST Council Meeting

- Agenda 17: Review of Revenue position
- Agenda 18: Compensation- Scenario post June, 2022
- Revenue dip during two pandemic waves
  - Although recovery post second wave has been robust.
- Need for measures to augment revenue
  - Corrective steps for inversion correction in mobile phones, footwear, etc already taken

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- GST Council directed that a Group of Ministers be formed to look at at rate restructuring / rate rationalization, including –
  - correction of inverted duty structure (IDS)
  - o to reduce classification related disputes, and
  - to enhance GST revenues.

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#### Constitution of the GoM and Terms of Reference

- Group of Ministers constituted with Hon'ble Chief Minister of Karnataka as convenor
  - o Other Member States: Uttar Pradesh, West Bengal, Bihar, Rajasthan, Kerala and Goa

Terms of	Reference
• review the supply of <b>goods and services</b> exempt under GST with an objective to expand the tax base and eliminate breaking of ITC chain	• review the current tax slab rates and recommend changes in the same as may be needed to garner required resources
• review the instances of <i>inverted duty</i> <i>structure</i> other than where Council has already taken a decision to correct the inverted structure and recommend suitable rates to eliminate inverted duty structure as far as possible so as to minimize instances of refund due to inverted duty structure	• review the current rate slab structure of GST, including special rates, and recommend rationalization measures, including merger of tax rate slabs, required for a simpler rate structure in GST

 Subsequently, in the 46<sup>th</sup> GST Council Meeting, the GoM was also given the mandate to examine duty inversion in the Textiles sector

**Proceedings of the Group of Ministers** 

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### **Preparatory work**

- Inputs were sought from all States on GoM's terms of the reference
- Refund Data analysis to identify duty inversion
- Fitment Committee examined the GoM's terms of reference based on above
- Proposals from Fitment Committee placed before the GoM

# **Meetings of the Group of Ministers**

- The Group of Ministers has met *three* times so far
- In the initial meeting, the roadmap for the GoM was set -
  - View that exemptions were given after serious thought and their review would require careful consideration
  - All the Members to provide their comments on proposals
  - Need to assess the impact of proposed changes
- In the second meeting, the specific Fitment Committee proposals related to IDS correction and review of exemptions were discussed in detail
  - Proposals where there was general agreement were taken forward
- In the third meeting, proposals related to above 2 Terms of Reference were finalised by the GoM, to be included in an *Interim Report* for consideration of the Council
- For remaining issues, GoM felt that further discussion is needed before a view can be taken

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#### **Inverted Duty correction**

# **Inverted Duty in GST rate structure**

What is Inverted Duty Structure (IDS)?	Instances of IDS	Why is IDS undesirable?		
GST on Value Addition only	Fertilizers	Unutilized ITC becomes a cost to the manufacturer		
Tax paid on inputs available as Credit (ITC)	☐ <del>Mobiles -</del>	To correct the anomaly, refund of unutilized ITC must be given		
☐ ITC set off with output tax liability	Manmade yarn, fabrics	This causes cash-flow issues for trade		
If Output Tax liability >	Renewable energy devices	Rs. 20,000 Crore refund issued per year		
ITC, IDS exists	Tractors	🔲 Unnecessary fiscal burden		

- Major anomaly in the rate structure. Discussed in the Council on many occasions in the past (38<sup>th</sup>, 39<sup>th</sup>, 40<sup>th</sup>, 43<sup>rd</sup> and 45<sup>th</sup> Meetings)
- Corrective action in respect of sectors like mobiles, footwear, renewable energy devices, ores, railway parts, pens, etc has already been taken

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#### **Inverted duty structure - Goods**

 Available Data on refund on account of IDS was analysed to identify **Total IDC Refund Claimed** major commodities/ sectors \$ 12,000 Backward linkages (rates on inputs 10,000 8.000 vis-à-vis finished product tax rate) account of 6,000 were analysed for these sectors 4,000 Refund on a 2,000 ñ. Remedial action proposed by Fitment Committee to the GoM- Output rate rationalization, or Disallowing refund on account of IDS. HS Chapter-Co E.g. coal, edible oils. 11

#### Inverted duty structure - Goods ...

- GoM discussed each proposal in detail with wide perspective, including
  - Extent of inversion
  - Impact on consumer
- Cautious approach chosen by the GoM. Many items where inversion is apparent were **left untouched** on account of consumer sensitivity and currently prevailing inflation scenario.

Fertilizers	Pharmaceuticals	Utensils
Tractors	Certain Agri-machinery	Agarbatti

#### Inverted duty structure - Goods ...

- Items where remedial action was generally agreed upon has been included in GoM's recommendations for correction in IDS.
- To illustrate, for IDS correction in goods, changes suggested include -

Item	Present rate	Proposed rate
Printing, writing or drawing ink	12%	18%
LED lamps/ lights/ light fixtures	12%	18%
Power driven pumps	12%	18%
Solar Water Heater and system	5%	12%
Prepared/finished /chamois /composition leathers	5%	12%
Milling and grinding machines including chakki and Wet grinder	5%	18%
Restriction on IDS refund on edible oil and coal	-	-

**Inverted duty structure – Services** 

- The GoM examined the inverted duty structure in following services -
  - Services provided by a foreman of a **chit fund**
  - Works contract service supplied to government, local authorities and for construction of roads bridges etc.
  - Services by way of **job work** in relation to
    - i. processing of hides, skins and leather;
    - ii. manufacture of leather goods or footwear;
    - iii. manufacture of clay bricks;
    - iv. textile & textile products and tailoring services.

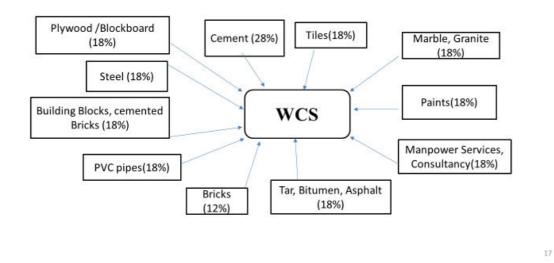
#### Inverted duty structure – Services ...

- Services supplied by foreman to chit fund may be increased from 12% to 18%
- GST on job-work in relation to processing of hides, skin, leather and manufacture of footwear on job work may be increased from 5% to 12%
  - $\,\circ\,$  GST rate on footwear has been increased to 12% w.e.f 1.1.2022
  - $\circ~$  Leather goods are already at 18%.
- Manufacture of clay bricks on job work may be increased from 5% to 12%
  - GST on clay bricks has been revised from 5% to 12% (with ITC)/ 6% (without ITC)
- Textile & textile products and tailoring services on job work may continue at 5%
  - GST rate structure on textile fabric and textile products is still under consideration

#### Inverted duty structure – Services ... Works Contract Services (WCS)

- Lower rate of 12% on:
  - WCS supplied to Government and local authorities
  - WCS for construction of roads, bridges, tunnels, terminals, railways, metro and mono rail
- Most of the inputs and input services used for works contract attract GST at 18% and 28%
  - o Cement (28%)
  - Steel, Paints, Tar, Asphalt, Bitumen etc. (18%)
- Inversion results in:
  - Accumulation of ITC, increase in cost of projects
  - Revenue leakage on input side and malpractices such as ITC diversion

#### Inverted duty structure-Services ... Works Contract Services (WCS)..



#### Inverted duty structure-Services ... Works Contract Services (WCS)..

- Construction sector is a large sector of economy
- GST Council had initially recommended standard rates of 18% on all WCS.

• The rate on specified WCS was reduced to 12% later

- States did not give any significant exemption from VAT on works contract supplied to Government or for construction of roads, bridges, dams, irrigation etc.
- Standard service tax rate applied on taxable services, including works contract

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#### Inverted duty structure-Services ... Works Contract Services (WCS)..

- No distinction or duality in GST rates on goods supplied to governments. In services, this duality exists
- Divergent views:
  - $\circ$  Increase in GST rate on works contract shall adversely impact state finances
  - Counter argument: Necessary to correct inversion
    - It shall remove ITC accumulation, reduce costs, boost revenue on input side, plug revenue leakages
    - *Higher GST paid by the states will flow back to them in the next month*
    - Financial devolution would ensure <u>positive net flow</u> to states at higher GST
- GST Council may take final view on increasing GST rate on WCS supplied to government and local authority

**Review of Exemptions** 

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#### **Review of exemptions – Goods:** 'Branded' items

- A number of items (mostly food grains, cereals, etc) when supplied unbranded are exempt from GST
- Condition for exclusion from exemption is that the corresponding items must be put up in unit container and
  - a) bearing a brand name; or
  - b) bearing a brand name on which actionable claim or enforceable right in a court of law is available (other than where any actionable claim or enforceable right in respect of such brand name has been voluntarily foregone.)
- (i.e. such items when put up in unit container and satisfying condition
  (a) or (b) above are being taxed at applicable rates)

#### Review of exemptions - Goods: 'Branded' items ...

- Subjective term 'branded' has been misused to avail exemption
- Further, cases came to light where even well established brands file Affidavit giving up rights on brand name, simply to avail GST exemption
- GoM suggestion: Replace exclusion condition of being 'branded' and related text, with condition of being 'pre-packaged and labelled', in order to specify items which will be taxed
  - Simplification of exclusion condition
  - No Rate change is suggested items sold in loose condition or not pre-packed, will continue to remain exempt
  - Existing provisions from the Legal Metrology Act, 2009 and rules made thereunder may be utilized to draft the revised text.

#### Review of exemptions - Goods ...

- Existing exemptions on supply of goods examined in detail
- GoM has again taken a cautious approach.
  - Fitment suggestion on withdrawing a number of exemptions was not accepted by the GoM in view of consumer-sensitivity and prevailing inflation scenario

Bread	Tea	Coffee	Guar meal
Non-alcoholic	Aquatic / Poultry	De-oiled rice	Cotton seed oil
Toddy	feed	bran	cake

- Items where remedial action was generally agreed upon has been included in GoM's recommendations for correction in IDS. (Interim Report Page 21 refers)
- GoM has also recommended rationalization of rates in respect of few instances of standlone exemptions/ concessional rates.
  - Oil exploration goods from 5% to 12%
  - Scientific and technical instruments from 5% to applicable rate

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#### **Review of exemptions – Services**

- GoM reviewed exemption in services under following categories:
  - o Exemptions on B2B supplies
  - o Exemptions to Regulators
  - o Exemptions prone to misuse
  - o Exemptions not warranted as recipient can afford to pay

#### **Review of exemptions – Services...** (B2B Supplies)

- In Service Tax period, ITC of VAT paid on capital goods, raw material and other inputs was not available for payment of Service Tax and vice versa
- Under GST, there is free flow of ITC
- Exemptions on B2B supplies have no justification
  - o break ITC chain and increase the cost of supplies
  - o increased compliance burden on the suppliers: reversals of ITC
- GST exemptions on B2B supplies such as the following may be withdrawn:
  - o Transportation of railway equipment and material
  - o Services provided by common bio-medical waste treatment facility
  - Fumigation in a warehouse of agricultural produce.
  - Storage or warehousing of goods which attract GST (spices, copra, sugarcane, jaggery, cotton, unmanufactured tobacco etc.)
- Exemption on reinsurance of exempted insurance services **may not** be withdrawn
  - Exempted insurance schemes meant for poor and farmers
  - o Premium mostly borne by Centre or State governments

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#### **Review of exemptions – Services...**

- Exemptions to Regulators
  - o Like other entities, regulators should pay GST on their supplies
  - No exemption has been given to Lok Sabha Secretariat and Rajya Sabha Secretariat also
  - No exemption on services supplied by Government or Local Authority to business entities
  - Exemption may be withdrawn on services supplied by RBI, IRDA, SEBI, FSSAI, GSTN

#### • Exemptions prone to misuse

- Exemption on hotel accommodation having room rent up to Rs 1000 per night may be withdrawn
  - Small players entitled to threshold exemption and composition scheme
  - Prone to misuse

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#### **Review of exemptions – Services...**

- Exemptions not warranted as recipient can afford to pay
  - Continuing such exemptions is against the objective of comprehensive taxation at lower rates
  - Exemption may be withdrawn/rationalised on:

Services of cord blood bank for	Business class air travel for North
stem cells	Eastern states
Services by way of training or coaching in recreational activities when provided by commercial large entities (other than by individuals)	Hospital rooms with room rent of above Rs. 5000 a day. A nominal GST of 5% may be levied on such room rent

**Rationalization of RCM** 

- Some of the services of Department of Post are under forward charge (Speed Post, Express Post Parcel, Life Insurance supplied to individuals or businesses) and the others under reverse charge (Ordinary Post, Post Card, Inland Letters, Registered Post etc. supplied to business entities).
- This makes the tax structure on the services of Department of Post complicated
- Services by Department of Post of only post-cards, inland letters, book post and ordinary post (envelopes weighing less than 10 gm.) may be exempted
- All other services of Department of Post supplied to any person including individuals, business entities, government etc. be taxed under forward charge to plug any leakage and for simplification

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# **Interim Report**

- Summarized deliberations of the GoM, and
- Recommendations of the GoM, in respect of –
  - inverted duty correction, and
  - review of exemptions

Contents
L Context
II. Decisions of the 45th and 46th GST Council Meetings
III. Group of Ministers and its Terms of Reference.
IV. Deliberations of the GoM
V. Inverted Duty Structure
VI. Review of exemptions
VII. Recommendations of the GoM
Annexure -A: Recommendations of the Group of Ministers
1 Inverted Duty Structure correction in Goods
2. Inverted Duty Structure correction in Services
3. Review of exemptions in Goods
3.1 Review of exemption condition: from 'branded' to 'pre-packaged and labelled'
3.2 Withdrawal of exemption in Goods
4. Review of exemptions in Services
4.1 Exemptions on services which mostly are B2B supplies
4.2 Exemptions to Regulators
4.3 Exemptions prone to misuse
4.4 Exemptions not warranted as recipient could afford to pay
4.5 Rationalization of tax structure on services supplied by Department of Post
4.6 Miscellaneous Exemptions
Annexure-B: Constitution of Group of Ministers on Rate Rationalization
Annexure-C: Press Release on recommendations of the 46th GST Council Meeting

#### **Future Roadmap**

- GoM felt that issue of GST rate slab re-structuring requires further deliberation
- Inversion in Textiles sector referred to GoM by 46<sup>th</sup> GST Council Meeting
- Few miscellaneous issues forwarded by Fitment Committee also to be examined.
- Extension of three months sought for completing deliberations on remaining Terms of Reference and submission of final report

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# THANK YOU

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Agenda for 48th GSTCM Volume 1



# 47th GST Council Meeting

# Report of Group of Ministers (GoM) on GST System Reforms

#### GoM on GST System Reforms (IT improvements)

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- The 45th GST Council reconstituted the Group of Ministers (GoM) on IT issues in GST.
  - 2 Meetings held First on 21<sup>st</sup> Oct.' 21 and Second Meeting on 10<sup>th</sup> Feb' 22
  - Deliberated on 16 broad suggestion: Prioritized Action Points for detailing by the officers
  - Priority I (7 Suggestions) and II (5 Suggestions)
  - Priority I Agenda items summarized below:

#### Agenda Item details

- 1 Integrated approach on improving Registration process: Using biometric authentication for high-risk applicants; (Item 1)
- 2 Risk Assessment of New applicants/registrants using Machine Learning (ML) and to carry out Mandatory Physical Verification as Assigned by the System (Item2A)
- 3 AI/ML based interdiction grounded on suspicious behaviour of existing taxpayers to be used for carrying out system assigned verifications etc (Item 2B)
- 4 Online Address verification of New and Existing Taxpayers with the help of Geocoding (Item 2C)
- 5 Capturing Electricity Bill meta data (CA No.) during Registration process (Item 3)
- 6 Validation of Bank Accounts of taxpayers through NPCI(Item 4)
- 7 Lead based dashboard, Task & Case Creation and Feedback Mechanism in Back Office (Item 7)

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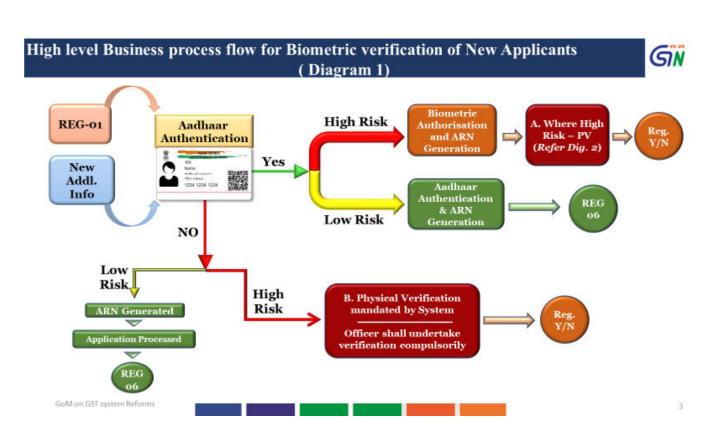
#### Integrated approach on improving Registration process(Agenda 1)

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**Issue #** : Integrated approach on improving Registration process: Using biometric authentication for high-risk applicants; (Item 1)

Solution #: AIML and Risk Based identification of Applicants for Biometric Authentication

GoM Decision #: GoM approved using mandatory biometric authentication for high-risk applicants for registration under GST.

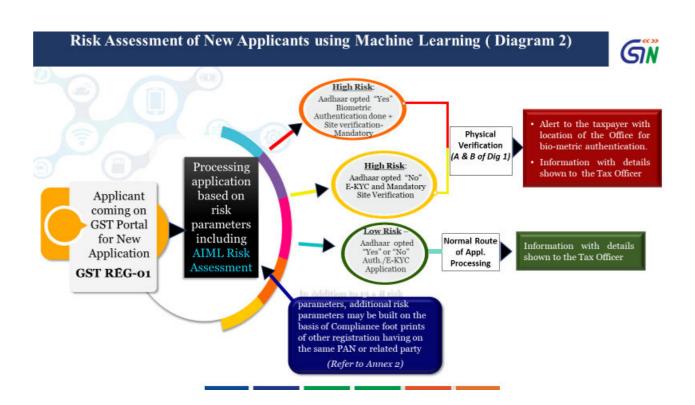


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Issue # : Risk Assessment of New applicants/registrants using Machine Learning (ML) and to carry out Mandatory Physical Verification as Assigned by the System (Item2A)

Solution #: AIML and Risk Based risk assessment of new registrations for mandatory physical verification

GoM Decision #: GoM approved identifying risky behaviour of the new registrants/applicants using AI/ML and place the information on the back office for the field officer to carry out mandatory physical verification of these taxpayers.



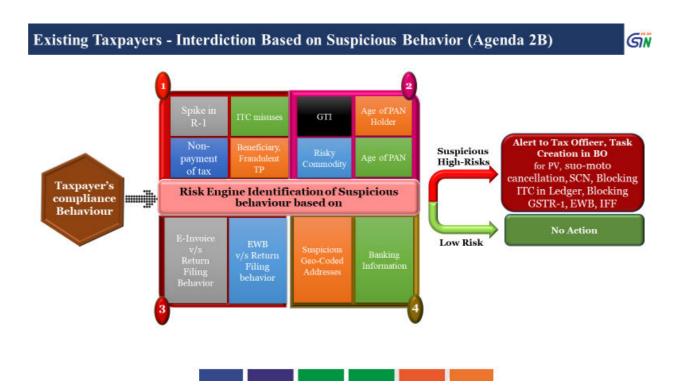
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AI/ML based interdiction grounded on suspicious behaviour of existing taxpayers (Agenda 2B)

Issue # : AI/ML based interdiction grounded on suspicious behaviour of existing taxpayers to be used for carrying out system assigned verifications etc.

Solution #: AIML and Rule based identification of Suspicious transactions for verification

**GoM Decision #:** Approved AI/ML based interdiction to generate MIS for officers to take post registration verification and other necessary actions for high risk taxpayers.



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# Online Address verification of Taxpayers with the help of Geocoding (Agenda 2C)

Issue # : Online Address verification of New and Existing Taxpayers with

the help of Geocoding (Item 2C)

Solution #: Geocoding of all taxpayers

**GoM Decision #:** GoM approved online/site verification with the help of Geo-Coding and for officers to carry out physical verification of high-risk taxpayers or getting correct address filed by the taxpayers.

nline Address verification of f Geocoding(Agenda 2C) application provided by Map My India (MMI • In case of major gap, mandatory physica	) using comparison with Geo-Coded	Value
Either by departmental officer or     Through any other agency as requ     MIS of such applications and outcome of phy	ired by the state, before approv	al of such application.
Residential Adpress		
Locate proceedings     Autor of each of the source of the	Indian BHALUBASA Dainy Integ the marker to your location Tant to school AGRICO AREA Brasha Sporting Club	-
The Golden Inte Indian Oil Petrol	Cansport npany O Fire Service Station	Srivatava Srivatava Institute of Timplate of India
Laoo m	GOLMURI Incat Industries	Management Paper Inc.
	Complete Match	
Si No Field Name	As-Is Value	Geo-Coded Value
1 Country 2 Pincode	831001	831001
3 State	Jharkhand	Jharkhand
4 District	East Singhbhum	East Singhbhum
5 City/Town/Village	Jamshedpur, Agrico	Jamshedpur

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# Capturing Electricity Bill meta data ( CA No.) during Registration process (Agenda 3):



# Issue # : Capturing Electricity Bill meta data ( CA No.) during Registration process (Item 3):

Solution #: Online capture and verification of Meta Data of Supporting

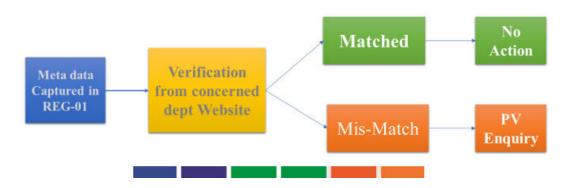
documents

**GoM Decision #:** GoM approved inclusion of Electricity Bill meta data ( CA No.) as a data field during registration by new taxpayers. CA Number shall be verified to improve the quality of registered addresses in GST System.

#### Making Electricity CA No. mandatary for Registration (Agenda 3)



- · Field in the registration form to capture meta data:
  - · Electricity consumer number /document number of any proof of principal place of business.
  - The GoM suggested GSTN to collect meta-data supported by documents (electricity bill etc.) furnished by taxpayers at the time of registration that clearly identifies their place of business.
  - Small change in REG-01 to capture document number, name and other details will be required.
  - State administration shall ensure that such departments are providing online access/search facility of such document.



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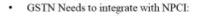
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Solution #: Online verification of Bank Accounts

**GoM Decision** #: GoM approved real time validation of Bank Accounts through integration of GST System with NPCI. The outcome of the verification shall be made available to the tax officers. GSTN to take necessary steps to make available information related to all bank accounts against a particular PAN.

#### Validation of Bank Account through NPCI (Agenda 4)



- The GoM discussed the possibility of Bank Account verification of taxpayer from authentic databases e.g., NPCI, CBDT etc
- The GoM proposed to add a feature on online Bank Account validation by integrating GST system with NPCI This system would highlight the high-risk category of taxpayers on a near real-time basis, for taking action by the tax officers
- This system would highlight the high-risk category of taxpayers on a near real-time basis, for taking action by the tax officers

Input from GSTN					Validation from NPCI			
Header	Reference No.	PAN	IFSC Code	Account number	IFSC Bank Account validity	Primary Account holder PAN	Primary Account Holder Name.	Account Number
Parameter name	Type, Account ID, State Code							
Sample	OTH1038710	AAQFG7471F	BNPA0009008	3002133454545	V verified	Null Not avialble	Null Not avialble	V Verified

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Lead based dashboard, Task & Case Creation and Feedback Mechanism in Back Office (Agenda 7)

Solution #: Action on ITC surge leads of BIFA

#### **GoM Decision #:** GoM approved development of BI-BO Feedback Mechanism for capturing the feedback of leads generated by BIFA (and provided to tax officers in BO systems)

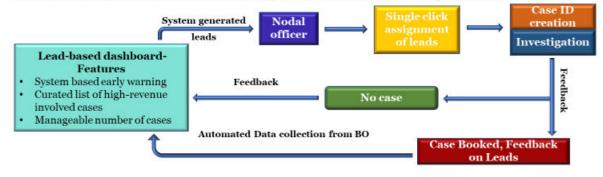


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#### Feedback Mechanism (Agenda 7)

Lead Based Dashboard in GAIN application of BIFA

- · GSTN may develop a feedback mechanism to create task for officers in BO
- · Leads generated in BIFA can be send to senior officers/nodal officers in their BO.
- · They can create task for officers in one click
- · Officers after investigating task may create a case and provide feedback which will be captured AUTOMATICALLY.



Proposal: Officers shall make use of Lead Based Dashboard in GAIN application of BIFA with feedback

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#### Second GoM Decisions Taken : Priority II Action Points

#### Priority II agenda items of the GoM

Agenda Item	Details
Agenda Item 8A & 8B.	Hard locking of Table 4 of GSTR 3B in order to restrict ITC up to 105%, and sequential filing of GSTR1 and GSTR 3B.
Agenda Item 9.	For tracking Non-Genuine/ Non-existent taxpayers (Fake invoicing) and for follow up action, there should be suitable communication platform to inform the task to the counterpart jurisdictional officer and to report compliance by the jurisdictional officer along with flagging of Non-genuine/ Non-existent Tax payer to dealer as well as tax officer.
Agenda Item 12.	Non-reporting of B2C Supplies. Payment portals to be mandated to report data in which annual transactions of individuals has exceeded more than 20 lakh in order to check for evasion of tax.
Agenda Item 13.	HSN level declaration in invoice or improving the same in Table 12 of GSTR1.
Agenda Item 16 A and B:	Proposal to integrate Income Tax, ICEGATE and Import/Export of Services data with GST system data.



# GN Goods And Services Tax Network

04-07-2022

GoM on GST system Reforms .

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Agenda for 48th GSTCM Volume 1

Report of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming

> 29<sup>th</sup> June, 2022 Chandigarh



# **Schema of the Presentation**

- Constitution of the GoM
- Considerations made by the GoM
- Challenges
- Deliberations by the GoM
- Recommendations

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# Constitution of the GoM on Casinos, Race Courses and Online Gaming

In May 2021, the GoM on Casinos, Race courses and Online Gaming was constituted with following Terms of Reference:

- To examine the issue of <u>valuation of services</u> provided by Casino, Race course and online gaming portals and <u>taxability of certain</u> <u>transactions in a casino</u>, with reference to the current legal provisions and orders of Courts on related matters.
- To examine whether any <u>change is required in the legal provisions</u> to adopt any better means of valuation of these services
- To examine the <u>administration of such valuation provisions if an</u> <u>alternative means of valuation is recommended</u>
- To examine the impact on other similarly placed services like lottery.

# **Constitution of the GoM**

- Meanwhile, GST Council in its 45<sup>th</sup> meeting held on 17.09.2021 agreed to defer various issues w.r.t. <u>Horse Racing, Casinos and</u> <u>Online Gaming</u>- for examination by the GoM.
- In Feb 22, the GOM was reconstituted.

#### **Constitution of the GoM**

#### S-31011/12/2021-DIR(NC)-DOR Government of India Ministry of Finance Department of Revenue

New Delhi, dated 10th February, 2022

#### OFFICE MEMORANDUM

Subject: Constitution of Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming - reg.

In partial modification to the OM of even number dated 24.05.2021 & 11.06.2021 on the subject cited above, it is stated that reconstituted membership of the GoM is as follows: -

<ol> <li>No.</li> </ol>	Name	Designation and State	
1.	Sh. Conrad Sangma	Chief Minister, Meghalaya	Convener
2.	Sh. Ajit Pawar	Deputy Chief Minister, Maharashtra	Member
3.	Smt. Chandrima Bhattacharya	Minister for Finance, West Bengal	Member
4.	Sh. Kanubhai Patel	Minister for Finance, Gujarat	Member
5.	Sh. Mauvin Godinho	Minister for Panchayat Raj, Transport, Animal Husbandry & Veterinary Services, Protocol & Legislative Affairs, Goa	
6.	Dr. Palanivel Thiaga Rajan	Minister for Finance, Tamil Nadu	Member
7.	Sh. Suresh Kumar Khanna	Minister for Finance, Parllamentary Affairs and Modical Education Departments, Uttar Pradesh	Member
S.	Sh. Thanneeru Harish Rao	Minister for Finance, Telangana	Member

2. The other terms of reference (ToR) for the GoM on Casinos, Race Courses and Online Gaming shall remain unchanged,

3. This issues with the approval of competent authority.

67. Gandhi Kumar) (Dr.N. Gandhi Kumar) (Director) Tel.011-23092613

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## **Issues before the GoM**

- Accordingly, main issues before the GoM were:
  - ✤Rate
  - ✤Valuation
  - Taxability of different activities in Casinos

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# Considerations by the GoM



# **Provisions of the GST Law**

#### Valuation:

- GST is applied on the transaction value, i.e., supply value of goods and services [Section 15 of the Act].
- In case of betting, gambling, lottery there may have been doubts as to whether the value is the full ticket price, entry fee, chips in casino <u>or</u> net of winnings
- Clarity on valuation of these activities has been provided in GST Rules which specifically provide Value of supply as follows:
- i. Lottery 100/128 of face value of ticket
- ii. Betting, gambling- 100% of face value of bet
- iii. Horse racing: Amount paid to the totalisator [Rule 31 A]

# **Provisions of the GST Law**

#### GST Rate:

Actionable claim involved in betting, gambling, or horse racing in race club has been kept in 28% rate slab [Notfn 1/2017-Rates]

Recreational, cultural and sporting services of: -Admission to Casino/Race Club/ events like IPL -Services provided by Race club -Gambling are also placed in 28% slab [Notfn 11/2017-rates]

# **Provisions of the GST Law**

**Clarification** has also been issued that

- 28% rate would apply on entry to casinos as well as on betting/gambling on the total bet value
- Further, GST would be leviable on entire bet value, that is, total of face value of any or all bets paid into the totalisator or placed with licensed bookmakers
   [Circular No. 27/01/2018-GST dated 04.01.2018]

# **Jurisprudence**

#### Sunrise Associates (2006)

The Constitution Bench of the Hon'ble Supreme Court held that lottery is an **actionable claim**. *Right to participate and right to win prize are inseperable rights conferred on a lottery buyer and entire consideration is paid for the chance to win*.

#### Skill Lotto case- 2020

#### The Hon'ble Supreme Court ruled that-

- a) Inclusion of actionable claim in Goods (sec 2(52)) is not illegal
- b) Prize money not to be excluded for determining taxable value. **Upheld the validity of Rule 31A(3).**

# **Challenges**

- Comparison ?
- Risk of closure
- Impact on other similar sectors
- Absence of clarity-skill vs chance
- International Practice
- Finding a formula which runs through all

# **Challenges**

- Online Gaming:
- Position taken by trade is that it is skill and not chance. Hence, it is not gambling or betting.
- Tax on Gross Gaming Revenue (GGR)/Platform fees.
- Adverse impact on the children and youth
- Market size of Industry 34600 cr INR FY 21 with a CAGR of 38%, estimated to grow to 165000 cr INR by FY 25

# **Challenges**

Horse Racing:

- Money goes to an escrow accounthence tax should be levied on GGR/Commission.
- Impact on the ancillary related sectors viz., breeding, pharma, etc.

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**Challenges** 

- Casino:
- Concerns expressed by Hon'ble Member from Goa- (i) likelihood of closure of casinos, which is the main source of revenue (ii) Levy of tax on GGR/Net chips
- How to keep a check on what happens inside the casino.
- International practices.
- Valuation of the Industry
- Other members felt that tax should be levied on the full value of the chips bought.

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#### Deliberations by the GoM

 The GoM deliberated upon the issues in the two meetings held in New Delhi on 2<sup>nd</sup> May, 2022 and 18<sup>th</sup> May, 2022.

#### View taken:

 Valuation of supply of lottery on its face value (cumvalue basis) was settled after extensive deliberation and discussions in GST Council and has been upheld by way of judicial pronouncements by the Hon'ble Supreme Court. It should not be re-opened.

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- The actionable claim provision is common and should be equally treated in all such cases.
- The GoM also felt that any different view on actionable claim for casino, online gaming, horse racing will also have implication on lottery.
- Simplification of GST principles to be kept in mind.

## Deliberations by the GoM

- All these activities are to be uniformly taxed and because of their nature and negative externalities, should be levied a higher incidence of tax
- GST being a pass-through tax, the incidence of entire GST is borne by the players, and its incidence does not fall on the suppliers involved in these activities
- Recommendations regarding valuation should be made in conformity with the statutory & legal framework and the jurisprudence in similar matters.

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# Deliberations by the GoM

#### Legislative Intent:

- Law does not differentiate between <u>game of chance or game of skill</u>: In valuation rule, it only has a reference of "chance to win" which is an inherent feature in all these activities, including online gaming.
- Taxing full value of consideration without deducting prize pay-outs.
- Actionable claim in (i) lottery, (ii) betting and (iii) gambling is taxable in GST. As per law, even the actionable claim in betting alone is also taxable
- By removing the prize pay-outs from the value of bets, it will result in effectively removing actionable claims from the value of supply, defeating –

Purpose of subsuming of taxes on betting and gambling in GST

o Intent of bringing actionable claims within the purview of GST

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# **Deliberations by GoM**

#### **Casino-specific Deliberations:**

- Taxing each round, once tax is collected at the entry to casino on the purchase of chips, is neither feasible nor desirable.
- It was also felt that the right to play with the winnings of the previous game was inherent in the rights acquired by the players against the price paid for the chips/tokens purchased from the casinos.

# Recommendations

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# **Recommendations**

- Imposition of GST on these activities namely, casinos, race courses, online gaming and lottery should be uniform (in terms of rate and valuation).
- For the purpose of levy of GST, no distinction merely on the ground that an activity is a game of skill or of chance or both.
- **Rate** of GST: **28%** on all activities namely Casinos, Race Courses and Online Gaming.

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## **Recommendations**

## Valuation:

- <u>Online gaming:</u> the activities be taxed at 28% on the full value of the consideration, by whatever name such consideration may be called including contest entry fee, paid by the player for participation in such games without making a distinction such as games of skill or chance etc.
- <u>Race Courses:</u> GST to be levied at the rate of 28% on the full value of bets pooled in the totalisator and placed with the bookmakers.
- <u>Casino:</u> GST to be levied at the rate of 28% on full face value of the chips/coins purchased from casino by a player.

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## Recommendations

<u>Taxablity in Casinos:</u>

- In casinos, once GST is levied on purchase of chips/coins (on face value), no further GST to apply on the value of bets placed in each round of betting including those played with winnings of previous rounds.
- Entry fee to casinos: GST at the rate of 28% is leviable on the services by way of access/entry to Casinos on payment of consideration/entry fee which compulsorily includes price of one or more other supplies such as food, beverages etc.; this being a mixed supply. However, optional supplies made independently of the entry ticket shall be taxed at the rates as applicable on such supplies.

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# **Thank You**

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Agenda for 48th GSTCM Volume 1

## <u>Agenda Item 2 : Ratification of the Notifications, Circulars and Orders issued by the GST Council</u> and decisions of GST Implementation Committee for the information of the Council

In the 22<sup>nd</sup> meeting of the GST Council held at New Delhi on 6<sup>th</sup>October, 2017, it was decided that the Notifications, Circulars and Orders, which are being issued by the Central Government with the approval of the competent authority, shall be forwarded to the GST Council Secretariat, through email, for information and deemed ratification by the GST Council. Accordingly, till the 47<sup>th</sup>meeting held on 28<sup>th</sup>-29<sup>th</sup>June 2022, the GST Council had ratified all the Notifications, Circulars and Orders issued up to 18.06.2022.

2. In this respect, the following Notifications and Circulars issued after 18.06.2022 under the GST laws by the Central Government, as available on <u>www.cbic.gov.in</u>, are placed before the Council for information and ratification: -

Act/Rules	Туре	Notification / Circular / Order Nos.	Description/Subject
		1. Notification No. 09/2022-Central Tax dated 05.07.2022	Seeks to notify the provisions of clause (c) of Section 110 and Section 111 of the Finance Act, 2022
		2. Notification No. 10/2022-Central Tax dated 05.07.2022	Seeks to exempt taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing annual return for FY 2021-22
Notifications under the	ander the GST Act, 7 / CGST Central Tax	3. Notification No. 11/2022-Central Tax dated 05.07.2022	Seeks to extend due date of furnishing FORM GST CMP-08 for the quarter ending June, 2022 till 31.07.2022
CGST Act, 2017 / CGST Rules, 2017		4. Notification No. 12/2022-Central Tax dated 05.07.2022	Seeks to extend the waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22
		5. Notification No. 13/2022-Central Tax dated 05.07.2022	Seeks to extend dates of specified compliances in exercise of powers under Section 168A of the CGST Act, 2017
		6. Notification No. 14/2022-Central Tax dated 05.07.2022	Seeks to make amendments (First Amendment, 2022) to the CGST Rules, 2017

7. Notification No. 15/2022-Central Tax dated 13.07.2022	Seeks to amend Notification No. 10/2019- Central Tax
8. Notification No. 16/2022-Central Tax dated 13.07.2022	Seeks to amend Notification No. 14/2019- Central Tax
9. Notification No. 17/2022-Central Tax dated 01.08.2022	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Crore from 1 <sup>st</sup> October, 2022
10. Notification No. 18/2022-Central Tax dated 28.09.2022	Seeks to notify 01.10.2022 as the date on which provisions of Sections 100 to 114, except clause (c) of Section 110 and Section 111 of Finance Act, 2022, shall come into force
11. Notification No. 19/2022-Central Tax dated 28.09.2022	Seeks to make amendments (Second Amendment, 2022) to the CGST Rules, 2017
12. Notification No. 20/2022-Central Tax dated 28.09.2022, along with corrigendum dated 29.09.2022	Seeks to rescind Notification No. 20/2018-Central Tax dated 28th March, 2018
13. Notification No. 21/2022-Central Tax dated 21.10.2022	Seeks to extend the due date of filing FORM GSTR-3B for the month of September, 2022
14. Notification No. 22/2022-Central Tax dated 15.11.2022	Seeks to make amendments (Third Amendment, 2022) to the CGST Rules, 2017

	15. Notification No. 23/2022-Central Tax dated 23.11.2022	Seeks to empower the Competition Commission of India to handle anti- profiteering cases under CGST Act, 2017 with effect from 01.12.2022
	16. Notification No. 24/2022-Central Tax dated 23.11.2022	Seeks to make fourth amendment (2022) to CGST Rules, 2017 with effect from 01.12.2022
	1. Notification No. 03/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 11/2017- Central Tax (Rate) dated 28.06.2017
	2. Notification No. 04/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 12/2017- Central Tax (Rate) dated 28.06.2017
Central Tax (Rate)	3. Notification No. 05/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 13/2017- Central Tax (Rate) dated 28.06.2017
	4. Notification No. 06/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 1/2017- Central Tax (Rate)
	5. Notification No. 07/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 2/2017- Central Tax (Rate)
	6. Notification No. 08/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 3/2017- Central Tax (Rate)
	7. Notification No. 09/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 5/2017- Central Tax (Rate)

		8. Notification No. 10/2022-Central Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 2/2022- Central Tax (Rate)
		9. Notification No. 11/2022-Central Tax (Rate), dated 13.07.2022	Rescinds Notification No. 45/2017- Central Tax (Rate)
	Union	1. Notification No. 03/2022-Union Territory tax dated 13.07.2022	Seeks to amend Notification No. 02/2019- Union Territory Tax
	Territory Tax	<ul><li>2. Notification No.</li><li>04/2022-Union</li><li>Territory tax dated</li><li>13.07.2022</li></ul>	Seeks to amend Notification No. 02/2017- Union Territory Tax
		1. Notification No. 03/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No 11/2017- Union territory Tax (Rate) dated 28.06.2017
Notificationsu nder UTGST Act / UTGST Rules	Union Territory Tax (Rate)	2. Notification No. 04/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No 12/2017- Union territory Tax (Rate) dated 28.06.2017
		3. Notification No. 05/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No 13/2017- Union territory Tax (Rate) dated 28.06.2017
		4. Notification No. 06/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No. 1/2017- Union Territory Tax (Rate)
		5. Notification No. 07/2022-Union Territory tax (rate),	Seeks to amend Notification No. 2/2017- Union Territory Tax (Rate)

		dated 13.07.2022	
		6. Notification No. 08/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No. 3/2017- Union Territory Tax (Rate)
		7. Notification No. 09/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No. 5/2017- Union Territory Tax (Rate)
		8. Notification No. 10/2022-Union Territory tax (rate), dated 13.07.2022	Seeks to amend Notification No. 2/2022- Union Territory Tax (Rate)
		9. Notification No. 11/2022-Union Territory tax (rate), dated 13.07.2022	Rescinds Notification No. 45/2017- Union Territory Tax (Rate)
		1. Notification No. 03/2022-Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 8/2017- Integrated Tax (Rate) dated 28.06.2017
	Integrated	2. Notification No. 04/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 9/2017- Integrated Tax (Rate) dated 28.06.2017
Notifications under IGST Act / IGST Rules, 2017	Tax (Rate)	3. Notification No. 05/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No 10/2017- Integrated Tax (Rate) dated 28.06.2017
		4. Notification No. 06/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 1/2017- Integrated Tax (Rate)

	5. Notification No. 07/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 2/2017- Integrated Tax (Rate)
	6. Notification No. 08/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 3/2017- Integrated Tax (Rate)
	7. Notification No. 09/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 5/2017- Integrated Tax (Rate)
	8. Notification No. 10/2022- Integrated Tax (Rate), dated 13.07.2022	Seeks to amend Notification No. 2/2022- Integrated Tax (Rate)
	9. Notification No. 11/2022- Integrated Tax (Rate), dated 13.07.2022	Rescinds Notification No. 47/2017- Integrated Tax (Rate)
	1. Circular No. 170/02/2022-GST dated 06.07.2022	Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B and statement in FORM GSTR-1
Circulars under the CGST Act, 2017	2. Circular No. 171/03/2022-GST dated 06.07.2022	Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices
	3. Circular No. 172/04/2022-GST dated 06.07.2022	Clarification on various issue pertaining to GST

4. Circular No. 173/05/2022-GST dated 06.07.2022	Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional Notification
5. Circular No. 174/06/2022-GST dated 06.07.2022	Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A
6. Circular No. 175/07/2022-GST dated 06.07.2022	Manner of filing refund of unutilized ITC on account of export of electricity
7. Circular No. 176/08/2022-GST dated 06.07.2022	Withdrawal of Circular No. 106/25/2019-GST dated 29.06.2019
8. Circular No. 177/09/2022-GST dated 03.08.2022	Clarifications regarding applicable GST rates & exemptions on certain services
9. Circular No. 178/10/2022-GST dated 03.08.2022	GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law
10. Circular No. 179/11/2022-GST dated 03.08.2022	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28th–29th June, 2022 at Chandigarh
11. Circular No. 180/12/2022-GST dated 09.09.2022	Guidelines for filing/revising TRAN- 1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd
12. Circular No. 181/13/2022-GST dated 10.11.2022	Clarification on refund related issues

13. Circular No. 182/14/2022-GST dated 10.11.2022	Guidelines for verifying the Transitional Credit in light of the order of the Hon'ble Supreme Court in the Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, order dated 22.07.2022 & 02.09.2022
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3. The GST Council may grant ratification to the Notifications and Circulars as detailed in para 2 above.

4. It is further informed that out of the Notifications and Circulars detailed in Para 2 above, certain Notifications and Circulars have been issued to implement the decisions of the GST Implementation Committee (GIC) taken during the period since the 47th meeting of the Council. The details of such decisions and the relevant Notifications and Circulars issued to implement such decisions are enclosed as **Annexure 2A** to this Agenda Note.

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

I. The GST implementation Committee (GIC) took certain decisions between 47<sup>th</sup> GST Council meeting and the upcoming 48<sup>th</sup> GST Council meeting. Due to the urgency involved, most of the decisions were taken after obtaining approval by circulation amongst GIC members. The details of the decisions take are given below:

## 1. Decision of GIC by Circulation on 21<sup>st</sup> July, 2022 on rollout of the fifth phase of einvoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Cr.

- a. In the agenda note received from GSTPW, CBIC, it was stated that the GST Council, in its 37<sup>th</sup> meeting held on 20<sup>th</sup> September, 2019, had recommended the roll out of e-invoicing in a phased manner. Accordingly, electronic invoicing system was introduced with effect from 01.10.2020 for taxpayers with turnover of more than Rs. 500 crores in any preceding financial year from 2017-18 onwards for B2B transactions and for export invoices. The same was extended for taxpayers with turnover of more than Rs. 100 crores from 01.01.2021. Vide Notification No. 05/2021-CT dated 08.03.2021, the same has been extended for taxpayers with turnover of more than Rs. 50 crores from 01.04.2021. Further, vide Notification No. 01/2022-CT dated 24.02.2022, the same has been extended for taxpayers with turnover of more than Rs. 20 crores from 01.04.2022.
- b. It was further stated that data has been received from GSTN vide email dated 12.07.2022 related to number of taxpayers along with their turnover:

<b>Turnover slabs</b>	Number	Number of GSTINs
	Of PANs	
Turnover above 500Cr	10,654	79,475
Turnover between 100Cr to	43,483	1,16,292
500Cr		
Turnover between 50Cr	59,254	1,02,905
to100Cr		
Turnover between 20Cr to 50Cr	1,86,662	2,62,745
Turnover between 10Cr and	2,94,982	3,67,941
20Cr		
Turnover between 5Cr and	4,89,857	5,73,905
10Cr		

## Summary of Slab wise PAN level AATO in any of the previous financial years (2017-18 to 2021-22)

c. It was also stated in the agenda note that e-invoice has been one of the major reforms taken by the Government which is beneficial for both tax administration as well as trade. It helps the taxpayers in backward integration and automation of tax relevant processes and in real-time

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updation of data on the GSTN system and thereby, drastically reducing the time taken in filing the returns. Therefore, it was proposed that next phase of e-invoicing may be rolled out. Taxpayers with annual turnover of more than Rs. 10 crore in any preceding financial year from 2017-18 onwards may be brought under the ambit of e-invoice for B2B transactions and for export invoices in the fifth phase as per capacity of GSTN/NIC. Further, sufficient window of 2-3 months may be provided to taxpayers to make necessary IT changes as well as for NIC to enable the specified taxpayers on sandbox for testing. Data suggests that approximately 3,67,941 GSTINs have AATO between rupees 10 Cr to 20 Cr who would be impacted by the decision.

- d. Accordingly, it was proposed that this provision for lowering threshold for issuance of einvoice to Rs 10 crore may be made applicable with effect from 01.10.2022 to provide sufficient time to taxpayers as well as NIC to make necessary preparations.
- e. **Decision**: The Members of GIC approved the above proposal regarding rollout of the fifth phase of e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Cr.
- f. Implementation Status: The decision of GIC was implemented by way of issuance of Notification No. 17/2022 Central Tax dated 1<sup>st</sup> August, 2022.

## 2. Decisions in the 42<sup>nd</sup> Meeting of the GIC held on 16<sup>th</sup> August, 2022

## 2.1 Agenda: GST data sharing with Ministries and Departments

a. In the agenda note, it was mentioned that after introduction of GST, large amount of quality data was available with the GST system that can be used within Government for various purposes, including better decision making and better targeting of Government resources. Department of Revenue and State Tax departments have been receiving requests from different Ministries/Departments/Agencies, at Central as well as State levels, seeking data related to GST. These request for data can be broadly classified into three categories as under:

## I. Validating GSTIN using GSTN validation API with the following data field.

It was further stated these requests are from those agencies that take the GSTIN from their clients for their purpose. Examples could include procurement, subsidy and other benefits. These agencies may like to verify the validity of the GSTIN given by the entity. GSTN has a publicly available facility on their portal, called "search taxpayer", where the details of the taxpayer for a given GSTIN is made available, including the legal name, trade name, address, date of registration, whether it is Aadhaar authenticated, major goods and services that the entity deals in and even the filing status. While this information is available on the portal, it has to be accessed through manual intervention for each GSTIN.

It was proposed that since this facility is anyway available publicly, it could be made through APIs to Government Ministries/Departments/Agencies so that their IT systems can easily access this information.

II. Aggregated GST data which does not involve disclosure of any personally identifiable information of a taxpayer etc. Page 156 of 531 It was also stated the second set of data sharing request pertain to aggregate information, mainly for planning and decision-making purposes. For example, aggregate information of e-way bill can give important insights into movement of goods, that would be useful for National and State Highway organisation. Details of gross GST collection every month is being widely used for macro-economic monitoring.

It was proposed that aggregate information as may be available from those fields of various statements under GST legal framework that are credible and have a system to ensure its correctness, even if on a risk based system, which do not reveal identity of a taxpayer or an identifiable set of taxpayer in any way, can be shared with Government Ministries/Departments/Agencies for planning and better decision making. It can also be considered that a subset of this information can be made available even in public domain so that they are available even to industry and research organisations. Currently, details of GST collection and settlement are put in public domain with a delay as per the decision of the GST Council.

## III. Dis-aggregated data which does not disclose the identity of the taxpayer

In the agenda note, it was mentioned that apart from aggregate data, at times agencies request for dis-aggregated data but with the identity of taxpayer masked. Such data can include details relating to individual e- way bills with the GSTIN of the supplier and the recipient removed. While most of the requirements can be met using aggregate data, many use advance analytics requiring dis-aggregated data. This would also allow mapping of datasets across IT platforms of different agencies using identifiers that cannot be traced back to the supplier or the recipient.

It was proposed that this information could be shared with Government Ministries/Departments/Agencies if they are able to demonstrate that their use case requires disaggregated data and there is value in sharing dis-aggregated data for such a use case.

Any data sharing request that does not fall under the above category should only be done with specific approval of the GST Council/GST Implementation Committee on a case to case basis. It may be noted that at previous occasions, data of individual taxpayers has been shared with Government agencies where the legal framework required providing such data, like with National Authority Chemical Weapons Convention (NACWC), Cabinet Secretariat, MSME registration etc. These have been done after approval of the GSTC/GIC. At specific instances, data is being shared with enforcement agencies for enforcement purposes and where GST data is required as an evidence.

- b. The sharing of data should be subject to following general conditions:
  - i. The user agency should ensure safety and security of the data received from GST system and put in place proper IT and administrative mechanisms to ensure safety of data shared.
  - ii. The user agency should use the data only for the purpose it was shared and not disseminate the data further to other agencies.
  - iii. The user agency should not use the raw data for commercial benefits since this data has been acquired from the compliances furnished by taxpayers. Agencies can, however, charge for value added services made available based on the data shared.
  - iv. GST Council reserves the right to revoke access to any data shared with any agency at any time if it comes to a conclusion that sharing of a set of data with an agency is not in public interest.

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The GST data is collectively owned by Centre and States and is held by GSTN under the guidance of GST Council. Decision has to be taken by both Centre and States as to how the GST data of the taxpayer can be shared with other departments/ministries for their use.

- c. A video conference was held on 16.08.2022 to enable the members to share their concerns and arrive at a consensus on the Agenda Item. The minutes of the VC is placed as **Annexure I**.
- d. **Decision:** The Members of GIC decided that a detailed agenda note for sharing of data with Ministries/Govt Depts would be placed in the next GST Council meeting for approval.
  - 3. Decision of GIC by Circulation on 26<sup>th</sup> August, 2022 on draft Circular for providing guidelines for the registered persons for filing/revising TRAN-1/TRAN-2 as per directions of the Hon'ble Supreme Court vide its order dated 22.07.2022 in the case of Union of India Vs M/s. Filco Trade Centre Pvt. Ltd.
- a. In the agenda note, it was stated that the Hon'ble Supreme Court in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, vide Order dated 22.07.2022 has issued the following directions:

"1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

3. GSTN has to ensure that there are no technical glitch during the said time.

4. The concerned officers are **given 90 days thereafter** to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."

b. It was further stated that the said Order of the Hon'ble Supreme Court was examined and opinion of the Additional Solicitor General of India (ASG) was sought on for clarification on various issues arising out of the said judgment. The ASG has opined that the opportunity for filing/ revising TRAN forms by the Hon'ble Supreme Court during 01.09.2022 to 31.10.2022 is for all registered taxpayers, who are eligible to file TRAN forms, whether they had filed writ petition or not, or whether they had filed application before ITGRC or not. The ASG has also opined that the said decision of the Hon'ble Supreme Court has to be enforced and filing review

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petition would not be desirable. In view of the above opinion of ASG, a time bound action is required for implementation of the directions of the Hon'ble Supreme Court in the said judgment.

- c. It was also stated in the agenda note that the said matter was discussed by the Law Committee in its meeting held on 03.08.2022 and 12.08.2022. It was decided by the Law Committee that a Circular may be drafted at the earliest for providing guidelines for the registered persons for filing/revising TRAN-1/TRAN-2 in the window provided by the Hon'ble Supreme Court, and another separate Circular shall be drafted later on for providing guidelines for the jurisdictional officer for verification of the TRAN-1/TRAN-2 filed/revised by the taxpayers in terms of Order of the Hon'ble Supreme Court. The draft Circular for providing guidelines for the registered persons for filing/revising TRAN-1/TRAN-2, as discussed by the Law Committee in its meeting held on 12.08.2022 and as finalized vide circulation, was placed before the GIC for approval.
- d. It was also mentioned that on the request of GSTN, an application/ prayer was being filed before the Hon'ble Supreme Court for seeking extension of one more month for opening of portal for enabling the aggrieved registered persons for filing/ revising Tran forms on the portal. Pending a decision by the Hon'ble Supreme Court on the said application/ prayer, the directions of the Hon'ble Supreme Court vide Order dated 22.07.2022 for opening common portal for filing TRAN-1/ TRAN-2 by aggrieved registered persons during 01.09.022 to 31.10.2022 needs to be implemented in a time bound manner. Accordingly, approval of GIC was sought for issuance of the draft Circular, as finalized by the Law Committee, for providing guidelines to the registered persons for filing/revising TRAN-1/TRAN-2 on the portal, so that the said Circular can be issued in a timely manner before start of the time period provided by the Hon'ble Supreme Court for filing/ revising Tran forms. It is also mentioned that dates, as to when the common portal shall be opened for the registered person for filing or revising TRAN-1/TRAN-2, and dates for subsequent verification by the concerned officers would be finalized in the Circular, based on the final directions/ Order of the Hon'ble Supreme Court in response to the above mentioned affidavit/ application.
- e. **Decision**: The Members of GIC approved the above proposal along with the draft Circular.
- f. Implementation Status: In pursuance of GIC decision dated 26.08.2022, Circular No. 180/12/2022-GST dated 09.09.2022 was issued on "Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of the Hon'ble Supreme Court in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd".

## 4. Decisions in the 43<sup>rd</sup> Meeting of the GIC held on 22<sup>nd</sup> September, 2022

4.1 Agenda: Notifying the remaining provisions of Finance Act, 2022 and consequential amendments in the CGST Rules, 2017

a. In the agenda note, it was stated that various amendments in the provisions of Central Goods and Services Tax Act, 2017 has been made vide the Finance Act, 2022. Based on the recommendations of the GST Council in its 47<sup>th</sup> meeting held on 28<sup>th</sup> and 29<sup>th</sup> June, 2022, provisions of clause (c) of Section 110 and Section 111 of the Finance Act, 2022 have already been notified by the Centre vide Notification No. 09/2022-Central Tax, dated 05.07.2022. Page 159 of 531

Consequent insertion of Rule 88B and sub-rule 87(14) in the CGST Rules, 2017 has also been carried out by the Centre vide Notification No. 14/2022-Central Tax, dated 05.07.2022.

- b. It was further stated that the GST council has recommended that the other provisions of the Finance Act, 2022 pertaining to GST may be notified w.e.f. 01.10.2022 by both the Centre and the States. Once these provisions are notified, corresponding amendments in the CGST Rules, 2017 would also be required to be carried out simultaneously.
- c. It was also stated in the agenda note that the Law Committee in its meeting held on 26.08.2022 and 07.09.2022 had accordingly, examined the requisite amendments to be carried out in the CGST Rules, 2017. The Law Committee recommended carrying out the requisite amendments to the CGST Rules, 2017 w.e.f. 01.10.2022 consequent to the Notification of the remaining provisions of the Finance Act, 2022, (except for the rules corresponding to sub-section(2) of amended Section 41 and corresponding to clause (ba) to sub-section(2) of Section 16, read with sub-section(2) of Section 38 of CGST Act, 2017 which will require further deliberations by the Law Committee, in consultation with GSTN, based on the data as well as the feedback to be provided by GSTN, as the implementation of the said rules may require development of requisite functionality on the portal by GSTN. The said amendments in the CGST Rules, 2017, as recommended by the Law Committee were placed before the GIC for approval.
- d. As no GST Council meeting was scheduled to be held before 01.10.2022, GST policy wing had requested that approval of GIC may be urgently obtained through circulation and that a meeting of GIC through video conferencing may be convened on 22.09.2022 for deliberations by GIC on this agenda.
- e. A meeting of the GIC was held on 22.09.2022 through video conferencing wherein the aforesaid agenda was taken up for discussion. The detailed minutes of the GIC meeting through VC is placed as **Annexure II**.
- f. **Decision**: The Members of the GIC approved the above agenda relating to the amendments proposed by Law Committee to the CGST Rules, 2017 with effect from 01.10.2022.
- g. Implementation Status: In pursuance of GIC decision dated 22.09.2022, Notification No. 18/2022- Central Tax dated 28.09.2022 was issued to notify 01.10.2022 as the date on which provisions of Sections 100 to 114, except clause (c) of Section 110 and Section 111 of Finance Act, 2022 shall come into force and Notification No. 19/2022- Central Tax dated 28.09.2022 was issued to make amendments (Second Amendment, 2022) to the CGST Rules, 2017. Further, Notification No. 20/2022-Central Tax dated 28.09.2022 and corrigendum to Notification No. 20/2022-CT dated 28.09.2022 was issued to rescind Notification No. 20/2018-CT dated 28.03.2018.

## 5. Decision of GIC by Circulation on 15<sup>th</sup> October, 2022 on proposal to settle IGST amount of Rs. 22,000 crores for the Financial Year 2022-23 on ad hoc basis.

a. In the agenda note, it was mentioned that depending on the amount of IGST remaining unapportioned, provisional settlement was done from time to time on an ad-hoc basis as per the provisions of sub-section(2A) of the Section 17 of the IGST Act, 2017, which reads as under:

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## 17. Apportionment of tax and settlement of funds.—

(2A). The amount not apportioned under sub-section(1) and sub-section(2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on ad-hoc basis and shall be adjusted against the amount apportioned under the said sub-sections

- b. It was further stated that as per the accounts made available by the Pr. CCA, CBIC, the unsettled IGST balance net of settlement and refund till September, 2022 is about Rs. 23,983 crore. Therefore, it is proposed to apportion ₹ 22,000 crore on ad-hoc basis, 50% to Centre and 50% to States/UTs.
- c. **Decision**: The Members of GIC approved the agenda item regarding proposal to settle IGST amount of Rs. 22,000 crores for the Financial Year 2022-23 on ad-hoc basis.

## 6. Decision of GIC by Circulation on 21<sup>st</sup> October, 2022 on extension of due date of filing FORM GSTR-3B for the month of September, 2022 due to technical glitches on portal

- a. In the agenda note, it was stated that in terms of sub-rule (1) of Rule 61 of the CGST Rules, 2017 every registered person furnishing return under sub-section(1) of Section 39, is required to furnish FORM GSTR-3B, electronically through the common portal on or before the twentieth day of the month succeeding such month. Accordingly, the due date of filing of FORM GSTR-3B for the monthly filers for month of September, 2022 was 20<sup>th</sup> October, 2022.
- b. It was further stated that the GSTN had informed vide email dated 20.10.2022 that taxpayers had reported slowness in portal while filing Form GSTR-3B return. The persistence of the issue had been acknowledged. Technical teams were working to resolve the issue. An incident report had been sent to CBIC for considering extension in the return filing dates.
- c. It was also stated in the agenda note that the as a result of the said technical glitch, taxpayers had lost crucial time before filing their returns. Thus, it was proposed that the due date of filing FORM GSTR-3B for the month of September, 2022, by registered person furnishing return under sub-section(1) of Section 39 of the CGST Act, 2017 be extended from 20<sup>th</sup> October, 2022 to 21<sup>st</sup> October, 2022. Accordingly, the draft Notification was proposed to be placed before the GIC for approval.
- Accordingly, approval of GIC was sought for extending the due date of filing FORM GSTR-3B for the month of September, 2022, by registered person furnishing return under sub-section(1) of Section 39 of the CGST Act, 2017 from 20<sup>th</sup>October, 2022 to 21<sup>st</sup> October, 2022
- e. **Decision**: The Members of GIC approved the above proposal to extend the due date for filing FORM GSTR-3B for the month of September, 2022, by registered person furnishing return under sub-section(1) of Section 39 of the CGST Act, 2017 from 20<sup>th</sup> October, 2022 to 21<sup>st</sup> October, 2022.
- f. Implementation Status: In pursuance of GIC decision dated 21.10.2022, Notification No. 21/2022- Central Tax dated 21.10.2022 was issued to extend the due date of filing FORM GSTR-3B for the month of September, 2022.

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## 7. Decision of GIC by Circulation on 31<sup>st</sup> October, 2022

- 7.1 Agenda 1:Guidelines for verifying the Transitional Credit in light of the Order of the Hon'ble Supreme Court in the Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, Order dated 22.07.2022 & 02.09.2022
- a. In the agenda note, it was stated that the Hon'ble Supreme Court in the case of Union of India vs. M/s. Filco Trade Centre Pvt. Ltd., SLP(C) No. 32709-32710/2018, vide Order dated 22.07.2022 has issued the following directions:

"1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.

2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).

*3. GSTN* has to ensure that there are no technical glitch during the said time.

4. The concerned officers are **given 90 days thereafter** to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.

5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.

6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."

Subsequently in Miscellaneous Application No. 1545-1546/2022 in SLP(C) No. 32709-32710/2018, the Hon'ble Supreme Court vide Order dated  $2^{nd}$  September, 2022 has inter-alia ordered as follows:

"The time for opening the GST Common Portal is extended for a further period of four weeks from today.

It is clarified that all questions of law decided by the respective High Courts concerning Section 140 of the Central Goods and Services Tax Act, 2017 read with the corresponding Rule/Notification or direction are kept open."

- b. It was further stated that based on the approval of the GIC, Circular No.180/12/2022 dated 09.09.2022 has been issued for providing guidelines for the registered persons for filing/revising TRAN-1/TRAN-2.
- c. It was also stated that Law Committee in its meeting held on 12.10.2022 deliberated and recommended issuance of a Circular for providing guidelines for the jurisdictional officer for verification of the TRAN-1/TRAN-2 filed/revised by the taxpayers. Since, GSTN has already opened the portal for taxpayers to file/revise TRAN-1/TRAN-2 as per Order of the Hon'ble Supreme Court, it is necessary to issue the said Circular at the earliest so that the jurisdictional

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tax officers can conduct necessary verification of such TRAN-1/TRAN-2 filed/revised in a time bound manner in accordance with the directions issued by the Hon'ble Supreme Court vide the above mentioned orders. The draft Circular recommended by the Law Committee was placed before the GIC for approval.

- d. Decision: The Members of GIC approved the agenda item along with the draft Circular.
- e. Implementation Status: The recommendation of GIC has been implemented by way of issuance of Circular No. 182/14/2022-GST dt. 10.11.2022.
  - 7.2 Agenda 2: Clarification regarding the issues relating to refund of unutilised ITC on account of inverted rated structure
- a. In the agenda note, it was stated that the formula for calculation of refund of unutilised ITC on account of inverted rated structure, prescribed under sub-rule (5) of Rule 89 of the CGST Rules, 2017 has been amended vide Notification No. 14/2022-Central Tax dated 05.07.2022 as under:

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

- b. Further, vide Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, refund of unutilised ITC on account of inverted rated structure has been restricted in respect of output supplies of certain commodities such as oils falling under the chapter heading/ sub-heading 1507 to 1518 and coal, lignite & peat falling under the chapter heading/ sub-heading 2701, 2702 & 2703 respectively w.e.f. 18.07.2022.
- c. It was also stated that references have been received from the field formations seeking clarification regarding the date of applicability of the formula, amended vide Notification No. 14/2022- Central Tax dated 05.07.2022, for calculation of refund of unutilised ITC on account of inverted rated structure as to whether the amended formula would be applicable to all refund claims pending as on 05.07.2022 or whether it would be applicable to refund claims filed on or after 05.07.2022.
- d. It was further stated that similar doubts have also been raised about the applicability of the restriction on refund of unutilised ITC on account of inverted rated structure imposed vide Notification No. 09/2022-CT (Rate) dated 13.07.2022 as to whether such restriction will apply to all refund claims pending on 18.07.2022 or will apply to refunds filed on or after 18.07.2022 or will apply to refunds of prospective tax periods only
- e. It was also mentioned that the issue was deliberated in the Law Committee in its meeting held on 21.09.2022 wherein Law Committee recommended the following:
  - i. The amended formula for calculation of refund of unutilised ITC on account of inverted rated structure, as per Notification No. 14/2022-CT dated 05.07.2022, would be applicable to refund claims filed on or after 05.07.2022.
  - ii. In respect of Notification No. 09/2022-Central Tax (Rate) dated 13.07.2022, the refund of unutilized ITC on account of inverted rated structure shall not be available for the supply of the notified commodities in respect of refund claims filed on or after 18.07.2022.

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- iii. The issue may be clarified through a Circular.
- f. It was informed that a draft Circular was prepared as per the recommendations of the Law Committee and placed before the Law Committee in its meeting held on 12.10.2022 wherein the same was approved. The draft Circular recommended by the Law Committee was placed before the GIC for approval.
- g. Decision: The members of GIC approved the agenda item along with the draft Circular.
- h. Implementation Status: The recommendation of GIC has been implemented by way of issuance of Circular 181/13/2022-GST dt. 10.11.2022.

## 7.3 Agenda 3: Amendment in the instructions of GSTR-9

- a. In the agenda note it was stated that vide Notification No. 18/2022-Central Tax dated 28.09.2022, the Government has appointed 01.10.2022 as the date on which the provisions of Sections 100 to 114, except clause (c) of Section 110 and Section 111, of the Finance Act, 2022 shall come into force. Thereby, the time limit for the various compliances under Section 16(4), Section 34(2) Section 37(3), Section 39(9) and Section 52(6) of CGST Act 2017, in respect of a particular Financial Year, has been extended and fixed as 30<sup>th</sup> November of the next Financial Year. In this regard, Government has also issued clarification regarding the applicability of this amended limitation period vide Press Note issued on 04.10.2022.
- b. It was further stated that the instructions to FORM GSTR-9 were amended vide Notification No. 14/2022-Central Tax dated 05.07.2022 for the Financial Year 2021-22. In the said Notification, the old limitation period (before amendment of the CGST Act, 2017 as notified vide Notification No. 18/2022-Central Tax dated 28.09.2022) was mentioned in instructions to FORM GSTR-9, as the said amendments in the CGST Act, 2017 made vide Finance Act, 2022 was not notified at the time of issuance of said Notification. Accordingly, to align the instructions of FORM GSTR-9 with the provisions of the Finance Act, 2022, the following changes may be made in the relevant part of paragraph 7 of instructions to GSTR-9 as under:
  - (A) The following changes may be made-

"For FY 2021-22, Part V consists of particulars of transactions for the previous financial year but paid in the **FORM GSTR-3B**between of April, 2022 to September-October, 2022 filed upto 30<sup>th</sup> November, 2022.";

- (B) in the Table, in second column, -
  - (I) against serial numbers 10 & 11, the following changes may be made -"For FY 2021-22, details of additions or amendments to any of the supplies already declared in the returns of the previous financial year but such amendments were furnished in Table 9A. Table 9B and Table 9C of FORM

amendments were furnished in Table 9A, Table 9B and Table 9C of **FORM GSTR-1** of April, 2022 to <del>September</del> October, 2022 filed upto 30<sup>th</sup> November, 2022 shall be declared here.";

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(II) against serial number 12, the following changes may be made -

"For FY 2021-22, aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April, 2022 to September-October, 2022 upto 30<sup>th</sup> November, 2022 shall be declared here. Table 4(B) of **FORM GSTR-3B** may be used for filling up these details.";

(III) against serial number 13, the following changes may be made -

"For FY 2021-22, details of ITC for goods or services received in the previous financial year but ITC for the same was availed in returns filed for the months of April, 2022 to September October, 2022 upto 30<sup>th</sup> November, 2022 shall be declared here. Table 4(A) of **FORM GSTR-3B** may be used for filling up these details. However, any ITC which was reversed in the FY 2021-22 as per second proviso to sub-section(2) of Section 16 but was reclaimed in FY 2022-23, the details of such ITC reclaimed shall be furnished in the annual return for FY 2022-23.;

- c. It was further stated that the issue was deliberated in the Law Committee in its meeting held on 12.10.2022. The Law Committee had approved the abovementioned changes in instruction to FORM GSTR-9. The draft Notification in this regard was placed before GIC for approval.
- d. **Decision:**The Members of GIC approved the agenda item regarding amendment in the instructions of GSTR-9.
- e. Implementation Status: The recommendation of GIC has been implemented by way of issuance of Notification No. 22/2022 dt. 15.11.2022.

## 8. Decision of GIC by Circulation on 15<sup>th</sup> November, 2022 on Authorizing Competition Commission of India (CCI) to handle Anti-Profiteering Cases and consequential rule amendments

- a. In the agenda note, it was stated that the National Anti-Profiteering Authority (NAA) has been constituted under Section 171 of the Central Goods and Services Act, 2017 to ensure that the reduction in tax or the benefits of input tax credit is passed on to the recipient by way of commensurate reduction in prices. Rule 137 of Central Goods and Service Tax Rules, 2017 prescribes that the tenure of the NAA shall be for 5 years from the date on which Chairman enters upon his office. Accordingly, the tenure of NAA is ending on 30<sup>th</sup> November, 2022.
- b. It was further stated that the GST Council in its 45<sup>th</sup> meeting held on 17.09.2021, while deliberating on the agenda No. 16 on National Anti-profiteering Authority, recommended that NAA to close down on 30.11.2022 and the work of the NAA can be taken up by Competition Commission of India (CCI). The relevant extract of the minutes of 45<sup>th</sup> GST Council meeting is as follows:

"The Secretary stated that as suggested by the Hon'ble Members, the tenure of NAA can be extended by one year up to 30.11.2022 after which it will close down and meanwhile it can be taken up with the CCI for taking up the work of Page 165 of 531

*NAA. He sought authority from the Council to take up the issue with CCI. The Council agreed with this arrangement.*"

- c. It was also stated in the agenda note that the matter was deliberated by the Law Committee for authorizing Competition Commission of India (CCI) to handle Anti-Profiteering Cases on expiry of tenure of NAA and for amendments in provisions of the CGST Rules, 2017 to provide for the same. Law committee in its meeting dated 21.09.2022 recommended that a Notification under Section 171(2) of CGST Act, 2017 may be issued authorizing CCI to handle Anti-Profiteering cases under CGST Act, 2017 with effect from 01.12.2022 and consequent amendments may also be carried out in Rules 122 to 137 under Chapter XV of the CGST Rules, 2017.
- d. Accordingly, approval of GIC was sought for authorizing Competition Commission of India (CCI) to handle Anti-Profiteering Cases and for making consequential rule amendments in the CGST Rules, 2017.
- e. **Decision:** The Members of GIC approved the agenda item regarding authorizing Competition Commission of India (CCI) to handle Anti-Profiteering Cases and for making consequential rule amendments in the CGST Rules, 2017 along with the draft Notification.
- f. Implementation Status: The recommendation of GIC has been implemented by way of issuance of Notification No.23/2022-Central Tax dt. 23.11.2022 and Notification No.24/2022-Central Tax dt. 23.11.2022.

## Minutes of the GST Implementation Committee (GIC) Meeting held on 16th August, 2022

A meeting of GIC was held through Video Conferencing on 16<sup>th</sup> August, 2022. The list of attendees for the GIC meeting through video conference is enclosed. A single Agenda item regarding GST data sharing with Ministries and Department which was shared with all the members through e-mail, was discussed during the meeting.

2. Member (GST), CBIC requested the Joint Secretary, GST Council Secretariat to give a brief on the Agenda item. The Joint Secretary, GSTCS thereafter gave a brief overview of classification of four categories of data including the general conditions for sharing the data as stated in Agenda Item

3. Additional Secretary, DoR stated that the consent based sharing of data was approved by GST Council in last meeting for implementing consent based data sharing module through amendments in the GST enactments, however, the current agenda item before GIC was regarding sharing of nonpersonal data of the taxpayer and which could be aggregated and could be utilized by any Government Agency i.e Centre or State for various purposes; that this data sharing would protect the taxpayers' identity and the data thus shared could not be used for any purpose other than it was sought for. Accordingly, the proposition was put up before the GIC for its approval in order to form SOP on the same which could be implemented through GSTN after due approval. He added further that keeping in view of the points raised by the State of Tamil Nadu and State of West Bengal, it was decided to have a meeting over the same and take a collective decision.

4. Member (GST), CBIC requested the other members to put forth their views on the Agenda item. The Commissioner of Commercial Taxes, Tamil Nadu stated that they had given their in-principle approval for the Agenda item, however, their only concern was that the implementation of this data sharing should be in line with the proposed amendments in the GST Act in order to avoid any litigation in future.

5. Commissioner, State Tax, West Bengal stated that the present issue being a major issue need to be discussed in the GST Council and not in GIC where only a few States were members. He also invited attention to the final decision of Law Committee taken in its meeting dated 22<sup>nd</sup> July 2020 regarding putting the general issue of data sharing with Government departments before the GST Council. He stated that the matter should be put up before the GST Council for further deliberations and collective decision on the same.

6. Joint Secretary, DoR, stated that if the GIC decided so, the matter might be put up before the GST Council. He further added that the validation of GSTIN through API to Government departments and Ministries would be beneficial for the business process of various departments of Centre and States; that aggregated data viz. e-way bill information could be shared with different departments for analytical purpose, data based decision making and for their own functional requirements; that this data sharing would protect the identity of taxpayers and therefore it would be different from consent based data sharing as per the proposed Section 158A. He stated that the first class of data was the publicly available information; second set of data was the aggregated information which did not belong to any taxpayer, and third one where the even disaggregated data was proposed to be shared, the taxpayer information would not be disclosed.

7. Member (GST), CBIC stated that an agreement could at least be reached on first clause where the information was already available in public domain and with API validation, it would be more convenient for any Govt department to access this information. The Commissioner, State Tax, West

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Bengal reiterated his point stating that the decision should be taken by all the States being stakeholders. Member (GST), CBIC agreed to the suggestion.

8. The CEO, GSTN stated that the API validation would be a basic validation which already existed in the system. He further stated that GSTN had been getting requests from various States asking for such validation. Member (GST), CBIC stated that GSTIN validation could be compared with Aadhar and PAN validation facility which was already being used by authorized agencies.

9. Member (GST), CBIC stated that it should also be clarified that the API validation facility would be provided to Government Organizations only. The Joint Secretary, DOR stated that the first set of data already being available in public domain could be shared by GSTN. Second class of data being the aggregated data having statistical value could also be put in public domain later if it was desired by many agencies. However, for dis-aggregated data, the sharing would be done for specific purpose.

10. Member (GST), CBIC stated that the concept of providing aggregated data was being used by Ministry of Commerce through DGFT portal where aggregated information of export and import was available in public domain and could be accessed by anyone. Accordingly, the ideas on what granular data needs to be publicly available may concretised. The Joint Secretary, DoR stated that such information related to GST would be made public only after analyzing the pattern of data requests from various departments.

11. The Additional Secretary, DoR stated that the issue can be put up before the GST Council in its next meeting vide an Agenda Note. Member (GST), CBIC stated that as suggested by West Bengal, as far as for the first set of data sharing was concerned, wider consultation and circulation amongst States was necessary and for second and third sets of data, the Agenda could be prepared in detail before taking it to the GST Council. The Additional Secretary also concurred with it.

12. Commissioner, State Tax, West Bengal clarified that they had no objection in proposed sharing of data, however, the same should be done with wide consultation with all States and with formal approval of GST Council. The Additional Secretary, DoR stated that the agenda would be put before the GST Council for formal approval.

**Decision:** GIC members decided that detailed agenda note for sharing of data with Ministries/Govt Depts would be placed in the next GST Council meeting for approval.

## List of Attendees to the GIC meeting held on 16th August, 2022

## Members (Centre)

- 1. Member (GST), CBIC
- 2. Additional Secretary, DoR
- 3. Principal Director General (Systems), CBIC
- 4. Principal Chief Commissioner (CGST), Delhi

## Members (State)

- 1. Commissioner, State Taxes, West Bengal
- 2. Commissioner, State Taxes, Tamil Nadu

## Special Invitees

- 1. CEO, GSTN
- 2. Joint Secretary, DoR

## Others

- 1. Principal Commissioner (GST Policy Wing), CBIC
- 2. Joint Secretary, GSTC Secretariat
- 3. Dy Commisssioner, Excise and Taxation Department, Haryana

## <u>Minutes of Video Conferencing on GIC Agenda- Notifying the remaining provisions of</u> <u>Finance Act, 2022 dt. 22.09.2022</u>

- 1. A meeting of GIC was held through Video Conferencing on 22<sup>nd</sup> September, 2022 with a single Agenda item regarding Notifying the remaining provisions of Finance Act, 2022 and consequential amendments in CGST Rules, 2017 (Annexure-1), was discussed during the meeting. The list of attendees for the GIC meeting through video conference are attached alongwith.
- Joint Secretary, GST Council Secretariat welcomed the newly appointed Member (GST), CBIC Ms. V. Rama Mathew to the meeting and requested her to chair the meeting. Member (GST), CBIC requested the Pr. Commissioner, GST Policy Wing to give a brief on the Agenda item.
- 3. The Pr. Commissioner, GST Policy Wing stated that in the 47<sup>th</sup> GST Council meeting it was agreed that several changes made to the CGST Act, 2017 vide Finance Act, 2022 may be notified w.e.f 01.10.2022 by Centre and States. He added that this would require corresponding changes to be made in the CGST Rules, 2017 and that the Law Committee in its meetings held on 26.08.2022 and 07.09.2022 proposed carrying out the requisite amendments to the CGST Rules, 2017 w.e.f. 01.10.2022 consequent to the Notification of the remaining provisions of the Finance Act, 2022. Thereafter, he stated that at present no GST Council meeting is scheduled to be held before 01.10.2022 and therefore, it was decided to table the proposed amendments as an agenda in GIC. Accordingly, the amendments proposed by Law Committee to the CGST Rules, 2017 were being taken up for approval in the meeting.
- 4. The Pr. Commissioner, GST Policy Wing detailed out stated Rule 21 of the CGST Rules, 2017 is being amended pursuant to amendments made to Section 29 of the CGST Act, 2017. The Rules 36, Rule 37, Rule 38, Rule 42, Rule 43, Rule 60, Rule 83, Rule 85, Rule 96 and Form PCT-05 are being amended due to omission of Sections 42,43 and Section 43A and to align the said Rules with the GSTR-1/GSTR2B/3B return filing system. Further, Rules 69 to 77 and Rule 79 are being omitted so as to do away with two way communication process in return filing. Rule 89 is amended on account of the proposed amendment to the proviso to sub-section(1) of Section 54 of the CGST Act, 2017. The FORM GSTR1A, GSTR 2 and GSTR 3 are also being omitted pursuant to omission of Sections 42,43 and Section 43A. Principal Commissioner GST also informed that consequent to amendment of Sub-section(2) of Section 54 providing for time of two years for filing refund claim under Section 55, Notification No. 20/2018-CT dated 28.03.2018 also needs to be rescinded.
- 5. The amendments proposed by Law Committee to CGST Rules, 2017 with effect from 01.10.2022 as detailed out by the Pr. Commissioner, GST Policy and rescinding Notification No. 20/2018-CT dated 28.03.2018 was agreed to by the members unanimously.

**Decision:** GIC members unanimously approved the agenda.

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## List of Attendees to the GIC meeting held on 22<sup>nd</sup> September, 2022

## Members- Centre

- 1. Additional Secretary (Revenue)
- 2. Member (GST), CBIC
- 3. Pr. DG, DG Systems, New Delhi, CBIC
- 4. Chief Commissioner, Delhi, CBIC

## **Members- States**

- 1. Haryana
- 2. Gujarat
- 3. Tamil Nadu
- 4. West Bengal

## Member- GSTC Secretariat

1. Additional Secretary, GSTCS

## **Others**

1.Pr. Commissioner, GSTPW

2. JS, GSTCS

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## Annexure-1 (GIC Meeting dated 22.09.2022)

## F. No. CBIC-20021/3/2022-GST

## **Government of India**

## **Ministry of Finance**

## **Department of Revenue**

## **Central Board of Indirect Taxes and Customs**

## **GST Policy Wing**

## AGENDA NOTE

## Subject: Notifying the remaining provisions of Finance Act, 2022 and consequential amendments to CGST Rules, 2017-reg

Various amendments in the provisions of Central Goods and Services Tax Act, 2017 ("CGST Act" in short) were made vide the Finance Act, 2022. Based on the recommendations of the GST Council in its 47<sup>th</sup> meeting held on 28<sup>th</sup> and 29<sup>th</sup> June 2022, provisions of clause (c) of Section 110 and Section 111 of the Finance Act, 2022 have already been notified by the Centre *vide* Notification no. 09/2022-Central Tax, dated 05.07.2022. Consequent insertion of Rule 88B and sub-rule 87(14) has also been carried out by the Centre *vide* Notification no. 14/2022-Central Tax, dated 05.07.2022.

2. The Council further recommended that the other provisions of the Finance Act, 2022 pertaining to GST may be notified **w.e.f. 01.10.2022** by both the Centre and the States. Once these provisions are notified, corresponding amendments in the CGST Rules, 2017 may also be required to be carried out simultaneously.

2.1 Accordingly, Law Committee in its meetings held on 26.08.2022 and 07.09.2022 examined the requisite amendments to be carried out in the CGST Rules, 2017. The Law Committee recommended carrying out the requisite amendments to the CGST Rules, 2017 w.e.f. 01.10.2022 consequent to the Notification of the remaining provisions of the Finance Act, 2022, (except for the rules corresponding to sub-section(2) of amended Section 41 and corresponding to clause (ba) to sub-section(2) of Section 16, read with sub-section(2) of Section 38 of CGST Act, 2017 which will require further deliberations by the Law Committee, in consultation with GSTN, based on the data as well as the feedback to be provided by GSTN, as the implementation of the said rules may require development of requisite functionality on the portal by GSTN).

2.2 The said amendments in CGST Rules, 2017, as recommended by the Law Committee, are enclosed as **Annexure-1A** to this agenda note.

3. The agenda note is, therefore, placed before the GIC for approval.

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(Annexure-1A)	
Proposed amendments in the CGST Rules, 2017	Remarks
21. Registration to be cancelled in certain cases	Clause (b) and (c) of sub-
The registration granted to a person is liable to be cancelled, if the said person, -	section(2) of Section 29 of the CGST Act, 2017 are being
(a) does not conduct any business from the declared place of business; or	amended so as to provide that the registration of a person is
(b) issues invoice or bill without supply of goods or services [or both] in violation of the provisions of this Act, or the rules made thereunder; or	liable for cancellation, where -
(c) violates the provisions of Section 171 of the Act or the rules made thereunder	(i) a person paying tax under Section 10 has not furnished the
(d) violates the provision of Rule 10A	return for a financial year beyond three months from the
(e) avails input tax credit in violation of the provisions of Section 16 of the Act or the rules made thereunder; or	due date of furnishing of the said return;
(f) furnishes the details of outward supplies in FORM GSTR-1 under Section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under Section 39 for the said tax periods; or	(ii) a person, other than those paying tax under Section 10,has
(g) violates the provision of rule 86B.	not furnished returns for such
(h) being a registered person, required to file return under sub-section (1) of Section 39 for each month or part thereof, has not furnished returns for a continuous period of six months.	continuous tax period as may be prescribed.
(i) being a registered person, required to file return under proviso to sub-section (1) of Section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.	
<b>36. Documentary requirements and conditions for claiming input tax credit.</b> -(1)The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with

	• • •
(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of Section 31;	two-way communication
(b) an invoice issued in accordance with the provisions of clause (f) of sub-section(3) of Section 31, subject to the	process in return filing. The rule
payment of tax;	therefore needs to be aligned
(c) a debit note issued by a supplier in accordance with the provisions of Section 34;	with the GSTR-1/2B/3B return
(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the	filing system.
assessment of integrated tax on imports;	
(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input	
Service Distributor in accordance with the provisions of sub-rule (1) of Rule 54 of CGST Rules, 2017.	
(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the	
provisions of Chapter VI are contained in the said document., and the relevant information, as contained in the said	
document is furnished in FORM GSTR-2 by such person:	
Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax	
charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and	
recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.	
(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any	
order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.	
(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are	
required to be furnished under sub-section (1) of Section 37 unless,-	
(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in	
FORM GSTR-1 or using the invoice furnishing facility; and	
(b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person	
in FORM GSTR-2B under sub-rule (7) of Rule 60 of CGST Rules, 2017.	
<b>37. Reversal of input tax credit in the case of non-payment of consideration</b> (1)A registered person, who has availed of	Sections 42, 43 and 43A of the
input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse	CGST Act, 2017 have been
charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable	omitted so as to do away with
thereon, within the time limit specified in the second proviso to sub-section(2) of Section 16, shall furnish the details of such	two-way communication
supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to	process in return filing. The rule
the supplier in FORM GSTR-2 for the month pay an amount equal to the input tax credit availed in respect of such supply,	therefore needs to be aligned
along with interest payable thereon under Section 50, while furnishing the return in <b>FORM GSTR-3B</b> for the tax period	with the GSTR-1/2B/3B return
immediately following the period of one hundred and eighty days from the date of the issue of the invoice:	filing system.
miniculately following the period of one number and eighty days from the date of the issue of the involce.	ming system.
Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be	Also, a mechanism needs to be

$1 \dots 1 \dots 1 \dots \dots 1 \dots \dots 1 \dots \dots \dots \dots \dots \dots \dots \dots \dots$	
deemed to have been paid for the purposes of the second proviso to sub-section(2) of Section 16:	provided for re-availment of
Provided further that the value of supplies on account of any amount added in accordance with the provisions of	ITC reversed earlier upon
clause (b) of sub-section(2) of Section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-	payment of the consideration by
section(2) of Section 16.	the recipient to the supplier.
section(2) of section 10.	Further, to align with the GSTR-
(2) The amountof input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person	
for the month in which the details are furnished.	1/2B/3B return filing system, 2 <sup>nd</sup>
	and 3 <sup>rd</sup> provisos to Section
(2) Where the said registered person subsequently makes payment of the amount towards the value of such supply along with	<b>16(2) may also be amended as</b>
tax payable thereon to the supplier thereof, he shall be entitled to re-avail the said input tax credit referred to in sub-rule (1).	below:
	"Provided further that where a
(3) The registered person shall be liable to pay interest at the rate notified under sub-section(1) of Section 50 for the period	"Provided further that where a
starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as	recipient fails to pay to the
mentioned in sub-rule (21), is paid.	supplier of goods or services or
	both, other than the supplies on
(4) The time limit specified in sub-section(4) of Section 16 shall not apply to a claim for re-availing of any credit, in	which tax is payable on reverse
accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.	charge basis, the amount
	towards the value of supply
	along with tax payable thereon
	within a period of one hundred
	and eighty days from the date of
	issue of invoice by the supplier,
	an amount equal to the input tax
	credit availed by the recipient
	shall be added to his output tax
	liability paid by him, along with
	interest thereon payable under
	Section 50, in such manner as
	may be prescribed:
	,
	Provided also that the recipient
	shall be entitled to avail of the

	credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon."
<ul> <li>38. Claim of credit by a banking company or a financial institutionA banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section(2) of Section 17, in accordance with the option permitted under sub-section(4) of that Section, shall follow the following procedure, namely,- <ul> <li>(a) the said company or institution shall not avail the credit of,-</li> <li>(i) the tax paid on inputs and input services that are used for non-business purposes; and</li> <li>(ii) the credit attributable to the supplies specified in sub-section(5) of Section 17, in FORM GSTR 2;</li> </ul> </li> <li>(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section(4) of Section 17 and not covered under clause (a);</li> <li>(c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR 2, and the balance amount of input tax credit shall be reversed in FORM GSTR 3B;</li> <li>(d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of Sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.</li> </ul>	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
<ul> <li>42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section(1) or sub-section(2) of Section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-</li> <li>(a) the total input tax involved on inputs and input services in a tax period, be denoted as 'T';</li> </ul>	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.

(g) 'T <sub>1</sub> ', 'T <sub>2</sub> ', 'T <sub>3</sub> ' and 'T <sub>4</sub> ' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 and at summary level in FORM GSTR-3B;	
<ul> <li>43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases(1) Subject to the provisions of sub-section(3) of Section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of Section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-</li> <li>(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall not be credited to his electronic credit ledger;</li> <li>(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall be credited to the electronic credit ledger;</li> </ul>	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
60. Form and manner of ascertaining details of inward supplies	Sections 42, 43 and 43A of the
<ul> <li>(7) An auto-drafted auto-generated statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of -</li> </ul>	CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned
(i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section(1) of Section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;	with the GSTR-1/2B/3B return filing system. Consequential changes:
	1. FORM GSTR-1A, FORM GSTR-2 & GSTR-3 may

	be omitted.
69. Matching of claim of input tax credit. The following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under Section 41, shall be matched under Section 42 after the due date for furnishing the return in FORMGSTR-3-	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with
(a)       GoodsandServicesTax IdentificationNumberofthesupplier;         (b)       GoodsandServicesTaxIdentificationNumberoftherecipient;	two-way communication process in return filing. The rule
(b) GoodsandServicesTaxIdentificationNumberoftherecipient; (c) invoiceordebit notenumber;	therefore needs to be aligned
(d) invoice or debit note date; and	with the GSTR-1/2B/3B return
<del>(e) tax amount:</del>	filing system.
Provided that where the time limit for furnishing FORM GSTR-1 specified under Section 37 and FORM GSTR-2 specified under Section 38 has been extended, the date of matching relating to claim of input taxcredit shall alsobeextended accordingly:	
Provided further that the Commissioner may, on the recommendations of theCouncil, by order, extend the date of matching relating to claim of input tax credit to such dateas maybespecifiedtherein.	
ExplanationFor the purposes of this rule, it is hereby declared that	
(i) The claim of input tax credit in respect of invoices and debit notes in <b>FORM GSTR-2</b> that were accepted by the recipient on the basis of <b>FORM GSTR-2A</b> without amendment shall be treated as matched if the corresponding supplier has furnished a valid return;	
recipient on the basis of FORM GSTR-2A without amendment shall be treated as matched if the corresponding	

(2) The claim of input tax credit in respect of any tax period which had been communicated asmismatched but is found to be matched after rectification by the supplier or recipient shall befinally accepted and made available electronically to	with the GSTR-1/2B/3B return filing system.
the person making such claim in FORMGSTMIS-1 through the common portal.	nning system.
<ul> <li>71. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit.</li> <li>(1) Any discrepancy in the laim of input tax creditin respect of any tax period, specified in sub-section(3) of Section 42 and the details of outputtax liable to be added under sub-section(5) of the said Section on account of continuation of such discrepancy, shall be made available to the recipient making such claim electronically in FORM GST MIS-1 and to the supplier electronically in FORM GST MIS-2 through the common portal on or before the last date of the month in which the matching has been carriedout.</li> <li>(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.</li> <li>(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.</li> <li>(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.</li> <li><i>Explanation.</i> For the purposes of this rule, it is hereby declared that-</li> <li>(i) Rectification by a supplier means adding or correcting the details of an outward supplyin his valid return so as to match the details of corresponding inward supply declared by the recipient;</li> <li>(ii) Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the</li> </ul>	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
details of corresponding outward supply declared by the supplier.         72. Claim of input tax credit on the same invoice more than once. Duplication of claims of input tax credit in	Sections 42, 43 and 43A of the
the details of inward supplies shall be communicated to the registered person in FORM GST MIS-1 electronically through the common portal.	CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned

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	with the GSTR-1/2B/3B return filing system.
<ul> <li>73. Matching of claim of reduction in the output tax liability. The following details relating to the claim of reduction in output tax liability shall be matched under Section 43 after the due date for furnishing the return in FORM GSTR-3, namely:-         <ul> <li>a. Goods and Services Tax Identification Number of the supplier;</li> <li>b. Goods and Services Tax Identification Number of the recipient;</li> <li>c. Credit note number;</li> <li>d. Credit note date; and</li> <li>e. tax amount:</li> </ul> </li> <li>Provided that where the time limit for furnishing FORM GSTR-1 under Section 37 and FORM GSTR-2 under Section 38 has been extended, the date of matching of claim of reduction in the output tax liability shall be extended accordingly:</li> </ul>	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of reduction in output tax liability to such date as may be specified therein.	
Explanation. For the purposes of this rule, it is hereby declared that	
(i) the claim of reduction in output tax liability due to issuance of credit notes in FORM GSTR-1 that were accepted by the corresponding recipient in FORM GSTR-2 without amendment shall be treated as matched if the said recipient has furnished a valid return. (ii) the claim of reduction in the output tax liability shall be considered as matched where the amount of output tax	
liability after taking into account the reduction claimed is equal to or more than the claim of input tax credit after taking into account the reduction admitted and discharged on such credit note by the corresponding recipient in his valid return.	
74. Final acceptance of reduction in output tax liability and communication thereof	Sections 42, 43 and 43A of the CGST Act, 2017 have been
(1) The final acceptance of claim of reduction in output tax liability in respect of any taxperiod, specified in sub- section(2) of Section 43, shall be made available electronically to thepersonmakingsuchclaim in FORMGST MIS-1	omitted so as to do away with two-way communication

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throughthecommon portal. (2) The claim of reduction in output tax liability in respect of any tax period which hadbeencommunicatedasmis- matchedbutisfoundtobematchedafterrectificationbythe supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-1 through the common portal.	process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
<ul> <li>75. Communicationandrectificationofdiscrepancyinreductioninoutputtaxliability and reversal of claim of reduction.</li> <li>(1) Any discrepancy in claim of reduction inoutput tax liability, specified in sub-section(3) of Section 43, and the details of output taxliability to be added under sub-section(5) of the said Section on account of continuation of such discrepancy, shall be made available to the registered person making such claim electronically in FORM GST MIS-1 and the recipient electronically in FORM GST MIS-2through the common portal on or before the last date of the month in which the matching hasbeencarried out.</li> <li>(2) — A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.</li> <li>(3) — A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.</li> <li>(4) — Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the shown in his return in FORM GSTR-3 for themonthsucceedingthe month in which the discrepancy is madeavailable.</li> <li><i>Explanation</i>. Forthepurposes ofthisrule, it is herebydeclared that—</li> <li>(i) rectification by a supplier means deleting or correcting the details of an outward supply soas to match thedetails</li> </ul>	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
ofcorrespondingoutward supplydeclaredbythesupplier.         76.       Claimofreductioninoutputtaxliabilitymorethanonce         Theduplicationofelaimsforreductioninoutputtaxliabilityinthedetailsofoutwardsuppliesshallbecommunicated to the registered person in FORM GST MIS-1 electronically through thecommonportal.	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication

		process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
<del>77.</del>	<b>Refund of interest paid on reclaim of reversals</b> . The interest to be refunded undersub-section(9) of Section 42 or sub-section(9) of Section 43 shall be claimed by the registeredperson in his return in <b>FORM GSTR-3</b> and shall be credited to his electronic cash ledger in <b>FORM GST PMT-05</b> and the amount credited shall be available for payment of any futureliability towards interest or the taxable person may claim refund of the amount under Section54.	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
79.	<ul> <li>Communication and rectification of discrepancy in details furnished by the ecommerce operator and the supplier .</li> <li>(1) Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in FORM GST MIS 3 and to the ecommerce operator electronically in FORM GST MIS 4 on the common portal on or before the last date of the month in which the matching has been carried out.</li> <li>(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.</li> <li>(3) An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.</li> <li>(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR 3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall bemade available to the supplier electronically on the common portal in FORM GST MIS 3.</li> </ul>	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.
83.	Provisions relating to a goods and services tax practitioner	1. Sections 42, 43 and 43A of the CGST Act, 2017 have

<ul> <li>"(1) An application in FORM GST PCT-01 may be made electronically through the common portal either directly of through a Facilitation Centre notified by the Commissioner for enrolment as goods and services tax practitioner by any person who,</li> <li></li></ul>	<ul> <li>away with two-way communication process in return filing. The rule therefore needs to be aligned with the GSTR-1/2B/3B return filing system.</li> <li>Consequential Amendment: FORM GST PCT-05 needs to be suitably amended.</li> </ul>
85. Electronic Liability Register	Sections 42, 43 and 43A of the
(1) The electronic liability register specified under sub-section(7) of Section 49 shall be maintained in FORM GST	
PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all	•
amounts payable by him shall be debited to the said register.	two-way communication
(2) The electronic liebility register of the normal shall be debited by	process in return filing. The rule
(2) The electronic liability register of the person shall be debited by-	therefore needs to be aligned
(a) the amount payable towards tax, interest, late fee or any other amount payableas perthe return furnished	with the GSTR-1/2B/3B return
by the said person;	filing system.
(b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in	
pursuance of any proceedings under the Act or as ascertained by the said person;	
(c) the amount of tax and interest payable as a result of mismatch under Section 42orSection 43 orSection	
<del>50;or</del>	
(d) any amount of interest that may accrue from time to time.	
89. Application for refund of tax, interest, penalty, fees or any other amount	1. Proviso to sub-section(1) of
	Section 54 of the CGST Act,

(1) Any person, except the persons covered under Notification issued under Section 55, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section(6) of Section 49 or any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file subject to the provisions of rule 10B, an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

**Provided** that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section(6) of Section 49 may be made through the return furnished for the relevant tax period in **FORM GSTR-3** or **FORM GSTR-**4 or **FORM GSTR-**7, as the case may be:

.....

2017 is proposed to be amended vide Section 113 of the Finance Act, 2022 as under:

**Provided** that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of subsection(6) of Section 49, may claim such refund in the return furnished under Section 39 in such form and manner as may be prescribed.

2. Rule 89 of the CGST Rules 2017 prescribes the manner of filing application of refund and documents required to be submitted along with such application. First proviso to sub-rule (1) of rule 89 of the CGST Rules, 2017 was earlier aligned with proviso of subsection(1) of Section 54 as it provided that the refund of any balance in excess cash ledger can be claimed by a

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registered person through the return filed for the relevant tax period. Therefore, as proviso to sub-section(1) of Section 54 has been amended to provide for filing of refund of balance in cash ledger in such form and may be as manner prescribed, there appears no need for first proviso to the sub-rule (1) of Rule 89 of the CGST Rules, 2017. Further, sub-rule (1) of Rule 89 is also proposed to be amended to provide for filing of refund of balance in electronic cash ledger in FORM GST **RFD-01** electronically through common portal.

3. Consequential amendment: Consequent to amendment in sub-section(2) of Section 54 of CGST Act, 2017 regarding extension of time period for filing refund claims under Section 55 from six months to two years Notification No. the  $28^{\text{th}}$ 20/2018-CT dated

	March, 2018 regarding providing a time period of eighteen months for filing such refund claims may be rescinded.
96. Refund of integrated tax paid on goods <sup>1</sup> [or services] exported out of India	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with
(3) Upon the receipt of the information regarding the furnishing of a valid return in <b>FORM GSTR-3</b> <sup>7</sup> [or FORM GSTR-3B,	two-way communication process in return filing. The rule
as the case may be;] from the common portal, <sup>8</sup> [the system designated by the Customs or the proper officer of Customs, as	therefore needs to be aligned
the case may be, shall process the claim of refund in respect of export of goods] and an amount equal to the integrated tax	with the GSTR-1/2B/3B return
paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.	filing system.
FORM GSTR-1A, GSTR-2 AND GSTR-3 TO BE OMITTED.	Sections 42, 43 and 43A of the CGST Act, 2017 have been omitted so as to do away with two-way communication process in return filing. The relevant forms therefore needs to be aligned with the GSTR- 1/2B/3B return filing system.
FORM GST PCT-05	Sections 42, 43 and 43A of the
[See rule 83(6)]	CGST Act, 2017 have been omitted so as to do away with
Authorisation / withdrawal of authorisation for Goods and Services Tax Practitioner	two-way communication process in return filing. The relevant forms therefore needs to be aligned with the GSTR-

То			1/2B/3B return filing system
The Au	thorised Officer		
Central	Tax/State Tax.		
	PART-A		
Sir/Mad	lam		
	Name of the Proprietor/all Partners/Karta/Managing Directors and ttee of Associations/Board of Trustees etc.) do hereby	whole time Director/Mer	nbers of Managing
	<b>v</b> 1 1 .1 '		
	*solemnly authorise, *withdraw authorisation of		
2.	*withdraw authorisation of (Name of the Goods and Services Tax Practitioner), bearing Enrolme		
2.	*withdraw authorisation of		
2. 8 read	*withdraw authorisation of (Name of the Goods and Services Tax Practitioner), bearing Enrolme with rule 83 to perform the following activities on behalf of (Le	gal Name) bearing << GS	
2. 8 read Sr.	*withdraw authorisation of (Name of the Goods and Services Tax Practitioner), bearing Enrolme		
2. 8 read Sr.	*withdraw authorisation of (Name of the Goods and Services Tax Practitioner), bearing Enrolme with rule 83 to perform the following activities on behalf of (Le	gal Name) bearing << GS	
2. 8 read Sr. No.	*withdraw authorisation of (Name of the Goods and Services Tax Practitioner), bearing Enrolmo with rule 83 to perform the following activities on behalf of (Le List of Activities	gal Name) bearing << GS	
2. 48 read Sr. No. 1.	<ul> <li>*withdraw authorisation of</li> <li> (Name of the Goods and Services Tax Practitioner), bearing Enrolme with rule 83 to perform the following activities on behalf of (Le</li> <li>List of Activities</li> <li>To furnish details of outward and inward supplies</li> </ul>	gal Name) bearing << GS	

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5.	To file an application for amendment or cancellation of registration			
[6	To furnish information for generation of e-way bill		-	
7	To furnish details of challan in FORM GST ITC-04			
8	To file an application for amendment or cancellation of enrolment under rule 58			
9	To file an intimation to pay tax under the composition scheme or withdraw from the said scheme.] <sup>1</sup>			
		Signature of the	e authorised signatory	
	ut whichever is not applicable.	Signature of the	e authorised signatory	
			Name	
			Designation/Status	
Date				
Place				
Part -B				
	of the Goods and Services Tax Practitioner			
Consent				

<sup>1</sup>Inserted vide Notf no. 03/2019-CT dt. 29.01.2019wef 01.02.2019

I <<(Name of the Goods and Services Tax Practitioner>>< Enrolment Number> do hereby solemnly accord my consent to act as the Goods and Services Tax Practitioner on behalf of (Legal name), GSTIN only in respect of the activities specified by (Legal name), GSTIN	
Signature	
Name	
Date Enrolment No.	

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#### <u>Agenda Item 3: Recommendations of the Fitment Committee for the consideration of the GST</u> <u>Council</u>

This agenda note deals with proposals regarding GST rates on supply of goods and services. The proposed changes in GST rates emanate from the recommendations made by the Fitment Committee.

2. Briefly stated, representations/recommendations have been received from various stakeholders including Ministries and other offices of Centre and States, seeking changes in GST rates and certain clarifications regarding GST rates applicable on supply of certain goods/services.

3. The Fitment Committee met on 12<sup>th</sup> & 23<sup>rd</sup> September, 2022 and 28<sup>th</sup> October, 2022 and had detailed discussions on recommendations received from various stakeholders seeking changes in GST/IGST rates or seeking clarification on supply of goods/services. After examination, the Fitment Committee has recommended changes in GST rates or issue of clarification, in relation to certain goods and services. Further, the Fitment Committee has recommended no change in respect of certain goods and services. On certain issues, Fitment Committee was of the view that further examination would be required before making any recommendation to the GST Council.

4. Accordingly, Fitment Agenda for consideration of the GST Council is summarised as below:

### a) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to goods – Annexure-I

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Pencil Sharpener (Educational Product)	18%	12%	<ol> <li>As suggested by GoM on Rate rationalization, based on the recommendation of 47<sup>th</sup> GST Council Meeting, GST rate on Pencil Sharpeners (falling under CTH 8214) was increased from 12% to 18%. Accordingly, entry 188 in Schedule II (12%) was omitted. 8214: Paper Knives, Pencil sharpeners and blades thereof.</li> </ol>
				<ol> <li>However, while examining the current request, it was seen that Pencil Sharpeners continued to attract 12% under Sr. No. 180 of Schedule II as below:</li> </ol>

#### Annexure – I

S. No	Description/HSN	Present GST rate	Requested GST rate		Commer	nts
				Product (CTH)	GST Rate	Sr.No.ofNotificationNo.1/2017-CentralTax(Rate)
				Pencils (9608)	12%	Sr. No. 233 of Schedule II
				Erasers (4016)	5%	Sr. No. 191 of Schedule I
				Pencil Sharpeners (7310 or 7326)	12%	Sr. No. 180 of Schedule II
				Pencil Sharpeners (8214)	18%	Sr. No. 302A of Schedule III
				Pencil Box including pencils, erasers and sharpeners	12%/18% (based on the classificati on of pencil sharpeners)	Mixed Supply
				Schedule-II	•	oned at Entry 180 of 26) still mentioned in 12%) says :
				7310 or 7	7326 : Mathem	atical boxes,
				geometry	y boxes and co	lour boxes,
				pencil sl	harpeners	
				mentioned	specifically i 214 10 10. (fo	encil Sharpeners are n classification under or which rate has been

S. No	Description/HSN	Present GST rate	Requested GST	Comments
		Gol rate	rate	<ol> <li>Entry in tariff is 82141010paper knives, letter openers, erasing knives, pencil sharpeners</li> <li>While not recommending reduction in rate, Fitment Committee recommends that the inconsistency in this regard may be removed by deleting the entry of Pencil Sharpeners from Sr. No. 180 (7310 or 7326) of Schedule II of GST Rate Notification No. 1/2017- Central Tax (Rate).</li> </ol>
2.	By-products of milling of Dal/Pulses like <b>Khanda, Churi</b> (also known as Chuni), Chilka	-	Reconsider the clarification issued <i>vide</i> Para 8 of Circular No. 179/11/2022-GST dated the 3rd August, 2022.	<ol> <li>The matter was brought for deliberation in the Fitment Committee (FC) of Officers meeting, held before the 47<sup>th</sup> GST Council Meeting. The FC had recommended that a suitable clarification may be issued that by-products of milling of Dal/ Pulses such as Chilka, Khanda and Churi are used as cattle feed ingredient and attract GST at the rate of 5% and that in view of the prevailing multiple interpretations, recovery on account of this issue for past periods, may not be insisted upon.</li> <li>Further, it was deliberated in the said FC meeting that the differential GST rates on animal feed ingredients (attract GST as per specific HS Code and the applicable GST rate thereof, primarily at 5%) and animal feed</li> </ol>
				<ul> <li>a lot of, printarity at 576) and animal freed (attracts GST exemption) has been subject to a lot of litigation (like Fishmeal, Meat cum Bone Meal, DDGS, etc.) and thus, a uniform rate of 5% on the entire Chapter 23 (except dog or cat food falling under CTH 2309) may help to address the issue.</li> <li>3. In line with this logic, the Fitment Committee had recommended that the GoM on Rate Rationalization may consider uniform GST rate of 5% on all items in Chapter 23 (with exception of dog or cat food).</li> </ul>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<ul> <li>4. In the 47<sup>th</sup> GST Council Meeting, the recommendation of FC to the extent of issuance of clarification, as detailed above, was accepted. With regards to the proposal regarding rate rationalization of entire chapter 23 to 5%, as per its Interim Report, the GoM on Rate Rationalization had not recommended any increase in rate on the animal feeds falling under Chapter 23, at this stage.</li> </ul>
				5. Now, certain representations have been received post issuance of the above-mentioned Circular that these items are also directly used as Cattle feed and they are covered within the ambit of the Entry at S. No. 102 of Notification No. 2/2017-Central Tax (Rate), dated the 28 <sup>th</sup> June, 2017, which <i>inter alia</i> provides GST exemption to goods with description <i>supplement &amp; husk of pulses, concentrates &amp; additives</i> , falling under heading 2302 and 2309.
				6. Accordingly, there is <b>dual use</b> of these products with differential GST rate [that is, Nil-when supplied as cattle feed and 5%- when supplied as cattle feed ingredients]. Thus, the administration of the levy would be difficult and so would be compliance on the part of the millers.
				7. Till the GoM on Rate Rationalisation takes a view on the rationalisation of rates under Chapter 23, in order to have clarity and avoid confusion amongst the concerned suppliers regarding the GST rate on the supply of subject goods and for the ease of administration of the levy, they may be exempt from GST, irrespective of its end use. This can be done by creating an entry for subject goods in the GST Rate Notifications as the ultimate burden of cost of cattle feed would fall primarily on farmers, and it may not be practically possible to determine the exact proportion of total supply that goes directly as cattle feed.

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments		
				relevant en amended/in Entry/ Notification	ommittee recommends th tries in the Notification n serted as under: Description	
				No./CTH           S. No. 102 of           Notification           No. 2/2017-           Central Tax           (Rate) dated           28.6.2017           (2301,2302,2)           308           2309)	shrimp feed and prawn feed, poultry feed & cattle	Nil
				S. No. 102 C of Notification No. 2/2017- Central Tax (Rate) dated 28.6.2017	Husk of pulses including chilka and concentrates including chuni/churi, khanda	Nil
				2302, 2309		

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				S. No. 103A, Schedule -I of NotificationBran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working 
3.	SUV Cars	-	Clarification on the rate of GST compensation cess applicable on the supply of SUVs in the light of ambiguity between the Entries in the Table appended to the Notification No. 5/2017- Compensation Cess (Rate) dated 11.09.2017 for HSN 8703 and the recommendations of the Goods and Services Tax	<ol> <li>The GST Council in its 21<sup>st</sup> Meeting held in Sept, 2017 had recommended a higher rate of compensation cess of 22% for SUVs.</li> <li>The exact extract of the decision is reproduced as below:</li> <li><i>"The Council approved the increase in the</i> <i>rate of Compensation Cess for the following</i> <i>categories of motor vehicles:</i></li> <li>Sports Utility Vehicles (SUVs) (of length more than 4-metre, engine capacity more than 1500cc and ground clearance 170 mm): To increase the rate of cess from the present 15% to 22%."</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate			Comments	
			Council, made in 21 <sup>st</sup> GST Council meeting held on 09.09.2017.	Co Ce Ce	uncil, the l ss rate No	ve recommendati Entry No. 52B or otification 1/201 ated 28.06.17(as a Description	f Compensation 7-Compensation amended) reads Rate of
							compensation cess
				52B	8703	Motor vehicles of engine capacity exceeding 1500cc, popularly called as Sports Utility Vehicles (SUVs) including utility vehicles. <i>Explanation. –</i> For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above	22%
				hig Fir rate	ther excise on the second seco	ay of backgroun duty on SUVs wa 2013, where the b cased for SUVs o	s brought in the asic excise duty

S. No	Description/HSN	Present GST rate	Requested GST rate			Comments	
						by inserting an Entry	No. 284A
						xcise Tariff as below:	<b></b> 1
				S.no	Heading	Description	Rate
				284A	8703	Motor vehicles of engine capacity exceeding 1500cc, popularly called as Sports Utility Vehicles (SUVs) including utility vehicles.	30%
						Explanation. – For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000mm and having ground clearance of 170mm and above	
				the Cen beer	GST regime tral Excise n defined,	at entry for Compensati is the same as entry in regime. The term SU <sup>V</sup> only an explanation above entries.	erstwhile V has not
				clari wou (CB date of E rate <i>are</i> <i>all t</i> <i>capo</i> <i>4000</i>	ification on Id be cover EC) issued d <b>24.07.20</b> Entry 284 A of tax is ap <i>popularly k</i> <i>he other thr</i> <i>acity exceed</i>	d on request of the in- the category of veh red by the said entry, the Circular No. 972/06 13 whereby it has in the clarified <i>inter alia</i> that plicable on <i>motor vehic</i> <i>nown as SUVs</i> <b>and</b> <i>whe</i> <i>ree conditions , viz.</i> (i) <i>the</i> <i>ls 1500cc,</i> (ii) <i>the lengt</i> (iii) <i>the ground clearan</i>	icles that the Board /2013/CX ne context t a higher cles which ich satisfy the engine th exceeds
					-	me, a similar issue has L four conditions vi	

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
		GSI rate		<ul> <li>capacity 1500 cc, popularly known as SUV, length exceeding 4000mm and ground clearance 170 mm as discussed above need to be satisfied, for levying higher cess rate as per Entry 52B, OR the conditions in Explanations are optional?</li> <li>9. As the recommendations of the Council (S.N. 2 above) was for levying cess at higher rate for the vehicles satisfying all conditions, a clarification may be issued (on similar lines as done earlier in 2013) to clarify that all four conditions need to be fulfilled for a motor</li> </ul>
				<ul> <li>vehicle to be eligible for levying a higher compensation cess rate of 22% as per entry 52B.</li> <li>10. Fitment Committee recommends that a</li> </ul>
4.	Mentha Oil		<ol> <li>Mentha namely Menthol Mint/Japanese Mint (Botanical Name-<u>Mentha</u> <u>arvensis</u>) needs to be included in the Notification Not 10/2021 CTR dt 30.09.2021 under HSN Code 33012590 (Others)</li> <li>Fitment Committee may deliberate on the necessity of issuance of Corrigendum to Notification No 10/2021 CTR di 30.09.2021 to</li> </ol>	<ul> <li>on capacity-based taxation and special composition scheme for certain sectors was placed before the GST Council in its 45<sup>th</sup> Meeting, held on 17.09.2021. One of the categorical recommendations in the Interim Report was for introducing the payment of GST liability under Reverse Charge Mechanism (RCM) on the supply of Mentha Oil, at the first stage of the supply, in terms of modalities worked out by Uttar Pradesh.</li> <li>2. Accordingly, the RCM was duly notified for supply made by any unregistered person to any registered person for the following goods:</li> <li>HS Code Description of goods</li> <li>33012400, 33012510, a)Of peppermint (Mentha piperita); 33012540</li> <li>b)Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate)</li> </ul>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
			incorporate Menthol Mint/Japanese Mint	<ol> <li>Now, a request has been made to also include <u>Mentha arvensis</u>, classifiable under HSN Code 3301 25 90, under Reverse Charge Mechanism.</li> </ol>
			(Botanical Name- Mentha arvensis) under RCM	4. Fitment Committee recommends to include <i>Mentha arvensis</i> , classifiable under HSN Code 3301 25 90, under Reverse Charge Mechanism.
5.	Fruit Pulp or fruit juice based drinks with Carbon- dioxide added as a "Preservative / Additive"		<ul> <li>(i) Clarification on applicable GST rate and 6/8-digit HS Code on fruit Pulp or fruit juice based drinks with Carbon-dioxide added as a "Preservative / Additive";</li> <li>(ii) Lower GST levy for these beverages may be considered given that it contains at least 5% fruits content.</li> </ul>	<ol> <li>In the 45<sup>th</sup> GST Council meeting, a separate entry was created for carbonated beverages, under heading 2202. The goods with description 'Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with fruit Juice' are covered under Sl. No. 12B of Schedule –IV of Notification No. 1/2017- CT(R) &amp; Entry at Sl. No. 4B of Notification No. 1/2017- CC(R) respectively attracting 28% and 12% duty. Fitment Committee recommended that 2202 99 is the appropriate 6-digit code and that the request for lower GST rate may not be accepted.</li> <li>Through representations, it has been brought to notice that few suppliers are still clearing their products under "Fruit pulp or fruit juice based drinks" @ 12% vide entry at Sl. No. 48 of Schedule –II of Notification No. 1/2017- CT(R) though they contain carbon dioxide also. The intention of the GST Council was always to tax these products at 40% as long as they contain carbon dioxide irrespective of whether it is used as a preservative, additive etc.</li> <li>Thus, in order to make it amply clear and remove any ambiguity Fitment Committee recommended an exclusion in the entry at Sl. No. 48 of Schedule –II of Notification No. 1/2017-CT(R) as below:</li> </ol>
6.	Rab (Rab-Salawat)	-	To clarify the	1. Under the UP Rab (Movement Control Order)

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
			classification and appropriate rate of <b>Rab (Rab-</b> <b>Salawat)</b>	<ol> <li>1957, rab has been defined as: "rab means massecuite prepared by concentrating sugar Juice on open pan furnaces, and includes Rab Galawat and a Salawat, but does not include Khandsari molasses or Gur"</li> <li>Under present classification, 'cane or beet sugar and chemically pure sucrose, in solid form' is classified under 1701.</li> <li>Though a product of sugarcane, <i>Rab(salawat)</i> being in liquid or semisolid form therefore does not qualify to be classified under HSN 1701.</li> <li>In addition, the chemical composition of <i>Rab(salawat)</i> is different from that of Molasses and hence it is not classifiable under HSN 1703.</li> <li>The Fitment Committee recommended to clarify that Rab (Rab-Salawat) falls under HSN 1702 attracting 18% GST.</li> </ol>
7.	Salted products manufactured using the process of extrusion; Fried and salted Fryums (Pellets)		Issuance of clarification regarding fryums manufactured using the process of extrusion.	1. The instant classification dispute is between the following two entries:         Entry and HSN       Description       Rate (%)         S. No. 46       Namkeens, bhujia, 12       12         of       mixture, chabena and Schedule-       similar       edible         II       of       preparations in ready for Notificatio       consumption form [other n         n       No.       than roasted gram], pre-1/2017-       packaged and labelled         [2106 90]       [2106 90]       [2106 90]       [2106 90]
				S. No. 16Pastry, cakes, biscuits and of other bakers' wares, Schedule- III of cocoa; communion wafers, Notificatio empty cachets of a kind n No. suitable for pharmaceutical 1/2017- use, sealing wafers, rice Central paper and similar products Tax (Rate) [other than pizza bread, [1905] khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted18

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
8.	IGST rate on items	-	Clarification	products]         2. CTH 19.05 includes extruded products, savoury or salted.         3. The Fitment Committee recommended to clarify that the item fryums manufactured using the process of extrusion will attract GST @ 18% (CTH 1905)         1. The GOM has, in its interim report, taken a
	imported for Petroleum Operations under Notification No. 3/2017-Integrated Tax (Rate)		sought on applicable IGST rate on items imported for Petroleum Operations under Notification No. 3/2017-Integrated Tax (Rate)	<ol> <li>The ooth has, in his internit report, taken a decision to prune the exemptions on manufactured items under rate rationalization as it felt that these concessions cause duty inversion and affect domestic capacity adversely. It also results in accumulation of Input Tax Credit and gives rise to refunds.</li> <li>On similar rationale, the 45<sup>th</sup> Council had revised the GST rates of new and renewable energy items like solar panel, solar cell, wind turbines, hydro plants, waste to energy equipment. The rate was revised w.e.f. 1.10.2021 from 5% to 12%. Further, inputs services which constitute major cost for such exploration attract GST at the rate of 12%.</li> </ol>
				3. Notification No. 3/2017-Integrated Tax (Rate) specifically provided concessional rate of GST (@5% for goods of all chapters and as <u>per the list</u> <u>specified</u> which were imported for petroleum operations. Based on the GoM report, the said Notification was amended by Notification No. 8/2022-Integrated Tax (rate), to increase the IGST rate from 5% to 12%. The intent of such rate increase was to correct duty inversion to some extent on those items in the specified list which attract higher GST rates.
				4. However, certain goods in the specified list, by virtue of their entry in Schedule I of Notification No. 1/2017-Integrated Tax (Rate) continue to attract the lower GST rate @5% For eg., certain dual-use products which are also used for petroleum operations such as Light-vessels, fire-floats, dredgers, floating cranes and other vessels attract 5% GST while other dual-use

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<ul> <li>products like organic chemicals attract 18% GST.</li> <li>5. Accordingly, exemption Notification No. 3/2017- Integrated Tax (Rate) provides a concessional rate @12% to those products which are at higher rate of GST (i.e. 18% in this case) if these goods are imported for Petroleum operations.</li> <li>6. Fitment Committee recommends that a clarification may be issued that a taxpayer can claim the lower rate for specific items as given in the Schedule.</li> </ul>
9.	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%	<ol> <li>National Policy on Biofuels – 2018, provides an indicative target of 20% ethanol blending under the Ethanol Blended Petrol (EBP) Programme by 2030.</li> <li>Further, during the Budget exercise of 2022-23, additional Basic Excise Duty @ Rs. 2 per litre was levied on Unblended Petrol and Unblended Diesel to promote blending in petrol and diesel in the country.</li> <li>At present, concessional GST rate of 5% is available only to Oil Marketing Companies (OMCs) like IOCL, BPCL and HPCL under Schedule I of Notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.</li> <li>S No. Chapter Description         <ul> <li>IO2A</li> <li>Ethyl alcohol supplied to Oil Marketing</li> </ul> </li> </ol>
				Companies for blending with motor spirit (petrol).         4. Keeping in view of the implementation of the Ethanol Blending Programme, and since

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<ul> <li>concessional GST benefit is already given to OMCs for blending ethanol with petrol, the proposal is to provide the same concessional GST rate of 5% on ethanol supplied to standalone petroleum refineries as well for blending with petrol in order to provide a level playing field.</li> <li>5. Fitment Committee recommends that the entry 102A of Schedule I may be amended to include refineries in addition to Oil Marketing Companies.</li> </ul>

## b) Issues where no change has been proposed by the Fitment Committee in relation to goods – Annexure-II

### Annexure-II

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
1.	Water Pump sets	18%	12%	<ol> <li>Based on the report of Group of Ministers on Rate Rationalization, the GST Council, in its 47th meeting, recommended to increase GST on 'Submersible &amp; Mono Block Pumps' (falling under HS Code 8413) from 12% to 18%, with effect from 18.07.2022, in order to lower the embedded costs of Input Tax Credits (ITC) accumulated due to inverted duty structure prevalent on these goods and thereby to promote their domestic manufacturing.</li> <li>Fitment Committee recommends that status quo may be maintained.</li> </ol>
2.	<ul> <li>(a) Milling Machinery for cereals (8437)</li> <li>(b) Kitchen ware (82119200)</li> <li>(c) Spoon (82159900)</li> </ul>	18%	5% (not more than 8%) 12%	<ol> <li>Based on the report of Group of Ministers on Rate Rationalization, the GST Council, in its 47th meeting, recommended to increase GST on:         <ul> <li>(a) 'Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; Machinery used in milling industry or for the working of cereals or dried leguminous vegetables other than farm type machinery' from 5% to 18%,</li> <li>(b) Kitchen and table ware from 12 to 18%</li> <li>-with effect from 18.07.2022, in order to lower the embedded costs of Input Tax Credits (ITC) accumulated due to inverted duty structure prevalent on these goods and thereby to promote their domestic manufacturing.</li> </ul> </li> <li>Fitment Committee recommends that status quo may be maintained.</li> </ol>
3.	Gold (7108)	3%	Reduce GST	<ol> <li>GST on Gold (falling under HS Code 7108) and Silver (7106) has been kept at the lower rate of 3% since the introduction of GST on</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
	Silver (7106)			<ul><li>01.07.2017.</li><li>2. Fitment Committee recommends that status quo may be maintained.</li></ul>
	Diamonds (7102, 7104)	0.25% / 1.5%	Reduce GST	<ol> <li>GST Council, in its 47th meeting, recommended to increase GST on Cut &amp; Polished Diamonds (falling under HS Code 7102 29, 7102 39 10, 7104 91 00) from 0.25% to 1.5% in order to lower the embedded costs of Input Tax Credits (ITC) accumulated due to inverted duty structure prevalent on these goods.</li> <li>GST on rough diamonds (falling under HS Code 7102 21, 7102 31 00 &amp; 7104 21 00) has been kept at lower rate of 0.25%.</li> <li>Fitment Committee recommends that status quo may be maintained.</li> </ol>
4.	<ul> <li>(a) Printing Paper by newspaper agencies (Newsprint) [CTH 4801]</li> <li>(b) Printing paper for books (uncoated copier paper) [CTH 4802]</li> </ul>	5%	<ol> <li>Remove GST on Printing paper</li> <li>Create differentiation between RNI (Registrar of Newspaper of India) registered and unregistered agencies at the time of purchasing printing papers.</li> <li>Provide incentive to printing paper manufacturing units that manufacture quality paper from cellulose fibres.</li> </ol>	<ol> <li>Newsprint, in rolls or sheets, attract a GST rate of 5% under S. N. 199, Sch 1 of 1/2017-CT(R) irrespective of purchase by Registrar of Newspaper of India (RNI) registered or unregistered agencies.</li> <li>Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes etc. attract a GST rate of 12% under S. N. 112, Sch 2 of 1/2017-CT(R)</li> <li>The GST rate of 5% on newsprint and 12% on uncoated copier paper was prescribed in the 14<sup>th</sup> GST Council meeting considering all factors including pre-GST tax incidence and consumption base and the rates remain unchanged since the implementation of GST from 1<sup>st</sup> July, 2017.</li> <li>The raw materials for newsprint attract a GST rate of 12% (different kinds of pulp) or 5% (waste paper). Thus, a reduction of GST rate to</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate		Comments
5.	ComponentsofBatteryEnergyStorageSystem(BESS)1.1.Li-ionBatteryStorage(BESS)1.1.Li-ionBatteryModule(Li ion)withBMS &Racks (8507)3.RackLevelBMS (853720)4.BatteryContainer(73090090)5.PCS (85044010)6.LTPower&Control Cable7.ACCable(85446090)8.33KVStep UpInverterDutyTransformer(85049090)9.AuxTransformer(85049010)10.33KVSwitchgear(85351040)11.DCDB&ACDB(85371000)	rate         Applica         ble rate	5% concessions shall be applicable for power sector till 31 <sup>st</sup> March, 2025 or till commencement of production of batteries under PLI scheme for advanced chemistry cell (ACC) Battery Storage, whichever is earlier.	<ol> <li>5.</li> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> <li>6.</li> </ol>	NIL will lead to inverted duty structure in the industry and may lead to distorting tax structure. Fitment Committee recommends that Status quo may be maintained. While the GST rate on batteries/electric accumulators is 28%, Lithium ion batteries attract a lower GST rate of 18%. Reducing the GST rate to 5% would lead to inversion and also potential misclassification due to excessive rate differential. Items numbered 3 to 13 are general electronic/ electrical items on which application of lower GST rate would lead to an end-use based concessional rate. Such end-use based concessional GST rates lead to distortion and are difficult to monitor. Therefore, in order to avoid inversion and not create distortions, the GST rate may be left unchanged for these items. Fitment Committee recommends that GST rate may be left unchanged for these items.
6.	12. Fire fighting System (84241000) 13. HVAC System Parts and accessories of	Applica ble rate	MoCA has requested for a uniform GST rate	1.	As recommended by the GST Council in its 23rd Meeting, 5% IGST rate has been
	aircraft and aircraft engines.	12/18/2 8%	@5% (from the applicable rate for the		prescribed for aircraft engines, tyres and seats. Specific parts (for aircraft) falling under

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
			list of 611 parts and accessories of aircraft and aircraft engines.	heading 8807 also attract 5% IGST (Sl. No. 245 of Schedule I of IGST Rate Notification).
				2. However other parts including consumable items attract applicable GST (12%-18%).
				3. 'Parts, testing equipment, tools and tool-kits for MRO activities for aircrafts' attract Nil BCD rate when imported by MRO operators registered with the DGCA. This exemption from BCD is available on all parts and equipment (whether designed for exclusive use with aircrafts or otherwise). However, IGST is payable on such imports at the applicable rate as mentioned in para (i) above.
				<ol> <li>An inter-Ministerial meeting was held on 25<sup>th</sup> February,2022 to discuss matters related to aviation industry.</li> </ol>
				5. Against this backdrop, the Ministry of Civil Aviation (MoCA) had given a list of more than 30,000 parts for uniform rate of 5% GST rate.
				<ol> <li>This request was examined in the recently held 47th GST Council Meeting and was not accepted.</li> </ol>
				7. Thereafter, MoCA has submitted a pruned down list of 611 high value items.
				<ol> <li>As per MoCA, the total value of imports in FY 2019 and 2020 is approx. USD 1.011 Billion. Thus, any GST rate reduction would entail substantial revenue implication.</li> </ol>
				9. Further, the list of parts has <b>generic items</b> like Starter, Unit, and Display Unit etc. Giving an end-use based exemption would has its implementation issues and also gives impetus to misclassification tendencies.
				10. Additionally, currently domestic industry is not much engaged in the manufacturing of such

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				<ul> <li>parts. So, if concessional IGST at 5% is applied to such parts, there would be no incentive for the domestic industry to develop since it would be cheaper to import such parts rather than producing them domestically.</li> <li>11. Fitment Committee recommends that status quo may be maintained.</li> </ul>
7.	LD Slag	18%	5%	<ol> <li>LD slag is used in Cement industry. Cement attracts GST@ 28%.</li> <li>Cement manufacturers will get ITC for GST paid on purchase of LD slag.</li> <li>Benefits of lower GST rates on slag will be garnered by slag producer and the cement industry will have no major impact.</li> <li>In order to achieve the larger goal of a single rate GST, it may not be appropriate to tweak GST rates of goods which are already at 18% or below and therefore, there is no rationale for further reduction in rate.</li> <li>Fitment Committee recommends that status quo may be maintained.</li> </ol>
8.	FTTH (Fibre To The Home) equipment and related services used for fixed line internet/broadband	18%	Exempt or Reduce GST to 5%	<ol> <li>The goods specified by the Department of Telecommunications as equipment used in providing FTTH connections are falling under the Chapter 39, 85 and 90 (viz. CTH 3917, 8517, 8529,8536,8544).</li> <li>The specified goods (around 160 items) are general electronic items like routers, connectors, splitters, cables, cords, switches, adapters, Pole mount kit, hot dipped galvanised pole, anchoring clamp, cables, plug for duct, telephone set etc, which can be used for FTTH and other telecommunication systems as well.</li> <li>Waiving off or prescribing a 5% GST rate on</li> </ol>

S. No	Description/HSN	Present GST rate	Requested GST rate	Comments
				these goods would create an inverted duty structure.
				4. Further, providing a concessional rate for these items for use in FTTH connections leads to end-use based exemption which is distortionary in nature and prone to misuse.
				5. Fitment Committee recommends that status quo may be maintained.

# c) Issues deferred by the Fitment Committee for further examination in relation to goods – Annexure-III

S.No.	Commodity	GST	Request/	Comments
		Rate	Requested GST Rate	
1	Khari, Cream Rolls [Bakery products] (HS 1905)		It is requested to clarify that Khari and Cream Roll should get covered under "similar toasted products", which attracts 5% GST rate	1. Currently, concessional GST rate of 5% is applicable on Rusks, toasted bread and other toasted products falling under tariff item 19054000.
				2. Bakery products such as Pastry, Cake, Biscuits, Communion Wafers, etc. [other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products], falling under CTH 1905, attract GST rate of 18%.
				3. Fitment Committee examined the issue before the 47 <sup>th</sup> GST Council Meeting and observed that further details regarding the nature of product, process of preparation is required before making any suggestions. Accordingly, the matter was deferred by the 47 <sup>th</sup> GST Council for further examination.
				4. Maharashtra asked for time to make a presentation.
				The Fitment Committee decided to defer
				this matter.
2.	Heavy feedstock, Vacuum Gas Oil	18%	Nil	<ol> <li>The main refinery products namely, petrol, diesel and ATF are outside purview of GST, while GST is levied on other refinery products including intermediate streams that are shared between refineries.</li> </ol>
	(VGS) / Reformates, etc [27]			<ul> <li>(2) As informed, feedstock is cheaper than crude while being a viable option to crude oil, easy availability of heavy feedstock will lead to better capacity utilization of refineries and revenue implication for OMCs is only around Rs. 321 crores.</li> <li>(3) Customs duty on these items, including</li> </ul>

### Annexure-III

S.No.	Commodity	GST	Request/	Comments
		Rate	Requested GST Rate	
				straight run fuel oil, low sulphur wax residue, vacuum residue, slurry, vacuum gas oil, etc was reduced to 2.5% during Budget in Feb, 2022.
				(4) Fitment Committee discussed the issue and noted that further clarity is needed on the matter regarding the intended use, capacity utilization potential and benefits accruing from the item. It was proposed that additional inputs may be sought from the Ministry of Petrol and Natural Gas. Accordingly, the matter was deferred until further inputs are provided.
				(5) Inputs have been sought from Ministry of Petroleum and Natural Gas (MoPNG) but the inputs/comments are awaited.
				The Fitment Committee decided to defer this matter as inputs are still awaited from MoPNG.

# d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services – Annexure-IV

#### Annexure – IV

Sr.	Proposal	Details of Request	Discussions in FitCom and its recommendation
No.			
1.	To extend validity of GST exemption on Viability Gap Funding (VGF) paid to Selected Airline Operators (SAOs) for operating flights under Regional Connectivity Scheme (RCS) for further period.	Ministry of Civil Aviation (MoCA) has undertaken Policy Reforms and Financial Relief Measures to SAOs for RCS -UDAN routes. Under these reforms, all concessions available on RCS - UDAN routes, available to SAOs for 3 years, were extended for an additional period during which operations were suspended due to COVID under any orders of the Central or State Government or UT administration. With the extension of all the concessions to SAOs, GST concession on VGF is also required to be extended for an additional period.	<ul> <li>Sr. No. 16 of Notification No. 12/2017-CTR exempts services provided to the Central Government, by way of transport of passengers, by air, embarking from or terminating at an RCS airport, against consideration in the form of VGF.</li> <li>This exemption is applicable for a period of 3 years from the date of commencement of operations of the RCS airport notified by MoCA.</li> <li>This exemption has been carried forward from ST regime.</li> <li>However, the exemption has become superfluous in GST regime as Section 15(2) sub-clause (e) excludes subsidies provided by Central and State Government.</li> <li>Therefore, it may be conveyed to MoCA, that subsidy in the form of VGF paid by government to airlines for operating RCS flights is not taxable in terms of the said provision of CGST Act, 2017. They may advise airlines accordingly.</li> </ul>
2.	Omission of the Entry 23A of Notification No. 12/2017-CTR dated 28.06.2017 which provides exemption to the service by way of access to a road or a bridge on payment of annuity.	Hon'ble High Court of Karnataka has set aside Circular No.150/06/2021-GST dated 1.06.2021 citing that it overrides the Notifications No.32/2017 -CTR dated 13.10.2017. It has also observed that the entry 23A of Notification No.32/2017 -CTR dated 13.10.2017 in a way, exempts services of construction of road, where the consideration is paid in the form of annuity.	<ul> <li>Entry 23A of Notification No. 12/2017-CTR dated 28.06.2017 exempts services, by way of providing access to a road or a bridge, against consideration in the form of annuity.</li> <li>Based on recommendations of the 43<sup>rd</sup> GST Council, it was clarified vide Circular No. 150/06/2021-GST dated 1.06.2021 that "Entry 23A of Notification No. 12/2017-CT(R)does not exempt GST on the annuity (deferred payments) paid for construction of roads."</li> </ul>

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
110.			The Hon'ble High Court has held that entry 23A of Notification No. 12/2017-CT(R) covers services of construction of road where consideration is paid in the form of annuity.
			Entry 23A is ambiguous and serves no purpose. Annuity is paid for construction of road and not for allowing access to road. Access to road or bridge is allowed against consideration in the form of toll which is exempt under entry at Sr. No. 23.
			Entry 23A may be omitted to prevent its misuse. The decision of Hon'ble Karnataka High Court may be challenged in Supreme Court.
3.	Whether revenue apportioned by Indian Railways (IR) to SPVs and O&M costs charged by Indian Railways from SPVs attract levy of GST?	It has been submitted that Ministry of Railways (MoR) has been giving lot of thrust on expanding its existing network, through the private participation including PPP initiatives. There are presently 10 SPVs, which have become part of the Indian Railway system on concession basis mainly for the first mile and last mile connectivity and there are many more in the pipeline. For any train, originating or terminating on the lines built by SPVs, the revenue is collected by Railways from the customer as single entity for the whole distance and proportionate revenue is passed on to SPVs by IR. Under the Service Tax regime, Traffic earnings are subjected to levy of Service Tax at its originating stage. Apportionment of revenue and apportionment of operation and maintenance charge on proportionate basis which did	<ol> <li>Ministry of Railways has stated that Indian Railways (IR) gets railway projects constructed through SPVs, which are incorporated as joint ventures between IR and public/private investors.</li> <li>The SPVs create assets such as new railway lines, electrification of railways, installation of signaling equipment etc.</li> <li>SPVs are the owner of the assets created by them during the concession period. They hand over the assets to IR after concession period is over. During the concession period, the assets are operated by IR. In other words, freight and passenger services using the assets created by SPVs are supplied by IR. SPV has no role in it. The IR collects the entire revenue from the freight and passenger operations. SPVs are paid on pro rata basis for the stretch of length of the line owned by them.</li> <li>The infrastructure/asset created by SPVs is maintained by IR for which it recovers O&amp;M expenses from the SPV.</li> <li>Ministry of Railways has requested for issuance of clarification that both apportioned revenues paid to SPVs and O&amp; M costs charged by IR form the SPV do not attract GST.</li> </ol>

Sr.	Proposal	Details of Request	Discussions in FitCom and its recommendation
No.			
		not attract any service tax. A significant portion of the funding of the Spy project line is through external sources (in addition to	use infrastructure built and owned by them during the concession period against consideration in the form of pro rata share of revenue is a taxable supply. GST paid on the said supply of services is available to IR as ITC.
		Indian Railways or its PSEs) brought in by the partners comprising both State Government as well as private entities. Once the rail infrastructure i.e., Railway line, Signaling, electrical installations etc., are developed, the train operations for running of passenger and freight trains is controlled by the Indian Railways (IR). This includes the commercial operation of collecting the freight as per freight tariffs of Ministry of Railways. The SPV is not involved in operation of trains.	6.1 It has been stated that SPV is not supplying any service. It is only contributing in the performance of sovereign functions by Government. The revenue stream of SPV is merely return on investment made by them for development of rail infrastructure for IR. It is relevant to mention that even if the SPV and IR are regarded as constituting an Association of Persons (AOP), the services supplied by them to each other will be taxable. Section 7 of the CGST Act, 2017 provides that <i>the 'person'</i> (which has been defined to include an AOP) <i>and its members</i> <i>or constituents shall be deemed to be two separate</i> <i>persons and the supply of activities or</i> <i>transactions inter se shall be deemed to take place</i> <i>from one such person to another.</i>
		These SPVs have been created to fill the gap of Railway's internal finances for rail infrastructure projects, thereby contributing in performing the sovereign function of the Government.	6.2 It has been stressed by IR that the amount paid to SPVs is only a revenue share. The pro rata share of revenue paid by IR to SPV is nothing but consideration paid by IR to SPV for the service of allowing the use of infrastructure owned by SPV. The measure of consideration can take any form as desired by the contracting parties. It can be a fixed sum paid upfront, or amount paid in installments or annuities or certain fixed percentage of the revenue earned from such
		The GST is collected by the Railway and deposited in the Consolidated Fund of India. No charge is being collected by the SPV since no service is being provided by them to the passengers or freight customers. Therefore, there is no loss of revenue to the Government.	project or the pro rata revenue earned from the project or the pro rata revenue earned from the project of asset owned by the SPV. The measure of consideration or the way how it is calculated, does not affect the taxability of supply for which it is paid. It is the supply which is taxed and the tax is levied on the amount paid /payable for that supply. The manner in which the contracting parties decide to calculate the consideration payable for a supply is immaterial in determining whether the supply is taxable or not.
		The project expenditure incurred by	7. Similarly, services of maintenance supplied by IR to SPV is a taxable supply. ITC of the same is available to SPV.
		the SPV is compensated by way of a return on investment and is transferred to the SPV from the	8. Therefore, the GST paid either on the amount paid by IR to the SPV or by the SPV to IR is not a

Sr.	Proposal	Details of Request	Discussions in FitCom and its recommendation
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		revenues collected by the IR from its customers and is transferred net of O&M expenses to the SPV. After the concession period, the project line is transferred back to the Railway.	<ul> <li>cost for them.</li> <li>9. The court rulings pertaining to service tax era are not relevant in GST as the provisions of GST law are different from the existing provisions of that period.</li> <li>10. We may clarify to Ministry of Railways accordingly.</li> </ul>
		In the perspective of above, it is requested to issue suitable clarifications that both apportioned revenue of SPVs and O&M costs for SPVs does not attract levy of GST.	
4.	To clarify on applicability of GST on Air Force Officers Mess.	The issue arises from 47 <sup>th</sup> GST Council's decision regarding levy of GST at 12% on services of hotel accommodation below Rs 1000/- by a hotel, inn, guest house, club or campsite for residential or lodging purposes.	All services supplied by the Government to individuals other than business entities except a few specified services such as services of postal department, transportation of goods and passengers etc. are exempt from GST vide Sl. No. 6 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017
		Messes in Armed Forces are established to cater for requirement of accommodation and messing for the personnel of Armed Forces all across the country which includes places where there is no habitation. These are created /established by using public fund as per the laid-	Therefore, accommodation services provided by Air Force Mess to Air Force personnel would be exempt in terms of Sl. No. 6 of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017 provided services supplied by Air Force Mess qualify to be considered as services supplied by Central Government.
		out scale and is maintained by the contribution from individual officers (members) on no profit no loss basis. Messes are home for the living-in officers, a club for living- out officers and a social centre for the station. Services provided at Officers Mess are chargeable to members and its income, if any, is used for the development of the	The same may be clarified to the Air Force.

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
		Mess. Officer Messes charge for per room per day has been kept @ less than Rs 1000/- for officers coming on Temporary Duty. Further, due to the specific object of the Messes, it is also outside the	
		ambit of Income Tax under Section 10 of the Income Tax Act, 1961. Therefore, it has been requested to give a clarification on the applicability of GST on Air Force Officers Mess.	
5.	To clarify whether GST is applicable on the incentive paid by MEITY to the Banks under the Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions. In case GST is applicable, the same may be waived as	MEITY rolled out a scheme called the Incentive Scheme for promotion of RuPay Debit Cards and low- value BHIM -UPI transactions (P2M). The scheme is aimed at boosting the acquiring banks to build a robust ecosystem for digital payments and making the digital payments accessible to sectors and population who do not have access to formal banking facilities.	The Payments and Settlements Systems Act, 2007 prohibits banks and system providers from charging any amount from a person making or receiving a payment through RuPay debit card or BHIM UPI. Instead, the Government pays them an incentive at prescribed rates. A view may be taken that the service supplied by the acquiring banks and other participants in the digital payment system in case of transactions
	the purpose of the scheme is to promote RuPay debit card and BHIM-UPI transactions.	The incentive is provided as a percentage of the amount transacted and is subject to specified caps. The incentive is given only for transactions made through RuPay debit cards and low value BHIM UPI (< Rs 2000) transactions. Further, the banks are required to show a minimum growth rate in the number of transactions made through RuPay/BHIM UPI as prescribed in the Notification to avail this scheme. Reimbursement	through RuPay/BHIM UPI is the same as the service that they provide in case of transactions through any other card or mode of digital payment. The only difference is that the consideration, instead of being paid by the merchant or the user of the card is paid by the government in the form of incentives. In this view of things, the incentive is nothing but a subsidy directly linked to the price of the service paid by the central government and the same is not taxable in view of the provisions of Section 2(31) and Section 15 of the CGST Act, 2017.
		of claims will be done on quarterly basis and incentive will be shared by acquiring banks with other stakeholders as decided by NPCI.	A view may also be taken that the incentive in question is not a consideration paid by the central government for service supplied by the acquiring banks but only an incentive per se as it is paid

No.		_	Discussions in FitCom and its recommendation
		It has been contended that the incentives given to member banks is nothing but subsidy received from the Central Government in order to promote the use of specified electronic modes and that Section 2(31) of the CGST Act, 2017, which defines 'consideration' excludes subsidy given by the Central Government or a State Government. Further, Section 15 of the CGST Act, 2017 also excludes subsidies provided by Central Government or State Government from the value of taxable supply. Therefore, GST is not applicable on the said incentive and a clarification to this effect has been requested.	contingent upon the banks achieving a minimum yearly growth rate in the number of transactions. However, even in that case, the incentive will not be taxable as it is not a consideration paid by the central government for any service supplied by the acquiring bank to the Central Government. It is the core business of the banks to facilitate monetary transactions between businesses and individuals. The transactions can be offline or online. The banks allow people to transact through digital system not for the Government but for themselves. Mere fact that the government encourages them to promote digital transactions through RuPay/BHIM UPI does not mean that they are supplying any service to the Central Government. The Central Government does so to promote its own policy objectives. Further, there is no contractual obligation on the banks to promote such transactions or on the central government to provide such incentives. The entire arrangement is voluntary. In other words, not achieving the yearly growth rates in number of transactions prescribed for the incentive does not result in any breach of contract. The incentive paid to the banks under the scheme can be considered akin to the export incentives paid by the government to exporters under various schemes. The exporters do not export for the Government but for themselves. Therefore, the incentives paid by Government to the acquiring banks for promoting RuPay/ BHIM-UPI transactions are no more taxable than the incentives paid to the exporter is. So, in this view of things also, incentives paid by acquiring banks under the scheme is not taxable.
	Whether, GST is leviable when the residential dwelling is	The petitioner has stated that she has taken registration under GST even though the turnover of her	The department has informed the Hon'ble High Court in the instant writ petition as below-

Sr.	Proposal	Details of Request	Discussions in FitCom and its recommendation
No.			
	rented by a person who is the proprietor of a proprietorship firm in his personal capacity for use as his own residential dwelling. businesses supplying goods or services through ECO irrespective of their turnover. Since, she is a registered person under GST, even though she intends to rent the residential dwelling for her own use as residence and not in the course of or furtherance of business of the proprietorship firm owned by her, she would be required to pay GST.	"the language used in the exemption entry as amended w.e.f. 18th July, 2022 makes it clear that renting of residential dwelling is taxable only where the residential dwelling is rented to a registered business entity. The exemption on renting of residential dwellings to a person other than a registered business entity continues. It is relevant to note in this context that the term "person" has been defined in the CGST Act, 2017 to include an individual, an HUF, a Company, a firm, Government and so on. Clearly, where the residential dwelling is rented by a person who is the proprietor of a proprietorship firm, who rents it in his personal capacity for use as his own residential dwelling, (and such renting is not on account of its business, i.e., not accounted for in the firms account but is on personal account) the exemption shall continue to be available to him. Similarly, where the residential dwelling is rented by a partner of a partnership firm in his personal capacity for his own residential use and not accounted for in business entity account, the exemption will be	
			available."2.However, the Government Counsel has informed that during the hearing in this matter, the Hon'ble Court has pointed out that the Notification did not specify that GST would be charged only where the registered person was renting the residential dwelling in course or furtherance of business.3.To obviate dispute and litigation in this regard, it is recommended that- a) The Entry at Sr. No. 12 of Notification No. 12/2017-CTR may be amended as under-SI.Heading entryPresent entryI2Heading g Services by g963 or way of way of way of renting dwelling for

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			9972       use as       use as         residence       residence       residence         except       except where       the residential         where the       the residential       dwelling is         dwelling is       rented to a       registered         person.       by such       registered         person in the       course or
			<ul> <li>b) An explanation may be inserted in the entry in exercise of the power under Section 11(3) of the CGST Act, 2017 as under:</li> <li>Explanation: - Notwithstanding anything stated above, services by way of renting of residential dwelling to a registered person where the, –         <ol> <li>residential dwelling is rented to a registered person who is a proprietor of a proprietorship firm and who rents it in his personal capacity for use as his own residence and</li> </ol> </li> </ul>
			<ul> <li>ii. such renting is on his own account and not that of the proprietorship firm;</li> <li>shall be exempted from tax.</li> <li>The same shall apply, mutatis mutandis, where the residential dwelling is rented to a partner of partnership firm who rents it in his personal capacity for use as his own residence.</li> </ul>
7.	To specify a positive list of services under Sr. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate)		Detailed agenda note which was placed before the 47 <sup>th</sup> GST Council meeting is enclosed (Annexure II) 1. 47 <sup>th</sup> GST Council meeting held on 28 <sup>th</sup> -29 <sup>th</sup>

Sr.	Proposal	Details of Request	Discussions in FitCom and its recommendation
No.			
			June, 2022 had directed that the proposal to specify a positive list of services under Sr. No. 3 & 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 may be reconsidered by the Fitment Committee taking into account the inputs from all the States which had voiced their concerns in the said council meeting.
			2. Accordingly, the States of Telangana, Andhra Pradesh and Delhi were invited to the Fitment Committee meeting held on 12.09.2022 to give their views on the said issue. At the said meeting, Telangana requested to include Public Distribution System, Animal Husbandry etc. under the proposed positive list. Andhra Pradesh suggested expanding the proposed definition of <i>Public Authority</i> so as to cover manpower supply services hired by the state through a state corporation under exemption.
			3. The views given by the states in writing are as under:
			Telangana
			The following services may be added to the list of services to be specified in entry 3/3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017
			<ul> <li><u>Public Distribution and the related</u> <u>activities including Custom Milling and</u> <u>transportation services</u> Process of public distribution system involves large scale procurement of Custom Milling Services and renting of vehicles transportation services, without which the final goal of distribution cannot be met.</li> <li><u>Minor Irrigation</u></li> </ul>
			Telangana has taken up the programme of restoring the minor irrigation sources under the title "Mission Kakatiya". The services procured under this programme are

Sr.	Proposal	Details of Request	Discussions in FitCom and its recommendation
No.			
			primarily in the nature of pure services or services where goods component is less than 25%.
			• <u>Social forestry and Farm forestry</u> For achieving the objective of increasing tree cover in the State to 33% of the total geographical area of the State through the "Haritha haram".
			• <u>Roads and bridges</u> To improve the connectivity, earth work (laying of mud roads) is taken up on a continuous basis in many villages. These
			services are generally procured from the Local people and the involvement of the goods component in these services is quite low.
			Delhi
			The exemption on services mentioned in Article 243 G & 243 W of Constitution of India should be continued.
			4. In view of the above suggestions received from states, the Fitment Committee went through the list of activities specified in the 11 <sup>th</sup> and 12 <sup>th</sup> Schedule to the Constitution and recommended that the following services may be added to the positive list of services (placed before the 47 <sup>th</sup> GST Council) under Sr. No. 3/3A of Notification No. 12/2017-CTR
			<ul> <li>Education, including primary and secondary schools</li> <li>Technical training and vocational education</li> <li>Adult and non-formal education</li> <li>Libraries</li> <li>Social Forestry and Farm Forestry</li> <li>Fire Services</li> </ul>
			4.1 On the suggestion to include 'society' also in the definition of Public Authority, consensus was that the phrase 'any other body' used in the

Sr.	Proposal	Details of Request	Discussions in FitCom and its recommendation
No.			definition of Public Authority proposed in the 47 <sup>th</sup>
			GST Council Meeting would include societies, companies, corporations etc. also.
			4.2 As regards, the suggestion of Telangana to include <u>Minor Irrigation &amp; Roads and Bridges</u> . GST on specified works contract services (WCS) supplied to Central Government, State Government and Local Authorities has recently been revised from 12% to 18% with effect from 18.07.2022 and on WCS predominantly involving earthwork from 5% to 12%. Services procured for minor irrigation and for construction/laying down of roads & bridges would predominantly be WCS which the GST Council has recommended to be taxed at 18%/12%.
			4.3 Exempting custom milling will block the input tax credit (ITC) of the milling units on capital goods, raw materials (such as packing material, vitamins and other fortification additives etc.) and input services. GST payable on customs milling will in any case flow back to the Government as revenue.
			5. Accordingly the following list of services may be specified in SI. No. 3 and 3A of Notification No. 12/2017-CTR as under:
			"3. Supply of pure services, or composite supply of goods and services, in which the value of goods constitutes not more than 25% of the value of composite supply, to Central Government, State Government, Union Territory, a local authority or a <b>public authority</b> by way of,
			<ol> <li>Water treatment and/or supply;</li> <li>Public Health activities, Sanitation Conservancy and Solid or Liquid Waste management;</li> <li>Slum Improvement and Up gradation;</li> <li>Maintenance and operation of street lights, bus stops, public conveniences, public parks and gardens, burial ground and compatation;</li> </ol>
			and crematorium; 5. Education, including primary and secondary schools; 6. Technical training and vocational

Sr.	Proposal	<b>Details of Request</b>	Discussions in FitCom and its recommendation
No.			
			<ul> <li>education;</li> <li>7. Adult and non-formal education;</li> <li>8. Libraries;</li> <li>9. Social Forestry and Farm Forestry;</li> <li>10. Fire Services;</li> <li>11. Renting of motor vehicles for carrying out functions listed at Sr. No. 1 to 10 above;</li> <li>12. Supply of manpower services for carrying out functions listed at Sr. No 1 to 10 above;</li> </ul>
			Public authority may be defined as under:
			"Public Authority means an authority or a board or any other body established <u>and controlled</u> by the <b>Central or State Government</b> to carry out the functions listed in SI. No. 1 to 10 of the entry." As explained in Circular No.177/09/2022-TRU dated 03 <sup>rd</sup> August 2022, issued on the basis of the recommendations of the 47 <sup>th</sup> GST Council meeting, exemption under Entry 3 & 3A of Notification no. 12/2017-CT(R) dated 28.06.2017 has been given on pure services and composite supplies procured by Central Government, State Government, Union Territories or local authorities for performing functions listed in the 11 <sup>th</sup> and 12 <sup>th</sup> Schedule of the Constitution. If such services are procured by any Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, the same are not eligible for exemption under SI. No. 3 and 3A of Notification 12/2017- CT(R).
			As a consequential change to the proposed modification in entry 3 and 3A of the said Notification, an explanation may be inserted in the modified entry along the lines of the Circular as under:
			"Explanation: The exemption under this entry applies only to pure services and composite supplies procured by Central Government, State Government, Union Territories, local authorities or a public authority for performing functions listed in the 11 <sup>th</sup> and 12 <sup>th</sup> Schedule of the

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendation
			Constitution. Services procured by any
			Central/State Government Ministry/Department
			/Union Territory or Public Authority which does
			not perform any functions listed in the 11th and
			12 <sup>th</sup> Schedule, in the manner as a local authority
			does for the general public, are not eligible for
			exemption under this entry."

# (Recommendations of Fitment Committee on positive list of services to be specified in Sr. No. 3/3A of Notification No. 12/2017-CT(R))

By way of background, it is stated that the entries at Sr. No. 3 and 3A of exemption Notification No. 12/2017-CT(R) dated 28.06.2017 exempt supply of pure services and composite services (goods component 25% or less) supplied to Government, Local Authority, Governmental Authority or Government Entity by way of any activity in relation to Municipal or Panchayat functions.

2. Post the amendments made with effect from 1.1.2022, the entries read as below:

# Entry 3 of Notification No. 12/2017- CT(R):

"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 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."

# Entry 3A of Notification No. 12/2017- CT(R):

"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 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."

3. With reference to these entries, the following a proposal placed before the GST Council in the 45<sup>th</sup> Council meeting held on 17.09.2021 was that the entries were being interpreted too widely, the issue as to the scope of the term "in relation to" appearing in the said entries was placed the Fitment Committee and GST Council. The Fitment Committee recommended that as the scope of the expression "in relation to" used in the said exemption entries is too wide and prone to interpretation disputes, a list of services may be specifically notified as exempt under the said entries.

[Agenda No 14, Annexure IV, Sl. Nos. 25 of 45th GST Council may please be seen]

4. In Service Tax regime, since the intent of the exemption was to exempt only the services directly connected with the functions carried out by Government and local authorities of water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation, the relevant Entry 25 of Notification No. 25/2012- Service Tax read as:

"Services provided to Government, a local authority or a governmental authority by way of-

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation;"

During discussion on this issue, in the 45<sup>th</sup> meeting Council was of the view that while the approach to specify a positive list of exempt services was agreed to, the list recommended by Fitment Committee needs to be pruned and refined. It was agreed that the list of services shall be circulated to all states for their inputs for refining the list which may be brought before GST Council for approval.

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6. Accordingly, as per the direction of the Council, the List was circulated to States vide email dated 22.11.2022. Comments were received from West Bengal, Bihar and Tamil Nadu.

7. The issue was discussed at length in the Fitment Committee. After long deliberation the Fitment Committee was of the view that the exemption under said entries should confine to those services which are directly connected with the functions entrusted to Panchayat or Municipality and not services remotely or vaguely connected with those functions. Further, it was felt that only few services constitute bulk of input services by the local authority. Hence the list could be pruned down significantly while ensuring that major services by these bodies remain exempted. This approach would ensure that exemption entries are not interpreted widely, local authority continue to have major relief on supply of input services, and in respect of other general services the normal design of GST could be applied. Fitment Committee also felt that in respect of purchase of goods no special concession is allowed to procurement by the Government or Local Authority. They suffer same incidence on goods as any private person (for example cement, iron and steel, vehicle, furniture etc.). In service, the special concession crept in as services were taxed differently in pre-GST regime wherein tax was only imposed by Centre and there was no VAT on services. However, In GST there should not be any appreciable difference in the approach for goods and services. As is the case in goods, the Government and Local Authority should also bear the normal rate of GST on input services barring exceptions. Accordingly, Fitment Committee carved out a positive list of services for consideration of the Council.

8. With this positive List approach, it was also felt that the authorities constituted by in different states for such civic work as fall in the proposed positive list should also be included in the ambit of these exemptions alongside the local authority.

# **Recommendation of Fitment Committee: -**

# I. The following list of services may be specified in Sl. No. 3/3A of Notification No. 12/2017-CT(R)dated 28.06.2017:

Supply of **pure services**, or **composite supply of goods and services**, **in which the value of goods constitutes not more than 25% of the value of composite supply**, to Central Government, State Government, Union Territory, a local authority or a public authority by way of, -

- 1) Water treatment and/or supply
- 2) Public Health activities, Sanitation Conservancy and Solid or Liquid Waste management
- 3) Slum Improvement and Up gradation
- 4) Maintenance and operation of street lights, bus stops, public conveniences, public parks

and gardens, burial ground and crematorium.

5) Renting of motor vehicles for carrying out functions listed at Sr. No. 1 to 4 above.

6) Supply of manpower services for carrying out functions listed at Sr. No 1 to 4 above.

# II. Public authority may be defined as under:

"Public Authority" means an authority or a board or any other body established by the Government to carry out the functions listed in S. No. 1 to 4 of the entry.

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# e) Issues where no change has been proposed by the Fitment Committee in relation to services – Annexure-V

# Annexure –V

Sr.	Proposal	Details of Request	Discussion in FitCom and its
No.	1 oposui	Domis of request	recommendation
1.	To extend the validity of GST exemption on transport of goods by air from India to Outside. This is currently valid till 30.9.2022.	In order to maintain competitiveness of Indian exporters vis-a vis their counterparts, exemption from GST for air freight exports may be extended beyond 30.09.2022	Transport of goods by vessel and air from a place in India to outside India, are presently exempt from GST [till 30.9.2022] vide entry No. 19A and 19B of Notification No. 12/2017. This exemption was given in September, 2017 because online refund mechanism for exporters had not fully stabilized at that time.
			The exemption was initially given for a period of one year up to 30.9.2018 and then extended every year.
			Last year, though, the online refund process had stabilized, exemption was given in view of COVID situation.
			Now, since the online refund process is fully functional and working smoothly, there is a case for withdrawing this exemption.
			GST paid on export freight will not be a cost for exporters as they will be entitled to take refund of ITC of the same. The withdrawal of exemption will also allow shipping lines to use their ITC. This will also benefit the airlines as they will not have to reverse ITC.
			The validity of GST exemption on transport of goods by vessel and air from a place in India to outside India may not be extended beyond 30.09.2022.
2.	a. Reduction in GST rate in respect of under construction commercial apartment from 18% with ITC to 7.5% (without ITC)	It has been submitted that due higher rate of GST on under construction commercial apartments, more and more buyers are preferring ready to use apartments, where occupancy certificate has been issued.	Lowering of GST rate on under construction commercial apartment will result in accumulation of ITC. Most of their inputs and input services attract GST @ 18% (steel, building blocks, cemented bricks, tar, bitumen, asphalt, tiles, paints, PVC pipes, manpower supply etc.) and 28% (cement). It will also act as a disincentive for procurement of tax paid input goods and services and result in revenue

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
			leakage and malpractices such as ITC diversion. May not be accepted.
	b. Options of rates i.e., 7.5% (without ITC) or 12% (with ITC) to given in respect of under construction residential apartment other than affordable residential apartment.	It has been submitted that in case of mixed project it become cumbersome for builders-promoters to utilize the ITC available to them.	It was a conscious decision of the GST Council after much deliberation to tax construction of other than affordable residential apartments by promoters at the effective rate of 5% without ITC.
	c. Uniform rate of 12% for works contract supply provided by contractor in respect of residential apartments irrespective of it being affordable or otherwise.	It has been submitted that higher rate of GST on works contract supply has increased price of the residential apartments.	Lowering GST rate on works contract supply will result in accumulation of ITC. Most of their inputs and input services attract GST @ 18% (steel, building blocks, cemented bricks, tar, bitumen, asphalt, tiles, paints, PVC pipes, manpower supply etc.) and 28% (cement). It will also act as a disincentive for procurement of tax-paid input goods and services and result in revenue leakage and malpractices such as ITC diversion. May not be accepted.
	d. Computation of shortfall in receiving 80% of value of input/input services from registered supplier should be done project wise instead of year wise.	requirement of year wise computation of shortfall in receiving 80% of value of input/input services from registered supplier, in the last	The provisions with regard to construction of residential apartments by the promoters were introduced after detailed deliberations by the Council. May not be accepted.
3.	Request of exemption to Assam Cancer Care Foundation (ACCF) from being subjected to the payment of GST applicable on works procured by ACCF for	Assam Cancer Care Foundation (ACCF) is a pioneer society, striving hard to facilitate cancer care in the state, under the patronage of Assam Government. And they procure a large number of equipment solely for the purpose of extending support to cancer patients, which are taxable	<ul><li>Health Care Services are already exempt.</li><li>Request is for end use-based exemption on inputs and input services used for setting up of hospital.</li><li>End use-based exemptions are difficult to</li></ul>

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	setting up the infrastructure and managing the operations in the State of Assam.	under GST.	monitor and prone to misuse. Further, request is for a new exemption. General policy of GST Council has been not to expand the existing list of exemptions.
4.	To exempt GST on leasing/renting/transfer of right to use the Energy Storage Systems (ESS)	India has pledged to achieve 500GW of non-fossil fuel-based generation capacity by 2030 at the COP 26 Summit. Out of the 500GW of required capacity 450GW of capacity will come from renewable sources. Electricity from renewable sources is available only during certain times of the day, this impacts the reliability and grid stability.	May not be accepted. Ministry of Power has stated that there is no clarity regarding GST on leasing/renting of Energy Storage Systems (ESS). It may be conveyed to Ministry of Power that the Notification No. 11/2017-Central Tax (Rate) dated 28.6.2017 which prescribe the rates of GST on supply of services very clearly provides in Sl. No. 17, Item 7A that leasing or renting of goods attracts the same rate of tax as applicable on sale of like goods. Therefore, it is clear that leasing or renting of ESS will attract GST @ 18% which is the rate applicable on sale of ESS.
		Energy Storage Systems (ESS) would overcome the challenges of grid integration and ensure availability of round the clock power from renewable energy sources. ESS connected to the grid has wide range of applications such as energy shifting, energy arbitrage, firming up of intermittent renewable energy power, ancillary services and storage of excess renewable energy generation.	Supply of electricity is presently exempt from GST. However, most of the goods and services used in generation of supply of electricity such as coal, capital goods, cable, works contract services, man power supply, instruments, cement, steel, switches and other apparatus all attract GST. Exempting any of the goods or services used in generation, transmission, distribution or supply of electricity will amount to zero rating/partial zero rating of supply of electricity. Zero rating is done only for exports and not for domestic use.
		ESS can be established by a Generating Company or a transmission licensee or a distribution licensee or an ESS developer. The ESS may be established on a standalone basis or in conjunction with Generation, Transmission and	There was no exemption on renting of ESS in Service Tax period also. The general view in GST Council has been that the existing list of exemptions should not be expanded. More importantly any exemption of leasing or renting of ESS will block ITC of the ESS

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
		DistributionSystems.Thedeveloper/ownerofESSmaysell/lease/rentouttheESStocompanyengagedingeneration,transmissionordistributionofelectricity.InallcasestheoutputisexemptfromGST.ItisapprehendedthatItisapprehendedthatapplicabilityGSTonleasing/rentingoutofESSwouldleadtoincreasedcostelectricityforconsumers.on	of capital goods, battery and other equipment required for setting up ESS facilities. Therefore, the exemption will increase the cost
5.	Credit of GST paid on O&M services used for metro, monorail etc., may be allowed to be used against other taxable services offered by NCRTC and the remaining unutilized credit may be allowed to be refunded.	National Capital region Transport Corporation (NCRTC) plans to outsource Operation & Maintenance (O&M) services as per Metro Rail Policy, 2017. However, service of transport of passengers by metro, monorail or tramway is exempt under GST. This results in non-availability of ITC to NCRTC on O&M services procured by it. Therefore, credit of GST paid on O&M services used for metro, monorail etc., may be allowed to be used against other taxable services offered by NCRTC and the remaining unutilized credit may be allowed to be refunded.	ITC is allowed only in respect of goods and services used in making a taxable supply. NCRTC is not eligible for taking ITC of GST paid on any inputs or input services used for supplying exempt services. Therefore, question of allowing utilization of such ITC for payment of GST on other supplies or refund of unutilized ITC does not arise. May not be accepted.
6.	a. Removal of Proviso to S1. No. 66 of the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 and to consider reinstating the exemption similar to the Mega Exemption Notification No. 25/2012-Service Tax,	The first proviso to SI. No. 66 of the Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017 restricts the exemption to services provided to educational institutions only up to higher secondary school (or equivalent)' and is not applicable to higher educational institutions, it is requested that an exemption similar to the Mega Exemption Notification No. 25/2012-Service Tax, dated 20th	The request is for broadening of the existing exemption entry, which is not desirable in the wake of initiative taken by the GST Council in respect of rate rationalisation. Broadening of existing exemptions is against the objective of comprehensive taxation of supply of goods and services at reasonable rates of tax. May not be accepted.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
110.			recommendation
	dated 20th June, 2012 as applicable till April 2017	June, 2012 as applicable till April 1, 2017, be reinstated.	
	<ul> <li>b. Expansion of exemption to other ancillary services such as Renting of premises of educational institution, General Insurance Services, Legal Services, ICT Enablement Services, Curriculum Development Services, Student Exchange programme related</li> </ul>	It has been submitted that the educational institutions need to incur expenses at a very high level on various ancillary services which are not a part of GST exemption Notification.	
	<ul> <li>c. concession be provided for supply of all goods and services (a)</li> <li>5 to all educational institutions including schools, colleges and universities</li> </ul>		
7.	Aligning GST rate for construction of ARHCs (Affordable Rental Housing Complexes) with other PM AWAS Yojana schemes: Amendment in Notification No. 8/2017- ITR dated 28.06.2017 to include specific entry for works contract service at GST rate of 12% used for construction of ARHCs at par with other PMAY schemes Amendment under	improving the living conditions of urban migrants and obviate them from staying in slums, informal settlements or peri-urban areas. The success of the scheme would depend on making the rental facility affordable for the beneficiary. Levy of 18% or 28% GST on pure labour contract or construction services or materials procured for construction would increase the overall cost of setting up the ARHCs which will translate to higher rental charges being collected from the beneficiaries. Specific GST	The request has lost its relevance in the wake of withdrawal of concessional rate of GST on works contract services with effect from 18.07.2022. May not be accepted.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	Heading 9954, Sl. No.11 in Notification No. 09/2017- ITR dated 28.06.2017 to include ARHCs as part of PMAY.	housing schemes under PMAY already draw the benefit of exemptions/ concessional rates of GST as mentioned above, as the objective is to provide affordable housing to the needful. Even though the intention of ARHC Scheme is the same - i.e., to provide affordable housing to the needful, ARHC Scheme currently doesn't have any exemption or concessional GST rates available to other PMA Y schemes.	
		the ARHC from GST would greatly increase the success rate of the ARHC scheme and is likely to increase its popularity.	
8.	Request to bring parity in applicable GST rate between supply of goods and services being consumed in the entire value chain of Petroleum operations at the rate of 5%.	dated 28.06.2017 provides for 5% GST on supply of specified goods required to be used in petroleum operations. Notification No. 11/2017-CT(R) dated 28.06.2017 provides for GST of 12% on other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both attract GST of 12%.	This is a request for expansion/deepening of lower rate. May not be accepted.
		Since the major part of capital expenditures in petroleum operations are in the form of services i.e drilling, fracturing, cementing, logging, perforation , workover operations, related manpower operations , professional/technical services etc,	

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
		the request is to bring parity in applicable GST rate between supply of goods and services being consumed in the entire value chain of Petroleum operations at the rate of 5%.	
		This measure will motivate operators to enhance their capital expenditure which will help in boosting domestic production and thereby reduce imports.	
9.	To extend GST exemption to service provided by sub- contractor to main contractor providing services to run electrical vehicles (buses) for Local Authorities or State Transport Undertakings.	While the Ministry of Finance has exempted GST levy on service provided by main contractors providing services to run electrical vehicles (buses) to local authorities and State transport undertakings, the same is not being extended to services provided by sub-contractors (e.g., Operation, maintenance, drivers etc.) to the main contractor	This is a request for deepening of exemption. It will amount to zero rating which is done only for exports. May not be accepted.
10.	The tax regime applicable to the travel and tourism sector may be reviewed holistically.	1. The 313 <sup>th</sup> Report by the Rajya Sabha Secretariat Department-related Parliamentary Standing Committee on Transport, Tourism and Culture has observed that one of the major reasons for India's Inbound Tourism remaining grossly under-utilized has been the high rates and multiplicity of taxes that deter Inbound Tourism and have led to tourist packages being outpriced vis-à-vis those in competing tourist destinations of other countries. The tax structure applicable to hotel accommodation, air travel, food and beverages consumption, etc., not only leads to tourist packages being overpriced but also obstructs seamless flow of tourists to our historical sites. The Committee notes that despite Inbound Tourism being a major foreign	Issues relating to the tax regimes on travel and tourism sector were holistically reviewed by 47 <sup>th</sup> GST Council in its meeting held on 28 <sup>th</sup> -29 <sup>th</sup> June, 2022. The 47 <sup>th</sup> GST Council recommended that in case of tours conducted for foreign tourists partially in India and partially outside India, proportionate value of the foreign component of the tour may be excluded from the value for the purposes of payment of GST. This recommendation has been brought into effect w.e.f 18.07.2022 vide Notification No. 04/2022 -Central Tax (Rate) dated 13.07.2022. Further, the GST Council also recommended for issuing a clarification that exemption at Sr. No 17 (d) of Notification No. 12/2017-CTR dated 28.06.2017 [which exempts <i>"transportation of passengers by public transport, other than predominantly for tourism purpose, <u>in a vessel</u> between places</i>

Sr.	Proposal	<b>Details of Request</b>	Discussion in FitCom and its
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		<ul> <li>exchange earner with foreign exchange earnings of Rs.2,11,661/-crore in 2019, the taxes levied on Inbound Tourism are among the highest in the country. The Committee, therefore, recommends that the tax regime applicable to the travel and tourism sector be reviewed holistically so that with suitable amendments India can convert its comparative natural and economic advantages into competitive advantages for the tourism sector. The Committee desires to be kept apprised of the steps taken and the result achieved in this regard."</li> <li>2. The Committee has observed that the travel and tourism sector, leading to tourist packages being overpriced and also outpriced vis-à-vis competing tourist destinations in other countries. Further, the Committee recommends for a holistic review of the tax regime applicable on the travel and courism sector.</li> </ul>	<ul> <li>located in India] would apply on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government and the expression 'public transport' used in the exemption Notification only means that the transport should be open to public and can be privately or publicly owned. This recommendation has also been implemented vide Circular No. 177/09/2022-TRU dated 03.08.2022.</li> <li>Tour operator service attracts GST in the lowest slab of 5%. Restaurant and catering service also attracts GST @ 5%. Transportation by rail (AC), road, air (economy class) attracts GST @ 5%. Transportation by rail (other than AC), non-air-conditioned stage carriage/contract carriage are exempt from GST. Accommodation services attract GST @ 12% upto tariff of Rs7500/day and 18% on tariff above Rs7500/day. Therefore, the travel and tourism sector presently attracts GST in the lower rate slabs of nil/5%/12%. Moreover, with the implementation of GST, various indirect taxes such as VAT, entertainment tax, luxury tax etc, have been subsumed under GST. This has done away with not only multiplicity of indirect taxes but also the cascading of taxes which resulted in a much higher tax incidence in pre-GST tax regime.</li> <li>Therefore, the observation of the Committee that the current rates are high and that there exists multiplicity of taxes in the travel and tourism sector does not appear to be correct.</li> </ul>
11.	Proposal for granting exemption to the services supplied by electricity transmission utilities by	It has been submitted that the principal activity of TRANSCO is transmission of electricity. Apart from this, it regularly engages in works involving construction, erection, modification,	The exemption has been sought by the transmission utility for construction of transmission lines upto the pump houses constructed under Lift irrigation Scheme on the ground that services supplied by

Sr.	Proposal	Details of Request	Discussion in FitCom and its
No.			recommendation
No.	way of construction and erection of transmission assets for providing power supply to the pump houses which are constructed under a Lift Irrigation Scheme (LIS).	commissioning & installation of various transmission assets such as transmission towers, bays, lines, sub-stations which are used in the course of transmission of electricity. Unless the transmission utilities (TS TRANSCO) provide such services for transmission of electricity, the distribution utilities cannot provide the service of distribution of electricity. Transmission utilities are providing the exact same services as the distribution utilities for the agricultural activity of the farmers, Therefore, it should also be the beneficiary of GST exemption vide entry 10A of Notification No. 12/2017 dated 28.06.2017. This would rationalise all types of construction and commissioning projects for agricultural purposes undertaken by Transmission utilities as well as Distribution utility provides services of construction, erection etc., for distribution of electricity to the farmers for agricultural purpose, such services are exempt from GST vide entry 10A of Notification No. 12/2017 dated 28.06.2017. This would rationalise all types of construction and commissioning projects for agricultural purposes undertaken by Transmission utilities as well as Distribution utility provides services of construction, erection etc., for distribution of electricity to the farmers for agricultural purpose, such services are exempt from GST vide entry 10A of Notification No. 12/2017 dated 28.06.2017. Irrigation and Command Area Development Department of Government of Telangana (I&CAD) during the course of constructing new dams under Lift Irrigation Scheme constructs pump-houses through which the water in these dams is pumped to the farmers' fields. These pump-houses need power supply to undertake the said function. As TS TRANS CO is designated state transmission utility for the state of Telangana it is engaged by I&CAD to build new transmission assets in	electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use are exempt from GST (vide Entry 10A of the Notification No. 12/2017- CTR dated 28.06.2017). There is no parallel between the two services. While electricity distribution utilities supply services to farmers, the electricity transmission utilities supply service to command area development authority or state governments and not to farmers directly. This is a request for new exemption. May not be accepted.
		order to provide power supply to the said pump-houses. It is for these services that TS TRANSCO seeks exemption from GST. In view of the above, it has been	

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		requested to make appropriate amendment in the entry 10A of Notification No. 12/2017 dated 28.06.2017 with retrospective effect to grant exemption to the services supplied by electricity transmission utilities by way of Construction and erection of transmission assets for providing power supply to the pump houses which are constructed under a Lift Irrigation Scheme (LIS).	
12.	Request to remove exemption limits of renting of premises as provided at Sl. no. 13 for entities registered under12(AA) of the Income-tax Act, 1961, or a trust or an institution registered under sub- clause (v) of clause (23C) of Section 10 of the Income-tax Act. OR Request to exempt renting by one 12(AA) entity registered under the Income Tax Act, 1961, who are engaged in activities of relief to poor, education, healthcare, environment protection, spread of religion, spirituality, yoga related activities etc.	<ul> <li>BAPS, a charitable trust provide following services:</li> <li>Renting of Immoveable Properties by individual trusts, whose focus is on social service, like education, health care, and publications related to religion and spirituality and herbal medicines etc.</li> <li>Certain other independent trusts carry out various social welfare activities from the premises leased / rented out by main trust; the BAPS charges rent from the service specific trust for the usage of property at reasonable rates.</li> <li>Till introduction of GST, renting of premises by a religious trust was exempt from Service Tax. But in GST, this exemption has been curtailed by prescribing limits on amount charged for these services.</li> </ul>	The issue was discussed in the 47 <sup>th</sup> GST Council meeting and was deferred. There is no merit in the request to reduce the existing limit of exemption towards renting of precincts of a religious place or completely exempt the renting activity. Internal transactions between individual 12AA entities are taxable if such transaction value exceeds the exemption limit provided under Sl. No. 13 of the Notification No. 12/2017- Central Tax (Rate). Exemption to such internal transactions may not be granted. Similar request from Auroville Foundation was not been accepted by GST Council in the 28th Meeting held on 21st July, 2018. May not be accepted.
13.	In principle approval of GST Council was obtained for formulating a Margin Scheme for		The agenda note where in-principle approval for a margin scheme for tour operators was sought from the GST Council in the 47 <sup>th</sup> meeting, is enclosed (Annexure I).

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	Tour Operators. The scheme shall be worked		Inputs from States on Tour Operator Margin Scheme
	out by Fitment Committee after consultation with stakeholders.		47 <sup>th</sup> GST Council meeting held on 28 <sup>th</sup> -29 <sup>th</sup> June, 2022 had directed that the proposal regarding margin scheme for tour operator services may be reconsidered by the Fitment Committee taking into account inputs from all States which had voiced their concerns in the said council meeting.
			2. Accordingly, the States of Himachal Pradesh, Kerala, Uttarakhand, Jammu & Kashmir, Delhi and Goa were invited to the Fitment Committee meeting held on 12.09.2022 to give their views on the said issue. The written inputs/ comments of these States are as under:
			<u>Himachal Pradesh:</u>
			Analysis shows that any reduction of GST on tour operator services will affect the income of the State adversely. The State is therefore in favour of continuing with the existing rate structure on tour operators. Comments of Himanchal Pradesh are annexed as Annexure A.
			<u>Kerala:</u>
			Kerala State is a popular destination for inbound domestic as well as foreign tourists and the tourism sector significantly contributes to the economy of the State. The existing provisions under GST with respect to place of supply are beneficial to all the States that are dependent on tourism. No changes which will adversely affect GST revenue of the State should be made to the place of supply provisions. Further, any change that is proposed to be made in this sector may be brought only after conducting a detailed study on the financial implications of the states where tourism is a predominant contributor to the economy. Comments of Kerala are

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
			annexed as Annexure B.
			<u>Uttarakhand:</u>
			Marginal scheme is against the concept of indirect tax which is a tax on transactions relating to manufacture, sales or supply of goods or services. During the period of more than 100 years of indirect tax history in India, a tax rate has not been fixed based on the profit margin in respect of any goods or service sector. Indirect tax has to be collected and paid and therefore cannot have any relevance to income or profit or margin of the assessee. Any conceptual change may result in opening of Pandora's box.
			If marginal scheme is allowed in tour operator services, it will further deteriorate revenues in the sector and will not be conducive to the finances of the State. The tax base will decrease compared to the current practice of levying 5% GST without ITC on the entire tour package cost. It is impractical to prescribe the same margin for all the tour operators as some would be operating at higher margin and others at lower margin. People with higher margin (say more than 10%) will benefit the most while those with the lower margin will be at a loss. Detailed comments of Uttarakhand are annexed as Annexure C.
			<u>Jammu &amp; Kashmir:</u>
			As of now J&K is in favour of existing scheme of things dealing with the tour operators. However, if the margin scheme is to be considered, certain safeguards/ suggestions may be incorporated. Some of the important safeguards/suggestions made by J&K are as under:
			<ul> <li>(i) Concept of Agent and Principal should be well defined in the scheme.</li> <li>(ii) Where normal commercial practice is to remit payments to</li> </ul>

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
			suppliers, for example hotels, on a periodic basis, the concept of self- billing needs to be incorporated. (iii) If a holiday includes components that are provided from own resources, one must include in costs, the equivalent cost of that component if one had to buy it in. (iv) Where the components of a holiday are bought from suppliers which are not registered for GST, the components may be treated in the calculation according to whether the supply would bear GST if the suppliers were registered.
			Detailed comments of J&K are annexed as Annexure D.
			<u>Delhi:</u>
			Delhi is in favour of its implementation so as to maintain a fine balance between the tax collection from this sector without being prejudicial to interest of the tour operators. The comments of Delhi are annexed as Annexure E.
			<u>Goa:</u>
			Goa has identified a modus operandi among the industry players especially the tour operators / travel agents who are defeating the basic purpose of the said provision by using the IGST settlement mechanism to transfer ITC out of the state thereby depriving the state of legitimate revenue generating out of immovable properties, cruises etc. in the state.
			Further, it is incorrect to claim that the tour operators are not taking the ITC credit of the hotel accommodation services. A study of top 35 tour operators / travel agents suggested that 34 out of 35 dealers are taking ITC credit for the same by undertaking IGST billing.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
			Therefore, the State of Goa supports the formulation of the margin scheme for the tour operators without ITC. However, the scheme should cover the tour operators and travel agents both along with withdrawal of the option of paying taxation with ITC. The rates however may be decided in discussion with industry experts from the relevant ministry, inputs from the stakeholders or as deemed fit by the committee.
			Since the revenue of the state is primarily based on the tourism industry, if such leakages are not stopped through intervention from all levels, it will adversely affect the revenue collection of the state. In case required, the issue may be referred to the Law Committee as well and Goa be allowed to be a part of discussions for the same, as required. Detailed comments of Goa are annexed as Annexure F.
			3. It was observed by the Fitment Committee that most of the concerns raised by Goa pertain to interpretation of law which Goa may take up with Law Committee.
			4. Keeping in view the concerns of states that any change to the taxation dispensation for tour operators may have an adverse impact on revenue of the state and also that the proposed margin scheme for tour operators may invite similar requests from other sectors, it was decided that status quo may continue. The tour operators in any case are paying GST in the lowest slab of 5%.
14.	GST on economy class fare may be increased to 12% and on business class to 18% provided ATF is brought under ambit of GST.	<ul> <li>Aviation turbine fuel may be included under GST subject to following conditions:</li> <li>For domestic travel:</li> <li>Output tax on economy class tickets may be fixed at 12% and on business class tickets at 18%;</li> </ul>	At present there is no proposal to bring ATF under ambit of GST, therefore, status quo may be maintained. Having different GST rates on domestic and international air travel is not feasible. It will distort tax structure and make it more complex.

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
110.		• GST on ATF may be fixed at	
		<ul> <li>no more than 18% (without application of any cess);</li> <li>Full ITC may be provided on all goods and services to airlines</li> </ul>	
		For international travel	
		<ul> <li>The current status quo may be maintained;</li> <li>Output tax may be retained at 5% on economy class and 12% on business class;</li> <li>No taxes may be applied on ATF. Any increase in output tax on international travel will greatly disadvantage the Indian carriers that seek to compete with foreign carriers.</li> </ul>	
15.	To bring parity between express and transport sector.	The express industry has been a major enabler for the growth of e- commerce industry in the economy. Express services are subject to GST @ 18%, whereas transportation services with credit are taxed @ 12%. The Place of Supply for transportation by air and ocean are different from the one applicable to express service. With respect to export shipments, ocean freight is zero-rated, while air freight is exempted. In case of import shipments, ocean freight is taxable whereas air freight is exempt. But express service for both imports and export shipments are subject to GST. This is contributing to increase in the overall logistics cost in India.	Postal and courier services attract GST at the rate of 18% and transport of goods by road/rail/vessel attract GST at the rate of 5% with either no ITC or restricted ITC of input services. The two are distinct services. In Service Tax period also Postal and Courier services attracted service tax at the standard rate of 15% and transport of goods by road/rail/vessel attract service tax at the rate of 4.5% with either no ITC or restricted ITC of input services. No merit in the request.
16.	To exempt GST on All India Permit fee paid for grant of authorization or	Ministry of Road Transport and Highways has notified All India Tourist Vehicles (Authorization or	The GST Council while recommending the exemption on National Permit Fee for goods carriages observed that National Permit Fee is

Sr. No.	Proposal	Details of Request	Discussion in FitCom and its recommendation
	permit for plying Tourist Vehicles throughout India w.e.f 1.04.2021	Permit) Rules, 2021 effective from 1.04.2021. These rules provide for submission of application with prescribed for grant of authorization to enable the passenger vehicles operator/owner to ply passenger vehicles throughout the territory of India. The All India Tourist Vehicles (Authorization or Permit) Rules, 2021 are similar to the rules governing the issue of National Permit for goods carriages. In both cases, the fee paid is for issue of Authorization or permit for plying Goods Carriages and Passenger vehicles throughout India. Since National Permit Fee is exempt from GST, the authorization fee, air- conditioned permit fee paid for All India Tourist Permit may also be exempted from GST.	not a tax but a fee or consideration for a service supplied by the Government in the form of grant of national permits for plying of vehicles. Expanding the scope of the exemption to include other types of fees which are also in nature of consideration for services supplied by Government may not be accepted.

#### Agenda note on issues related to Tour and hospitality Sector

#### A Existing rate structure and place of supply provisions

#### (I) On tour operators

#### a. GST rate

**5% without ITC** (but ITC of input services in the same line of business is allowed) subject to the <u>condition</u> that the amount charged for the tour operator services must include charges for accommodation and transportation both.

Or

18% with ITC

[Refer S. No. 23 of Notification No. 11/2017-CT(R)]

#### b. Place of supply of service of tour operator:

For domestic supplies: Location of recipient [ default rule]-Section 12 of the IGST Act, 2017.

#### For international supplies:

(i) The location where services are actually performed (location of physical presence)-Section 13(3)(b) of the IGST Act, 2017.

(ii) If service is provided both in taxable and non-taxable territory (say a composite tour of India and Nepal) the place of supply of service is India for whole service by virtue of Section 13(6) of the IGST Act, 2017.

#### (II) Hotel accommodation services:

#### a. GST rate:

Nil upto a rent of Rs 1000 per day 12% (Rent> Rs 1000, <=7500) 18% (Rent> Rs 7500) [Refer S. No. 7 of Notification No. 11/2017-CT(R), and S. No. 14 of Notification No.12/2017- CT(R))

**b.** Place of Supply of service: Location of hotel [ in all scenarios - domestic as well as international supplies- (Section 12(3) and 13(4) of the IGST Act, 2017 refers)

# (III) Restaurant services:

#### a. GST rate:

5% without ITC in all cases except restaurants within hotels where room tariff is higher than Rs 7500.

18% - specified premises (retaurants within hotels where room tariff is higher than Rs 7500)

[Refer S. No. 7 of Notification No. 11/2017-CT(R)]

**b.** Place of Supply of service: Location where services are actually performed, i.e. location of the restuarants [Section 12(4) and 13(3)(b) of the IGST Act, 2017 refers]

# (IV) Passenger Transport services:

By road	5% without ITC (except ITC of input service in the same line of business); 12% (with ITC)
By rail (AC or First Class)	5% (with ITC of input services) <u>Exempt</u> other than AC or first class
By Air	Economy 5% (with ITC of input services) Business 12% (with ITC) <u>Exempt</u> To or from NE States and RCS airports
By inland waterways	Exempt
By sea including cruise ships	18%

a. GST rate:

[Refer S. No. 8 of Notification No. 11/2017-CT(R), and S. No. 15, 16 and 17 of Notification No.12/2017- CT(R))

# b. Place of Supply of service:

For domestic supplies:

- (i) Supply to registered person location of such person
- (ii) For unregistered person place where the passenger embarks on the conveyance for a continuous journey.

(Section 12(9) of the IGST Act, 2017 refers)

### For international supplies:

Place where the passenger embarks on the conveyance for a continuous journey. (Section 13(10) of the IGST Act, 2017 refers)

#### **B.** Issues and request by tour operators

The rate structure and place of supply as above leads to a situation that 18% with ITC is not a viable option and hence most tour operators pay GST at the rate of 5% without ITC. The tour operators have been arguing that effective GST tax rate on tour operators is very high. The issues raised are discussed below.

### (a) Issue

PoS of hotel accommodation is the location of the hotel. As a result, tour operators are not able to take ITC of GST paid on hotel accommodation in the outside their States. Similarly they may not be able to take ITC of transport services and restaurant services in many instances in view of place of supply thereof. The tour operators have requested that they should be facilitated ITC of all goods and input services including the hotel accommodation service if standard rate is to apply.

### Request

For this purpose, PoS of hotel accommodation service may be suitably changed.

# Alternatively,

They may be charged GST @ 1.8% without ITC on the gross value charged by them. Tour operators have stated that they work on a margin of 10%. Hence GST @18% on 10%.

#### (b) Issue:

Services supplied by tour operators to foreign tourists in India against payment in foreign exchange do not qualify as exports and attract GST. This is because PoS of tour operator service is the place where the service is performed.

The 288<sup>th</sup> Report of the Department Related Parliament Standing Committee on Transport, Tourism and Culture on demands for grants (2021-22) has recommended that "*in order to enhance export competitiveness of Indian tourism as also to provide relief to the tourism and hospitality sector, the payments received by all the tourism and hospitality entities in convertible foreign exchange be considered as deemed export and be exempted from GST and the concept of zero-rating also be applied to tourism foreign exchange earnings*".

The tax charged on tour operator services by competing countries like Thailand, Singapore, Maldives and other South East Asian countries is much lower as compared to India. This makes the Indian tour packages less competitive as compared to tour packages in countries like Thailand and Singapore where the GST rates are lower at 7%. Industry has requested that the tour operator services supplied to the foreign tourists in India may be treated as exports/deemed exports.

# **Request:**

Service provided to a foreign tourist be treated as exports [ at least where it is against foreign exchange receipt]

#### (c) Issue:

Tours having a foreign component and an Indian component are taxed as if the entire tour happened in India in view of the PoS provisions.

#### **Request:**

Foreign component may be exempted.

#### (d) Issue

#### Reduce GST on private ferry tickets at Andamans:

The industry has represented that presently GST @ 18% is applicable on private ferry tickets in Andamans as per cruise GST rate. The ferry is not luxury ferry or cruise but it is a means of transport. These are normal AC transport ferries. There is no other way of transportation to reach from one island to another island and is the only source of connectivity between small islands and Port Blair.

# C Facts and Analysis

- The PoS of hotel accommodation service is the State where the hotel is located. As a result, a tour operator, say registered in Delhi is not able to take ITC of Maharashtra State GST paid on hotel accommodation in Maharashtra. This PoS provision in the Indian GST law is not in harmony with the international practice. As per International VAT/GST guidelines, 2015 brought out by OECD in the context of cross-border trade, place of B2B supply of hotel accommodation service is the location of the recipient.
- The PoS of tour operator service is the place where the tour is performed (Section 13 (3) of IGST Act, 2017 refers). This PoS provision is in harmony with the international practice. In Singapore, Australia, EU etc the PoS of B2C supply of tour operator service is the place where the tour is conducted. Accordingly, these countries do not treat tour operator services supplied to a foreign tourist as zero rated.
- GST charged on tour operator services by Thailand and Singapore is 7%. They are major competitors of India in tourism sector.
- The Travel and Tourism Competitive Index, 2019 places India at an overall rank of 34 but at a much lower rank of 118 when evaluated on the basis of total taxes paid by this sector [Travel and Tourism Competitive Index, 2019 published by World Economic Forum, <u>https://reports.weforum.org/travel-and-tourism-competitiveness-report-2019/rankings]</u>
- The proposal to change PoS of B2B supply of hotel accommodation service was taken to the GST Council. However, the same was not agreed to in view of competing arguments of revenue to states where services are performed.

# **D Options available for resolving the above issues**

## 1. <u>PoS of hotel accommodation service</u>

• Change PoS of B2B supply of hotel accommodation service, transport services and restaurant services from the exiting rule to the default rule ( location of recipient). This would require change in law and hence a long process.

Alternatively,

• Allow tour operators a margin scheme, as an alternative option, under which they may pay GST on value arrived at on deemed basis [ certain % of gross tour cost] that represent their fair competitive margin no ITC is availed on any input and input services. Margin scheme would be allowed where tour is all inclusive or includes either the hotel accommodation or transport. This will make the tax incidence on tour operator competitive.

### 2. <u>Tours conducted partially in India and partially outside India</u>

- The POS provision in Section 13(6) of IGST Act, 2017, as far as tour operator service is concerned, maybe aligned with Explanation to Section 12(7) of IGST Act, 2017. Or
- Considering the genuineness of the issue, and also taking into account that foreign component is actually performed outside India, for excluding the proportionate value of the foreign component of the tour.
- To avoid disputes/ misuse, we may prescribe valuation of the foreign and domestic components of such composite tours based on the proportion of the number of nights for which tour was conducted outside and within India. To ensure that balance remains in favour of domestic tourism in such composite tours, we may prescribe that this concession shall be provided for say maximum of half of the duration of the tour or actual period whichever is less.

# 3. GST on private ferry tickets at Andamans:

Sr. No 17 (d) of said Notification No. 12/2017-CTR dated 28.06.2017 exempts "transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India".

We may clarify that this exemption would apply on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government. The expression 'public transport' used in the exemption Notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

# 4. <u>Export status to tour operator service supplied to foreign tourists against foreign exchange</u> by way of tours conducted in India.

Such services are not treated as exports internationally. Margin scheme would address the concern of tour operators. A reasonable margin scheme will reduce the burden of tour operators.

### **Recommendation of Fitment Committee:**

- 1. In principle approval of GST Council may be obtained for formulating a Margin Scheme for Tour Operators. Once approval is given by the Council, the scheme shall be worked out by Fitment Committee after consultation with stakeholders.
- 2. In principle the Council may approve that in case of tours conducted for foreign tourists partially in India and partially outside India, proportionate value of the foreign component of the tour may be excluded from the value for the purposes of payment of GST. To ensure that balance remains in favour of domestic tourism in such composite tours, we may prescribe that this concession shall be provided for say maximum of half of the duration of the tour or actual whichever is less. Once in principle approval is given, the exact methodology would be worked out by Fitment Committee after consultation with tour operators.
- 3. It may be clarified by way of Circular that exemption at Sr. No 17 (d) of Notification No. 12/2017-CTR dated 28.06.2017 [which exempts "transportation of passengers by public transport, other than predominantly for tourism purpose, in a vessel between places located in India] would apply on tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/Government. The expression 'public transport' used in the exemption Notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

Annexure A

# **Detailed Comments of Himachal Pradesh:**

Any reduction of GST on tour operator services will affect the income of the State adversely. The State is therefore in favour of continuing with the existing rate structure on tour operators.

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#### **Detailed Comments of Kerala:**

Kerala is a popular destination for inbound domestic as well as foreign tourists and the tourism sector significantly contributes to the State's economy. The existing provisions under the GST with respect to the place of supply are beneficial to all the States that are dependent on tourism. No changes which will adversely affect the GST revenue of the State should be made to the place of supply provisions. Further, any changes that is proposed to be made in this sector shall be brought only after conducting a detailed study on the financial implications of the states where tourism is a predominant contributor to the economy.

\*\*\*\*

## **Detailed Comments of Uttarakhand:**

1. Marginal scheme is against the concept of indirect tax which is a tax on transactions relating to manufacture, sales or supply of goods or services. During the period of more than 100 years of indirect tax history in India, such a tax rate has not been fixed based on the profit margin in respect of any goods or service sector. Indirect tax has to be collected and paid and therefore cannot have any relevance to income or profit or margin of the assessee. Any conceptual change may result in a situation like the opening of Pandora's Box.

2. It may be noted that there was an abatement scheme in Central Excise and Service Tax. However, in Central Excise it was introduced to simplify valuation process and avoid litigation in the case of goods which are required to have MRP predetermined and in Service Tax, to ensure that the service tax is levied only on the Service portion and not on the Goods part. It did not have any relation with margins.

3. If the marginal scheme is allowed in tour operator services, it will further deteriorate the revenues in the sector and will not be conducive to the finances of the State. The tax base will decrease compared to the current practice of levying 5% GST without ITC on the entire tour package cost.

4. The place of supply being the location of recipients for domestic supplies in the tour operator sector has already adversely affected the revenue of the State which is almost to the tune of Rs.196 crore for the year 2021-22.

5. It is impractical to determine the same margin for all the tour operators as some would be operating at higher margin and others at lower margin. The people with higher margin (say more than 10%) will benefit the most while one with the lower margin will be at loss.

6. Margins are usual and common across all the businesses, so the deviation from the fundamental tenets of GST may connive others also to put forward the demand to be taxed marginally.

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### Annexure D

## Detailed Comments of Jammu & Kashmir:

### 1. Concept of Agent and Principal should be well defined in the scheme.

The treatments for GST vary depending on whether one is acting as an agent or principal. A business may be an agent for some of the sales it makes, and a principal for others. One is acting as a principal if one buys in components of a holiday, such as accommodation, travel, tours and car hire, or provide these from the resources of own business, and sell the components in his own name, either individually or as a package. One is acting as an agent if one do not buy in the components of a holiday but sell them, or the package, on behalf of another business.

Normally this is in return for a commission, although one is acting as an agent even if one do not take a commission. For example, one may include a component supplied by someone else in a package you put together, without taking a commission, because it makes the overall package more attractive to potential customers.

There is also a concept of an **'undisclosed agent'** behaving as if they are principal. One is acting as an undisclosed agent when the customer is not aware that someone else, and not you, is making the supply. So, while formulating a scheme these aspects need to be considered.

### 2. The scheme should clearly define Supplies as a principal

Where someone is acting as principal, GST may be calculated on holiday packages that one sell as a principal in one of two ways:

- the package basis, or
- the components basis

**The package basis:** When a package that includes both standard and zero-rated components, the proportion of the value of supply that is taxable at GST standard rate is equal to the proportion of the costs of the components of the holiday that are standard-rated.

**Buying in components of a holiday:** Where package is purchased on component basis GST shall be charged on the component supplied by a supplier and it is a standard-rated supply.

# 3. Self -billing

Where normal commercial practice is to remit payments to suppliers, for example hotels, on a periodic basis, the concept of self-billing needs to be incorporated. This enables the customer to create the supplier's sales invoice, sending a copy to them.

# 4. Components of a holiday provided from own resources

If a holiday includes components that are provided from own resources, one must include in costs, the equivalent cost of that component if one had to buy it in. For example, if accommodation is provided in a hotel that is part of GST registration, the cost of that component to be included in the calculation is the rate for the room(s) if not sold as part of a holiday package.

# 5. Components of a holiday provided by suppliers not registered for GST

Where the components of a holiday are bought from suppliers that are not registered for GST, the components are treated in the calculation according to whether the supply would bear GST if the supplier were registered. For example, a taxi service may not be provided by a GSTregistered business, but if it is used that taxi service for airport transfers as part of the holiday package, the cost should be included in the standard-rated costs. Examples of other such components may include: pony trekking, bike or car hire, guided walks and meals.

Further, Vaishno Devi and Amarnath Tour Packages are Managed both by the private tour operators as well as by Government and Includes Darshan, pony rides as well as helicopter rides as such needs to be considered in this context. Similarly, Amaranth Yatra is managed through Government by registration and issuance of Yatra Permit (YP).

#### 6. Supplies as an agent

Where the supplies of a holiday are made as an agent for a commission, the liability of supply follows that of the main supply of the holiday. If one acts as an agent for no commission, one is not making a supply for GST. Therefore, the concept of agent should be clear with the ones working as commission agents.

As of now J&K is in favour of existing scheme of things dealing with the tour operators however if the margin scheme is considered the above observations made may kindly be considered.

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# **Detailed Comments of Delhi:**

Delhi is in favour of its implementation so as to maintain a fine balance between the tax collections from this sector without being prejudicial to interest of the tour operators.

\*\*\*\*

#### **Detailed Comments of Goa:**

#### 1. Issue and request by Tour Operators as mentioned in the agenda

Following is the excerpt of the issue raised by tour operators from the agenda as placed in the 47th GST Council meeting:

The rate structure and place of supply leads to a situation that 18% with ITC is not a viable option and most tour operators pay GST (a) 5% without ITC. The tour operators have been arguing that the effective GST tax rate on tour operators is very high i.e. 5% without ITC. It has been stated by the tour operators that the PoS of hotel accommodation is location of hotel and therefore they are not able to take ITC of GST paid on hotel accommodation in the outside their states and therefore they are seeking the formulation of margin scheme at a lesser rate than 5% which is the rate as prescribed for taxation without ITC.

#### 2. Issue in brief for the state of Goa

Section 12 of the IGST Act provides for "<u>Place of supply of services where location of</u> <u>supplier and recipient is in India</u>" and sub-section (3) of the said section provides for Place of Supply (PoS) in case of immovable property or boat or vessel.

# It is known that the primary intent of said provision is that the tax revenue generated from an immovable property in any state is retained in that state by mandating the taxpayer to charge local tax i.e SGST and CGST.

However, this office has identified a modus operandi among the industry players especially the tour operators/travel agents who are defeating the basic purpose of the said provision by using the IGST settlement mechanism to transfer ITC out of the state thereby depriving the state of legitimate revenue generating out of immovable properties, cruises etc. in the state. The Modus Operandi is explained below with an example:

Example: Tour Operator 'A' in 'XYZ' state books hotel accommodation for its customer residents of 'XYZ' state through a tour operator 'B' in the state 'ABC', who in turn books the hotel accommodation with a hotel 'C' located in the state 'ABC'. Thus, the taxpayer 'C' (Hotelier) bills 'B' as intra-state supply as per the provisions of section 12(3) of IGST Act and charges IGST for having provided the support services and not a supply covered by section 12(3) of IGST Act.

Thus, the actual tax intended to be retained in the state where the immovable property is situated is transferred out of the state using IGST settlement mechanism.

Further, there remains ambiguity with regards to Section 12(3)(d), which provides that "Any services ancillary to the services referred to in clause (a), (b) and (c)". For hotel accommodation services, the tour operators / travel agents claim that they do not fall within the purview of Section 12(3)(d) since the principal supplier of hotel accommodation services is the hotel and not the travel agent / tour operator.

Thus, in a nutshell the following submissions, being connected to the issue at hand with the fitment committee, be taken into account for resolution.

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- (i) It is incorrect to claim that the tour operators are not taking the ITC credit of the hotel accommodation services. A study of top 35 tour operators / travel agents suggested that 34 out of 35 dealers are taking ITC credit for the same by undertaking IGST billing.
- (ii) The dealers providing the room accommodation services by sourcing them from hotels claim that they are out of the definition of tour operators since tour operators as per definition provided should be supplying both accommodation and transport services.
- (iii) It is stated that the billing of IGST is being done amongst travel agents / tour operators as mentioned above and therefore the claim that they are not taking ITC is incorrect.
- (iv) It is, however, stated that in this entire process the provisions relating to Place of supply are being defied.

### 3. Proposed resolution of the issue

a. The state of Goa supports the formulation of the margin scheme for the tour operators without ITC. However, the scheme should cover the tour operators and travel agents both along with withdrawal of the option of paying taxation with ITC. The rates however may be decided in discussion with industry experts from the relevant ministry, inputs from the stakeholders or as deemed fit by the committee.

b. Another course of action would be the suggestion that the billing by such tour operators / travel agents be allowed on a commission basis chargeable at the rate of 18% on the commission amount only.

c. Further, it is proposed that any support services provided by the facilitator, where the primary services are in relation to immovable property and having place of supply as provided in section 12(3) of IGST Act, should be treated as services provided at the location of the immovable property or boat or vessel. It is proposed that a clarification may be issued, to specify that any services whether ancillary or support service when supplied in relation to the principal supply or supply which are actually performed at the location of immovable property, boat or vessel shall be treated as supply in relation to immovable property and the place of supply in such cases shall be the location of the immovable property or boat or vessel. Therefore, while billing such services either by principal supplier to customer or tour operator or travel agent or any other facilitator or by one facilitator to another, either for intrastate or interstate transactions, the place of supply of such services should be the location of immovable property (i.e., place where the primary service is performed).

The above course of action shall resolve the issue being faced by tour operators as well as the tourism centric states.

### 4. Request to list the issue in next meeting

Since the revenue of the state is primarily based on the tourism industry, if such leakages are not stopped through intervention from all levels, it will adversely affect the revenue collection of the state. In case required, the issue may be referred to the Law Committee as well and Goa be allowed to be a part of discussions for the same, as required. Therefore, it is humbly requested that the issue be placed before the fitment committee for appropriate recommendation on the issue to be placed before the GST Council for consideration.

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# f) Issues deferred by the Fitment Committee for further examination in relation to services - Annexure-VI

Annexure -	VI

Sr.	Proposal	Details of Request	Discussions in FitCom and its
No.			recommendations
1.	a. To notify a mechanism for availment of ITC in cases where passenger transportation services by AC buses are supplied through an e-	The applicant hires AC buses from bus owners. The bus owners charge GST from the applicant. Thereafter, the applicant provides passenger transport services wherein the ticket price charged from	The issue was discussed in the 47 <sup>th</sup> GST Council Meeting and was deferred for gathering more data to understand ramifications of the issue. So far request to allow registered bus operators to discharge GST instead of
	commerce operator (ECO). b. To shift the onus of discharging GST on the	customers includes the cost of fuel. Passenger transport services attract GST @ 5% with ITC of services in	ECOs has been received only from two entities. One of them has filed a writ petition in the Hon'ble Delhi High Court.
	registered bus operators providing passenger transportation service through ECOs	same line of business. Earlier, the applicant was discharging GST on outward supply of passenger transport services by utilizing ITC of input service that is, leasing/renting of buses.	As regards pricing of tickets pre and post shifting of liability to pay GST on ECOs, it has been informed that there is no change in the price of tickets sold before 1.1.2022 and tickets sold after 1.1.2022 as dynamic pricing system is followed for fixing the price of tickets.
		However, w.e.f 1.1.2022, ECOs were made liable to pay tax under Section 9(5) of CGST Act, 2017 in respect of services by way of transportation of passengers by any motor vehicle.	With regard to details of other bus operators facing issue of credit accumulation and industry data about number of bus operators paying GST @ 5% and 12%, no information has been received.
		Therefore, the liability to pay tax in respect of passenger transportation services provided by AC buses shifted from applicant to ECO.	The matter may be deferred.
		The issue which has arisen due to the aforesaid change is that ITC of input services is getting accumulated with the applicant as there is no mechanism on GST portal to transfer ITC to ECO for payment of tax.	
		The ECO, thus has to discharge the entire GST liability in cash despite significant ITC accumulation with	

Sr. No.	Proposal	Details of Request	Discussions in FitCom and its recommendations
2.	To clarify the nature and taxability of various supplies in relation to crypto eco-system.	the service provider. The applicant has requested that (a) the GST portal be suitably amended so that the ITC available to actual service provider is reflected in electronic credit ledger of ECO or (b) a facility should be made available to actual service provider so that he may transfer the ITC available in his electronic credit ledger to the ECO. Alternatively, the onus to discharge GST on sale of tickets for passenger transport service through ECO may be shifted to the registered bus operators. Crypto industry in India has been facing various challenges, concerns and skepticism like any new industry. The Virtual Digital Assets (VDA) industry has seen astronomical growth despite ambiguities around regulations. Two unicorns have come into existence. Finance Bill provision of 1% TDS (Direct Tax) on all VDA transactions and disallowing set off is expected to adversely affect the sector. Any additional tax, such as GST will further pose a challenge to this industry.	The issue was discussed in the 47 <sup>th</sup> GST Council Meeting and was deferred because it was felt that issues involved in crypto ecosystem need deeper study. Crypto assets refer to algorithm based decentralized convertible virtual asset protected by crypto-graphy. Crypto ecosystem involves various activities including mining, exchange services, wallet services, payment processing, barter system, and other different transactions etc. Officers from Haryana and Karnataka were requested by the Fitment Committee to identify all relevant issues in GST associated with crypto-ecosystem and possible solutions for the same. The report is awaited.
3.	To clarify that GST is not applicable on flying training courses by the flying training institutes.	It has been submitted by National Flying Training Institute Private Limited that it is approved by DGCA to conduct flying training to pilots. DGCA fully controls such training	Services supplied by educational institutions to students are exempt from GST vide entry 66 of the Notification No. 12/2017-CT(Rate), dated 28 <sup>th</sup> June, 2017. "Educational Institution" means an

Sr.	Proposal	Details of Request	Discussions in FitCom and its recommendations	
No.			recommendations	
		institutes by prescribing syllabus, number of seats per session, conduct of examination. It issues a Course completion certificate and on job training certificate to candidate. Course completion certificate is approved by DGCA.	<ul> <li>institution providing services by way of:</li> <li>i. Pre-school education and education up to higher secondary school or equivalent,</li> <li>ii. Education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force,</li> </ul>	
		2. Thus, it should be considered as educational institution and the educational courses and certificates	iii. Education as a part of an approved vocational education course.	
		issued by it for obtaining commercial pilot license can be considered as education recognized under law. Further, Circular No. 117/36/2019- GST dated 11.10.2019 has been referred wherein it has been clarified that Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.	<ol> <li>Based on the recommendation of GST Council in its 37<sup>th</sup> Meeting held on 20<sup>th</sup> September, 2019, it has been clarified vide Circular No. 117/36/2019-GST dated 11. 10.2019 that the maritime training institutes are educational institutions and the courses conducted by them are exempt from levy of GST.</li> <li>Flying training institutes have also requested for a similar clarification in respect of flying training imparted by them.</li> <li>However, it was observed that the</li> </ol>	
			education imparted by maritime training institutes and flying training institutes is vocational in nature. The vocational education should therefore, meet the criteria of 'approved vocational course' prescribed in sub-para (iii) of the definition of 'Educational Institution' mentioned above to be eligible for exemption under Sl. No 66 of the Notification No. 12/2017-CT(Rate), dated 28 <sup>th</sup> June, 2017 and not clause (ii) of the said definition which covers "Education as a part of a curriculum for obtaining a qualification recognized by law".	
			5. In view of the above, question arose whether maritime training institutes and flying training institutes should meet the criteria of ' <i>approved vocational education</i>	

Sr. No	Proposal	Details of Request	Discussions in FitCom and its recommendations
Sr. No. 4.	Proposal Proposal Request for bringing renting of residential dwellings transactions by registered persons to registered persons under forward charge mechanism.	Details of Request Details of Request	Discussions in FitCom and its recommendationscourse' prescribed in sub-para(iii) of the definition of 'educational institution' to be eligible for exemption under Sl. No 66 of the Notification No. 12/2017-CT(Rate), dated 28th June, 2017 and whether Circular No. 117/36/2019-GST dated 11. 10.2019 needs to be revisited.6. It was decided that the issue may be referred to GoM on rate rationalisation for taking a comprehensive view on definition of educational institutions.It was felt that the change has been made very recently. It may need detailed examination before any change is made.May be deferred.

# 5. The proposals, as contained in para 4 above are placed before the GST Council for consideration.

# <u>Agenda Item 04: Report of the Committee on Levy of penal interest on delayed remittances of GST by the banks to the Government Accounts in RBI during the initial period of GST implementation.</u>

1.1 Principal Chief Controller of Accounts, CBIC designated as Chief Accounting Authority (CAA) for the purpose of accounting & reporting of Goods & Services Tax (GST) has formulated a SOP (Standard Operating Procedure) to monitor the delays in remittances by the agency Banks to the Government Account with RBI and levy the penal interest on Agency Banks. The same SoP was made applicable post implementation of GST and was duly documented in the form of BARM (Banking Authorization Reference Model) which served as a benchmark for authorization of Agency Banks in the GST regime.

1.2 As part of the regular exercise, the Pr. CCA, CBIC issued demand letters for penal interest on delayed remittances of GST collection against 23 banks for the period from l<sup>st</sup> July, 2017 to 31<sup>st</sup> December, 2017. In response to the demand letter, most of the banks requested for waiver of penal interest on account of technical glitches, validation failure at RBI, CBS problem, etc. faced by the banks during the initial period of GST implementation. To examine the requests of the Banks regarding levy of penal interest during the initial period of GST on merit, a Committee was constituted vide O.M dated 08.02.2019 (copy enclosed as **Annexure 'A'**) under the chairmanship of Pr. CCA, CBIC.

1.3 The committee submitted its report on 21.08.2020 (copy enclosed as **Annexure 'B'**) and recommended the following points: -

1.3.1 Various banks had given reasons and justifications for the delay in remittance of GST collections to the Central/State Government Accounts in RBI. Members of the committee representing SBI, Bank of Baroda and PNB had cited the changes made in the integration and file exchange processes in the initial six months of GST implementation, because of which Banks could not remit the Govt. funds timely. Other Banks in their representations had also cited that it took time for understanding and implementing the changes/modifications in the IT processes to meet out the requirements of GST portal, as the reasons for not making timely remittance of funds.

1.3.2. In the first few months of the introduction of GST, the IT Systems and Applications could not be properly tested before GST implementation because of the time constraint and non-availability of actual data. Those IT applications and integration processes were only tested on the basis of some expected and anticipated test cases and scenarios. But there were many scenarios that were unexpected and were encountered only after the actual roll out of the system from July 1<sup>st</sup>, 2017.

1.3.3. Failure of many receipt transactions from Banks at GSTN portal resulted into various course corrections on the basis of analysis of errors. Those course corrections were necessitated in the interest of the tax payers to credit their electronic cash ledgers on GST portal, enabling them to discharge their tax liability without difficulty. Those cases were discussed with banks in multiple meetings organized periodically by GSTN in its premises and also through video/call conferences. There were other channels like email and Google groups, through which GSTN officials were communicating with authorized banks to resolve the issue of failed transactions. In one of such email, GSTN directed all authorized banks to RBI. This direction was contrary to the prescribed guidelines of T + 1 day for settlement of receipts transactions. The impression taken by the banks to RBI, remained for some time

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resulting into change of priority. The confusion among the banks in that regard contributed to irregular compliance of the prescribed guidelines for settlement of receipt transactions on T + 1 basis.

1.3.4 RBI on its part clarified that it had never given any permission to any agency bank to upload luggage file for settlement of receipt transactions after T + 1 day. It was also clarified that there was no case on record where agency bank had approached RBI for exemption from being penalized for delayed uploading of luggage file on a particular day. Therefore, it was concluded from those facts that the agency banks, whenever not remitting the funds on T + 1 day to RBI during the initial period of GST implementation was not because of any rejections by RBI system but because of issues in the reconciliation between banks and GST portal of GSTN and also due to IT issues like up-gradation of banking software, and technical glitches.

1.3.5. The data for the said period (July-December 2017) was analysed and it showed that about 80% of the total delayed transactions were having one to three days of delay. This pattern was being seen in all the six months of transaction, across all 25 banks. There were, however, many transactions which were delayed beyond 3 days, but those were pertaining to few banks only and did not form any pattern as well. Therefore, the committee was of the view that during initial months of GST implementation, there were many transaction failures while being transmitted by banks to GSTN, because of unforeseen errors and IT glitches. While those transactions were successful at the bank's end after debiting the taxpayer's account, however, they were not reported on real time to GSTN to credit the tax payer's electronic cash ledger. The thrust, therefore, during those months was on the reconciliation of such transactions between GSTN and Banks.

1.3.6. On the basis of analysis of data for the said period for all banks, the committee, therefore recommended a relaxation of 3 days for remittance of GST receipt by agency banks to Govt. account in RBI beyond T+1 for the CINs generated from 1<sup>st</sup> July to 31st October, 2017 and a relaxation of 1 day for the CIN s generated from 1<sup>st</sup> November to 31<sup>st</sup> December, 2017. The actual delay beyond T+1 day might be adjusted by the recommended period of 3 days or 1 day. If a transaction was delayed for more than 3 days/1 day, (as the case may be), then the interest on delayed remittance might be charged after adjustment of recommended days.

1.4 Controller General of Accounts forwarded the report to the GST Council Secretariat to seek the views of the States/UTs on the recommendation of the committee. The report was circulated among all the states vide this office letter dated 09.03.2021 for their comments. Only fourteen states gave their comments of which ten states agreed with the recommendations of the committee. The comments of the states are annexed as **Annexure 'C'**.

1.5 Under GST regime, CIN (digitally signed Challan from banks) was a composite challan containing Central & State Taxes and in order to have uniform process in Central and States/UTs, applicability of the recommendations of the Committee might also be considered for SGST component of GST. Hence, the report of the committee is placed before the GST Council for decision.

Annexure 'A'

Office of the Controller General of Accounts Ministry of Finance Department of Expenditure Mahalekha Niyantrak Bhawan E Block, INA, New Delhi Tele/Fax : 011-24649365 Email: sao-rbd@nic.in

No. S-11012/3/PI/CBIC/GBA/ 194-200

8th February 2019

#### Office Memorandum

# Sub:- Constitute of the Committee for examining the matter of levy of penal interest during the initial period of GST Collections

As decided in the 19<sup>th</sup> Meeting of the Core Group of Standing. Committee held on 2<sup>nd</sup> November 2018 at Bhubaneswar, it has been decided to constitute a Committee comprising of the following members to examine the requests of the banks and to decide on the issue of waiver of penal interest, levied by O/o the Pr.CCA, CBIC, on the grounds of technical problems faced by the banks during the initial period of GST collection i.e. from 1<sup>st</sup> July 2017 to 31<sup>st</sup> December 2017.

Ι,	Principal Chief Controller of Accounts, Central Board of Indirect Taxes and Customs	Chairman
2,	Joint Controller General of Accounts (GBA), O/o the CGA, New Dethi	Member
3	Commissioner, Polley Wing, CBIC, Department of Revenue	Member
4	General Manager, Department of Government and Bank Accounts, Reserve Bank of India, Mumbai	Member
5	Chief General Manager (Government Business), State Bank of India	Member
б <sup>.</sup>	General Manager (Government Business), Punjab National Bank	Member
2	Ceneral Manager (Government Business), Bank of Baroda	Member

2. The Committee will submit its report to the CGA within three months from the date of issue of this order.

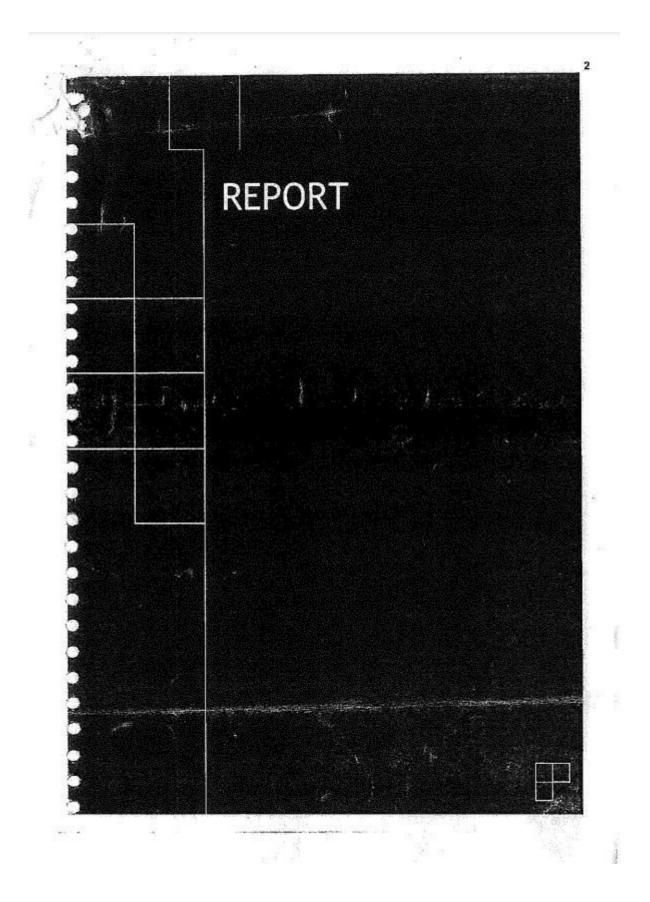
·3.

This issues with the approval of Competent Authority

(Anupam Rai)

Annexure 'B'

Assit: Controller General of Accounts (GBA)



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#### Report of the committee constituted by Controller General of Accounts, for examining the matter of levy of penal interest on Banks during the initial period of GST collection

#### PART: 1

#### BACKGROUND

- 1.1 The Government of India implemented Goods & Services Tax (GST) with effect from 1st July, 2017. Total 25 banks (21 Public Sector Banks and 04 Private Sector Banks) were authorized to collect GST on behalf of Government of India. Principal Chief Controller of Accounts, Central Board of Indirect Taxes and Customs (the then Central Board of Excise and Customs), New Delhi was designated as Central Accounting authority for the accounting of CGST. The complexities involved in the business process having multiple stakeholder's systems, could only be overcome through IT solutions alone so that the system can work in an automated environment. The Joint Committee of the empowered group of the State Finance Ministers, recommended in its Report of Payment process that a dedicated IT application should be developed by authorized banks to get integrated with GSTN portal on one hand and Reserve Bank of India on the other hand.
- 1.2 Keeping in view the responsibility of the Central Accounting authority, a detailed document BARM (Bank Authorization Reference Model) was prepared by the Office of Pr. CCA, CBIC. The business logic and work flow designs were prescribed in this document for the authorized banks.
- 1.3 In the Bank Authorization Reference Model (BARM), it has been stipulated that IT systems of the banks should be in place to prepare the luggage file of all transaction successfully credited in Page 1 of 7

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the Government account of the accredited bank till 2000 hrs of the day and the same are to be uploaded to RBI on T+1 day. Based on luggage file, the RBI gives credit to Govt. Account after debiting the bank account.

- 1.4 An elaborate integration and testing process was followed between GSTN portal and all 25 banks before implementation of GST on 1<sup>st</sup> July, 2017. 25 authorized banks were allowed by the GST Council on the basis of preparedness certificate and check list provided by all the banks.
- 1.5 The SOP for levying penal interest on accredited banks doing Govt. Agency business, issued by the Office of the CGA vide O.M. No. S-11/12/1 (31)/AC22/2015/RBS/332-424 dated 09.03.2016 specifies that penal interest for delayed remittance beyond the prescribed time limit will be levied at the rate of Bank Rate +2%.
- 1.6 Accordingly, the transaction (CIN) wise details of delayed remittance for collection were worked out by the office of Pr. CCA, CBIC. Penal interest twas calculated on the delayed period as per prescribed rate for the period from 1\* July, 2017 to 31\* Dec., 2017. As per SOP dated 09.03.2016 of the office of CGA, petty claims of delayed penal interest involving an amount of Rs.500/- or below per transaction is to be ignored. Hence, the demand letters fon penal interest against 23 banks to the tune of Rs.7.62 crore was issued to the concerned banks in Feb/March, 2018 by the office of Pr. CCA, CBIC.
- 1.7 Most of the banks represented to the office of Pr. CCA, CBIC for waiver of penal interest due to the reason of technical problems, EOD related issues, validation failure at RBI, GSTN,CBS problems etc.

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- 1.8 The Office of Pr. CCA, CBIC brought this issue as an agenda item before the 19th Meeting of the Core Group of Standing Committee held on 2<sup>nd</sup> November, 2018 at Bhubaneshwar. The meeting was chaired by CGA. It was decided in this meeting to constitute a committee comprising the following members to examine the requests of the banks and to decide on the issue of waiver of penal interest levied by the office of Pr. CCA, CBIC on the ground of technical problems faced by the banks during the initial period of GST collection:
  - i) Pr. Chief Controller of Accounts, CBIC- Chairman
  - ii) Joint Controller of Accounts (GBA), O/o. CGA, New Delhi - Member
  - iii) Commissioner, Policy Wing, CBIC, Department of Revenue- Member
  - iv) General Manager, Department of Government and Bank Accounts, Reserve Bank of India, Mumbai-Member
  - v) Chief General Manager (Govt. Business), State Bank of India- Member
  - vi) General Manager (Govt. Business), Punjab National Bank- Member
  - vii) General Manager (Govt. Business), Bank of Baroda-Member

The agenda item along with the grounds on which the banks had represented the levy of penal interest are annexed as <u>Annexure 1</u> and <u>Annexure 2</u>. The minutes of the meeting and the O.M. dated 8<sup>th</sup> Feb., 2019 issued for constituting the Committee are annexed as <u>Annexure 3</u> and <u>Annexure 4</u>.

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#### PART :2

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#### PROCEEDINGS OF THE COMMITTEE

2.1 The Committee had held three meetings. The details of these meetings are as follows:

- 1<sup>st</sup> meeting was held on 12<sup>th</sup> March, 2019. (Minutes are annexed as <u>Annexure 5</u>)
- 2<sup>nd</sup> meeting was held on 10<sup>th</sup> April, 2019. (Minutes are annexed as <u>Annexure-6</u>)
- iii) 3<sup>rd</sup> meeting was held on 11<sup>th</sup> June, 2019. (Minutes are annexed as <u>Annexure-7</u>)

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#### PART :3 RECOMMENDATIONS

3.1 Various banks have given reasons and justifications for the delay in remittance of GST collections to the Central/State Government Accounts in RBI.Members of the committee representing SBI, Bank of Baroda and PNB had cited the changes made in the integration and file exchange processes in the initial six months of GST implementation, because of which Banks could not remit the Govt. funds timely. Other Banks in their representations have also cited that it took time for understanding and implementing the changes/modifications in the IT processes to meet out the requirements of GST portal, as the reasons for not making timely remittance of funds.

3.2 In the first few months of the introduction of GST, the IT Systems and Applications could not be properly tested before GST implementation because of the time constraint and non-availability of actual data. These IT applications and integration processes were only tested on the basis of some expected and anticipated test cases and scenarios. But there were many scenarios, which were unexpected and encountered only after the actual roll out of the system from July 1\*, 2017.

3.3 Failures of many receipt transactions from Banks at GSTN portal, resulted into various course corrections on the basis of analysis of errors. These course corrections were necessitated in the interest of the tax payers to credit their electronic cash ledgers on GST portal, enabling them to discharge their tax liability without difficulty. These cases were used to be discussed with banks in multiple meetings organized periodically by GSTN in its premises and also

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through video/call conferences. There were other channels like email and Google groups, through which GSTN officials were communicating with authorized banks to resolve the issue of tailed transactions. In one of such email(Annexure-8), GSTN directed all authorized banks to complete the reconciliation process on daily basis at the end of day, before remitting the funds to RBI. This direction was contrary to the prescribed guidelines of T+1 day for settlement of receipts transactions. The impression taken by the banks to handle failure cases and fully reconcile the transactions with GSTN before remitting the funds to RBI, remained for some time resulting into change of priority. The confusion among the banks in this regard contributed to irregular compliance of the prescribed guidelines for settlement of receipt transactions T+1 basis.

- 3.4 RBI on its part has clarified that it had never given any permission to any agency bank to upload luggage file for settlement of receipt transactions after T+1 day. It has also been clarified that there was no case on record where agency bank had approached RBI for exemption from being penalized for delayed uploading of luggage file on a particular day. Therefore, it may be concluded from these facts that the agency banks, whenever not remitting the funds on T+1 day to RBI during the initial period of GST implementation was not because of any rejections by RBI system but because of issues in the reconciliation between banks and GST portal of GSTN and also due to IT issues like up-gradation of banking software, and technical glitches.
- 3.5 The data for the said period (July-December 2017) as been analyzed, and it shows that about 80% of the total delayed transactions are having one to three days of delay. This pattern is being seen in all the six months of transaction, across all 25 banks. There are, however, many transactions which were delayed beyond 3 days, but these are pertaining to few banks only and do not form any pattern as well. Therefore, the committee is of the view that during initial months of GST implementation, there were many transaction failures while being transmitted by banks to GSTN, because of

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unforeseen errors and IT glitches. While these transactions were successful at the bank'send after debiting the taxpayer's account, however, were not reported on real time to GSTN to credit the tax payer's electronic cash ledger. The thrust, therefore, during these months was on the reconciliation of such transactions between GSTN and Banks.

3.6 On the basis of analysis of data for the said period for all banks, committee, therefore recommends a relaxation of 3 days for remittance of GST receipt by agency banks to Govt. account in RBI beyond T+1 for the CINs generated from 1<sup>st</sup> July to 31st October,2017 and a relaxation of 1 day for the CINs generated from 1<sup>st</sup> November to 31<sup>st</sup> December, 2017. The actual delay beyond T+1 day may be adjusted by the recommended period of 3 days or 1 day. If a transaction is delayed for more than 3 days/1 day, (as the case may be), then the interest on delayed remittance may be charged after adjustment of recommended days...

JLCGA (GBA) (Member)

Dy.Commissiones Policy) CBIC

(DGBA), RBI

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(Member)

(LA CGM (GB) SBI (Member)

BAMBAM GM (GB) PNB (Member)

(Member)

Pr.CCA (CBIC) Chairperson

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GM (GB) BOB (Member)

Annexure ' C'

S.No.	Name of the States	letter No.	Dated	Remark/Comments given by the Sates
1	Rajasthan	<u>17(105-Part-VI)</u> <u>ACCT/GST/2019/663</u> (Pg-44)	18.03.2021	They want Bank Rate+2% Penal Interest for the period 01.07.2017 to 31.12.2017. It appears that they did not agree with report of Committee
2	Meghalaya	<u>No. CTA-12/2020/43</u> (pg-42)	24.03.2021	Agreed with recommendation of the committee
3	Nagaland	<u>No.</u> <u>CT/LEG/GSTC/1/17(PT)/191(Pg-43)</u>	25.03.2021	Agreed with recommendation of the committee
4	Tamil Nadu	<u>3451/B1/2021(Page45)</u>	25.03.2021	Agreed with recommendation of the committee
5	Gujarat	email dated 26.03.2021( Pg-37)	26.03.2021	various suggestion have been given which are being re produced below*
6	Himachal Pradesh	<u>12-12/2017-18(512)-EXN-GST-</u> <u>9692 (pg-41)</u>	19.04.2021	They are agreement with the proposal of CBIC for levy of penal interest on Banks for delaying the payment T+1 days
7	Odisha	FIN-CTI-Tax-0017-2021(Pg-36)	28.04.2021	Agreed with recommendation of the committee
8	Uttar Pradesh	<u>Email dated 23.06.2021( Page 50</u> )	23.06.2021	The State of Uttar Pradesh would like to convey its approval to the recommendations of the committee constituted for examination of levy of penal interest ondelayed remittance by the banks. However we are of the opinion that the SGST Component of the penal interest charged from the Banks after the adjustment of the recommended 3 Days/1 Day (as the case maybe) shall be transferred to the respective states.
9	Punjab	<u>No. Accountants-2-2021/241 dated</u> 06.12.2021 (Page No.66)	06.12.2021	No relaxation may be given, in the penal interest to be levied on the banks, due to late transfer of the amount of GST by bank to the RBI account, and the state share of penal interest should be paid to the state Government." (Not Agreed)
10	Chhattisgarh	letter No. 6670 (Page No. 56)	27.07.2021	Accepted the recommendations of the committee.
11	Manipur	Letter No. TAX/CO-101/1/2022- TAXES-TAXATION dated 05.08.2022 (Pg No. 74)	05.08.2022	Accepted the recommendations of the committee.
12	West Bengal	Email dated 19.09.22	19.09.2022	The report of the committee may be placed before the GST Council for deliberation
13	Assam	<u>CT/GST-28/2019/106</u>	20.09.2022	Agreed with recommendation of the committee
14	Goa	No.CCT/26-10/RBI-Penal Interest/2022-23/2480	23.11.2022	Agreed with recommendation of the committee

# Summary of Reply received from States

# Agenda Item 05: Performance Report of the NAA (National Anti-Profiteering Authority) for the 1st quarter (April, 2022 to June, 2022) and 2nd quarter (July,2022 to September, 2022) along with monthly performance report for the month of October and November 2022 for the information of the Council

The performance report of Anti-Profiteering for the 1<sup>st</sup> quarter (April to June 2022) and 2<sup>nd</sup> quarter (July to September 2022) at various levels is as under:

Opening	No. of	D	Disposal of Cases (during Quarter) Cl					
Balance	Investigation	Total Disposal	No. of	No. of cases	No. of	Balance		
	Reports	during quarter	cases	Where	cases			
	received		Where	Profiteering	referred			
	from DGAP		Profiteering	not	back to			
	during the		established	established	DGAP			
	quarter							
Quarter 1	(April – June	2022)						
208	8	37	26	6	5	179		
Quarter 2	2 (July – Septen	nber 2022)						
179	11	70	43	5	22	120		
October 2	October 2022*							
120	5	0	0	0	0	125		
Novembe	November 2022*							
125	3	0	0	0	0	128		

## 1.1. Performance of National Anti-Profiteering Authority:

\* National Anti-Profiteering Authority (NAA) has also submitted month wise reports for the months of October 2022 and November 2022 as the tenure of NAA has ended on 30<sup>th</sup> November, 2022. Now, the work related to NAA has been shifted to Competition Commission of India (CCI) vide Notification No. 23/2022-Central tax dated 23.11.2022.

# 1.2 Performance of DG (Anti-Profiteering):

Opening	Receipt	Disposal	Mode of disposal of	Closing Balance			
Balance (No.			Report to NAA	Report to	(No. of cases)as		
of cases)			confirming	NAA for	on 30.06.2022		
			profiteering	closure action			
Quarter 1 (Apri	l – June 20	22)					
29	17	7	6	1	39		
Quarter 2 (July – September 2022)							
39	36	10	5	5	65*		

\*Out of these 65 cases, 21 cases have been stayed by various Hon'ble High Courts

- One case has been held up as per direction by NAA.
- Actual pendency of cases in which Investigation is under Process, are 43 only.

## **1.3** Performance report of the **Standing Committee** on Anti-profiteering:

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)as on 30.06.2022			
Quarter 1 (April – June 202	22)					
30	38	26	42			
Quarter 2 (July – September 2022)						
42	48	19	71			

### **1.4** Performance report from the **State Level Screening Committee**:

Opening Balance	Receipt	Dispo	Closing				
(No.of cases)		Cases referred to	Balance				
		Standing Committee		(No. of			
				cases)			
Quarter 1 (April – J	une 2022)						
64*	123	20	11	156			
Quarter 2 (July- September 2022)							
156	95	23	133	95			

Last quarter data of F.Y. 2021-22 (January to March 2022) for reference

101	66	7	92	68
	0.1	1' ) ( 1 0000 1		

\*The Closing Balance of the quarter ending March 2022 doesn't match with the Opening Balance of the quarter ending June 2022 since the report from Karnataka SLSC for the quarter ending June 2022 was not received so the total Closing Balance of Quarter ending March 2022 and Opening Balance of quarter ending June 2022 differs by no of 4 cases. The SLSC report for the quarter ending September 2022, does not include the report from Chhattisgarh, Himachal Pradesh, Karnataka and Kerala as these States have not submitted their reports.

2. During the above mentioned quarters NAA has undertaken the following activities/initiatives-

### For the quarter April-June 2022:-

i. The quorum in the Authority was restored w.e.f 23.02.2022 after joining of two new Technical Members i.e, Shri P.K. Singh and Shri Hitesh Shah and thereafter the Authority has started working with full vigor and passed 37 Orders involving profiteering of an amount of Rs. 244 Crores. The NAA, till date has passed 310 orders since its inception establishing profiteering of Rs.1945 Cr. (Approx.) out of which an amount of Rs. 562.5 Cr. (Approx.) has either been passed on to the buyers or deposited in the Consumer Welfare Funds or deposited with the High Courts.

- ii. Total no of 179 cases were pending for completion of proceedings at the level of Authority.
- iii. The Authority has taken a landmark decision by removing the practice of pre-verification of passing of the ITC benefit to home/flat/shop buyers and replaced the same with post-verification of passing of the ITC benefit by the Jurisdictional CGST/SGST Commissioners. It has helped in speedier resolution of cases before the Authority. In this respect, an advertisement of appropriate size (large enough to be noticed by the reader) would be published in minimum of two local Newspapers/ vernacular press in Hindi/English/local language with the details i.e Name of builder (Respondent) and Project, its Location and profiteered amount so that the concerned customers/ flat buyers/ recipients can claim the benefit of ITC. This would help buyers in ascertaining the amount of ITC benefit due to them from the builders. The Authority has also started this practice in respect of cases of tax reduction where consumers are identifiable.
- iv. The performance of DGAP was reviewed by the Authority periodically with the last such review on 23.06.2022. Various issues like pending investigations, Court cases, complaints, non-submission of Monthly/Quarterly reports by the State Screening Committees of certain states etc. were discussed in detail.
- v. The Chairman, NAA held Review Meeting with the Members of the Standing Committee on Anti-Profiteering wherein various pending issues like speedier resolution of grievances/ complaints, rejection of complaints etc. were discussed in detail.
- vi. The Chairman, NAA held a Review Meeting with the Members of Delhi State Screening Committee on Anti-Profiteering on 26.04.2022 regarding various pending issues including the details of the disposal of the complaints received by the Screening Committee and pendency of complaints.
- vii. 140 Writ Petitions filed before various High Courts of India are being continuously monitored by the Authority. The Counsels are being regularly briefed about all cases listed before Hon'ble High Courts by the Authority with active assistance of the Legal Consultant. The Hon'ble High Court of Delhi has reported and fixed hearings in 81 clubbed anti-profiteering cases on 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> July, 2022 respectively wherein arguments are being heard on constitutionality of Section 171 of the CGST Act, 2017 and the Rules framed under it. The Hon'ble High Court is likely to pass judgement on these cases shortly. It is noteworthy that none of the decisions of the NAA has been set aside by any High Court till date.
- viii. 33 complaints were received by the Authority during the quarter via NAA portal, e-mails and post. The complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to the respective Screening Committee/ Standing Committee for further action/examination thereof. While 13 complaints related to other GST/enforcement issues were forwarded to the Jurisdictional State and Central GST Commissioners for necessary action.

### For the quarter July-September 2022:-

ix. During the quarter ending September 2022, the Authority has passed 70 orders involving profiteered amount of Rs. 621 Crores. Therefore, the NAA has passed 380 orders since its inception establishing profiteering of Rs. 2563 Crores (Approx.) and out of which an amount

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of Rs. 563 Cr. (Approx.) has either been passed on to the buyers or deposited in the Consumer Welfare Funds or deposited with the High Courts.

- x. 120 cases (including 11 received from the DGAP during the quarter) were pending for completion of proceedings at the level of the Authority. The proceedings were being held expeditiously to dispose of the pending cases at the earliest.
- xi. 117 hearings were held during the quarter ending September 2022 thereby 280 hearings have been held till the quarter ending September 2022 since reconstitution of the Authority w.e.f 23.02.2022 and regular proceedings are being held by the Authority since 23.02.2022.
- xii. In compliance of Department of Revenue's Order No. 51/2022 dated 03.02.2022, Sh. Mahesh Kumar Rustogi, IRS, (C & CE) had joined in the Authority on 16.08.2022 as Fourth Technical Member.
- xiii. The performance of DGAP is being monitored by the Authority periodically. The last review meeting was held on 29.09.2022. Various issues like pending investigations, Court cases, Complaints, non-submission of Monthly/Quarterly reports by State Screening Committees of certain states etc. have been discussed in detail.
- xiv. The Chairman, NAA has held the Review Meeting with the Members of Maharashtra State Screening Committee on Anti-profiteering on 16.09.2022 regarding various pending issues including the details of the disposal of the complaints received by the Screening Committee and pendency of complaints.
- xv. 150 Writ Petitions filed before various High Courts of India are being continuously monitored by the Authority. The counsels are being regularly briefed about all cases listed before Hon'ble High Courts by the Authority with active assistance of the Legal Consultant. The Assistant Solicitor General and empanelled councils were briefed about 82 clubbed antiprofiteering cases wherein the hearings were held on 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> August 2022 before the Hon'ble Delhi High Court and arguments were heard on constitutionality of Section 171 of The CSGT Act, 2017 and the Rules framed under it. The Hon'ble High Court of Delhi has fixed the next hearing on 19<sup>th</sup> October in these cases and is likely to decide on these cases shortly. It is noteworthy that none of the decisions of the NAA has been set aside by any High Court till date and recently in one of the judgements in case of M/s L'Oreal India Pvt. Ltd., the Hon'ble Delhi High Court has passed a detailed speaking order and directed M/s L'Oreal India Pvt. Ltd. to deposit the principal profiteered amount of Rs. 186 Cr. which is a landmark victory for the anti-profiteering efforts of the Authority.
- xvi. Four cases viz. M/s K.V. Developers, M/s Umang Realtech, M/s Supertech and M/s Logix City Developers are pending for resolution before NCLT which have been kept in abeyance for time being by the Authority.
- xvii. 49 complaints were received by the Authority during the quarter ending September 2022 via NAA portal, e-mails and post. 30 complaints relating to profiteering in terms of Section 171 of the CGST Act 2017 were forwarded to the respective Screening Committees/ Standing Committee for further action/examination thereof. While 20 complaints that related to other GST/ enforcement issues were forwarded to the jurisdictional State and Central GST Commissioners/ Chief Commissioners for necessary action.

#### For the period October 2022 to November 2022:-

- xviii. During the month of October and November 2022, no order could be passed by the Authority due to lack of quorum as the tenure of the Chairman expired on 02.10.2022. The NAA has passed 380 orders since its inception establishing profiteering of Rs. 2563 Cr. (Approx) out of which an amount of Rs. 563 Cr. (Approx.) has either been passed on to the buyers or deposited in the Consumer Welfare Funds or deposited with the High Courts.
  - xix. Total 128 cases were pending for completion of proceedings at the level of the Authority.
  - xx. 10 complaints were received by the Authority during the month of October, 2022 via NAA portal, e-mails and post. 7 Complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to the respective Screening Committees/ Standing Committee for further action/examination thereof. While 3 complaints that related to other GST/enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/Chief Commissioners for necessary action.
  - xxi. 21 complaints were received by the Authority during the month via NAA portal, e-mails and post. 17 Complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to the respective Screening Committees/ Standing Committee for further action/examination thereof. While 3 complaints that related to other GST/enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/Chief Commissioners for necessary action.
    - 3. In addition to the two quarterly reports (i.e. April-June 2022 and July-September 2022), the National Anti-profiteering Authority has also submitted the reports for the months of October 2022 and November 2022 as the tenure of NAA has ended on 30<sup>th</sup> November, 2022. Now, the work related to NAA has been shifted to CCI vide Notification No. 23/2022-Central tax dated 23.11.2022.
    - 4. Department of Revenue (State Taxes-I), Ministry of Finance vide OM dated 30.11.2022 issued vide F. No.S-34011/37/2021-ST-I-DoR has directed that all the officers/staff subordinate to Chairman and Members of NAA shall continue to work on an as-is where-is basis and will provide necessary assistance to CCI for a period of six months from 01.12.2022 till 31.05.2023 or until further orders, whichever is earlier. It also provided that the DGAP shall continue to investigate anti-profiteering matters even in the amended framework.
    - 5. Accordingly, the quarterly performance reports for two quarters i.e. April-June 2022 and July-September 2022 of the National Anti-profiteering Authority, State-level screening, Standing committees and Directorate General of Anti-Profiteering (DGAP) along with NAA's reports for the months of October and November 2022 are placed before the GST Council.

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# Agenda Item 06: Ad-hoc Exemptions Orders issued under Section 25(2) of the Customs Act, 1962 to be placed before the GST Council for information

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

Order No. Date		Date	Remarks		
AEO	No.	02	of	16 <sup>th</sup> September, 2022	Request for ad-hoc exemption for import of
2022					cheetahs as donation by the National Tiger
					Conservation Authority, Ministry of Environment,
					Forest & Climate Change, Government of India
					(order copy enclosed).
AEO	No.	03	of	30 <sup>th</sup> September, 2022	Request for ad-hoc exemption from customs duties
2022					and other taxes for import of goods for 90th Interpol
					General Assembly in New Delhi (order copy
					enclosed)
AEO	No.	04	of	13 <sup>th</sup> October, 2022	Request from Shri T.N Hari for exemption from
2022					payment of customs duty under Section 25(2) of
					Customs Act, 1962 on import of drug Inj. Anakinra
					(order copy enclosed)

2. The details of the ad hoc exemption orders issued recently are as follows:

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

#### F. No. 452/06/2022-Cus V Ad-hoc Exemption Order no. 2 of 2022 Issued under section 25(2) of the Customs Act, 1962

Government of India Ministry of Finance Department of Revenue

Room no. 49, North Block, New Delhi – 110001 Dated the 16<sup>th</sup> September 2022

To, The Chief Commissioner of Central GST & Customs Bhopal Zone

Sir,

# Subject: Request for Ad hoc exemption for import of Cheetahs as donation by the National Tiger Conservation Authority, Ministry of Environment, Forest and Climate Change, Government of India-reg.

The undersigned is directed to refer to a request dated 07.09.2022 (copy enclosed) received from the Director General of Forests and Special Secretary, Ministry of Environment Forest and Climate Change (MoEF&CC), Government of India and subsequent D.O. letter dated 15.09.2022 from the Secretary, Ministry of Environment, Forest and Climate Change seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for the goods received as grant from Government of Namibia.

- 2. MoEF&CC has informed that:
  - Project Tiger Division, Ministry of Environment Forest and Climate Change, Government of India is in receipt of 08 number of live Cheetahs in crate, accompanied with empty crates, radio collars & receivers which are a Government of India cargo being consigned by The Head of Chancery, High Commission of India in Namibia.
  - ii. The Cheetahs will be imported from Gwalior International Airport.
- iii. From Gwalior the Cheetahs would proceed for final release to Kuno National Park.

2.1 MoEF&CC has requested for waiving off the customs duties and IGST (where applicable) for the above-mentioned imported goods received as grant for restoration of open forest and savanna system which in turn will help in conservation of biodiversity and accrue ecosystem services.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts the subject goods (i.e. 08 number of live Cheetahs in crate, accompanied with empty crates, radio collars & receivers) for introduction into Kuno National Park, from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the

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2921162/2022/Cus-V Section

#### F. No. 452/06/2022-Cus V Ad-hoc Exemption Order no. 2 of 2022 Issued under section 25(2) of the Customs Act, 1962

Customs Tariff Act, 1975 (where applicable), subject to the end use for the purpose being imported and in compliance of the provisions of the Customs Act, 1962.

4. An undertaking to comply with the conditions mentioned in Para 3 above shall be submitted to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of this Order should be brought to the immediate notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

6. This order is valid for imports made up to 30.09.2022

Yours faithfully,

N

(Komila Bunia)

Copy to:

 The Inspector General of Forests, Project Tiger Division, Ministry of Environment Forest and Climate Change, Government of India.

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- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.
- Guard File.

Yours faithfully,

(Komila Punia) Deputy Secretary to the Govt. of India

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2921166/2022/Cus-V Section

#### F. No. 462/03/2022-Cus V Ad-hoc Exemption Order No. 3 of 2022 Issued under section 25(2) of the Customs Act, 1962

#### Government of India Ministry of Finance Department of Revenue

Room no. 49, North Block, New Delhi – 110001 Dated the 30<sup>th</sup> September 2022

To, The Chief Commissioner Customs Delhi Zone

Sir, Sir,

Subject: Request for Ad hoc exemption from Customs duties and other taxes for import of goods for 90th Interpol General Assembly in New Delhi- regarding.

The undersigned is directed to refer to a request dated 11<sup>th</sup> July 2022 from Director, Central Bureau of Investigation (CBI), New Delhi and Para 5(iv) of the Record of Discussion during the meeting held on 3rd August 2022 under the Chairmanship of Union Home Secretary regarding hosting of 90th INTERPOL General Assembly. Ministry of Finance has been requested, in accordance with the Article 6 of the Privileges and Immunities Agreement (copy enclosed) entered into by the Government of India and INTERPOL, for granting exemption from Customs duties and other taxes to the anticipated imports.

2. Director CBI has informed that:

- India will be hosting the 90th INTERPOL General Assembly in New Delhi at Pragati Maidan from <u>18th -21st October</u>, 2022
- the event will be preceded by the INTERPOL Executive Committee meetings from 15th-17th October, 2022.
- Delegates/participants will be visiting India to attend the same from 195 INTERPOL member countries.
- India has signed the Privileges and Immunities Agreement, which entered into force on 14.06.2022.

2.1 Director CBI has requested for granting exemption from Customs duties and other taxes to the anticipated imports (where applicable) which will be imported under Article 6 of the aforesaid Privileges and Immunities Agreement.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts the goods, imported under Article 6 of the Privileges and Immunities Agreement entered by the Government of India and INTERPOL for the 90th General Assembly Session and the Executive Committee meetings to be held in New Delhi in 2022, from the whole of the duty of

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2921166/2022/Cus-V Section

#### F. No. 462/03/2022-Cus V Ad-hoc Exemption Order No. 3 of 2022 Issued under section 25(2) of the Customs Act, 1962

Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and, whole of the Integrated Tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975 (where applicable), subject to the end use for the purpose being imported and in compliance of the provisions of the Customs Act, 1962.

4. An undertaking to comply with the conditions mentioned in Para 3 above may be submitted to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. This order is valid for imports made up to 31.12.2022.

Yours faithfully,

(Komila Punia) Deputy Secretary to the Govt. of India

#### Encl: as above

Copy for information and necessary compliance (where required) -

The concerned Chief Commissioner of Customs of any other Customs port to which
the said goods are consigned for import for the above stated purpose.

Copy also for information to:

- The Director, Central Bureau of Investigation, 5-B, C.G.O. Complex, Lodhi Road, New Delhi 110003.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi–110 002.
- · Guard File.

Yours faithfully,

(Komila Punia)

Deputy Secretary to the Govt. of India

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462/05/2020-Cus.V

2921175/2022/Cus-V Section

F. No. 452/01/2022-Cus V Ad-hoc Exemption Order no. 4 of 2022 Issued under section 25(2) of the Customs Act, 1962

> Government of India Ministry of Finance Department of Revenue

Room no. 227A, North Block, New Delhi – 110001 Dated the13<sup>th</sup> October 2022

To, The Chief Commissioner of Customs, Delhi Customs Zone

Sir,

# Subject: Request for Special Exemption from payment of Customs Duty under Section 25 (2) of Customs Act, 1962 on import of drug Inj. Anakinra-reg.

The undersigned is directed to refer to a request received from Shri. T. N. Hari, father of baby Navaneeth Krishna, seeking exemption from payment of duty in terms of Section 25 (2) of Customs Act, 1962, for import of injection Anakinra, a drug for treatment of Neonatal onset multi system inflammatory disease (NOMID).

Sh. T.N.Hari has represented that:

- his son, Navaneeth Krishna, is suffering from Neonatal onset multi system inflammatory disease (NOMID). It is a disorder that causes persistent inflammation and tissue damage primarily affecting the nervous system, skin, and joints. Patients are at risk for leukemia, infections and some develop deposits of protein aggregates called amyloid, which can lead to kidney failure and other problems.
- ii. they raised money for import of the drug, through crowd funding.
- they have obtained approval from DGCI to import this life saving medicine for personal use.
- iv. the drug Anakinra needs to be imported from Sweden and as per the doctor's advice 28 pre-filled syringes would be required for the treatment of the child for the next 6 months.

2.1 In view of the above, a request for waiving off the customs duties and GST on the import of this lifesaving drug Anakinra has been made.

3. In view of the exceptional circumstances as mentioned above, the Central Government in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), being satisfied that it is necessary in the public interest so to do, hereby exempts 28 prefilled syringes of Anakinra, from the whole of the Integrated Tax leviable thereon under subsection (7) of section 3 of the Customs Tariff Act, 1975, subject to the condition that the imported goods will be used for the treatment of baby Navaneeth Krishna and will not be put to other use.

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2921175/2022/Cus-V Section

#### F. No. 452/01/2022-Cus V Ad-hoc Exemption Order no. 4 of 2022 Issued under section 25(2) of the Customs Act, 1962

The said drug is already exempt from payment of BCD under SI. No. 607 of Notification 50/2017-Customs dated 30<sup>th</sup> June, 2017, subject to conditions therein. The port of import may ensure that the conditions prescribed for waiving of basic customs duty are full-filled.

4. An undertaking that the goods covered by this Order will be used solely for the treatment of baby Navaneeth Krishna and shall not be put to any other use shall be submitted by the applicant to the jurisdictional Commissioner of Customs of the port of import for claiming benefit of exemption under this Order.

5. Any infringement of conditions of this Order should be brought to the notice of the Commissioner of Customs of the port of import for taking further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc. .

This order is valid for imports made up to 12.04.2023

Yours faithfully, la Punia Deputy Secretary

Copy to:

- Mr. T.N. Hari, Thekkumkomana House, Mamala Post Office Kakkad, EKM District, Kerala- 682305.
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi–110 002.
- Guard File.

Yours faithfully,

(Komila Punia) Deputy Secretary

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# Agenda Item 7: Issues recommended by the Law Committee for the consideration of the GST Council

# <u>Agenda Item 7(i): Amendment in the CGST Rules, 2017 for Aadhaar based Biometric</u> <u>authentication of the registrants</u>

### A. Biometric-based Aadhaar authentication and physical verification for new registration

Sub-rule (4A) was inserted in Rule 8 of the CGST Rules, 2017, vide Notification No. 94/2020-Central Tax dated 22.12.2020 to provide for biometric-based Aadhaar authentication w.e.f. a date to be notified, as follows: -

"(4A) Every application made under Rule (4) shall be followed by—

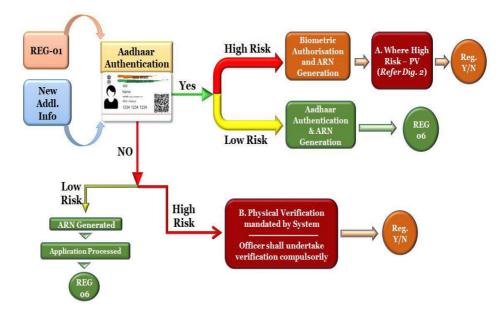
(a) biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (6D) of Section 25, if he has opted for authentication of Aadhaar number; or

(b) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of Section 25, if he has opted not to get Aadhaar authentication done,

of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of Section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule."

1.2 However, the said provision has not yet been notified.

2 The Group of Ministers on GST System Reforms in its first report inter alia approved the proposal to improve the registration process by using mandatory biometric authentication for high-risk applicants for registration under GST and the pilot for the same is proposed to be conducted by the State of Gujarat.





3 The GoM recommended mandatory physical verification for High-risk applicants only, even where the Aadhaar authentication was not opted or failed. However, the same was discussed in law committee meeting held on 26.08.2022 and it was recommended to mandate physical verification in all cases where Aadhaar authentication is not opted or fails. The corresponding provision is already there in Rule 9, and therefore no Rule amendment is required for this.

4.1 The Law Committee in its meetings held on 26.08.2022 and 07.09.2022 examined the issues relating to biometric-based Aadhaar authentication, and recommended that:

(i) to mandate biometric-based Aadhaar authentication for high-risk applicants who opt for authentication of Aadhaar number, sub-rule (4A) of Rule 8 may be substituted as under:

"(4A) Every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of Section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of Section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in **FORM GST REG-01** at one of the Facilitation Centres notified by the Commissioner for the purpose of this subrule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule."

(ii) to provide for exemption from biometric-based Aadhaar authentication in States / UTs where the pilot is not being undertaken, sub-rule (4B) may be inserted in Rule 8 of the CGST Rules, 2017, as under:

"(4B) The Government may, on the recommendations of the Council, by notification specify the States and/ or Union Territories wherein the provisions of sub-rule (4A) shall not apply."

(iii) to provide that acknowledgement shall be issued to the applicant only after completion of biometric-based Aadhaar authentication, sub-rule (5) of Rule 8 may be amended as under:

"(5) On receipt of an application under sub-rule (4) or sub-rule (4A), as the case maybe, an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02."

(iv) To provide for mandatory physical verification of an applicant who has undergone biometric-based Aadhaar authentication and is identified on the common portal, based on data analysis and risk parameters, for carrying out such physical verification of places of business, Rule 9 may be amended as under:

"(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of seven working days from the date of submission of the application:

#### Provided that where -

(a) a person, other than a person notified under sub-section (6D) of Section 25, fails to undergo authentication of Aadhaar number as specified in subrule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within thirty days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided under Rule 25 and verification of such documents as the proper officer may deem fit;

(2) Where the application submitted under Rule 8 is found to be deficient, either in terms of any information or any document required to be furnished under the said Rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within a period of seven working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within a period of seven working days from the date of submission from the date of the receipt of such notice.

#### Provided that where -

(a) a person, other than a person notified under sub-section (6D) of Section 25, fails to undergo authentication of Aadhaar number as specified in subrule (4A) of Rule 8 or does not opt for authentication of Aadhaar number; or

(aa)a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of Rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or (b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application.

... "

4.2 As it has been proposed to conduct a pilot in the State of Gujarat for such biometric authentication during registration process, it is proposed that:

(i) the above amendments in Rule 8(4A), 8(5) and Rule 9 may be made at present only in Gujarat SGST Rules and in the CGST Rules, 2017 but not in the SGST / UTGST Rules, 2017 of other States / UTs at present.

(ii) Rule 8(4B) may be introduced in the CGST Rules, 2017 only. Subsequently, a notification will be required to be issued by the Centre under Rule 8(4B) for specifying all States and UTs, except Gujarat, where provisions of Rule 8(4A) will not apply.

# B. Incorporation of details of electricity bill and property registration in FORM GST REG-01

5 The Group of Ministers on GST System Reforms in its first report also approved the proposal for inclusion of Electricity Bill meta data (CA No.) as a data field during registration by new taxpayers. CA Number shall be verified to improve the quality of registered addresses in GST System. The State of Maharashtra agreed to carry out the pilot project in this regard. The State of Madhya Pradesh also volunteered for the same as well as for the validation of property registration details from Land Revenue Department.

6 Accordingly, the Law Committee on 07.09.2022 recommended as under:

(i) Details of electricity consumer account number (CA Number) and Property registration may be sought under State Specific Information at Sl. No. 24 of **FORM GST REG-01**.

(ii) Details of electricity CA Number may be notified under Sl. No. 24 by the State of Maharashtra.

(iii) Details of electricity CA Number and Property registration may be notified under Sl. No. 24 by the State of Madhya Pradesh.

# C. Enhancement in GST Registration to restrict misuse of PAN

7 GST Registration is PAN-based. Currently, OTP-based verification in Part-A of **FORM GST REG-01** is done to verify only the mobile number and email address provided by the authorised signatory. However, no intimation is sent to the PAN holder when a GST registration is applied. This communication gap may result into misuse of PAN of a person without his knowledge by unscrupulous elements.

8 To address this, the Law Committee in its meeting held on 03.08.2022 recommended:

(i) PAN-linked mobile number and email address (fetched from CBDT database) may be captured and recorded in FORM GST REG-01.

(ii) OTP based Verification of PAN-linked mobile and email address in Part-A of FORM GST REG-01 be made mandatory, instead of verification of authorised signatory's self-declared mobile number and email address.

(iii) Accordingly, Part-A of FORM GST REG-01 may be amended as below:

(i)	Legal name of the business				
(ii)	Permanent Account Number				
<del>(iii)</del>	Email address(Authorised signatory)				
<del>(iv)</del>	Mobile number(Authorised signatory)				
(iii)	Email address (PAN linked)	<auto></auto>			
(iv)	Mobile Number (PAN linked)	<auto></auto>			

(v) Sub-rule (1) of Rule 8 may be amended to omit the requirement of declaration of mobile number and e-mail address in Part A of FORM REG-01

(vi) Clauses (b) and (c) to sub-rule (2) of Rule 8 be omitted to do away with the verification of authorised signatory's self-declared mobile number and email address.

(vii) Clause (a) to sub-rule (2) of Rule 8 be amended to provide for OTP-based verification of PAN-linked mobile number and email address, as below:

"(a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes and shall also be verified through separate one-time passwords sent to the mobile number and email address linked to the Permanent Account Number."

9 Accordingly, the proposals at paras 4, 6 and 8 are placed before the GST Council for deliberation and approval.

#### Agenda Item 7(ii): Refund to the unregistered persons.

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of Section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'The CGST Act, 2017') may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

1.2 Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of Section 34 of the CGST, 2017 may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

1.3 Representations have been received requesting for providing a facility to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of service of construction of flats/ building or on termination of long-term insurance policy.

2.1 In this regard, reference is made to sub-section (1) of Section 54 of the CGST Act, 2017, which provides for filing an application of refund by any person. Sub-section (1) of Section 54 is reproduced as under:

"(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner <u>as may be prescribed</u>:"

2.2 In view of the above, as the term used is 'any person' and not 'registered person', therefore, it can be stated that there is no restriction under GST Law which restricts any unregistered person from claiming refund under GST.

3. Further, clause (e) of sub-section (8) of Section 54 of the CGST Act, 2017 provides that the refundable amount would be paid to the applicant instead of being credited to Consumer Welfare Fund (CWF), where such amount relates to the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person. In cases, where the amount of tax paid and charged from the unregistered person by the supplier has not been refunded to such unregistered person by the supplier, the unregistered person may have borne the incidence of such tax paid without passing on the incidence to any other person. Therefore, the unregistered person may be eligible for refund to be paid to him, instead of being credited to CWF, under the provisions of clause (e) of sub-section (8) of Section 54.

4. In order to enable such a unregistered person to file application for refund under sub-section (1) of Section 54, GSTN has recently introduced a new functionality on the common portal that allows

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unregistered persons to take a temporary registration and apply for refund under the category '*Refund for Unregistered person*'.

5. As regards the relevant date in respect of such refund claims, clause (g) in Explanation (2) under Section 54 appears to be applicable in cases of refund by unregistered persons, being the recipient. Clause (g) in Explanation (2) under Section 54 is reproduced below:

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

5.1 In view of the above, the relevant date in case of refund by unregistered persons would be the date of receipt of goods or services. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in installments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it is proposed that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under Section 54 of the CGST Act, 2017, date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier may be considered as the date of receipt of the services by the applicant.

6. In addition, an amendment would be required in sub-rule (2) of Rule 89 of the CGST Rules, 2017, to prescribe the documents which would be required to be furnished along with the refund claim in order to establish that refund is due to the applicant. Accordingly, the proposal for **amendment in the CGST Rules, 2017** for refund to unregistered persons is attached as **Annexure 'A'**.

7. Further, it is proposed to issue a Circular clarifying the procedure for filing application of refund by the unregistered persons and processing of such refunds thereof. Accordingly, a **draft Circular** for the same is attached as **Annexure-B**.

8. The aforesaid proposal has been deliberated in the Law Committee in its meeting held on 26.08.2022 and 07.09.2022 wherein it was approved.

9. In view of the above, the agenda is placed before the GST Council for deliberation and approval.

#### **Proposal for amendment in the CGST Rules, 2017:**

(a) Insertion of following clauses after clause (k) of sub-rule (2) of Rule 89:

(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement/registered agreement/contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation/ termination of agreement/contract for supply of service, details of payment received from the supplier against cancellation/ termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement/ contract for supply of service has been cancelled/ terminated:

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement/ contract for supply of service has been cancelled/ terminated;

(b) Insertion of proviso under clause (m) of sub-rule (2) of Rule 89:

Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax;

(c) Insertion of a statement 8 in FORM GST RFD-01as per proposed clause (ka) of Rule 89(2):

Sl.	GS	Document/Invoice Details		Tax Paid			Details of		Details of		Refund			
No	TIN						payment of		pay	vment	Amount			
	of								invoice value		rec	eived	Claimed	
	sup						to the		against		( <i>I</i> + <i>C</i> + <i>S</i>			
	plie							supplier		cancellation/		+Cess)		
	r											termination		
		Туре	No.	Dat	Taxa	Inte	Cent	State	Ces	Dat	Amoun	Date	Amoun	
		of		е	ble	gra	ral	1	<i>S</i>	е	t		t	
		docu			Valu	ted	Tax	UT						
		ment			е	Tax		Tax						
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

# Statement-8 [Rule 89(2)(ka)] Refund Type: Refund for unregistered persons

# F. No. CBIC-20023/3/2021-GST Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing \*\*\*\*

New Delhi, Dated the , 2022

To,

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

Madam/Sir,

#### Subject: Prescribing manner of filing an application for refund by unregistered persons.

Instances have been brought to the notice where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of Section 34 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'The CGST Act, 2017') may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

1.2 Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of Section 34 of the CGST, 2017 may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST.

1.3 Representations have been received requesting for providing a facility to such unregistered buyers/ recipients for claiming refund of amount of tax borne by them in the event of cancellation of the contract/agreement for supply of service of construction of flats/ building or on termination of long-term insurance policy.

2. It would be pertinent to mention that sub-section (1) of Section 54 of the CGST Act, 2017 already provides that any person can claim refund of any tax and interest, if any, paid on such tax or any other amount paid by him, by making an application before the expiry of two years from the relevant date in such form and manner <u>as may be prescribed. Further</u>, in terms of clause (e) of sub-section (8) of Section 54 of the CGST Act, 2017, in cases where the unregistered person has borne the

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incidence of tax and not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

2.1 In order to enable such unregistered person to file application for refund under sub-section (1) of Section 54, a new functionality has been made available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category '*Refund for Unregistered person*'. Further, the CGST Rules, 2017, (hereinafter referred to as 'The CGST Rules, 2017') have been amended to provide for the documents required to be furnished with the refund by the unregistered persons and the statement to be uploaded along with the refund application vide Notification No. XX/2022-CT dated xx.xx.2022.

3. In order to ensure uniformity in the implementation of the above provisions of the law across field formations, the Board, in exercise of its powers conferred by Section 168(1) of the CGST Act, 2017, hereby clarifies the following:

# 3. **Filing of refund application**

3.1 The unregistered person, who wants to file an application for refund under sub-section (1) of Section 54 of the CGST Act, 2017, shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN). While doing so, the unregistered person shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered. Thereafter, the unregistered person would be required to undergo Aadhaar authentication in terms of provisions of Rule 10B of the CGST Rules, 2017. Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

3.2 The application for refund shall be filed in **FORM GST RFD-01** on the common portal under the category '**Refund for unregistered person**'. The applicant shall upload the **statement 8** (in pdf format) and all the requisite documents as per the provisions of sub-rule (2) of Rule 89 of the CGST Rules, 2017. The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed. Further, the applicant shall also upload the certificate issued by the supplier in terms of clause (kb) of sub-rule (2) of Rule 89 of the CGST Rules, 2017 along with his refund application. The applicant shall also upload any other document(s) to support his claim that he has paid and borne the incidence of tax and that the said amount is refundable to him.

3.3 Separate applications for refund has to be filed in respect of invoices issued by different suppliers. Further, where the suppliers in respect of whose invoices refund is to be claimed are registered in different States/UTs, the applicant shall obtain temporary registration in the each of the concerned States/UTs where the said supplier are registered.

3.4 Where the time period for issuance of credit note under Section 34 of the CGST Act, 2017 has not expired at the time of cancellation/termination of agreement/contract for supply of services, the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the

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time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under Section 34 of the CGST Act, 2017 has already been expired.

# 4. **Relevant date for filing of refund:**

4.1 As per sub-section (1) of Section 54 of the CGST Act, 2017, time period of two years from the relevant date has been specified for filing an application of refund. Further, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person in terms of provisions of clause (g) in Explanation (2) under Section 54 of the CGST Act, 2017. However, in respect of cases where the supplier and the unregistered person (recipient) have entered into a long-term contract/ agreement for the supply, with the provision of making payment in advance or in installments, for example- construction of flats or long-term insurance policies, if the contract is cancelled/ terminated before completion of service for any reason, there may be no date of receipt of service, to the extent supply has not been made/ rendered. Therefore, in such type of cases, it has been decided that for the purpose of determining relevant date in terms of clause (g) of Explanation (2) under Section 54 of the CGST Act, 2017, **date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier** will be considered as the date of receipt of the services by the applicant.

# 5. Minimum refund amount

5.1 Sub-section (14) of Section 54 of the CGST Act, 2017 provides that no refund under subsection (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no refund shall be claimed if the amount is less than one thousand rupees.

6. The proper officer shall process the refund claim filed by the unregistered person in a manner similar to other FORM RFD-01 claims. The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the refund sanction order in FORM GST RFD-06 accordingly. The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.

6.1 In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person.

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

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

(Sanjay Mangal) Principal Commissioner (GST)

# Agenda Item 7 (iii): Decriminalization of the CGST Act, 2017

The issue of decriminalization of various laws, including GST law, to reduce compliance burden on the taxpayers, was discussed in the meeting of Committee of Secretaries (CoS) on **Decriminalization of existing Acts/Rules.** It was discussed that the provisions of prosecution under various laws need to be reviewed, so as to decriminalize some of the minor offences. It was also deliberated that there is a need to examine whether any enhancement is required in the threshold for prosecution of offences under Section 132 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017, 2017). Besides, it was also desired that there is a need to make the provisions of compounding of offences more attractive to the taxpayers so that more and more taxpayers can avail the benefit of these provisions.

2. Accordingly, Law Committee in its meeting held on 07.09.2022 deliberated on the various provisions pertaining to prosecution and compounding in the CGST Act, 2017, so as to rationalize the same and to remove ambiguity, if any, and also to make compounding provisions more attractive in GST for the taxpayers.

3. After detailed deliberations, Law Committee recommended the following amendments in GST Law with the aim to decriminalize various provisions of the GST Act:

#### 3.1 Decriminalization of minor offences in the CGST Act, 2017,:

3.1.1 Offences specified in clause (g), (j) and (k) of sub-section (1) of Section 132 are in nature of pure criminal offences. Maximum punishment is six months in case of offences under clause (g) and (j) whereas in case of clause (k), punishment depends on tax amount. The offences covered under the said clauses are as follows :-

- (a) obstructs or prevents any officer in the discharge of his duties under this Act.
   [clause (g) of sub-section (1) of Section 132]
- (b) tampers with or destroys any material evidence or documents. [clause (j) of sub-section (1) of Section 132]
- (c) fails to supply any information which he is required to supply under this Act or the Rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information. [clause (k) of sub-section (1) of Section 132]

3.1.2 Further, under Section 122 of the CGST Act, 2017, these types of offences are liable to penalty of <u>ten thousand rupees only</u>, if not linked to tax amount. However, minor offences specified in *clause* (g) and (j) even when not linked to tax amount, if committed, would remain liable for punishment of imprisonment up to six months.

3.1.3 All the <u>offences under clause (g), (j) and (k) are specifically covered in detail and punishable</u> <u>under Indian Penal Code.</u> The comparison of minor offences under the CGST Act, 2017, with corresponding provisions in Indian Penal Code, 1860 for same offence is as below:

Sl. No.	Offence clause under the CGST Act, 2017	Offence under Indian Penal Code
1.	obstructs or prevents any officer in the discharge of his duties under this Act.[clause (g) of sub-section (1) of Section 132]	<ul> <li>186. Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.</li> <li>Non-cognizable&amp; bailable;</li> <li>Who can try: any magistrate</li> </ul>
2.	tampers with or destroys any	Chapter XI of IPC
2.	material evidence or documents. [clause (j) of sub- section(1) of Section 132]	(OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE)
		204. Destruction of document to prevent its production as evidence.—Whoever secretes or <b>destroys any</b> [document and electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or <b>in any proceeding lawfully</b> <b>held before a public servant</b> , as such, or obliterates or renders illegible the whole or any part of such [document or electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to <u>two</u> <u>years, or with fine, or with both</u> Non-cognizable & bailable offence;
		Who can try: any magistrate
3.	fails to supply any information which he is required to supply under this Act or the Rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the	CHAPTER X of IPC {OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS} 176. Omission to give notice or information to public servant by person legally bound to give it.
	information supplied by him is	Non-cognizable & Bailable offence;
	true) supplies false information;	Who can try: The Court in which the offence is committed, subject to provisions of Chapter XXVI;
	1	commuted, subject to provisions of Chapter XXVI,

[clause (k) of sub-section(1)	or, if not committed in a Court, any magistrate
of Section 132]	

3.1.4 <u>Law Committee recommended that to avoid duplication, it may be desirable</u> that these types of offences may be excluded from the CGST Act, 2017 as they are already covered under <u>IPC</u>, which is a complete code for these type of criminal offences.

#### 3.1.5 **Proposed Amendment:**

132:

In view of above, the following amendments are proposed in sub-section (1) of Section

(a) Deletion of the *clause* (g), (j) and (k) of sub-section (1) of Section 132:

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the Rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(b) Amendment in clause (l) of sub-section (1) of Section 132:

"(*l*) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (i) (k) of this Section,"

(c) Amendment in clause (iv) of sub-section (1) of Section 132:

"(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both-"

#### 3.2 Align the prosecution threshold with arrest threshold

3.2.1 It is mentioned that minimum threshold for launching prosecution in respect of the offences punishable under clause (iii) of sub-section (1) of Section 132 of the CGST Act, 2017, is **Rs. one crore**. However, as per Section 69 of the CGST Act, 2017, arrest for specified offences of sub-section (1) of Section 132 can be made only in cases involving minimum amount of tax evaded of **Rs. two crore**.

3.2.2 Feedback received from the field formations depicts that <u>hardly any prosecution case has</u> been filed under the clause (iii) of sub-section (1) of Section 132 which provides for prosecution in cases involving amount between Rs one crore and Rs two crore. <u>Moreover, limited manpower is available in field formations</u> for filing prosecution in such large number of cases where tax amount is more than rupees one crore but less than two crore rupees. Prosecution complaint also requires sustained efforts on the part of department right from investigation to the conclusion of case before all judicial forums. In view of above, it may be desirable to file prosecution only in suitable cases,

# having significant revenue implications. <u>Therefore, Law Committee recommended to delete</u> <u>clause (iii) of sub-section (1), so that the monetary limit for prosecution is raised to Rs two</u> <u>crore from the current Rs one crore.</u>

**Proposed amendment:** 

(A) The <u>minimum threshold for launching prosecution may be increased to two crore rupees</u> and the clause (iii) of sub-section (1) of Section 132 may be deleted.

"(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;"

(B) Amendment in Section 132 (3): In view of increase threshold for prosecution, the sub-section (3) of Section 132 also requires deletion of reference to clause (iii).

"(3) The imprisonment referred to in clauses (i), (ii) and (ii) (iii) of sub-section (1) and subsection (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months."

#### 3.3 <u>Rationalization of compounding provisions to make them more attractive:</u>

#### I. Making Compounding provisions more attractive to taxpayers:

Sub-section (2) of Section 138 of The CGST Act, 2017 provides for range of monetary limit for compounding which is currently between 50% (minimum) to 150% (maximum) of tax amount involved. This range for compounding amount is very high due to which persons eligible for compounding of offences may be dissuaded to come forward for compounding their offence. In this regard, data received from field formations for usage of compounding provisions by trade in field shows that almost no one has applied to take the benefit of these provisions even after 5 years of implementation of GST. Therefore, rationalization of such compounding amount is needed so that accused persons can take benefit of compounding provisions and litigation costs to Government are minimized. This will require amendment in sub-section (2) of Section 138 of the CGST Act, 2017.

Further, the phrase **'not being less than'** used in sub-section (2) of Section 138 for higher limit is not conveying proper meaning as it leads to a misleading conclusion that maximum amount has to be more than the higher of Rs 30,000 or 150% of Tax, which means that the maximum amount is limitless. Instead, the phrase should have been **'not being more than'**. Moreover, with deletion of minor offences clauses (g), (j) and (k) of sub-section (1) of Section 132, there will practically not be any case in which compounding amount can fall between Rs. Ten thousand and Rs. Thirty thousand. Therefore, reference to these amounts in sub-section (2) of Section 138 is also required to be deleted. **Hence, an amendment in Section 138 (2) has been recommended by the Law Committee**.

#### Proposed Amendment:

The range of compounding amount is proposed to be reduced suitably to <u>minimum of 25% of</u> <u>the tax amount to maximum of 100%</u> of tax amount in the CGST Act, 2017, to make compounding provisions attractive and to promote the trade to utilize the same, by amending sub-section (2) of Section 138, as below:

"(2) The amount for compounding of offences under this Section shall be such as <u>may</u> <u>be prescribed</u>, subject to the minimum amount not being less than the thousand rupees or fifty per cent. twenty five per cent. of the tax involved, whichever is higher, and the maximum amount not being more than less than thirty thousand rupees or one hundred and fifty one hundred per cent. of the tax involved, whichever is higher."

II. Anomaly in clause (c) of proviso to Section 138 (1) and 2nd proviso to Section 138 (1): One of the conditions mentioned at clause (c) of proviso to sub-section (1) of Section 138 of the CGST Act, 2017 is that the compounding provisions are not applicable to a person, who has been accused of committing an offence under the CGST Act, 2017 which is also an offence under any other law in force. On the other hand, 2nd proviso to Section 138 (1) of the CGST Act, 2017, mentions that "Provided further that any compounding allowed under the provisions of this Section shall not affect the proceedings, if any, instituted under any other law". Therefore, joint reading of clause (c) of proviso to Section 138(1) and 2nd proviso to Section 138(1) creates an ambiguity that when the compounding provisions are not applicable to the persons who have committed an offence which is also punishable under any other law in force at time being, then what is the need of second proviso to Section 138(1), as no such situation can arise, when the compounding under the CGST Act, 2017 cannot be done in such cases as per provisions of 2<sup>nd</sup> proviso of Section 138(1) of the CGST Act, 2017. Further, clause (c) of Section 138(1) of the CGST Act, 2017, stipulates a situation where the proper officer will have to exclude the category of person from taking benefits of compounding provisions in case such person is accused of committing an offence under this Act which is also an offence under any other law for the time being in force. The practical issue while implementing this sub-clause is that, it may not be possible for a tax officer to have complete knowledge of all the other laws of land and what will be the mechanism to found out whether the offence committed by accused person is also an offence under any other law. Also, who would be the competent authority to decide whether the said person has committed an offence under any other law except the CGST Act, 2017, or whether the person has not breached provisions of any other law. Therefore, clause (c) of proviso to sub-section (1) of Section 138 of the CGST Act, 2017 needs to be deleted.

Also, it is to be noted that to curb the menace of fake invoice and to control passing of ITC by such fake/ non-existent units, it is imperative that mastermind of such a crime is not afforded any opportunity to compound their offence by using benefits of these provisions under Section 138 of the CGST Act, 2017. The compounding provisions are to minimize the legal proceedings with genuine and existing traders who have committed the offence but are ready for cleaning up their actions and to further do their business as per law and nowhere, the intent of compounding provisions can be to provide an opportunity to masterminds creating fake entities and perpetrating economic frauds deliberately to escape prosecution. Hence, Law Committee recommended excluding such class of persons from the compounding provisions by inserting a clause to this effect in sub-section (1) of Section 138.

#### Proposed Amendment:

It is proposed to substitute clause (c) of sub-section 1 of Section 138:

(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force

"(c) person who has retained the benefit of a transaction covered under clause (ii) of sub-section (1) of Section 122 and at whose instance such transaction has conducted."

III. Complex language of clause (a) and (b) of first proviso to sub-section (1) of Section 138: Clause (a) of the first proviso to sub-section (1) of Section 138 provides that compounding provisions will not be applicable to a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of Section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section. It is to be seen that once clauses (g), (j) and (k) of sub-section (1) of Section 132 are deleted, there will be no need to make a reference to (a) to (f) and excluding the remaining sub-clauses. It is therefore, proposed to make this clause simpler by amending to the effect that a person who has been allowed to compound once in respect of any of the offences specified in any clauses of sub-section (1) of Section 132, compounding provisions will be not applicable.

Further, clause (b) of the first proviso to sub-section (1) of Section 138 provides that compounding provisions will not be applicable to a person who has been allowed to compound once in respect of any offence, under the CGST Act, 2017 or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act, in respect of supplies of value exceeding one crore rupees. Law Committee recommended that **this clause may be deleted** as it becomes duplicate and redundant subsequent to deletion of clauses (g), (j) and (k) of sub-section (1) of Section 132 and simplification of clause (a) of first proviso to sub-section (1) of Section 138, as discussed in para above.

#### **Proposed amendment:**

Clauses (a) and (b) of the first proviso to sub-section (1) of Section 138 of the CGST Act, 2017 are proposed to be amended as below:

"(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (l) of sub-section (1) of Section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;"

#### IV. Consequential Amendment due to deletion of minor offences from Section 132:

Clause (e) of the first proviso to sub-section (1) of Section 138 is proposed to be deleted in view of proposed amendment in Section 132 with respect to deletion of minor offences.

(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of Section 132; and

Therefore, after all the above amendments, the first proviso to sub-section (1) of Section 138 shall be as follows:

"Provided that nothing contained in this Section shall apply to—

(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (l) (a) to(f) of sub-section (l) of Section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force

(c) person who has retained the benefit of a transaction covered under clause (ii) of subsection (1) of Section 122 and at whose instance such transaction has conducted;

(d) a person who has been convicted for an offence under this Act by a court;

(c) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of Section 132; and

(f) any other class of persons or offences as may be prescribed:"

4. Law Committee also recommended that subsequent to the amendment in Section 138 of the CGST Act, 2017, as per the above recommendations, corresponding amendments will also be required to be made in the CGST Rules, 2017, inter alia providing for different amount of compounding for different type of offences. The same will be deliberated by the Law Committee in due course of time.

5. Accordingly, the agenda is placed before the GST Council for deliberation and approval.

# Agenda Item 7 (iv): Amendment in Rule 94 of the CGST Rules, 2017 and Section 56 of the CGST Act, 2017 to provide for exclusion of time period of delay in sanction and disbursal of refund where such delay is attributable to applicant.

Section 56 of the CGST Act, 2017 provides that if the tax ordered to be refunded is not paid to the applicant within 60 days of the receipt of the refund application, interest shall be paid to the applicant from the date immediately after expiry of sixty days till the date of refund. Section 56 is reproduced as under:

"If any tax ordered to be refunded under sub-section (5) of Section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that Section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

**Provided** that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

**Explanation**.-For the purposes of this Section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of Section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5)."

1.2 Further, Rule 94 of the CGST Rules, 2017 provides for order sanctioning interest on delayed refunds. The same is reproduced below:

"Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a payment order in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund."

2. Reference is also invited to para 34 of the Master Circular No. 125/44/2019-GST dated 18.11.2019 on refunds wherein tax authorities have been advised to issue the refund sanction order within 45 days so that the refund is disbursed to the applicant within 60 days. Para 34 of the Circular No. 125/44/2019-GST dated 18.11.2019 reads as below:

"34.Section 56 of the CGST Act, 2017 clearly states that if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of application, interest at the rate of 6 per cent (notified vide notification No. 13/2017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of

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receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant. It may be noted that any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Therefore, interest will be calculated starting from the date immediately after the expiry of sixty days from the date of receipt of the application till the date on which the amount is credited to the bank account of the applicant. <u>Accordingly, all tax authorities are advised to issue the final sanction order in FORM GST RFD-06 and the payment order in FORM GST RFD-05 within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days."</u>

3. In this regard, it is worth mentioning that different steps in the refund processing, along with the time period within which such step is to be carried out, have been clearly prescribed in the CGST Rules, 2017. The timelines prescribed for various refund processing steps are mentioned below:

- i. Issuance of Deficiency Memo in FORM GST RFD-03/Acknowledgement in Form GST RFD-02 - within 15 days from the date of filing of application in FORM GST RFD-01
- ii. Issuance of Provisional refund in FORM GST RFD-04 within 7 days from date of acknowledgement
- iii. Submission of Reply to notice in FORM GST RFD-09 within 15 days from date of receipt of notice in FORM GST RFD-08

3.1 No time period has been prescribed for issuance of notice in FORM GST RFD-08 or that of passing an order after examination of reply to notice furnished by the applicant in FORM GST RFD-06. However, it has to be noted that the refund sanction order in FORM GST RFD-06 has to be issued within 60 days from the date of receipt of the application, in terms of the provisions of sub-section (7) of Section 54 of the CGST Act, 2017.

4. As stated above, in terms of Section 56 of the CGST Act, 2017, the sanctioned refund amount is required to be credited to the bank account of the applicant within 60 days from the date of receipt of application, which is complete in all aspects, failing which interest @ 6% p.a. has to be paid to the applicant on such delayed refund till such delay continues. Therefore, the officer has to not only ensure that the refund is sanctioned within 60 days but also to ensure that the said sanctioned amount is paid to the applicant within 60 days.

5. It is observed that there are a number of cases, where the applicant does not file reply to the notice in FORM RFD-08 within the prescribed time of 15 days and seeks additional time for filing reply, or for providing additional documents/ reply, or for personal hearing. In such cases, it may not be possible for the officers to stick to the timeline of 60 days for sanction and disbursal of refunds. However, the present provisions in the CGST Act, 2017 and Rules do not provide for any exceptions from payment of interest in cases of such delayed refunds, where the delay is attributable to the applicant.

6. There are also cases where though the refund is sanctioned to the applicant within time but the refund could not be credited to the bank account of the applicant within 60 days due to PFMS bank account validation error, on account of wrong details of bank account being submitted by the applicant. In such cases, the responsibility of correctly furnishing the details of the bank account, in which the refund is being sought, lies with the applicant. However, as stated above, the present provisions in the CGST Act, 2017 and Rules do not provide for any exceptions from payment of interest in cases of such delayed refunds, where the delay is attributable to the applicant.

7. In this regard, it is felt that the where the delay in sanction or payment of refund is attributable to the applicant, there should be no liability on the department for payment of interest on account of delayed refund, to the extent the delay is attributable to the applicant. Therefore, there is a need to make provisions in the Act/ Rules to provide for exclusion of time period taken by the applicant in excess of 15 days in replying to notice in FORM GST RFD-08, any additional time sought by the applicant for submitting additional documents/ reply and the period taken for providing correct bank account details in case of PFMS bank account validation error and removal of such error thereof, for computation of time period of 60 days for sanction and disbursal of refund and calculation of interest on delayed refunds thereof.

8. Here, it would be pertinent to mention that CAG has also made the said recommendation in its report No. 5 of 2022 which has been laid before the Parliament on 08.08.2022, which is reproduced below:

"The provisions regarding payment of interest on delayed refunds need to be amended to exclude the period of delays that is attributable to the taxpayers such as delay in reply to SCN or incorrect bank details for payment."

9. The said issue was deliberated by the Law Committee in its meetings held on 21.09.2022 and 23.11.2022. The Law Committee recommended making the following amendment in Rule 94 of the CGST Rules, 2017:

"(1) Where any interest is due and payable to the applicant under Section 56, the proper officer shall make an order along with a payment order in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

- (2) The following periods shall not be included in the period of delay under sub-rule (1):
- (a) any period of time beyond fifteen days of receipt of notice in FORM GST RFD-08 under sub-rule (3) of Rule 92, that the applicant takes:
  - *i.* to furnish a reply in FORM GST RFD-09, or
  - *ii. for submitting additional documents or reply, on the request of the applicant; and*
- (b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant."

10. The Law Committee also felt that as Section 56 of the CGST Act, 2017 does not contain any provision empowering government to prescribe any Rules for computation of period of delay under the CGST Rules, 2017, there is also a need to provide enabling provision in Section 56 of the CGST Act, 2017 to provide for prescribing the manner of computation of period of delay for purpose of calculation of interest payable on delayed refund in the CGST Rules, 2017. Accordingly, the Law Committee recommended that in addition to making amendment in Rule 94 of the CGST Rules, 2017, as proposed in Para 9 above, an amendment may also be made in Section 56 of the CGST Act, 2017 as below:

Section 56 Interest on delayed refunds.-

If any tax ordered to be refunded under sub-section (5) of Section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that Section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund for such period of delay beyond from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed:

11. Accordingly, the agenda for amendment in Section 56 of the CGST Act, 2017 and Rule 94 of the CGST Rules, 2017, as recommended by the Law Committee, is placed before GST Council for deliberation and approval.

# Agenda Item 7 (v): Clarifying the manner of re-determination of demand in terms of subsection (2) of Section 75 of the CGST Act, 2017.

Section 75(2) of the CGST Act, 2017 provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of Section 74 is not sustainable for reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as "noticee"), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of Section 73. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (10) of Section 73, specially in cases where time limit for issuance of order as per sub-section (10) of Section 73 has already been over. Doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of Section 73.

2. The issue was deliberated by the Law Committee in its meeting held on 12.10.2022. The Law Committee recommended for clarifying the doubts by way of issuing a circular. The draft Circular as approved by Law Committee is attached as **Annexure-A**.

3. Accordingly, the agenda is placed before the GST Council for deliberation and approval.

Circular No. XXX/YY/2022-GST

# CBEC-20/06/04/2020-GST Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing

Dated the xxth December, 2022

To,

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

# Subject: Clarification with regard to applicability of provisions of Section 75(2) of CGST Act, 2017 and its effect on limitation -reg.

Madam/Sir,

Attention is invited to sub-section (2) of Section 75 of CGST Act, 2017 which provides that in cases where the appellate authority or appellate tribunal or court concludes that the notice issued by proper officer under sub-section (1) of Section 74 is not sustainable for reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the person to whom such notice was issued (hereinafter called as "noticee"), then the proper officer shall determine the tax payable by the noticee, deeming as if the notice was issued under sub-section (1) of Section 73.

2. Doubts have been raised by the field formations seeking clarification regarding the time limit within which the proper officer is required to re-determine the amount of tax payable considering notice to be issued under sub-section (1) of Section 73, specially in cases where time limit for issuance of order as per sub-section (10) of Section 73 has already been over. Further doubts have also been expressed regarding the methodology for computation of such amount payable by the noticee, deeming the notice to be issued under sub-section (1) of Section 73.

3. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

S.No.	Issue	Clarification
1.	In some of the cases where the show cause notice has been issued by the proper officer to a notice under sub- section (1) of Section 74 for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of Section 74 for the reason that the charges of fraud or any willful- misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of Section 73, in accordance with the provisions of sub- section (2) of Section 75. What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?	<ul> <li>Sub-section (3) of Section 75 provides that an order required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court has to be issued within two years from the date of communication of the said direction.</li> <li>Accordingly, in cases where any direction is issued by the appellate authority or appellate tribunal or the court to re-determine the amount of tax payable by the noticee by deeming the notice to have been issued under sub-section (1) of Section 73 in accordance with the provisions of sub-section (2) of Section 75, the proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in under sub-section (3) of Section 75, i.e. within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.</li> </ul>
2.	How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of Section 73, shall be re-computed/ re- determined by the proper officer as per provisions of sub-section (2) of Section 75?	<ul> <li>In cases where the amount of tax, interest and penalty payable by the noticee is required to be re-determined by the proper officer in terms of sub-section (2) of Section 75 of CGST Act, 2017 the demand would have to be re-determined keeping in consideration the provisions of sub-section (2) of Section 73, read with sub-section (10) of Section 73.</li> <li>Sub-section (1) of Section 73 provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax. Sub-section (2) of Section 73 provides that such show cause notice shall be issued at least 3 months prior to the time limit specified in sub-section 10 of Section 73 for issuance of order. As per sub-section (9) of Section 73, the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an</li> </ul>

order. As per **sub-section (10) of Section 73**, an order under sub-section (9) of Section 73 has to be issued by the proper officer within three years from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund.

- It transpires from a combined reading of these provisions that in cases which do not involve fraud or wilful-misstatement or suppression of facts to evade payment of tax, the show cause notice in terms of sub-section (1) of Section 73 has to be issued within 2 years and 9 months from the due date of furnishing of annual return for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within 2 years and 9 months from the date of erroneous refund.
- Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under sub-section (1) of Section 73 in terms of sub-section (2) of Section 75, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under subsection (2) of Section 73 read with sub-section (10) of Section 73. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized along with interest and penalty payable in terms of Section 73 relating to such financial years can be re-determined, where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.
- In case, where the show cause notice under subsection (1) of Section 74 was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of

2 years and 9 months from the due date of
furnishing of the annual return for the financial
year to which such demand relates to, and the
appellate authority concludes that the notice is
not sustainable under sub-section (1) of Section
74 thereby deeming the notice to have been issued under sub section (1) of Section 72 the
issued under sub-section (1) of Section 73, the
entire proceeding shall have to be dropped,
being hit by the limitation of time as specified in Section 73. Similarly, where show arous
in Section 73. Similarly, where show cause
notice under sub-section (1) of Section 74 was
issued for erroneous refund <b>beyond a period of 2</b>
years and 9 months from the date of erroneous
refund, the entire proceeding shall have to be
dropped.
• In cases, where the show cause in terms of sub-
section (1) of Section 74 was issued for tax short
paid or not paid tax or wrongly availed or utilized
input tax credit or on account of erroneous refund
within 2 years and 9 months from the due date
of furnishing of the annual return for the said
financial year, to which such demand relates to,
or from the date of erroneous refund, as the
case may be, the entire amount of the said
demand in the show cause notice would be
covered under re-determined amount.
• Where the show cause notice under sub-section
(1) of Section 74 was issued for <b>multiple</b>
Financial Years, and where notice had been
issued before the expiry of the time period as per
sub-section (2) of Section 73 for one financial
year but after the expiry of the said due date for
the other financial years, then the amount payable
in terms of Section 73 shall be re-determined
only in respect of that Financial Year for
which show cause notice was issued before the
expiry of the time period as specified in sub-
section (2) of Section 73.

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

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

(Sanjay Mangal) Principal Commissioner (GST)

# Agenda Item 7 (vi): Amendment in the CGST Rules, 2017.

Law Committee, in its various meetings, has deliberated upon several issues and has recommended changes in some of the provisions of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules"). In addition to the changes in the CGST Rules, some changes in the FORMS have also been recommended by the Law Committee. These changes are discussed below:

#### I. Amendment in sub-rule (3) of Rule 12

1.1 References have been received from the trade that there is no option available presently for an e-commerce operator having TCS registration to apply for cancellation of TCS registration in case of the closure of the operations of e-commerce operator. It has been requested to provide an option to cancel TCS registration. Similarly, there is also no option presently for a TDS registrant to apply for cancellation of TDS registration. The following paras examine this issue in detail.

1.2 Electronic commerce operator who is required to collect tax at source under Section 52 of the CGST Act, 2017 is required to be compulsorily registered in terms of clause (x) of Section 24 of the said Act. Similarly, persons who are required to deduct tax under Section 51, whether or not separately registered, are required to be compulsorily registered in terms of clause (vi) of Section 24.

1.3 Section 29 of the CGST Act,2017 provides that the proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person is no longer liable to be registered under Section 22 or Section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of Section 25.

1.4 Rule 20 of CGST Rules provides for application for cancellation of registration by a registered person, other than a person to whom a registration has been granted under Rule 12 or a person to whom a Unique Identity Number has been granted under Rule 17, seeking cancellation of his registration under sub-section (1) of Section 29. Such person is required to electronically submit an application in FORM GST REG-16 within a period of thirty days of the occurrence of the event warranting the cancellation. However, the said Rule specifically excludes a person to whom a registration has been granted under Rule 12.

1.5 It may be noted that **Rule 12 deals with grant of registration to persons required to deduct tax at source or to collect tax at source**. Accordingly, TDS deductors and TCS collectors are not covered within the ambit of Rule 20 and as such, there is no procedure prescribed under Rule 20 for such persons to apply for cancellation of registration.

1.6 Cancellation of such registration by proper officer is provided under Rule 12(3), but there is no mechanism for the said person to apply for cancellation himself. Rule 12(3) provides for cancellation of registration as under:

(3) Where, upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in **FORM GST REG-06** has been issued is no longer liable to deduct tax at source under Section 51 or collect tax at source under Section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in **FORM GST REG-08**:

Provided that the proper officer shall follow the procedure as provided in Rule 22 for the cancellation of registration.

7. The issue was deliberated by the Law Committee in its meeting held on 23.11.2022, wherein Law Committee recommended for amendment in sub-rule (3) of Rule 12 to provide an option to the TCS and TDS operators to apply for cancellation of their registration. The proposed amendment in sub-rule (3) of Rule 12 is shown, in red color, as below:

# Sub-rule (3) of Rule 12

(3) Where, on a request made in writing by a person to whom a registration has been granted under sub-rule (2) or upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source under Section 51 or collect tax at source under Section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in FORM GST REG-08:

Provided that the proper officer shall follow the procedure as provided in Rule 22 for the cancellation of registration.

#### II. Amendment in sub-rule (1) of Rule 37

2.1  $2^{nd}$  proviso to Section 16(2) of the CGST Act provides for the cases where a recipient fails to pay to the supplier the amount towards the value of supply along with tax payable thereon within a period of 180 days. The same reads as under:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

2.2 It may be noted that to align with the GSTR-1/2B/3B return filing system, 2<sup>nd</sup> and 3<sup>rd</sup> provisos to Section 16(2) have separately been recommended to be amended as below:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input

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tax credit availed by the recipient shall be added to his output tax liabilitypaid by him, along with interest thereonpayable under Section 50, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.

2.3 The said manner to be followed by such a recipient is prescribed in Rule 37(1) of the CGST Rules. However, to align with the GSTR-1/2B/3B return filing system, FORM GSTR-2 and FORM GSTR-3 in CGST Rules, 2017 have been omitted and the Rule 37(1) of CGST Rules, 2017 has been amended with effect from 01.10.2022 *vide* Notification No. 19/2022 - CT dated 28.09.2022, as under:

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of Section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month pay an amount equal to the input tax credit availed in respect of such supply, along with interest payable thereon under Section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

2.4 It is observed that, before the said amendments, sub-rule (1) of Rule 37 required the recipient to furnish the details of *"the amount of input tax credit availed of proportionate to such amount not paid to the supplier"* and under sub-rule (2) of Rule 37, the amount of such input tax credit was to be added to the output tax liability of the said recipient for the month in which the details were furnished. Resultantly, only amount of ITC proportionate to the amount of payment withheld vis-à-vis the value of supply was to be added to the output tax liability.

2.5 However, the amended Rule 37(1) requires the said recipient to pay an amount equal to the input tax credit availed in respect of such supply. It gives an impression that the whole of ITC pertaining to such supply is to be reversed even though a part of the payment may have been made by the recipient to the supplier. This appears to be an inadvertent departure from the principle of proportionate reversal under the original Rule.

2.6 In view of the above, the Law Committee in its meeting held on 05.11.2022 deliberated on a proposal to address this anomaly and recommended that sub-rule (1) of Rule 37 may be amended **retrospectively with effect from 01.10.2022.** The proposed amendment insub-rule (1) of Rule 37 is shown, in red color, as below:

#### Sub-rule (1) of Rule 37

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply, whether wholly or partly, along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of Section 16, shall pay or reverse an amount equal toinput tax credit availed in respect of such supply, proportionate to the amount not paid to the supplier, along with interest payable thereon under

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Section 50, while furnishing the return in **FORM GSTR-3B** for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

# III. Insertion of Rule 37A

3.1 Section 106 of the Finance Act, 2022 has been notified w.e.f.  $1^{st}$  October, 2022 vide Notification No. 18/2022 - CT to substitute Section 41 of the CGST Act, 2017. Sub-section (2) of Section 41 provides as under:

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in **such manner** as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in **such manner as may be prescribed**.

3.2 The Law Committee in its meetings held on 26.08.2022, 07.09.2022 and 05.11.2022 deliberated the manner in which such ITC may be reversed and re-availed. Considering various practical issues in the implementation of the said provision and for ease of doing business, the Law Committee recommended the following mechanism for such reversal of credit and re-availment thereof:

(i) Recipient may avail credit in the return in FORM GSTR-3B based on amount available as per his FORM GSTR-2B in a tax period (as he may not be aware of return filing status of supplier at the time of filing his return in FORM GSTR-3B as the due date of filing return for both the supplier and recipient is the same).

(ii) Where the supplier of the registered person has furnished details of a supply in his FORM GSTR-1 or using IFF for a tax period, but the corresponding return in FORM GSTR-3B is not furnished by the said supplier till 30<sup>th</sup> September following the end of corresponding financial year, the ITC in respect of such supplies shall be reversed by the registered person.

(iii) The reversal shall be made by the registered person while furnishing a return in FORM GSTR-3B on or before 30<sup>th</sup> November following the end of such financial year, during which such input tax credit has been availed.

(iv) Where the said ITC is not reversed by the registered person in a return in FORM GSTR-3B on or before 30<sup>th</sup> November following the end of the financial year, during which such input tax credit has been availed, such amount shall be payable along with interest under Section 50. Therefore, no interest burden lies on the taxpayer if reversal is done upto the specified time period and the interest liability arises only if reversal is done after that.

(v) The registered person can re-avail the said credit in a subsequent return in FORM GSTR-3B when the concerned supplier files his return in FORM GSTR-3B for the corresponding tax period of the said invoice.

3.3 Therefore, the Law Committee recommended insertion of Rule 37A to the CGST Rules. The proposed Rule 37A is shown in red color below:

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#### Rule 37A

**37A.** Reversal of input tax credit in the case of non-payment of tax by the supplier and reavailment thereof.- Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30<sup>th</sup> day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30<sup>th</sup> day of November following the end of such financial year:

**Provided that** where the said amount of input tax credit is not reversed by the registered person in a return in **FORM GSTR-3B** on or before the  $30^{th}$  day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under Section 50.

**Provided further that** where the said supplier subsequently furnishes the return in **FORM GSTR-3B** for the said tax period, the said registered person may re-avail the amount of such credit in the return in **FORM GSTR-3B** for a tax period thereafter.

#### IV. Amendment in Rule 46

4.1 Clause (e) of Rule 46 of the CGST Rules, 2017 provides that a tax invoice issued by a registered person shall contain the name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and where the value of taxable supply is fifty thousand rupees or more. Further, clause (f) of Rule 46 provides that a tax invoice issued by a registered person shall contain the name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is unregistered and the value of taxable supply is less than fifty thousand rupees but where the recipient requests that such details be recorded in the tax invoice.

4.2 General provisions relating to place of supply of services as provided in sub-section (2) of Section 12 of the IGST Act, 2017 provide that the place of supply of services made to an unregistered person shall be the location of the recipient, where the address on record exists, and the location of the supplier of services, in other cases. Location of the recipient of service is the usual place of residence in case of an unregistered person in accordance with clause (d) of sub-section (70) of Section 2 of the CGST Act. Hence, it becomes imperative to capture the proper address of the recipient in the invoice in case of supply of service to ensure flow of revenue to the appropriate consuming State.

4.3 The issue was deliberated by the Law Committee in its meeting held on 26.08.2022 and 07.09.2022. Law Committee observed that in case of supply of services to unregistered persons through online platforms, in particular, recipients' addresses are not properly captured, which affects flow of revenue to the appropriate destination states. Law Committee recommended insertion of a proviso to clause (f) of Rule 46 to ensure mandatory recording of address of unregistered recipients of service along with the PIN code when the said services are provided through the online platform by a

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registered person even if the value of taxable supply is less than fifty thousand rupees. The LC recommended insertion (shown in red color) of proviso in clause (f) of Rule 46 as below:

#### Rule 46

**Rule 46.** Tax invoice.-Subject to Rule 54, a tax invoice referred to in Section 31 shall be issued by the registered person containing the following particulars, namely,-

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice; :

Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient.

(g) .....

#### V. Amendment in Rule 46A

5.1 Rule 46 of the CGST/SGST Rules, 2017 prescribes the particulars that a tax invoice issued by a registered person shall contain. Rule 49 of the said Rules prescribes the particulars that a bill of supply issued by a supplier shall contain. Rule 54 of the said Rules further prescribes the particulars in respect of tax invoices issued in special cases.

5.2 Rule 46A of the CGST/SGST Rules, 2017 provides that, notwithstanding anything contained in Rule 46 or Rule 49 or Rule 54, a registered person supplying taxable as well as exempted goods or services or both to an unregistered person may issue a single "invoice-cumbill of supply" for all such supplies. It may be observed in this regard that, the *non-obstante* clause in Rule 46A actually removes the obligation on the part of a registered person who is supplying taxable as well as exempted goods or services or both to an unregistered person to include the particulars as prescribed in Rule 46 or Rule 49 or Rule 54, as applicable, while issuing the single "invoice-cum-bill of supply". Hence, it was felt by Law Committee that Rule 46A is required to be amended accordingly to make it obligatory on the part of a registered person, who

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is supplying taxable as well as exempted goods or services or both to an unregistered person, to include the relevant particulars as prescribed in Rule 46 or Rule 49 or Rule 54, as applicable, while issuing the single "invoice-cum-bill of supply".

5.3 Accordingly, the Law Committee in its meeting dated 26.08.2022 and 07.09.2022 recommended insertion of a proviso (shown in red color) in Rule 46A as below:

#### Rule 46A

**Rule 46A. Invoice-cum-bill of supply.-** Notwithstanding anything contained in Rule 46 or Rule 49 or Rule 54, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies<del>.</del> :

Provided that the said single "invoice-cum-bill of supply" shall contain the particulars as prescribed under Rule 46 or Rule 54, as the case may be, and Rule 49.

# VI. Insertion of proviso in sub-rule (8) of Rule 87

6.1 GST System enables taxpayers paying their taxes through e-payment mode on real-time basis. As per the Joint Committee Report on GST Payment Process, GST System generates CPIN at the time of creating Challan and the banks on realizing payment from the taxpayers' account generate CIN against each CPIN and send to GST System. Based on the signed CIN received from the banks, the GST System updates payment in Electronic Cash Ledger (ECL) of the taxpayer.

6.2 However, in certain cases, where the bank fails to communicate the signed CIN details to GST system, two API calls are made by GST System automatically at the interval of 5 minutes to the concern banks for sharing signed CIN of transactions. Subsequently, taxpayers may also trigger on call demand of such payment transactions from GST System to the bank in case payments are not updated in their ECL even after the above API calls.

6.3 It has been learnt that even after all these efforts, the bank fails to share CIN details with GST System in few cases and payments are not integrated with the ECLs, whereas, banks share the CIN details and payment of such transaction with RBI subsequently. RBI after reconciliation of payment with CINs received from the banks, share such transaction details with GST System next day in the RBI e-Scroll file.

6.4 Since RBI e-Scroll contains the successful payment made against the CINs, and Para 112 and 113(i) of the Joint Committee Report on GST Payment Process also requires integration of Payments on the basis of RBI e-Scroll file, the ECL of such taxpayers are updated by GST Systembased on e-Scroll of RBI received next day. It has also been specified under Para 113 of the Joint Committee Report that the Accounting Authority shall carry out the accounting based on Scroll data received from RBI.As on 31.03.2022, a total of 2953 transactions have been updatedby GST System in ECL on the basis of RBI e-Scrolls which is 0.00128 percent of total 23.05 Crore payment transactions.

6.5 CAG has raised a Para on this process of ECL update. Though, they don't have objection on the authenticity of payment integration, still they have held that instead of continuing such ad-

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hoc process, the DoRshould set a right process by taking a decision to ensure proper accounting and reconciliation.

6.6 Therefore, a process may be prescribed under the law to allow ECL updates on the basis of e-Scroll of RBI in such cases, where banks fail to provide signed CIN to GST System but take the payment from taxpayers successfully and share such payments with RBI. Since payment is debited from the taxpayers account and RBI has transferred such payment to Government, the accounting/ reconciliation may be made by the Pr. CCA based on the RBI e-Scroll in such cases.

6.7 The matter was deliberated by the Law Committee to regularize the process of updating ECL on the basis of e-Scroll data received from the RBI (the account aggregator on behalf of Government of India and State Governments) in the cases where payment has been received successfully but bank fails to share the signed CIN with GST System, with a view to protect taxpayers' genuine interest and mitigate the hardships faced due to such technical challenges. Considering this miniscule volume, payments of which are caught in unavoidable technicalproblems and the hardship of the taxpayers, Law committee in its meeting dated 07.09.2022 recommended for amendment of Rule 87 of CGST Rules by inserting a new proviso (shown in red color) to sub-rule (8) of Rule 87 of the CGST Rules, 2017, as below:

#### Sub-rule (8) of Rule 87

(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in <u>FORM</u> <u>GST PMT-07</u> through the common portal to the bank or electronic gateway through which the deposit was initiated <del>-</del>:

**Provided** that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the RBI in cases where the details of the said e-Scroll are in conformity with the details in challan generated in **FORM GST PMT-06** on the Common Portal.

#### VII. Amendment in Rule 108 and Rule 109

7.1 In terms of sub-section (1) of Section 107 of the CGST Act, 2017, any person aggrieved by any decision or order passed by an adjudicating authority may appeal to the concerned appellate authority within three months from the date of communication of the said decision or order to such person. Similar provision exists under sub-section (2) of Section 107 of the CGST Act, 2017 to provide for filing appeal by an officer authorised by the Commissioner to the appellate authority within six months from the date of communication of the said decision or order.

7.2 In terms of sub-rule (3) of Rule 108 of the CGST Rules, 2017 in respect of an appeal filed in terms of the provisions of sub-section (1) of Section 107 of CGST Act, 2017 a certified copy of the decision or order appealed against is required to be submitted within seven days of filing the appeal in FORM GST APL-01 under sub-rule (1) of Rule 108. On receipt of such certified copy, the appellate authority is required to issue a final acknowledgment in Form GST APL-02. It has also been provided that the date of issuance of the provisional acknowledgment is considered as the date of filing of appeal in case the certified copy is submitted with seven days of filing of Form GST APL 01; however, in case the same is not furnished within the aforesaid period of seven days, the date of submission of the certified copy is considered as the date of filing appeal. Hence, submission of the certified copy of the decision or order appealed against is mandated for issuance of final acknowledgment of appeal or its admissibility.

7.3 Similarly, sub-rule (2) of Rule 109 of CGST Rules, 2017 provides for requirement of submission of certified copy of the order appealed against within seven days of filing application in FORM GST APL-03 in terms of sub-section (2) of Section 107 of CGST Act, 2017.

7.4 In GST regime, when an order, which is appealed against, is issued or uploaded by the adjudicating authority on the common portal, the same can be viewed by the appellate authority. Further, certification of a document serves the purpose of vouching for the authenticity of its content. Accordingly, the requirement of submission by the appellant of a certified copy of such an uploaded order to vouch for its authenticity, pales into insignificance considering that, the order has been uploaded by the adjudicating authority using his Digital Signature Certificate and the same is available for viewing or downloading by the appellate authority on the portal.

7.5 However, in cases where the decision or order has been passed manually and has not been uploaded on the common portal, the same is not available to the Appellate Authority on the common portal. In such cases, non-submission of the certified copy by the appellant restricts the Appellate Authority in entertaining the same. Doubts are being raised on the requirement of submission of a certified copy of the decision or order appealed against for admissibility of appeal by an Appellate Authority.

7.6 The issue was deliberated by the Law Committee. The Law Committee in its meeting held on 05.11.2022 and 23.11.2022 recommended that to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority, an amendment may be made in sub-rule (3) of Rule 108 and in Rule 109 of the CGST Rules, 2017.

7.7 The Law Committee also observed that on the common portal, the procedure of filing of appeal in accordance with Rule 109 of the CGST Rules, 2017 by the Department is similar to the procedure of filing of appeal in accordance with Rule 108 of the CGST Rules, 2017, i.e. once an appeal is filed by the Department in FORM GST APL-03, a provisional acknowledgement is issued immediately by the system, subsequent to which the final acknowledgement in FORM GST APL-02 is issued by the Appellate Authority. Accordingly, the Law Committee recommended that Rule 109 of the CGST Rules, 2017 may be re-drafted in the similar manner as Rule 108 of the CGST Rules, 2017. Subsequent to the amendment in Rule 108 and 109, label changes would be required in FORM GST APL-02.

7.8 The proposed amendment in Rule 108, Rule 109 and FORM GST APL-02 are shown in red color, as below:

#### **Rule 108**

Rule 108. Appeal to the Appellate Authority.-

(1) ....

(2) ....

(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

Explanation. - .....

#### **Rule 109**

#### Rule 109. Application to the Appellate Authority.-

(1) An application to the Appellate Authority under sub-section (2) of Section 107 shall be filed in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.

(2) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

#### FORM GST APL – 02

#### [See Rule 108(3) & 109(2)]

#### Acknowledgment for submission of appeal

#### <Name of applicant><GSTIN/Temp ID/UIN/Reference Number with date >

Your appeal has been successfully filed against < Application Reference Number >

- 1. Reference Number-
- 2. Date of filing-
- 3. Time of filing-
- 4. Place of filing-
- 5. Name of the person filing the appeal-
- 6. Amount of pre-deposit-
- 7. Date of acceptance/rejection of appeal-
- 8. Date of appearance-

9. Court Number/ Bench

Place:

Date:

Signature>

Time:

Bench:

Date:

Court:

Name:

Designation:

On behalf of Appellate Authority/Appellate

Tribunal/Commissioner / Additional or Joint Commissioner

#### VIII. Insertion of Rule 109C

\_

8.1 Sub-section (1) of Section 107 of CGST Act, 2017 provides for filing of appeal by any aggrieved person before first appellate authority against any decision or order passed by the adjudicating authority. Similarly, sub-section (2) of Section 107 of CGST Act, 2017 provides for the appeal to be filed by an authorised officer with the first appellate authority against any decision or order of an adjudicating authority. However, no provision in CGST Act or CGST Rules presently provides for withdrawal of such an appeal application either by the aggrieved person or by the authorised officer. The issue was deliberated by the Law Committee and it was felt that an option of withdrawal of Appeal application upto a specified stage before the issuance of Order-in-Appeal needs to be made available to the taxpayer and tax officer.

8.2 Accordingly, GSTN has developed functionality for withdrawal of the appeal application by taxpayer as well by the tax officer. For enabling such functionality, requisite changes are required to be carried out in CGST Rules, 2017 and a new form for withdrawal of appeal application is also required to be introduced.

8.3 The issue was deliberated by the Law Committee in its meeting held on 03.08.2022, which recommended insertion of Rule 109C in CGST Rules 2017 to provide for withdrawal of appeal as below. Further, Law Committee in its meeting held on 12.10.2022 recommended introduction of FORM GST APL-01/03W in CGST Rules, 2017, to enable the appellant to file application for withdrawal of appeal application. The proposed Rule 109C and FORM GST APL-01/03W is shown, in red color, as below:

#### **Rule 109C**

#### 109C. Withdrawal of Appeal.-

The appellant may, at any time, before issuance of show cause notice under sub-section (11) of Section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in **FORM GST APL-01**, file an application for withdrawal of the said appeal by filing an application in **FORM GST APL-01W**:

**Provided that** where the final acknowledgment in **FORMGST APL-02** has beenissued, the withdrawalof the said appeal would be subject to the approval of the appellateauthority and such application for withdrawal of the appeal shall be decided by the appellate authority within 7 days of filing of such application:

**Provided further that** any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of Section 107, as the case may be.

# FORM GST APL-01/03 W

#### [Refer Rule 109C]

#### Application for Withdrawal of Appeal Application

1. GSTIN:

2. Name of Business (Legal) (in case appeal is filed under sub-section (1) of Section 107)

3. Name and designation of the appellant (in case appeal is filed under sub-section (2) of Section 107):

- 4. Order No.& Date:
- 5. ARN of the Appeal & Date:
- 6. Reasons for Withdrawal:
  - *i.* Acceptance of order of the adjudicating authority.
  - *ii.* Acceptance of order of an Higher Appellate Authority/ Court on similar subject matter
  - *iii.* Need to file appeal again after rectification of mistakes/omission in the filed appeal
  - *iv. Amount involved in appeal is less than the monetary limit fixed for Appeal by the Board/Commissioner*
  - v. Any other reason

7. Declaration (applicable in case appeal is filed under sub-section (1) of Section 107):

*I/We* <*Taxpayer Name>* hereby solemnly affirm and declare that the information given herein is true and correct to the best of my/ our knowledge and belief and nothing has been concealed therefrom.

Place:

Signature

Date:

Name of Applicant /Applicant Officer

Designation/Status.

# IX. Deletion of clause (d) of sub-rule (14) of Rule 138

9.1 The threshold limit for generation of e-way bill has been prescribed in Rule 138 of CGST Rules, 2017. As per sub-rule (1) of Rule 138 of the CGST Rules, 2017, a registered person who causes movement of goods of consignment value exceeding fifty thousand rupees shall before commencement of such movement has to generate the e-way bill. Further, sub-rule (14) of Rule 138 of CGST Rules, 2017 prescribes the conditions when the e-way bill is not required to be generated.

9.2 As per clause (d) of the said sub-rule, e-way bill is not required to be generated in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of <u>Rule</u> <u>138</u> of the SGST or UTGST Rules in that particular State or Union territory. Therefore, for intrastate movement of goods, the said threshold limit for generation of e-way bill is to be notified by the Commissioner of State Tax, in consultation with the Principal Chief Commissioner/ Chief Commissioner of Central Tax as per the provisions of clause (d) of sub-rule (14) of the Rule 138 of the respective SGST or UTGST Rules. Therefore, e-way bill is not required to be generated for intra-state movement of goods where the consignment value of goods being transported is less than the threshold value as notified by the respective Commissioner of State Tax.

9.3 Consequently, different States/ UTs have notified different threshold limits for requirement of generation of e-way bill for intra-state movement of goods within their state/ UT. While most of the States/ UTs have kept the threshold limit for generation of e-way bill for intra-state movement at the consignment value of fifty thousand rupees but some of the States/ UTs like Delhi, Punjab, Bihar, Jharkhand, West Bengal and Tamil Nadu have kept the said threshold value at one lac rupees. Further, Union Territory of Jammu and Kashmir has exempted generation of e-way bill for intra-state movement of goods. Gujarat has exempted the same for some specified goods transported for the purpose of job-work. In some of the States, intra-city movement of goods has either been exempted from generation of e-way bill or higher threshold limits have been prescribed for the same.

9.4 Representations have been received from various quarters that different threshold for generation of e-way bill for intra-state movement of goods in different States/ UTs is creating confusion and difficulties for the trade and industry.

9.5 Law Committee deliberated on the issue in its meeting held on 05.11.2022 and recommended that the threshold for intra-state generation of e-way bill may be brought at the same level in all the States/ UTs at par with that for inter-state movement of goods (i.e. Rs 50,000) by deletion of clause (d) of sub-rule (14) of Rule 138 of CGST Rules, 2017. The proposed amendment in sub-rule (14) of Rule 138 is shown, in red color, as below:

## Sub-rule (14) of Rule 138

(14) Notwithstanding anything contained in this Rule, no e-way bill is required to be generated-

•••• ••• ••• ••• ••• ••• ••• •••

(d) in respect of movement of goods within such areas as are Notified under clause (d) of subrule (14) of <u>Rule 138</u> of the State or Union territory Goods and Services Tax Rules in that

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particular State or Union territory;

.....

Explanation. -....

#### X. Amendment in Entry (5) of Annexure appended to sub-rule (14) of Rule 138

10.1 In terms of clause (a) of sub-rule (14) of Rule 138 of the CGST/SGST Rules, 2017, eway bill is not required to be generated in case of transportation of goods as specified in the Annexure appended to the said sub-rule.Entry No.4 & 5 of the aforesaid Annexure **cover the entire Chapter 71** of the First Schedule to the Customs Tariff Act, 1975, **including Imitation Jewellery**, thereby exempting the generation of e-way bill for transportation of imitation jewellery.

10.2 It has been contended by the field formations that in common parlance, imitation jewellery does not fall in the same genre as jewellery made of Gold and Silver. One of the reasons to exempt Jewellery made of gold, silver and precious metal from the requirement of generation of e-way bill was the security concern. The said reason may not be applicable in case of imitation jewellery. Moreover, imitation jewellery is an item prone to evasion of tax. It has, therefore, been suggested by field formations to mandate requirement of generation of e-way bill for movement of consignments of imitation jewellery in the interest of revenue.

10.3 LC in its meeting held on 05.11.2022 deliberated on the issue and recommended a modification in the Entry No. 5 of the Annexure appended to sub-rule(14) of Rule 138 of the CGST Rules, 2017 so as to exclude imitation jewellery from the exemption from the generation of e-way bill for its movement. Law Committee also recommended that GSTN and NIC should ensure requisite enabling functionality on the e-way bill portal for the generation of e-way bills for imitation jewellery. The proposed Amendment in Entry No. 5 in Annexure appended to sub-rule (14) of Rule 138 of CGST Rules, 2017 is shown, in red color, as below:

## Annexure appended to sub-rule (14) of Rule 138

S.No.	Description
(1)	(2)

5. Jewellery, goldsmiths', and silversmiths' wares and other articles (Chapter 71) excepting Imitation Jewellery (7117)

### XI. Substitution of FORM GST REG-19

11.1.1 Under Rule 22(3) of CGST Rules, 2017, **FORM GST REG-19** is the order for cancellation of registration. Therein, the proper officer is required to select appropriate status from the following options:

(i) Whereas no reply to notice to show cause has been submitted; or

(ii) Whereas on the day fixed for hearing you did not appear; or

(iii) Whereas the undersigned has examined your reply and submissions made at the time of hearing, and is of the opinion that your registration is liable to be cancelled for following reason(s).

11.1.2 There could be more scenarios based on whether the reply to the show cause notice has been submitted or not and whether the concerned person has appeared for personal hearing or not. Therefore, GSTN proposed an elaborate list of such options to choose from in **FORM GST REG-19** in order to clearly bring out the status.

11.2 Further, "Determination of amount payable pursuant to cancellation" along with a table is also a part of the said order **in FORM GST REG-19**. Display of this table with nil value in cancellation order may be misleading if no tax liability to be discharged by taxpayer has been ascertained and mentioned by the tax officer in the table in the said order. Moreover, according to Section 29(3) of CGST Act, 2017 cancellation of registration does not affect the liability to pay tax and other dues or to discharge any obligation under CGST Act or the Rules made thereunder for any period prior to the date of cancellation. Also, an electronic liability register specified under sub-section (7) of Section 49 is maintained in **FORM GST PMT-01** for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him are debited to the said register. Therefore, it was proposed to remove the said table for determination of amount payable pursuant to cancellation from **FORM GST REG-19**.

11.3 The matter was deliberated by the Law Committee in its meeting held on 05.11.2022. The Law Committee felt that in addition to the above, the registered person, whose registration is being cancelled through **FORM GST REG-19**, should also be communicated certain other compliances due on his part such as furnishing the pending returns and the final return.

11.4 The Law Committee, accordingly, recommended that **FORM GST REG-19** may be substituted. New **FORM GST REG-19 is** shown, in red color, as under:

#### FORMGSTREG-19

#### [SeeRule22(3)]

Reference Number To Name Address GSTIN/UIN Application Reference Number(ARN)

#### **Order for Cancellation of Registration**

This has reference to show cause notice issued dated -----

- Whereas no reply to the show cause notice has been submitted;
   and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or
- □ Whereas reply to the show cause notice has been submitted vide <ARN Number> dated\_\_\_\_;

and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or

- □ Whereas no reply to the show cause notice has been submitted and on day fixed for personal hearing, you did not appear in person or through an authorized representative; and whereas, the undersigned based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or
- □ Whereas no reply to the show cause notice has been submitted, but you/ your authorised representative attended the personal hearing and made a written or verbal submission; and whereas, the undersigned on examination of your written or verbal submission made during personal hearing and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or
- □ Whereas reply to the show cause notice has been submitted vide <ARN Number> dated\_\_\_\_\_. But, you or your authorised representative did not attend the personal hearing on scheduled or extended date;

and whereas, the undersigned on examination of your reply to show cause notice and based on record available with this office is of the opinion that your registration is liable to be cancelled for following reason(s): or

□ Whereas reply to the show cause notice has been submitted vide <ARN Number> dated\_\_\_\_\_ and you/ your authorised representative attended the personal hearing, made a written/oral submission during personal hearing;

and whereas, the undersigned has examined your reply to show cause notice as well as submissions made at the time of personal hearing and is of the opinion that your registration is liable to be cancelled for following reason(s):

i. ii.

- *The effective date of cancellation of your registration is <<DD/MM/YYY>>.*
- 2. *Kindly refer to the supportive document(s) attached for case specific details.*
- 3. It may be noted that a registered person furnishing return under sub-section (1) of

Date

Date

Section 39 of the CGST Act, 2017 is required to furnish a final return in **FORM GSTR-10** within three months of the date of this order.

4. You are required to furnish all your pending returns.

5. It may be noted that the cancellation of registration shall not affect the liability to pay tax and other dues under this Act or to discharge any obligation under this Act or the Rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

*Place: Date:* 

Signature <Name of the officer> Designation Jurisdiction

#### XII. Amendment in FORM GST REG-17

12. Under Rule 22(1) of CGST Rules, 2017, FORM GST REG-17 is show cause notice for cancellation of registration. GSTN proposed that "*Kindly refer to the supportive documents attached for case specific details*." may be added at the end of **FORM GST REG-17**. The Law Committee in its meeting held on 05.11.2022 recommended the same. The proposed amendments in **FORM GST REG-17** are shown, in red color, as below:

## FORM GST REG -17

[See Rule 22(1)]

Reference No. -

<< Date >>

То

Registration Number (GSTIN/UIN)

(Name)

(Address)

#### Show Cause Notice for Cancellation of Registration

Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons: -

1 2 3

....

 $\Box$  You are hereby directed to furnish a reply to this notice within seven working days from the date of service of this notice.

□ You are hereby directed to appear before the undersigned on DD/MM/YYYY at HH/MM

If you fail to furnish a reply within the stipulated date or fail to appear for personal hearing on the appointed date and time, the case will be decided *ex parte* on the basis of available records and on merits.

 $\Box$  *Kindly refer to the supportive document(s) attached for case specific details.* 

Place:

Date:

Signature

< Name of the Officer> Designation Jurisdiction

[Note: - Your registration stands suspended with effect from ------ (date).]

# XIII. Amendment in FORM GST DRC-03

13.1 Circular No. 174/06/2022-GST dated 06.07.2022 has been issued prescribing the manner of re-credit of amount of erroneous refund deposited by the taxpayer, in terms of provisions of sub-rule (4B) of Rule 86, in electronic credit ledger using FORM GST PMT-03A. In this regard, GSTN has been requested to make certain amendments in FORM GST DRC-03 to include the following options in the drop-downregarding cause of payment:

- i. Deposit of erroneous refund of unutilised ITC
- ii. Deposit of erroneous refund of IGST, obtained in contravention of sub-rule (10) of Rule 96 of the CGST Rules, 2017.

13.2 Further, GSTN has been requested to develop an automated functionality for online transmission of intimation of payment of amount of erroneous refund through FORM GST DRC-03 to the jurisdictional proper officer for issuance of FORM GST PMT-03A for re-credit of amount so deposited by the taxpayer in his electronic credit ledger. For development of this functionality, certain additional information has to be sought from the taxpayer in FORMGST DRC-03 regarding the details of refund application or the shipping bill, date of credit of refund in the taxpayer's bank account etc. for making the said information available to the proper officer in order to automate the functionality.

13.3 In view of the above, GSTN has placed a proposal for making certain amendments in FORM GST DRC-03 before the Law Committee in its meeting held on 21.09.2022 wherein LC has recommended the changes in FORM GST DRC-03 with the following suggestions:

- a) The options for drop down need not be specified in FORM GST DRC-03 and same may be made available on the portal under drop down options.
- b) A drop-down option may also be provided in the said Form for deposit of refund in case of non-realisation of export proceeds under Rule 96B.
- c) Taxpayer may be provided facility to choose multiple options in the drop down.

13.4 The proposed amendments in FORM GST DRC-03, as suggested by LC, are shown, in red color, as below:

# FORM GST DRC- 03

[See Rule 142(2) & 142 (3)]

Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement [or intimation of tax ascertained through FORM GST DRC-01A

1.	GSTII	V													
2.	Nam	е				< Auto>									
З.	Caus	e of po	ayment			<< drop down>>									
3 A	IGST the s	refund pecifie	ll details I (to be e ed catego menu)	nable	d only if	(ii) A (iii) N c (iv) E (v) A (vi) A	Amount Iotifica oncess Date of Amount	g Bill/ Bil t of IGST ition No. ional rate notificat t of refun t of erron	paid on e used for e or exer ion: d receive eous ref	export of procuring nption: ed: und to be	goods: g input e depos	s at ited:			
4.			ler which made	ı volur	ntary	<< drop down>>									
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6.	Finar	ncial Ye	ear												
7.	Deta	ils of p	ayment i	made	including	interest an	nd penc	alty, if ap	plicable	(Amount	in Rs.)				
Sr.	Тах	Α	Place	Тах	Inter		Fe	Othe	Tot		Deb	Dat			
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8. *Reasons, if any - << Text box>>* 

9. Verification-

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorized Signatory

Name Designation / Status

Date .....

Note -

1. Payment to be only in cash for deposit of erroneous refund of unutilised ITC and for deposit of erroneous refund of IGST, obtained in contravention of sub-rule (10) of Rule 96.

2. ARN of FORMGST RFD-01 to be mentioned mandatorily if cause of payment is selected as – 'deposit of erroneous refund of unutilised ITC'.

3. Details of shipping bill numbers to be entered in the same pattern in which the details have been entered in the return.

Accordingly, the agenda note is placed before the GST Council for deliberation and approval. *Pari-Materia* changes would also be required in the respective SGST Rules.

# Agenda Item 7(vii): Supplies by unregistered person and composition dealers through ecommerce operators

Attention is drawn to an agenda on the cited subject which was deliberated by the GST Council in its 47<sup>th</sup> meeting held on 28<sup>th</sup>-29<sup>th</sup> June, 2022. The Council had given in-principle approval for relaxation in the provisions for suppliers making supplies through E-Commerce Operators (ECOs), as under:

- (I) Waiver of requirement of mandatory registration under Section 24(ix) of the CGST Act, 2017 for person supplying goods through ECOs, subject to certain conditions, such as:
  - a. The aggregate turnover on all India basis does not exceed the turnover specified under sub-section (1) of Section 22 of the CGST Act, 2017 and notifications issued thereunder.
  - b. The person is not making any inter-state taxable supply
- (II) Composition tax payers would be allowed to make intra-state supply through e-commerce operators subject to certain conditions.
- (III) The details of the scheme will be worked out by the Law Committee of the Council. The scheme would be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by ECOs.

2.1 In this regard, the detailed recommendations made by the Council in its 47<sup>th</sup> meeting are as follows:

# For unregistered persons supplying goods through electronic commerce operators

2.2. In respect of supplier supplying goods through electronic commerce operators, who are required to be mandatorily registered under Section 24(ix) of the CGST Act, 2017, the Council had deliberated the proposal to provide exemption from mandatory registration under Section 23(2) of the CGST Act, 2017 for class of suppliers making supplies of goods through E-commerce operators, subject to conditions that-

- a. The exemption is available upto aggregate turnover on all India basis not exceeding the turnover specified under sub-section (1) of Section 22 of the CGST Act, 2017 and notifications issued thereunder.
- b. such unregistered persons shall not make any inter-state taxable supply;
- c. they would be mandatorily required to declare their Permanent Account Number (PAN) and Principal place of business.
- d. such unregistered person shall be restricted to declare principal place of business in only one State.
- e. The electronic commerce operators would be required to declare the supplies made by unregistered persons through them in **FORM GSTR-8** statement (by inserting a suitable table in it). E-commerce operators would also be mandated to ensure that no inter-state supply through them is allowed in respect of such unregistered persons by making necessary checks and validations on their system/platform; failing which the penalty would be imposable on the ECO.

f. The electronic commerce operators will not be required to deduct any TCS in respect of such supplies made by unregistered persons through them.

#### For composition taxpayers supplying through electronic commerce operators

2.3. In respect of composition taxpayers who are restricted under Section 10(2)(d) of the CGST Act, 2017 from making supplies through E-Commerce operators, the Council had deliberated to make a special procedure under Section 148 of the CGST Act, 2017 for persons supplying through electronic commerce operators to opt for composition scheme by fulfilling all other eligibility conditions provided under Section 10(1) and (2) or Section 10(2A), as the case may be, of the CGST Act, 2017. This may be subject to conditions such as the following:

- a. he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;
- b. he is not engaged in making any inter-state outward supplies of goods or services;
- c. he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council
- d. he is neither a casual taxable person nor a non-resident taxable person.
- e. Further, electronic commerce operators would be required to declare the supplies made by such composition dealers through them through existing GSTR-8 statement (by inserting a suitable table in it, if required). Electronic commerce operators would also be mandated to ensure that no inter-state supply through them is allowed in respect of composition dealers by making necessary checks and validations on their system/platform.
- f. Whenever a registered person (including composition taxpayer) makes a supply through ecommerce operator, TCS collected by e-commerce operator would be credited to electronic cash ledger of such registered person making supply. Given that composition sellers are required to remit taxes in cash only, they can then make payment of GST on outward supplies using TCS balance available in the electronic cash ledger.

3. The Law Committee in its meeting held on 03.08.2022 and 05.11.2022 deliberated on the requisite legal changes to implement the aforementioned recommendations of the Council. The recommendations of the Law Committee in this regard are as follows:

# <u>A. Recommendations in respect of unregistered persons supplying goods through electronic commerce operators</u>

4.1. Notification may be issued under Section 23(2) of the CGST Act, 2017 for exempting unregistered persons from obtaining mandatory registration for supplying goods through electronic commerce operators (enclosed as **Annexure A** to this agenda note).

4.2. Notification may be issued under Section 148 of the CGST Act, 2017 for providing special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by unregistered persons (enclosed as **Annexure B** to this agenda note).

4.3. **FORM GSTR-8** may be amended for capturing the information of supplies made by unregistered suppliers through electronic commerce operators by insertion of the following two tables in **FORM GSTR-8**:

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Enrolment no. of supplier	Gross value of supplies made	Value of supplies returned	Net value of the supplies
1	2	3	4

# 3.1. Details of supplies made through e-commerce operator by un-registered suppliers

4.1. Amendments to details of supplies made through e-commerce operator by unregistered suppliers

	Original details			Revised details	5
Month	Enrolment no. of supplier	Enrolment no. of supplier	Gross value of supplies made	Value of supply returned	Net value of the supplies
1	2	3	4	5	6

4.4. Rule 67(2)of CGST Rules, 2017 may be amended to clearly bring out that the details of TCS furnished by ECOs in **FORM GSTR-8** shall be made available only to the registered suppliers, as, supplies by unregistered persons do not attract TCS. Accordingly, the said Rule may be amended as under:

(2) The details of tax collected at source under sub-section (1) of Section 52 furnished by the operator under sub-rule (1) shall be made available electronically to each of the registered suppliers on the common portal after filing of **FORM GSTR-8** for claiming the amount of tax collected in his electronic cash ledger after validation.

# **B.** Recommendations in respect of the composition taxpayers supplying through electronic commerce operators

5.1. To remove the condition restricting registered persons engaged in supplying through electronic commerce operators from opting for the Composition Levy, clause (d) to sub-section (2) and clause (c) to sub-section (2A) of Section 10 of CGST Act, 2017 may be amended as under:

(i) clause (d) to sub-section (2) of Section 10 of CGST Act, 2017 may be amended as under:

(d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under Section 52;

(ii) clause (c) to sub-section (2A) of Section 10of CGST Act, 2017 may be amended as under:

(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under Section 52;

5.2. Notification may be issued under Section 148 of the CGST Act, 2017 for providing special procedures to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers (enclosed as **Annexure C** to this agenda note).

# C. Recommendations in respect of the penal provisions for non-compliant electronic commerce <u>operators</u>

6.1. The scheme approved by the Council is based on certain compliances on part of the electronic commerce operators in respect of the supplies made by the unregistered persons and Composition taxpayers through them. Such compliances include the following:

- (i) Not allowing unregistered persons to supply goods through electronic commerce operators without enrolment as prescribed.
- (ii) Not allowing inter-state supplies through electronic commerce operators by unregistered persons or composition taxpayers.
- (iii) Reporting the details of supplies made by unregistered persons through electronic commerce operators in **FORM GSTR-8**.

6.2. An examination of the existing provisions of the CGST Act, 2017 reveals that no specific provisions exist in CGST Act, 2017 presently providing for demand or penalty in cases of violation of the aforementioned compliances by electronic commerce operators. In the absence of such provisions, there may not be any effective guard against violations by the electronic commerce operators.

6.3. Therefore, the Law Committee in its meeting held on 05.11.2022 has recommended that relevant provisions may be made in the CGST Act for such instances by inserting **sub-section (1B) in** Section 122, as under:

(1B) Any electronic commerce operator who-

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration through a notification or an order issued under this Act to make such supply through an electronic commerce operator;
- (ii) allows an inter-state supply of goods or services or both through it by a person who is not eligible to make such inter-state supply; or
- (iii) fails to furnish the correct details in the statement to be furnished under subsection (4) of Section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under the provisions of this Act,

shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the amount of tax involved considering the said supply to have been made by a registered person, other than a person paying tax under Section 10, whichever is higher.

# D. Recommendations in respect of the deferment of implementation of the scheme

7.1. The GST Council in its 47<sup>th</sup> meeting, while approving in-principle the scheme of allowing unregistered persons and composition taxpayers to make supplies through electronic commerce operators, recommended that the details of the scheme will be worked out by the Law Committee of the Council. The Council had also recommended that the scheme would be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by electronic commerce operators.

7.2. GSTN has informed that the said functionality to implement recommendations of the Law Committee on the portal will be ready by June 2023. Thereafter, the same will also be required to be made available to the electronic commerce operators for testing before it is implemented.

7.3. Further, industry representatives have given a feedback that sufficient time needs to be provided for testing the APIs of on boarding unregistered online sellers (i.e., for enrollment number) in the sandbox environment. This will help electronic commerce operators to prepare themselves as well as unregistered online sellers. Accordingly, requests have been received that in order to provide adequate time for testing and effective implementation, the planned schedule of January 1, 2023 should be reconsidered and appropriate extension be provided to the Industry.

7.4. In view of the above, the Law Committee in its meeting held on 05.11.2022 has recommended deferring the implementation of the scheme till **01.10.2023**. Wherever amendments in CGST Act/ SGST Act/ UTGST Act are required, the same may also be carried out by the Center and States/ UTs by that date.

8. Accordingly, the recommendations of the Law Committee at para 4, 5, 6.3 and 7.4 are placed for approval of the Council.

# [TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

# GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

#### NOTIFICATION

#### No. --/2022- Central Tax

#### New Delhi, the --October, 2022

G.S.R. .....(E).— In exercise of the powers conferred by sub-section (2) of Section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby specifies the persons making supplies of goods, through an electronic commerce operator who is required to collect tax at source under Section 52 of the said Act, and having an aggregate turnover, in thepreceding financial year and in the current financial year, not exceeding the amount of aggregate turnover above which a supplier is liable to be registered in the State or Union Territory in accordance with sub-section (1) of Section 22 of the said Act, read with clause (iii) of the Explanation to that Section, as the category of persons exempted from obtaining registration under the said Act, subject to the following conditions:

(i) such persons shall not make any inter-state supply of goods;

(ii) such persons shall not make supply of goods through electronic commerce operator in more than one State or Union Territory;

(iii) such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961);

(iv) such persons shall, before making any supply of goods through electronic commerce operator, declare on the common portal their Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961), address of their Place of Business and the State or Union Territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;

(v) such persons have been granted an enrolment number on the common portal on successful validation of the Permanent Account Number declared as per clause (iv);

(vi) such persons shall not be granted more than one enrolment number in a State or Union Territory;

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(vii) no supply of goods shall be made by such persons through electronic commerce operator unless such personshave been granted an enrolment number on the common portal; and

(viii) where such personsare subsequently granted registration under Section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.

[F. No.CBIC-20001/2/2022-GST]

(Rajeev Ranjan) Under Secretary

# [TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

# GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

#### NOTIFICATION

#### No. <mark>--/</mark>2022 – Central Tax

#### New Delhi, the<mark>--</mark> October, 2022

G.S.R. (E):— In exercise of the powers conferred by Section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifiesthe electronic commerce operator who is required to collect tax at source under Section 52 (hereinafter referred to as the said electronic commerce operator) as the class of persons who shall follow the following special procedure in respect of supply of goods made through it by the persons exempted from obtaining registration in accordance with Notification No. --/2022- Central Tax, dated the -- October, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. ---(E), dated the -- October, 2022 (hereinafter referred to as the said person):-

(i) the said electronic commerce operator shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;

(ii) the said electronic commerce operator shall not allow any inter-state supply of goods through it by the said person;

(iii) the said electronic commerce operator shall not collect tax at source under sub-section (1) of Section 52 in respect of supply of goods made through it by the said person; and

(iv) the said electronic commerce operator shallfurnish the details of supplies of goods made through it by the said person in the statement in **FORM GSTR-8** electronically on the common portal.

[F. No.CBIC-20001/2/2022-GST]

(Rajeev Ranjan) Under Secretary

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# [TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

# GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

# NOTIFICATION

#### No. --/2022- Central Tax

#### New Delhi, the <mark>--</mark>October, 2022

G.S.R. .....(E).— In exercise of the powers conferred by Section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifiesthe electronic commerce operator who is required to collect tax at source under Section 52 (hereinafter referred to as the said electronic commerce operator) as the class of persons who shall, in addition to other compliances under the said Act, also follow the following special procedure in respect of supply of goods made through it by the persons paying tax under Section 10 of the said Act (hereinafter referred to as the said person):-

(i) the said electronic commerce operator shall not allow any inter-state supply of goods through it by the said person;

(ii) the said electronic commerce operator shall collect tax at source under sub-section (1) of Section52 of the said Act in respect of supply of goods made through it by the said person and pay to theGovernment as per provisions of sub-section (3) of Section 52 of the said Act; and

(iii) the said electronic commerce operator shall furnish the details of supplies of goods made through it by the said person in the statement in **FORM GSTR-8** electronically on the common portal.

[F. No.CBIC-20001/2/2022-GST]

(Rajeev Ranjan) Under Secretary

# Agenda Item 7(viii): Amendments in the CGST Act, 2017

# A. Amendment in second proviso to Section 16 of CGST Act, 2017 to align with GSTR-1/3B

In the 42<sup>nd</sup> GST Council meeting held in October 2020, it was recommended that the present system of GSTR-1/3B return filing to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system. Such amendments have been carried out vide the Finance Act, 2022 and notified w.e.f. 01.10.2022.

2. However, the Law Committee in its meeting held on 26.08.2022 observed that 2nd and 3rd provisos to Section 16(2) also require amendments in order to align with the GSTR-1/2B/3B return filing system.

3. Therefore, the Law Committee has recommended that  $2^{nd}$  and  $3^{rd}$  provisos to Section 16(2) may be amended as below:

"Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability paid by him, along with interest thereon payable under Section 50, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon."

## B. <u>Amendment to Section 23 to provide overriding effect over Sections 22(1) & 24</u>

4. Section 22 of the CGST Act, 2017 provides for persons liable for registration and Section 24 provides for compulsory registration in certain cases. On the other hand, Section 23 provides for persons not liable for registration and exemption of specified categories of persons from obtaining registration.

5. However, existing Section 23 does not have any clause overriding the registration requirement imposed vide Section 24 and Section 2(1). Therefore, a doubt arises whether provisions of compulsory registration under Section 24 prevail over the exemption under Section 23.

6. Accordingly, the Law Committee in its meeting held on 05.11.2022 recommended that to avoid any conflict within the said provisions and to provide more clarity, Section 23 may be amended retrospectively w.e.f. 01.07.2017 as under:

## Section 23. Persons not liable for registration.-

(1) Notwithstanding anything to the contrary contained in sub-section (1) of Section 22 or Section 24, the The following persons shall not be liable to registration, namely:-

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

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(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who, notwithstanding anything to the contrary contained in sub-section (1) of Section 22 or Section 24, but subject to such conditions and restrictions as may be specified in the notification, may be exempted from obtaining registration under this Act.

# C. <u>Amendments in CGST Act, 2017 to restrict filing of returns / statements after</u> <u>completion of specified time in view of data archival policy</u>

7. GSTN has informed that GST System has completed more than five years and the huge data size of all these years is putting an excessive load on the server and compromising performance. Keeping massive data available online slows down the GST system applications and impacts return filing, especially during peak filing days. Also, keeping data in big data format for either taxpayers or tax officers involves considerable cost in terms of infrastructure requirements.

8. Considering this, GSTN proposed a data archival policy for the smooth functioning of the GST Portal and also to provide superior experience to the taxpayers.

9. While deliberating on the proposed data archival policy for GST portal in its meetings held on 12.10.2022 and 05.11.2022, the Law Committee inter alia recommended that the maximum time limit for filing returns / statements be fixed as three years beyond the due date of filing and accordingly, CGST Act, 2017 may be amended as below:

# (i) sub-section (5) may be inserted in Section 37 as below:

"(5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after expiry of 3 years from the due date of furnishing the said details:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of 3 years from the due date of furnishing the said details."

## (ii) sub-section (11) may be inserted in Section 39 as below:

"(11) A registered person shall not be allowed to furnish a return for a tax period after expiry of 3 years from the due date of furnishing the said return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of 3 years from the due date of furnishing the said return"

(iii) sub-section (2) may be inserted in Section 44 as below:

"(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after expiry of 3 years from the due date of furnishing the said annual return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of 3 years from the due date of furnishing the said annual return."

# (iv) sub-section (15) may be inserted in Section 52 as below:

"(15) An electronic commerce operator shall not be allowed to furnish a statement under subsection (4) for a month after expiry of 3 years from the due date of furnishing the said statement:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an electronic commerce operator or a class of electronic commerce operators to furnish a statement for a month under sub-section (4), even after the expiry of 3 years from the due date of furnishing the said statement."

# D. <u>Proposal for amendment of sub-section (6) of Section 54 of CGST/SGST Act, 2017</u>

10. Sub-section (6) of Section 54 of the CGST/SGST Act,2017, provides for **provisional refund** of ninety percent of the total amount claimed as refund on account of zero rated supplies of goods or services or both **excluding the amount of input tax credit provisionally accepted**.

11. In this regard, it is worth mentioning that the concept of 'provisionally accepted input tax credit' was related to the GSTR-1-2-3 system of return filing which has never been implemented. However, in the absence of implementation of GSTR-1-2-3 system of return filing, it was clarified vide para 2.0 of Circular no 24/24/2017 –GST dated 21.12.2017 that provisionally accepted input tax credit would be sanctioned upon obtaining of an undertaking in relation to Sections 16(2)(c) and 42(2) of the CGST/SGST Act, 2017. The same has also been reiterated in para 7 of Circular No. 125/44/2019 – GST dated 18.11.2019 issued by the CBIC. Therefore, in practice, no deduction on account of provisionally accepted input tax credit is being made while granting provisional refund.

12. Further, Section 41 of the CGST/SGST Act, 2017 that provided for availing of eligible input tax credit as self-assessed in the return on a provisional basis in terms of GSTR-1-2-3 system of return filing has been amended in Finance Act, 2022 w.e.f. 01.10.2022 by doing away with the provision of availment of input tax credit on a provisional basis.

13. In view of the above, as the provision relating to availment of input tax credit on provisional basis has been done away with, it is proposed to omit the words *"excluding the amount of input tax credit provisionally accepted,"* in sub-section (6) of Section 54 of the CGST Act as under:

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

14. The said proposal was placed before the Law Committee in its meeting held on 05.12.2022 wherein Law Committee has approved the amendment in sub-section (6) of Section 54 of the CGST Act.

15. Accordingly, the recommendations of the Law Committee in para 3, 6, 9 and 14 are placed before the Council for deliberation and approval.

# Agenda Item 7(ix): Amendment in the tables of GSTR-1 for reporting ECO Supplies made under Section 9(5) of CGST Act and attracting TCS under Section 52 of CGST Act , 2017.

As per current notified format of **FORM GSTR-1**, the supplies made by a registered person through e-commerce operators (ECOs) attracting TCS under Section 52 of CGST Act, 2017 are to be reported in various tables of **FORM GSTR-1** i.e. 4C, 5B, 7A(2), 7B(2), 10A(1) & 10B(1). The details are to be provided invoice-wise and e-commerce operator-wise. However, these tables have not yet been made functional on GST Portal.

2. Further, amendment has been made in **FORM GSTR-3B** vide Notification no. 14/2022-Central Tax dated 05.07.2022, to provide that the taxable supplies made by the registered person through electronic commerce operator, on which electronic commerce operator is required to pay tax under sub-section (5) of Section 9 of CGST Act, 2017, are required to be reported by both the registered persons as well as the E-commerce operator in their respective returns in **FORMGSTR-3B**. However, there is no separate table in **FORM GSTR-1** to furnish the aforementioned details.

3. In view of this, the issue was deliberated by the Law Committee in its meeting held on 18.11.2021, 29.12.2021 and 05.11.2022. The Law Committee has recommended certain changes in **FORM GSTR-1**(enclosed as **Annexure** to this agenda note). A summary of the existing form and the proposed changes is as below:

S.	Table	Existing	Proposed	Rationale of the change
No.	No.			
1	2	3	4	5
1.	3	Aggregate turnover	Aggregate turnover may	The requirement was for
		in preceding year and	be replaced with ARN and	the first year of
		April-June, 2017.	date of ARN (ARN &	implementation of GST. It
			ARN date will be shown	can be replaced with ARN
			in GSTR-1 pdf after filing	and date of ARN. AATO
			of GSTR-1)	is being computed
				separately.
2.	4A	Supplies other than	Supplies other than those	The supplies made through
		those (i) attracting	attracting reverse charge	e-commerce operators
		reverse charge and	[including supplies made	attracting TCS will be
		(ii) supplies made	through e-commerce	captured in the proposed
		through e-commerce	operator attracting TCS]	new table 14.
				(Label changes only)
3.	4C	Supplies made	This table may be deleted.	The supplies made
		through e-commerce		through e-commerce
		operator attracting		operators attracting TCS
		TCS (operator wise,		will be captured in the
		rate wise)		proposed new table 14.
4.	5A	Outward supplies	Outward supplies	Consequent change due to
		(including other than	(including supplies made	omission of e-commerce
		supplies made	through e-commerce	table 5B.

S.	Table	Existing	Proposed	Rationale of the change
No.	No.			
1	2	3	4	5
		through e-commerce operator, rate wise)	operator, rate wise)	(Label changes only)
5.	5B	Supplies made through e-commerce operator attracting TCS (operator wise, rate wise)	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
6.	7A(2)	7A (2). Out of supplies mentioned at 7A(1), value of supplies made through e-Commerce Operators attracting TCS(operator wise, rate wise)	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
7.	7B(2)	7B (2).Out of thesuppliesmentionedin7B (1), thesuppliesmadethroughe-CommerceOperators (operatorwise, rate wise)	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
8.	9	Amendments to taxable outward supply details furnished in returns for earlier tax periods in Table 4, 5 and 6 [including debit notes and, credit notes, refund vouchers issued during current period and amendments thereof]	Amendments to taxable outward supply details furnished in returns for earlier tax periods in Table 4, 5 and 6 [including debit and credit notes issued during current period and amendments thereof]	Advance is reported in table 11. Refund voucherscan also be included in table 11 by reporting the values as net- of. (Label changes only)
9.	10A(1)	Out of supplies mentioned at 10A, value of supplies made through e- Commerce Operators attracting TCS	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.

S.	Table	Existing	Proposed	Rationale of the change
No.	No.			
1	2	3	4	5
10.	10B(1)	Out of supplies mentioned at 10B, value of supplies made through e- Commerce Operators attracting TCS	This table may be deleted.	The supplies made through e-commerce operators attracting TCS will be captured in the proposed new table 14.
11.	11	Consolidated Statement of Advances Received/Advance adjusted in the current tax period/Amendments of information furnished in earlier tax period	Consolidated Statement of Advances Received/Advance adjusted in the current tax period/ Amendments of information furnished in earlier tax period (Net of refund vouchers, if any)	Values can be reported as net of refund vouchers. (Label changes only)
12.	14, 14A, 15, 15 A		Insertion of new tables to capture the details of the supplies made through e- commerce operators attracting TCS as well as under Section 9(5).	Supplies made through e- commerce operators attracting TCS will be reported by the supplier here. Also, supplies u/s 9(5), on which ECO is required to pay tax,were not being reported separately in GSTR-1, either by the supplier or the ECO. Such supplies shall now be required to be reported in GSTR-1 by both the supplier as well ECO in these tables.In resepct of supplies made u/s 9(5), ECOs shall separately provide details for registered and unregistered suppliers, as well as registered and unregistered recipients.

4. Accordingly, the proposed changes in FORM GSTR-1 shown in **Annexure** to the agenda note and as detailed in para 3 above, are placed for deliberation and approval of the Council.

# ANNEXURE

#### FORM GSTR-1

[See Rule (59(1)]

Details of outward supplies of goods or services

 Financial Year

 Month-Tax period

1.		GSTIN							
2.	(a)	Legal name of the registered person							 
	(b)	Trade name, if any							
3.		Aggregate Turnover in the preceding							
	(a)	Financial Year							
		ARN							
	(b)	Aggregate Turnover - April to June, 2017							
		Date of ARN							

*4. Taxable outward supplies made to registered persons (including UIN-holders) other than supplies covered by Table 6* 

(Amount in Rs. for all Tables)

GSTIN	Invo	oice detai	ils	Rate	Taxable		Amour	nt		Place of
/UIN					value				supply	
	No.	Date	Value			Integrated	Central	State	Cess	(Name of
						tax	tax	/UT tax		State / UT)
1	2	3	4	5	6	7	8	9	10	11
4A. Supp	plies other	than the	ose <del>(i)</del> attra	acting rev	verse charge	e <del>and (ii) su</del>	oplies made	e through o	e-comme	erce operator
[including	supplies n	nade thro	ugh e-con	nmerce op	perator attra	cting TCS]				
4B. Suppli	ies attractir	ng tax on	reverse cl	harge basi	is		•	•		
4 <del>C. Suppl</del>	ies made th	<del>rough e-</del>	commerce	e operator	attracting 7	CS (operator	wise, rate v	<del>vise)</del>		
GSTIN of	e-commer	<del>ce operat</del>	<del>or</del>							

# 5. Taxable outward inter-state supplies to un-registered persons where the invoice value is more than *Rs 2.5 lakh*

Place of	Inv	oice deta	ils	Rate	Taxable Value	Amo	ount
Supply	No.	Date	Value		Value	Integrated Tax	Cess
(State/UT)							
1	2	3	4	5	6	7	8
5A.Outward supp TCS, rate wise)	plies ( <mark>incl</mark> ı	uding <del>oth</del>	<del>er than</del> su	pplies ma	de through	e-commerce oper	ator attracting
5B. Supplies mad	<del>le through</del>	e-comm	erce oper	ator attrac	ting TCS (	operator wise, rate	wise)
GSTIN of e com	merce ope	<del>vrator</del>					

# 6. Zero rated supplies and Deemed Exports

GSTIN of recipient	Inv	voice d	etails	bill	pping / Bill xport	Integrated Tax			Central Tax			State	Cess		
	No.	Date	Value	No.	Date	Rate	Taxable value	Am t.	Rate	Taxable value	Amt.	Rate	Taxable value	Amt.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
6A. Exports															
	I	Ι	I												
6B. Suppl	lies m	ade to	SEZ un	it or S	EZ De	evelop	er								
6C. Deemed exports															

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							1
							1
							1
							1
							1

7. Taxable supplies (Net of debit notes and credit notes) to unregistered persons other than the supplies covered in Table 5

Rate of tax	Total Taxable value			Amount		
		Integrated	Central	St	ate Tax/UT Tax	Cess
1	2	3	4		5	6
7A. Intra-Sta	ate supplies					1
7A (1).Cons operator attr	olidated rate wise outwar acting TCS]	d supplies [ind	cluding supp	lies made	through e-con	nmerce
2.1	of supplies mentioned at tracting TCS(operator wis		<del>f supplies ma</del>	<del>ide throu</del> g	<del>zh e-Commerc</del>	æ
GSTIN of e	commerce operator					
	ate Supplies where invoid d supplies [including supp			-	-	
<del>7B (1).</del> Place	of Supply (Name of					
State)						
7 <del>B (2). Ou</del>	t of the supplies mentione	<del>d in 7B (1), th</del>	e supplies m	ade throu	gh e-Comme	æ
<del>Operators (c</del>	perator wise, rate wise)					
GSTIN of e	commerce operator					

# 8. Nil rated, exempted and non GST outward supplies

Description	Nil Rated	Exempted	Non-GST
	Supplies	(Other than Nil rated/non-GST	supplies

		supply)	
1	2	3	4
8A. Inter-state supplies to registered persons			
8B. Intra- State supplies to registered persons			
8C. Inter-state supplies to unregistered persons			
8D. Intra-State supplies to unregistered persons			

9. Amendments to taxable outward supply details furnished in returns for earlier tax periods in Table 4, 5 and 6 [including debit notes and, credit notes, refund vouchers-issued during current period and amendments thereof]

Deta orig docu	ginal		detail	s of	etails o origina <del>or refu</del>	al De	bit/C	redit	Rate	Taxa ble Valu e		Amour	nt		Plac e of supp ly
GSTI	<del>In</del>	<del>In</del>	GST		voice		ppi	Val			Integrat	Cent	Stat	С	
N	<del>∀.</del>	<del>∀.</del>	IN		ocum	ng	bill	u			ed Tax	ral	e	es	
	Ν	D		(	ent			e				Tax	/UT	s	
	0.	at											Tax		
		e													
				Ν	Dat	Ν	D								
				0	e	0.	at								
							e								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	1 5	16
9A. <b>A</b> t	meno	dmen	t of <del>lf t</del>	<del>he</del> ir	nvoice	/Ship	ping	bill det	ails furr	nished ea	rlier <del>were</del>	incorrec	÷ŧ		
9B. De	ebit l	Notes	/Credit	Note	es <del>/Ref</del> i	und v	ouch	er [Ori	ginal]		<u> </u>				
9C. De	ebit I	Notes	/Credit	Note	es/ <del>Ref</del> i	und v	ouch	<del>er</del> [Am	iended <del>a</del> i	mendme	nts thereof	]			

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

Rate of tax	Total Taxable value		А	Amount					
		Integrated	Central	State/UT Tax	Cess				
1	2	3	4	5	6				
Tax period for which th revised	e details are being	<month qua<="" td=""><td>arter&gt;</td><td></td><td></td></month>	arter>						
10A. Intra-State Supplies [ wise]	including supplies m	ade through e	-commerce	operator attracting	g TCS] [Rate				
10A (1). Out of supplies me attracting	entioned at 10A, value	e of supplies r	nade throug	h-e-Commerce Oj	<del>serators</del>				
TCS (operator wise, rate w	i <del>se)</del>								
GSTIN of e-commerce ope	rator								
10B. Inter-state Supplies [i wise]	including supplies ma	de through e-o	commerce of	perator attracting	ΓCS] [Rate				
Place of Supply (Name of	State)								
10B (1). Out of supplies mentioned at 10B, value of supplies made through e Commerce Operators attracting									
TCS (operator wise, rate w	i <del>se)</del>								
GSTIN of e-commerce ope	rator								

11. Consolidated Statement of Advances Received/Advance adjusted in the current tax period/ Amendments of information furnished in earlier tax period (Net of refund vouchers, if any)

Rate	Gross Advance Received/adjusted	Place of supply (Name of	Amount							
	10001700 adjustoa	State / UT)	Integrated tax	Centra l Tax	St at e/ U	Cess				

						Т					
						ta x					
						л					
1	2	3	4		5	6		7			
I Inf	ormation for the curre	nt tax period									
11A.	1										
to be a	to be added to output tax liability)										
11A (	11A (1). Intra-State supplies(Rate Wise)										
11A (	2). Inter-state Supplies	(Rate Wise)									
	Advance amount receiv x period in Table Nos. 4	-	iod and ad	justed	against t	he suj	pplies b	eing sho	wn in		
11B (	1). Intra-State Supplies	(Rate Wise)									
11B (2	2). Inter-state Supplies(	Rate Wise)									
	endment of information		e No. 11[1	] in G	STR-1 s	taten	nent for	r earlier	tax		
period	periods[Furnish revised information]										
Mon		Amendment relat	-	ormatio		A(	11A(	11B (1)	11B		
th		furnished in S. N	furnished in S. No.(select) 1)						(2)		
						I					

HSN-wise summary of outward supplies

Sr.	HSN	Description	UQC	Total	Rate	Total	Amount			
No.		<del>(Optionalif</del> HSN is provided)		Quantity	of tax	Taxable Value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6	7	8	9	10	11

# 13. Documents issued during the tax period

Sr.	Nature of document	Sr. 1	No.	Total	Cancelled	Net issued
No.		From	То	number		
1	2	3	4	5	6	7
1	Invoices for outward supply					
2	Invoices for inward supply from unregistered person					
3	Revised Invoice					
4	Debit Note					
5	Credit Note					
6	Receipt voucher					
7	Payment Voucher					
8	Refund voucher					
9	Delivery Challan for job work					
10	Delivery Challan for supply on approval					
11	Delivery Challan in case of liquid gas					
12	Delivery Challan in cases other than by way of supply (excluding at S no.					
	9 to 11)					

# 14. Details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under Section 52 or liable to pay tax u/s 9(5) [Supplier to report]

Nature of supply	GSTIN of	Net value of	Tax amount					
	e-commerce operator	supplies	Integrated tax	Central tax	State / UT tax	Cess		
1	2	3	4	5	6	7		

(a) Supplies on which e-commerce operator is liable to collect tax u/s 52			
(b) Supplies on which e-commerce operator is liable to pay tax u/s 9(5)			

. Amendment to details of the supplies made through e-commerce operators on which ecommerce operators are liable to collect tax under Section 52 or liable to pay tax u/s 9(5) [Supplier to report]

Nature of supply	Original details Month / GSTIN of		Revised details GSTIN of	Net value of supplies	Tax amount					
	Quarter		e-commerce operator		Integrated tax	Central tax	State / UT tax	Cess		
1	2	3	4	5	6	7	8	9		
(a) Supplies on which e- commerce operator is liable to collect tax u/s 52										
(b) Supplies on which e- commerce operator is liable to pay tax u/s 9(5)										

# 15. Details of the supplies made through e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report]

Type of	Type of	GSTIN	GSTIN	Document	Document	Rate	Value	Tax amount			Place	
supplier	recipient	of	of	no.	date		of				r	of
							supplies	Integrated	Central	State	Cess	supply
		supplier	recipient				made	tax	tax	/		
										I UT		
										UT		

										tax		
1	2	3	4	5	6	7	8	9	10	11	12	13
Registered	Registered											
	Unregistered											
Unregistered	Registered											
	Unregistered											

15A (I). Amendment to details of the supplies made through e-commerce operators on which ecommerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report, for registered recipients]

Type of supplier	-				Revised	Revised details				Value of	Tax amount				Place of
заррнет	GSTIN of supplier	GSTIN of recipient	no.	Doc. date	GSTIN of supplier	GSTIN of recipient	no.	Doc. date							supply
											Integrated tax	Central tax	State / UT tax	Cess	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Registered															
Unregistered															

15A (II). Amendment to details of the supplies made through e-commerce operators on which ecommerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report, for unregistered recipients]

Type of	Original details			Rate			Tax an		Place	
supplier			details		of supplies					of supply
	GSTIN	Tax	GSTIN		made					Suppry
	of	period	of			Integrated	Central	State	Cess	
	supplier		supplier			tax	tax	/		
								UT		
								tax		

1	2	3	4	5	6	7	8	9	10	11
Registered										
Unregistered										

#### 16. Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed there from and in case of any reduction in output tax liability the benefit thereof has been/will be passed on to the recipient of supply.

	Signature
Place	Name of Authorised Signatory
Date	Designation /Status

## A. General Instructions

- 1. Terms used:
  - a. GSTIN: Goods and Services Tax Identification Number
  - b. UIN: Unique Identity Number
  - c. UQC: Unit Quantity Code
  - d. HSN: Harmonized System of Nomenclature
  - e. POS: Place of Supply (Respective State)
  - f. TCS: Tax collection at source by e-commerce operator
  - g. SEZ: Special Economic Zone
  - h. ECO: E-commerce operator
  - i. DTA: Domestic Tariff Area
  - j. B to B: Supplies from one registered person to another registered person
  - k. B to C: Supplies from registered person to unregistered person

2. Quarterly taxpayers filing invoice details through GSTR-1/IFF for the first two month(s) of the quarter shall not repeat such details while filing GSTR-1 of the quarter.

#### **B.Table specific instructions-**

Sr. No.	Table No.	Instructions

1	2	3
1.	4A	<ul> <li>i. Supplies made to registered persons includingsupplies made through e- commerce operator attracting TCS u/s 52, but excluding supplies attracting tax on reverse charge basis, shall be reported.</li> <li>ii. Supplies made u/s 9(5) for which e-commerce operator is liable to pay tax shall not be reported in this table.</li> <li>iii. The supplies made by SEZ on cover of a bill of entry shall not be reported by SEZ unit /developer.</li> </ul>
2.	4B	Supplies made to registered persons, attracting tax on reverse charge basis, shall be reported. Supplies made u/s 9(5) for which e-commerce operator is liable to pay tax shall not be reported in this table.
3.	5	Inter-state supplies made to unregistered persons having invoice value more than Rs. 2.50 lakh shall be reported.
4.	6A	Exports with or without IGST shall be reported. Shipping bill details, if applicable, can be provided later through table 9 if such details are not available at the time of filing the statement.
5.	6B	Supplies made to SEZ units or SEZ developers, with or without IGST, shall be reported.
6.	6C	Deemed export supplies shall be reported.
7.	7	Supplies made to unregistered persons other than those reported in table 5 shall be reported. Values shall be net of credit and debit notes.
8.	8	Supplies having no tax liability (Nil rated, exempted and non-GST supplies) shall be reported. Supplies made through E-commerce Operator under Section 9(5) shall not be included under exempted supplies of supplier.
9.	9A	Amendment of values reported in table 4A, 4B, 5, 6A, 6B and 6C shall be reported.
10.	9B	Credit and debit notes issued during the period shall be reported.
11.	9C	Amendment of credit and debit notes reported in table 9B shall be reported.
12.	10	Amendment of unregistered supplies reported in table 7 shall be reported.
13.	11(I)A	Advances received shall be reported. The values shall be net of refund vouchers, if any.
14.	11(I)B	Advances adjusted during the period shall be reported.
15.	11(II)	Amendment to advances received or adjusted shall be reported.
16.	12	HSN details as per notifications issued by Government from time to time shall be reported.
17.	13	Details of the documents issued during the period shall be reported.
18.	14(a)	Details of the supplies reported in any table from 4 to 10, made through e- commerce operator on which ECO is liable to collect tax at source (TCS) under Section 52,shall be reported by the supplier.
19.	14(b)	Details of supplies made through ECO, on which ECO is liable to pay tax u/s 9(5), shall be reported by the supplier. Tax on such supplies shall be paid by the

Sr. No.	Table No.	Instructions		
1	2	3		
		ECO and not by the supplier.		
20.	14A(a)	Amendment to supplies reported in table 14(a) in earlier tax period shall be reported.		
21.	14A(b)	Amendment to supplies reported in table 14(b) in earlier tax period shall be reported.		
22.	15	<ul> <li>(i) ECO shall report details of the supplies made through him/ her on which he/she is liable to pay tax u/s 9(5).</li> <li>(ii) GSTIN of supplier and recipient, if registered, shall be reported.</li> <li>(iii) Details of the documents issued by ECO shall be reported, if recipient is registered.</li> </ul>		
23.	15A(I)	Amendment to the details reported in table 15 in earlier tax periods in respect of registered recipients shall be reported.		
24.	15A(II)	Amendment to the details reported in table 15 in earlier tax periods in respect of unregistered recipients shall be reported.		

Instructions

#### 1. Terms used:

- 1. GSTIN: Goods and Services Tax Identification Number
- m. UIN: Unique Identity Number
- n. UQC: Unit Quantity Code
- o. HSN: Harmonized System of Nomenclature
- p. POS: Place of Supply (Respective State)
- q. B to B: From one registered person to another registered person
- r. B to C: From registered person to unregistered person
- 2. The details in GSTR-1 should be furnished by 10<sup>th</sup> of the month succeeding the relevant tax period.
- 3. Aggregate turnover of the taxpayer for the immediate preceding financial year and first quarter of the current financial year shall be reported in the preliminary information in Table 3. This information would be required to be submitted by the taxpayers only in the first year. Quarterly turnover information shall not be captured in subsequent returns. Aggregate turnover shall be auto-populated in subsequent years.
- 4. Invoice level information pertaining to the tax period should be reported for all supplies as under:
- (i) For all B to B supplies (whether inter state or intra State), invoice level details, rate wise, should be uploaded in Table 4, including supplies attracting reverse charge and those effected through e-

commerce operator. Outwards supply information in these categories are to be furnished separately in the Table.

- (ii) For all inter state B to C supplies, where invoice value is more than Rs. 2,50,000/ (B to C Large) invoice level details, rate wise, should be uploaded in Table 5; and
- (iii) For all B to C supplies (whether inter-state or intra State) where invoice value is up to Rs. 2,50,000/- State wise summary of supplies, rate wise, should be uploaded in Table 7.
- 5. Table 4 capturing information relating to B to B supplies should:
- (i)be captured in:

a. Table 4A for supplies relating to other than reverse charge/ made through e-commerce operator, rate-wise;

b. Table 4B for supplies attracting reverse charge, rate-wise; and

c. Table 4C relating to supplies effected through e commerce operator attracting collection of tax at source under Section 52 of the Act, operator wise and rate wise.

- (ii)Capture Place of Supply (PoS) only if the same is different from the location of the recipient.
- 6. Table 5 to capture information of B to C Large invoices and other information shall be similar to Table 4. The Place of Supply (PoS) column is mandatory in this table.
- 7. Table 6 to capture information related to:
- (i) Exports out of India
- (ii) Supplies to SEZ unit/ and SEZ developer
- (iii) Deemed Exports
- 8. Table 6 needs to capture information about shipping bill and its date. However, if the shipping bill details are not available, Table 6 will still accept the information. The same can be updated through submission of information in relation to amendment Table 9 in the tax period in which the details are available but before claiming any refund / rebate related to the said invoice. The detail of Shipping Bill shall be furnished in 13 digits capturing port code (six digits) followed by number of shipping bill.
- 9. Any supply made by SEZ to DTA, without the cover of a bill of entry is required to be reported by SEZ unit in GSTR 1. The supplies made by SEZ on cover of a bill of entry shall be reported by DTA unit in its GSTR 2 as imports in GSTR 2. The liability for payment of IGST in respect of supply of services would, be created from this Table..

- 10. In case of export transactions, GSTIN of recipient will not be there. Hence it will remain blank.
- 11. Export transactions effected without payment of IGST (under Bond/ Letter of Undertaking (LUT)) needs to be reported under —0∥ tax amount heading in Table 6A and 6B.
- 12. Table 7 to capture information in respect of taxable supply of:
- B to C supplies (whether inter state or intra-State) with invoice value uptoRs 2,50,000;
- (ii) Taxable value net of debit/ credit note raised in a particular tax period and information pertaining to previous tax periods which was not reported earlier, shall be reported in Table 10. Negative value can be mentioned in this table, if required;
- (iii) Transactions effected through e-commerce operator attracting collection of tax at source under Section 52 of the Act to be provided operator wise and rate wise;
- (iv) Table 7A (1) to capture gross intra-State supplies, rate-wise, including supplies made through e commerce operator attracting collection of tax at source and Table 7A (2) to capture supplies made through e commerce operator attracting collection of tax at source out of gross supplies reported in Table 7A (1);
- (v) Table 7B (1) to capture gross inter state supplies including supplies made through e commerce operator attracting collection of tax at source and Table 7B (2) to capture supplies made through ecommerce operator attracting collection of tax at source out of gross supplies reported in Table 7B (1); and
- (vi) Table 7B to capture information State wise and rate wise.
- 13. Table 9 to capture information of:
- (i) Amendments of B to B supplies reported in Table 4, B to C Large supplies reported in Table 5 and Supplies involving exports/ SEZ unit or SEZ

developer/ deemed exports reported in Table 6;

- (ii) Information to be captured rate-wise;
- (iii) It also captures original information of debit / credit note issued and amendment to it reported in earlier tax periods; While furnishing information the original debit note/credit note, the details of invoice shall be mentioned in the first three columns, While furnishing revision of a debit note/credit note, the details of original debit note/credit note shall be mentioned in the first three columns of this Table,
- (iv) Place of Supply (PoS) only if the same is different from the location of the recipient;

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- (v) Any debit/ credit note pertaining to invoices issued before the appointed day under the existing law also to be reported in this table; and
- (vi) Shipping bill to be provided only in case of exports transactions amendment.
- 14. Table 10 is similar to Table 9 but captures amendment information related to B to C supplies and reported in Table 7.
- 15. Table 11A captures information related to advances received, rate-wise, in the tax period and tax to be paid thereon along with the respective PoS. It also includes information in Table 11B for adjustment of tax paid on advance received and reported in earlier tax periods against invoices issued in the current tax period. The details of information relating to advances would be submitted only if the invoice has not been issued in the same tax period in which the advance was received.
- 16. Summary of supplies effected against a particular HSN code to be reported only in summary table. It will be optional for taxpayers having annual turnover uptoRs. 1.50 Cr but they need to provide information about description of goods.
- 17. It will be mandatory to report HSN code at two digits level for taxpayers having annual turnover in the preceding year above Rs. 1.50 Cr but uptoRs. 5.00 Cr and at four digits level for taxpayers having annual turnover above Rs.

5.00 Cr.

18. It will be mandatory to specify the number of digits of HSN code for goods or services that a class of registered persons shall be required to mention as may be specified in the notification issued from time to time under proviso to Rule 46 of the said Rules.

# Agenda Item 7(x): Retrospective applicability of para 7, 8(a) and 8(b) of Schedule III of the CGST Act, 2017

**1. Taxability of** supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India:

**1.1** Para 7 of Schedule III to Central Goods and Services Tax Act, 2017 (CGST Act) provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India, is an activity which is to be treated as neither supply of goods or services. The said para was inserted in Schedule III of CGST Act vide the Central Goods and Services Tax (Amendment) Act, 2018 and was made applicable vide Notification No. 02/2019-Central Tax dated 29.01.2019 with effect from 01.02.2019.

**1.2** The said notification was not made applicable retrospectively from 01.07.2017 which implies that before the said amendment of the CGST Act, such transactions were subject to GST. Moreover, as per sub-section (5) of Section 7 of the Integrated Goods and Services Tax Act, 2017, the supply of goods or services or both, when the supplier is located in India and the place of supply is outside India shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce. However, the taxpayers are taking the plea that the insertion of the para 7 in Schedule III of CGST Act is only for clarifying that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India is neither supply of goods nor supply of services, and therefore, may be treated similarly before 01.02.2019 also.

## 2. Taxability of High Sea Sales:

**2.1** High Sea Sales (hereinafter referred to as, "HSS") refers to the sale of the goods that takes place on the high seas when the goods are still en-route to India and have not entered into the territorial waters of the country.

**2.2** It is pertinent to note that vide CGST (Amendment) Act, 2018, clause (b) of para 8 was inserted in Schedule III of the CGST Act with effect from 01.02.2019, to provide that "Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption" will be treated neither as supply of goods nor as supply of services". Thus, with the insertion of the said entry in schedule III of the CGST Act, the said supply has been taken outside the ambit of GST. However, it is significant to note that as the said amendment has been brought into effect only from 01.02.2019, thereby implying that before the said amendment, such supply was taxable under GST.

**2.3** Many taxpayers engaged in HSS transactions may not have paid GST on the said transactions during the period 01.07.2017 to 31.01.2019 claiming the said transactions as non-taxable on account of the presumption that since the sale of the goods did not take place within the territory of India, the same are non-taxable. In such cases, the taxpayers are taking the plea of Circular No.33/2017- Customs dated 01.08.2017 which states that IGST on high sea sales transactions of imported goods shall be levied and collected only at the time of importation of goods. The relevant portion of the said Circular is reproduced below:

"IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition

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accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance."

It is pertinent to note that the said Circular was issued as per the decision of the GST Council in its 18<sup>th</sup> meeting dated 30.07.2017. The Council deliberated on the "Agenda Item 3(viii) - High Sea Sales" in the said meeting and decided the following :

"High Sea Sales" is a terminology used in common parlance for "Sales in the course of import." In such cases, sale taking place by transfer of documents of title to goods before goods are cleared from Customs, is a sale in the course of import. There is need to bring clarity on the issue of levy of IGST, when such sale (supply in GST parlance) takes place in high sea and a second-time levy of IGST when goods are cleared through Customs. It is proposed to clarify by way of a Circular that when goods sold on high sea sales basis are imported the first time, IGST would be levied at the time of importation and the value addition due to high sea sales shall be part of the value on which IGST is collected. **The Council agreed to this proposal**.

**2.4** Taxpayers are also taking the view that the amendment made in Schedule III with effect from 01.02.2019 needs to be considered clarificatory, and should be applicable with effect from 01.07.2017.

# **3.** Taxability of supply of warehoused goods to any person before clearance for home consumption

**3.1** Some taxpayers are engaged in supply of warehoused goods to a person before clearance for home consumption and treat such transactions as non-taxable. It is pertinent to mention here that Para 8(a) of Schedule III to CGST Act provides that the supply of warehoused goods to any person before clearance for home consumption, is an activity which is to be treated as neither supply of goods or services. The said para was inserted vide the Central Goods and Services Tax (Amendment) Act, 2018 and was made applicable vide Notification No. 02/2019-Central Tax dated 29.01.2019 with effect from 01.02.2019.

**3.2** In such cases, the taxpayers are taking the plea that the insertion of the para 8(a) in Schedule III of CGST Act is only for clarifying that supply of warehoused goods to a person before clearance for home consumption is neither supply of goods nor supply of services, and therefore, may be treated similarly before 01.02.2019 also. However, the said notification was not made applicable retrospectively from 01.07.2017 which implies that before the said amendment of the CGST Act, supply of warehoused goods to any person before clearance for home consumption was subject to GST.

4. Considering the issues discussed in paras above, to avoid unnecessary litigation and doubts, there is a need to provide clarity in the GST law with respect of treatment of the transactions covered by Para 7, 8(a) and 8(b) of Schedule III of CGST Act for the period from 01.07.2017 to 31.01.2019, i.e. before the said paras were inserted in Schedule III of CGST Act.

**5.** The abovementioned amendments in Schedule III of CGST Act were carried out in accordance with the decision taken in the 28<sup>th</sup> GST Council Meeting. The relevant portion of the Agenda Note "Agenda Item 6(i): Proposals for amendments in the CGST Act, 2017, IGST Act, 2017, UTGST Act, 2017 and GST (Compensation to States) Act, 2017" and signed minutes of the said meeting are attached as **Annexure-A** and **Annexure-B** respectively.

#### 6. Law Committee recommendations

Law Committee deliberated on these issues in its meeting dated 12.10.2022 and 23.11.2022 and recommended the following:

a. Para 7, Para 8(a) and Para 8(b) in Schedule III inserted vide the Central Goods and Services Tax (Amendment) Act, 2018 should have retrospective effect w.e.f. 01.07.2017.

b. However, in cases where any tax has already been paid in respect of transactions/supplies covered under Para 7, 8(a) and 8(b) of Schedule III of CGST Act during the period 01.07.2017 to 31.01.2019, no refund shall be available in respect of such tax paid.

7. Accordingly, the recommendations of the Law Committee as detailed in para 6 above, are placed before the GST Council for deliberation and approval.

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

## Agenda Item 6(i): Proposals for amendments in the CGST Act, 2017, IGST Act, 2017, UTGST Act, 2017 and GST (Compensation to States) Act, 2017

#### I. <u>Background</u>

1.1 As per the decisions of the 22<sup>nd</sup> GST Council Meeting held on 06.10.2017, a Law Review Committee was constituted in order to review and propose changes in the CGST/SGST Acts and the IGST Act, taking into account feedback from all the stakeholders, and bring these proposals before the Council. In pursuance of the same, a Law Review Committee (hereinafter referred to in this note as 'LRC'), as well as an Advisory Group to the LRC were constituted to review the laws and make proposals for making amendments in the Acts.

1.2 The LRC submitted its first draft report on 04.01.2018, taking into consideration the issues raised by the Advisory Group to the LRC, the representations forwarded by GST Council Secretariat and the suggestions received from the State Governments and CBIC formations. The final report of the LRC was submitted on 11.07.2018.

1.3 In addition, the representations received in the GST Policy Wing of CBIC (GSTPW for short), from July to December 2017, from the field formations, GST Feedback and Action Room (FAR) and various trade associations were analysed and a broadsheet containing the proposals for review of the Acts was prepared by the GSTPW.

1.4 The recommendations of the LRC, along with the broadsheet prepared by the GSTPW were discussed in a joint meeting of the LRC and the Law Committee held on 10.01.2018. The combined recommendations of the LRC and Law Committee were thereafter discussed in the meeting of the officers of the Central and the State Governments on 11.01.2018 and the consolidated recommendations of the officers' meeting was placed before the GST Council at its 25<sup>th</sup> meeting held on 18.01.2018.

1.5 The Council accorded its in-principle approval for the proposals, subject to certain modifications therein. It was stated by the Hon'ble Chairperson of the Council that on the basis of the approval of the proposed changes, the Law Committee would draft the legislative changes and after vetting by the Union Law Ministry, it would be brought before the Council for approval.

1.6 Thereafter, four joint meetings of the Law Committee and LRC were held on 17<sup>th</sup> and 18<sup>th</sup>February, 2018, 05<sup>th</sup> to 07<sup>th</sup> April, 2018, 10<sup>th</sup> to 12<sup>th</sup> May, 2018 and 07<sup>th</sup> to 09<sup>th</sup> June, 2018, to finalise the proposals and draft formulations. The draft proposals that were agreed upon after the above four meetings were further discussed by the Law Committee on 06.07.2018. The finalised proposals for amending the law have been collated in the broadsheet placed as **Annexure 1** to this note, wherein the proposed changes have been indicated in <u>red colour</u>.

#### II. Stakeholder Consultation and Feedback

2.1 The broadsheet containing the proposals (as finalised by the Law Committee on 06.07.2018) was placed in the public domain (<u>https://www.mygov.in/</u>) from 09.07.2018 to 15.07.2018, for inviting comments from the trade and public.

2.2 A total of 1270 suggestions were received. Out of this, 158 suggestions relate to the proposed law amendments. On analysis of these 158 suggestions, 13 actionable suggestions on the proposed

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amendments have been identified and have been incorporated in <u>blue colour</u> in the Annexure 1. However, these suggestions have not been discussed in the Law Committee.

#### III. Amendments resulting from changes in the return format

3.1 It is submitted that at Sl. No. 27 of the **Annexure**, on the basis of the proposed new return scheme, it is proposed to insert a new section, viz., section 43A, in order to provide for the procedure for furnishing returns (including amendment thereto) and availing input tax credit.

3.2 As per the extant legal provisions, all taxpayers are required to make monthly tax payment along with monthly filing of return. However, a fresh proposal to allow filing of a quarterly return with monthly tax payment for taxpayers with annual turnover upto Rs. 1.5 crore has been discussed. It was decided to ascertain the feasibility of its quick implementation from GSTN and they have replied in the affirmative.

3.3 A fresh proposal for allowing quarterly return filing for small taxpayers with monthly tax payment is part of a separate Agenda Note. The modalities for implementing the proposal along with its consequential legal amendments relating to payment of tax and input tax credit etc, is being discussed in the Officers' meeting scheduled to be held on 20.07.2018. Changes suggested in the said meeting would be placed before the GST Council separately.

#### IV. <u>Approval sought</u>

Accordingly, the approval of the GST Council is sought for the following:

- a) Amending the CGST Act, 2017, IGST Act, 2017, UTGST Act, 2017 and GST (Compensation to States) Act, 2017, as detailed in the **Annexure 1**;
- b) Granting in-principle approval for allowing quarterly return filing for small taxpayers with monthly tax payments, and for carrying out the necessary law amendment proposals in this regard; and
- c) Placing the requisite law amendment Bills before the Parliament and the respective State/Union territory legislatures.

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SI. No.	Section/Sub- section/Clause	Amendments as shown in Red and Strikethrough	Rationale/Remarks
			from any of their establishments outside India.
8.	Schedule III, new insertion	<ul> <li>7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory.</li> <li>Trade has represented for retrospective amendment from 01.07.2017.</li> </ul>	It is sought to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non- taxable territory to another non- taxable territory.
9.	Schedule III, new insertion	<ul> <li>8 (a) Supply of warehoused goods to any person before clearance for home consumption.</li> <li>(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.</li> <li>Explanation For the purposes of this clause, the expression "warehoused goods" shall have the meaning as assigned to it in the Customs Act, 1962 (52 of 1962)</li> <li>Trade has represented for retrospective amendment from 01.07.2017.</li> </ul>	It is sought to ensure that there is no double taxation of transactions where supply of goods occurs in the course of high sea sales and sale of warehoused goods before clearance for home consumption. It was observed that in case of supply of goods as high seas sales and sale of warehoused goods, before being cleared for home consumption, IGST was being levied twice, once under the Customs Tariff Act, 1975 (read with the IGST Act) and then for a second time, on clearance for home consumption under the IGST Act. Since double taxation needs to be avoided, Circulars were issued to state that IGST would be payable only once at the time of clearance of goods for home consumption. However, it is imperative that such situations are squarely mentioned as 'no supply' in Schedule III.
Levy	and Collection		
10.	9 (4)	9 (4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient	Section 9 (4), which mandates that all registered persons shall pay the tax on reverse charge basis on purchases made from unregistered persons, is presently under suspension. This sub-section is being omitted for trade facilitation.

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#### MINUTE BOOK

threshold for registration could then be increased for those Special Category States which so desired in future. The Hon'ble Minister from Haryana stated that this provision was deliberated in great detail during the original drafting of the GST law and the benefit of lower annual turnover threshold for registration under GST was given to a class of Special Category States. It needed to be examined whether a further class within this class of Special Category States should be created or whether all Special Category States should be persuaded to increase their annual turnover threshold for registration from Rs.10 lakh to Rs.20 lakh. The Hon'ble Chairperson stated that this issue should be kept open and the Special Category States should be given flexibility to increase their annual turnover threshold to Rs.20 lakh for registration as and when they felt comfortable with it. Dr. Rajiv Mani, Joint Secretary, Ministry of Law stated that an enabling provision could be made in the GST Law so that the Council could approve the names of the Special Category States as and when they wanted to increase their threshold for registration from annual turnover of Rs.10 lakh to Rs.20 lakh. The Council approved this suggestion as well as the proposed amendment to include names of four more States, namely Arunachal Pradesh, Himachal Pradesh, Meghalaya and Uttarakhand in Explanation to Section 22 of the CGST Act. 2017.

(vi) S. No. 46 of Presentation relating to new Section 10 (3A) of GST (Compensation to States), Act, 2017: The Hon'ble Chairperson suggested that the proposed formulation should have more flexibility. Instead of providing that the amount remaining unutilised in the Fund shall be distributed between the Centre and the States, the law should provide that such amount may be distributed between the Centre and the States, as the Council may decide. He suggested to change the phrase 'distribute <u>the</u> amount remaining unutilized in the Fund' to 'distribute <u>such</u> amount remaining unutilized in the Fund'. The Council agreed to this proposal.

(vii) **S.No.1 of Table relating to Returns:** The Hon'ble Chief Minister of Puducherry suggested that this proposal should be examined further. The Hon'ble Minister from Assam stated that this was only an enabling provision and it could be agreed upon. The Council agreed to the formulation shown in the presentation.

14.13. The Hon'ble Deputy Chief Minister of Delhi stated that the report of the Law Review Committee should be tabled in the Council along with the reasons as to why its 46 proposals were not considered. He also suggested that the website link containing the proposed 1270 suggestions received from the stakeholders on the proposed changes to the GST Law should also be shared with the States. He further suggested that the report of the Law Review Committee should not be closed. The Commissioner (GST Policy Wing), CBIC pointed out that these suggestions were available on the MyGov in portal of the Government of India. The Council approved the proposals of the Hon'ble Deputy Chief Minister of Delhi.

15. For Agenda Item 6(i), the Council approved the following:

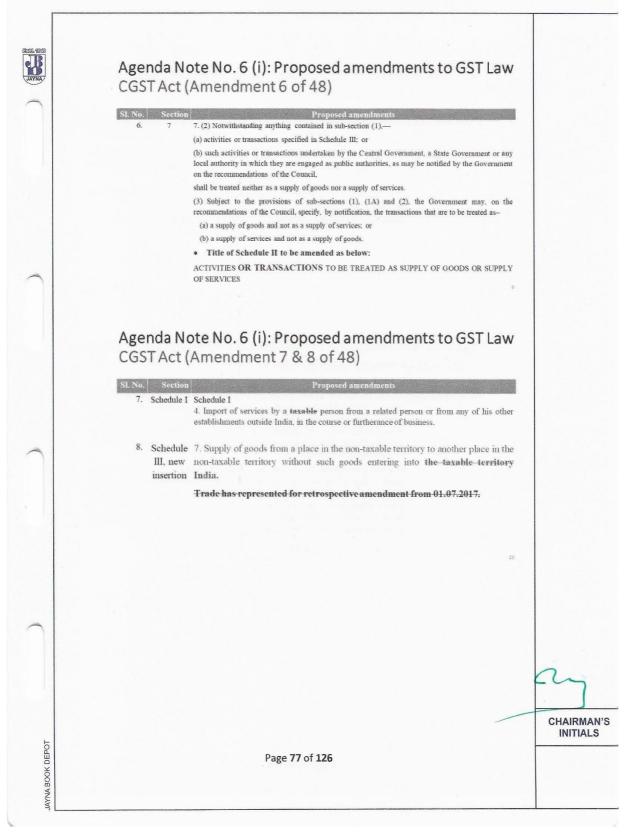
JAYNA BOOK DE POT

15.1. Amendments in the CGST Act, 2017; IGST Act, 2017; UTGST Act, 2017; and GST (Compensation to States) Act, 2017 as proposed in the presentation attached as Annexure 4 to the Minutes with the following changes:

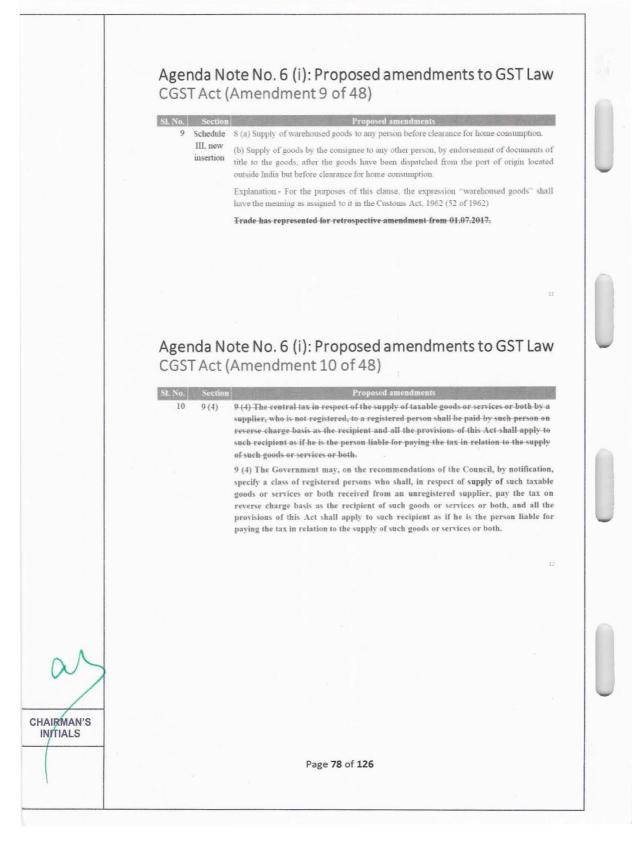
CHAIRMAN'S INITIALS

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#### MINUTE BOOK



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## <u>Agenda Item 7(xi): Mechanism to deal with differences in liabilities between GSTR-1 and GSTR-3B, along with draft rules and proposed FORM DRC-01B for implementing the same.</u>

The Law Committee in its meetings held on 05.11.2022, 23.11.2022 and 05.12.2022 deliberated upon ways to safeguard revenue by finding suitable manner of handling and controlling the difference in liabilities reported between **FORM GSTR-1** and **FORM GSTR-3B** by the taxpayers. Law Committee felt that considering large number of taxpayers involved, such a mechanism should be based on system based identification of the taxpayers based on certain approved risk criteria and a procedure of auto-compliance on the part of the taxpayers to explain/ take remedial action in respect of such difference.

2. The Law Committee opined that where the tax liability as per FORM GSTR-1 for a tax period exceeds the tax liability as per FORM GSTR-3B for that period by more than a certain extent, the registered person maybe intimated on the portal of such difference and be directed to either pay the differential tax liability along with interest, or explain the difference. Unless he either deposits the amount specified in the said intimation or furnishes a reply explaining the reasons for any amount remaining unpaid, such a person may not be allowed to furnish the details of outward supplies in FORM GSTR-1 or using invoice furnishing facility for a subsequent tax period. However, in cases where the taxpayer deposits the said differential tax liability only partly, with or without an explanation for such short payment, a separate procedure may be formulated for examination of such cases by the proper officer, and for further action for recovery of the unpaid amount in accordance with the provisions of Section 79, to the extent no satisfactory explanation has been provided by the taxpayer for such differential unpaid amount.

3. To implement the said approach, the Law Committee recommended as follows:

(i) Insertion of new **Rule 88C** to communicate the difference between **FORM GSTR-1** and **FORM GSTR-3B** and to direct payment of the differential or explain the difference as below:

# 88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.-

(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in **FORM GSTR-1** or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in **FORM GSTR-3B** by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in **Part A** of **FORM GST DRC-01B**, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a) pay the differential tax liability, along with interest under section 50, through **FORM GST DRC-03**, or

(b) explain the aforesaid difference in tax payable on the common portal,

within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,

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(a) pay the amount of the differential tax liability, as specified in **Part A** of **FORM GST DRC-01B**, fully or partially, along with interest under section 50, through **FORM GST DRC-03** and furnish the details thereof in **Part B** of **FORM GST DRC-01B** electronically on the common portal, or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in **Part B** of **FORM GST DRC-01B**,

within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of Section 79.

(ii) Insertion of a new clause (d) in sub-rule (6) of Rule 59 to enable blocking of FORM GSTR-1 for a subsequent tax period unless the taxpayer has deposited the amount specified in the intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as below:

(d) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of Rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under Section 37, in **FORM GSTR-1** or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of Rule 88C.

(iii) FORM GST DRC-01B may be inserted as required under Rule 88C(1) (enclosed as Annexure to this agenda note).

(iv) To begin with, difference between liability declared in **FORM GSTR-1** & that declared in **FORM GSTR-3B** of more than 20% as well as more than Rs. 25 lakhs may be taken for the purpose of intimation under proposed Rule 88C(1).

(v)Law Committee to formulate a separate procedure for examination of such cases by the proper officer, where the taxpayer deposits the differential tax liability only partly, with or without an explanation for such short payment, and for further action for recovery of the unpaid amount in accordance with the provisions of Section 79, to the extent no satisfactory explanation has been provided by the taxpayer for such differential unpaid amount.

4. Accordingly, the recommendations of the Law Committee in para 3 are placed before the Council for deliberation and approval.

Annexure

#### FORM GST DRC-01B

#### [See Rule 88C]

#### **PART-A (System Generated)**

# Intimation of difference in liability reported in statement of outward supplies and that reported in return

Ref No: Date:

**GSTIN**:

#### Legal Name:

Form Type	Liability declared/ paid (in Rs.)				
Form Type	IGST	CGST	SGST/UTGST	Cess	Total
FORM GSTR-1 / IFF					
FORM GSTR-3B					
Difference in liability					

2. In accordance with sub-rule (1) of rule 88C, you are hereby requested to either pay the said differential tax liability, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part-B of FORM GST DRC-01B, and/or furnish the reply in Part-B of FORM GST DRC-01B incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, within a period of seven days.

3. It may be noted that where any amount remains unpaid within a period of seven days and where no explanation or reason is furnished by you or where the explanation or reason furnished by you is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79 of the CGST Act, 2017.

4. This is a system generated notice and does not require signature.

#### PART-B

#### Reply by Taxpayer in respect of the intimation of difference in liability

Reference No. of Intimation:

A. I have paid the amount of the differential tax liability, as specified in **Part A** of **FORM GST DRC-01B**, fully or partially, along with interest under section 50, through **FORM GST DRC-03**, and the details thereof are as below:

ARN of FORM GST DRC-03	Paid Under Head	Tax Period	IGST	CGST	SGST/UTGST	CESS

#### AND/OR

**B.** The reasons in respect of that part of the differential tax liability that has remained unpaid, are as under:

S. No	Brief Reasons for Difference	Details (Mandatory)
1	Excess Liability paid in earlier tax periods in <b>FORM GSTR-3B</b>	
2	Some transactions of earlier tax period which could not be declared in the FORM GSTR-1/IFF of the said tax period but in respect of which tax has already been paid in FORM GSTR-3B of the said tax period and which have now been declared in FORM GSTR-1/IFF of the tax period under consideration	
3	<b>FORM GSTR-1/IFF</b> filed with incorrect details and will be amended in next tax period (including typographical errors, wrong tax rates, etc.)	
4	Mistake in reporting of advances received and adjusted against invoices	
5	Any other reasons	

#### Verification

I \_\_\_\_\_\_ hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Signature of Authorised Signatory Name: Designation/Status:

Place:

Date:

Date:

## A. Clarification on taxability of No Claim Bonus offered by Insurance companies

**Representations** have been received from General Insurance Council and various insurance companies regarding seeking clarity on the treatment of **No Claim Bonus ('NCB') under GST. It has been represented that NCB** is a discount given by insurance companies on the premium payable by the customer/insured for a particular year, if the insured has not made any claim during the previous year. However, some of the field formations/ investigation agencies are treating NCB as supply by the customer to the insurance company and are not permitting the same to be deducted from the value of supply of the insurance services being provided by the insurance company to the customer.

1.2 Some of the field formations/ investigative agencies are taking a view that two supplies of services are taking place simultaneously in the transaction, the first of insurance services provided by the insurer to the insured in exchange for insurance premium, and the second supply where the insured is providing insurer a service by not making any claims during the previous year in exchange for the NCB discount (by treating NCB as the consideration for the alleged supply of service by the insured to the insurer). In view of the same, they are claiming that the insurer is liable to pay GST on the gross premium, and deduction for discount on account of NCB should not be allowed for the purpose of calculation of value of supply made by insurer to the insured.

1.3 Insurance companies, on the other hand, have submitted that insurance is a business of indemnity and the risk premium for indemnity is determined based on various parameters, including the probability of a claim against the policy. If the insured has not made any claim in the previous year(s), considering the lower probability of claims by such person, the premium to be charged from the insured for the following year gets reduced, and this reduction is passed to the insured in form of "No Claim Bonus", i.e. NCB. NCB is not in respect of any service rendered by the insured to the insurance company. NCB is allowed to the insured as an upfront discount from the premium payable by him for the supply of insurance services by the insurer to the insured and therefore, the same is deductible for the purpose of calculation of value of supply of insurance services under Section 15 of CGST Act, 2017.

#### 1.4 **RELEVANT GST PROVISIONS:**

1.4.1 For, determining value of supply of a service, reference needs to be made to sub-section (1) of Section 15 of the Central Goods and Services Tax Act, 2017 ('CGST Act') which provides that the value of taxable supply shall be the transaction value if the supplier and recipient of the supply are not related, and price is the sole consideration for the supply.

1.4.2 Further, sub-section (3) of Section 15 of the CGST Act, provides that:

"(3) The value of the supply shall not include any discount which is given-

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if-

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply."

1.5 Therefore, from the perusal of clause (a) of sub-section (3) of Section 15 of the CGST Act, it is clear that the value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. Here, it is to be noted that NCB amount is fully disclosed at the time of renewal of the policy and is included in the policy document as well.

1.6. It is mentioned that the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period, and the amount or percentage of such No Claim Bonus varies depending upon the consecutive period for which no claim is made by the insured. There is no obligation on the insured, either as per the terms of the insurance policy, or otherwise, not to claim insurance claim during any period covered under the policy. Further, the insured is also not in any business of refraining to make any claim from the insurance company. There is also no contractual agreement between insurer and inured for not claiming any insurance claim from the insurer in lieu of the consideration of No Claim Bonus. On the other hand, the insured has procured insurance policy from the insurance company to indemnify himself from the loss, if any, during the policy period, which is covered by the said insurance policy, and has not procured the said policy for the purpose of or under obligation of refraining from making claim or tolerating any act of the insurance policy from the said insurance company, in lieu of consideration in form of No Claim Bonus. Accordingly, there does not appear to be any supply from the insured to the insurer on account of receipt of No Claim Bonus.

1.7 It is further mentioned that the insurance policy documents make the disclosure of the fact of availability of discount in form of No Claim Bonus to the insured subject to certain conditions. The <u>pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of Section 15 of the CGST Act, 2017.</u>

1.8 Law Committee deliberated on the issue in its meeting held on 05.11.2022 and recommended that the issue may be clarified through a Circular, specifying that the No Claim Bonus (NCB) cannot be considered as a consideration for a supply by the insured to the insurance company, but is to be considered as a permissible deduction under clause (a) of Section 15(3) of CGST Act for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured, and accordingly, GST shall be leviable only on actual insurance premium amount, after deduction of No Claim Bonus, payable by the policy holders to the insurer in respect of insurance services received from the insurer.

Clarifications, as recommended by the Law Committee, are covered at Sl. No 1 and 2 of the draft Circular enclosed with the agenda note.

### B. Clarification on applicability of e-invoicing w.r.t an entity-reg

2. As per Rule 48(4) of the CGST Rules, 2017, the notified class of registered persons has to prepare invoice by uploading specified particulars of invoice (in **FORM GST INV-01**) on Invoice Registration Portal (IRP) and obtain an Invoice Reference Number (IRN). Vide Notification No. 13/2020-Central Tax dated 21.03.2020, as amended, the class of registered persons to whom e-invoicing shall be applicable under Rule 48(4) of the CGST Rules, 2017 has been notified. Further, SEZ units, government departments, local authority and those referred in sub-rules (2), (3), (4) and (4A) of Rule 54 of the CGST Rules have been exempted from e-invoicing. In terms of the said notification, as amended, the following entities/sectors have been exempted from issuance of e-invoice and the same is also clarified as per Question 17 of Frequently Asked Questions (Version 1.4 dated 30.03.2021) available on GST Portal:

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)

2.1 Further, as per Question 18 of Frequently Asked Questions (Version 1.4 dated 30.03.2021) available on GST Portal, it has been clarified that the exemption from e-invoicing is with respect to an entity:

#### "18. The exemption from e-invoicing is w.r.t the nature of supply/transaction or w.r.t the entity?

It is with respect to the entity."

2.2 Representations have been received from banking entities that banks are being subjected to investigation by tax authorities wherein the tax officers are insisting that e-invoices are required to be generated by banks for movement of goods, including bullion, arguing that said exemption from generation of e-invoices is available to a banking company only with respect to the banking services provided by it and not for the goods or for the Banking Company as a whole. The tax officers are, therefore, insisting that generation of e-invoice and related compliances are mandatory in case of supply/movement of goods by such banking companies. It has been represented by banking entities that banks continue to face multiple challenges in movement of goods, including bullion, from one state to another, on account of alleged non issuance of e-invoice which is causing undue hardship in the regular movement and business operations. Thus, it has been requested to issue a suitable clarification on the issue.

2.3 Law Committee deliberated on the issue in its meeting held on 5.11.2022 and recommended that it may be clarified through a Circular that the exemption from mandatory issuance of e-invoices is with respect to the entity as a whole and not just with respect to the nature of supply/transaction.

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Clarification, as recommended by the Law Committee is covered at Sl. No 3 of the draft Circular enclosed with the agenda note.

3. The agenda note along with the draft Circular (**enclosed as Annexure**) is placed before the GST Council for deliberation and approval.

Annexure

Circular No. XXX/XX/2022-GST

## F. No. CBIC-20001/2/2022-GST Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing

New Delhi, Dated the November, 2022

To,

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

Madam/Sir,

### Subject: Clarification on various issue pertaining to GST-reg.

Various representations have been received from the field formations seeking clarification on certain issues with respect to -

- i. taxability of No Claim Bonus offered by Insurance companies;
- ii. on applicability of e-invoicing w.r.t an entity.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarify the issues as under:

S. No.	Issue	Clarification				
	Taxability of No Claim Bonus offered by Insurance companies					
1.	Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the during the previous year?	As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period. The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.				

2.	Whether the No Claim Bonus provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured?	provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the during the previous year and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company. As per clause (a) of sub-section (3) of Section 15 of the CGST Act, value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply. The insurance companies make the disclosure of the fact of availability of discount in form of No Claim Bonus, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the no claim Bonus in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of No Claim Bonus in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under clause (a) of sub-section (3) of Section 15 of the CGST Act, 2017. It is, therefore, clarified that No Claim Bonus (NCB) is a permissible deduction under clause (a) of sub-section (3) of Section 15 of the CGST Act, 2017 for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured. Accordingly, where the deduction on account of No claim bonus is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of No Claim Bonus mentioned on the invoice.
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	Clarification on applicability of e-invoicing w.r.t an entity					
3.	Whether the exemption from mandatory generation of e- invoices in terms of Notification No. 13/2020-Central Tax, dated 21 <sup>st</sup> March, 2020 as amended, is available for the entity as whole, or whether the same is available only in respect of certain supplies made by the said entity?	In terms of Notification No. 13/2020-Central Tax dated 21 <sup>st</sup> March, 2020, as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per sub-rule (4) of Rule 48 of CGST Rules, 2017. It is hereby clarified that the said exemption from generation of e-invoice is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.				
		<b>Illustration</b> : A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020-Central Tax, dated 21 <sup>st</sup> March, 2020 as amended, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.				

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

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

(Sanjay Mangal) Principal Commissioner (GST)

### <u>Agenda Item 7(xiii): Clarification regarding treatment of the difference in ITC availed in</u> <u>GSTR-3B as compared to that available in GSTR-2A for FY 2017-18 and 2018-19</u>

Section 16 of the Central GST Act, 2017 provides for eligibility and conditions for taking the Input Tax Credit (ITC) for the taxpayer and is reproduced below:

Section 16. Eligibility and conditions for taking input tax credit.-

(1) ...

(2) Notwithstanding anything contained in this Section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

<sup>1</sup>[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under Section 37;]

(b) he has received the goods or services or both.

(c) subject to the provisions of Section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and (d) he has furnished the return under Section 39:

Provided that ...

<sup>1</sup> Inserted w.e.f. 1<sup>st</sup> January, 2022 vide Notification No. 39/2021-C.T., dated 21st December, 2021 by Sr.No. 109 of The Finance Act, 2021 (No. 13 of 2021)

1.1 A perusal of the above Section leads to the conclusion that input tax credit can be availed by a registered person only if the conditions specified in Section 16 of the CGST Act, 2017 are fulfilled. One of the conditions for availment of ITC is that the tax charged in respect of the said supply should have been paid to the Government by the concerned supplier.

1.2 During the initial period of implementation of GST, especially during the financial years 2017-18 and 2018-19, many suppliers failed to furnish the correct details of outward supplies in their FORM GSTR-1.Because of such discrepancies in FORM GSTR-1 of the suppliers, FORM GSTR-2A of their recipients was incomplete. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B, as restrictions in availment of ITC upto certain specified limit beyond the ITC available to the registered persons as per FORM GSTR-2A were provided under Rule 36(4) only with effect from 9<sup>th</sup> October 2019.

1.3 The discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing

to FORM GSTR-2A of the registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged by them seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19.

3. The matter was deliberated by the Law Committee in its meeting held on 12.10.2022 and 05.12.2022. The Law Committee considered the following scenarios:

- a) Where the Supplier has failed to file FORM GSTR-1 for a tax period;
- b) Where the supplier has filed FORM GSTR-1 but failed to report the supply in the same;
- c) Where the supplier has filed FORM GSTR-1 but reported a particular supply as B2C supply instead of B2B supply;
- d) Where the supplier has filed FORM GSTR-1 but declared the supply under wrong GSTIN.

4. Law Committee recommended the following procedure to deal with such cases for FY 2017-18 and 2018-19:

i) In cases, where the difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website https://udin.icai.org/search-udin and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx.

ii) In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier, to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

5. The Law Committee recommended that a Circular may be issued to clarify the manner of dealing with discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during FY 2017-18 and FY 2018-19. The draft Circular as recommended by the Law Committee is enclosed as **Annexure-I**.

6. Accordingly, the recommendations of the Law Committee as detailed in **para 4 and 5 above** are placed before the GST Council for deliberation and approval.

#### **ANNEXURE-I**

Circular No. //2022-GST

#### F. No. - GST Government of India

Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing

New Delhi, Dated the xx December, 2022

To,

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

The Principal Directors General/Directors General (All)

Madam/Sir,

# Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A in for FY 2017-18 and 2018-19 – Regarding.

Section 16 of the CGST Act, 2017 provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, especially during the **financial years 2017-18 and 2018-19**, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions in availment of ITC upto certain specified limit beyond the ITC available to the registered persons as per FORM GSTR-2A were provided under Rule 36(4) only with effect from 9<sup>th</sup> October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act, 2017 from 1<sup>st</sup> July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during **FY 2017-18 and FY 2018-19**.

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3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168(1) of the CGST Act, hereby clarifies as follows:

S. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR- 3B, for said tax period due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 and return in FORM GSTR- 3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
с.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules, 2017, containing GSTIN of the recipient, but supplier has reported the said supply as B2C supply instead of B2B supply in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply under wrong GSTIN in FORM GSTR-1.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
		In addition, the proper officer of the actual claimant shall intimate the concerned jurisdictional tax authority of the registered person whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B.

However, allowance of ITC to the actual recipient
shall not depend on the completion of the action by
the tax authority of such registered person whose
GSTIN has been mentioned wrongly, and such
action will be pursued as an independent action.

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of the CGST Act, 2017 in respect of the input tax credit availed on such invoices by the registered person:

i) he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

ii) he has received the goods or services or both;

iii) he has made payment for the amount towards the value of supply along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with Section 17 or Section 18 of the CGST Act, 2017 and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of Section 16 of the CGST Act, 2017.

4.1 In order to verify the condition of Section 16 of CGST Act, 2017 that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh , the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <a href="https://udin.icai.org/search-udin">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https://udin.icai.org/search-udin">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https://udin.icai.in/udin/VerifyUDIN.aspx">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https://udin.icai.in/udin/VerifyUDIN.aspx">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https://udin.icai.in/udin/VerifyUDIN.aspx">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https://udin.icai.in/udin/VerifyUDIN.aspx">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https://udin.icai.org/search-udin">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https://udin.icai.org/search-udin">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https://udin.icai.org/search-udin">https://udin.icai.org/search-udin</a> and that issued by CMAs can be verified from ICMAI website <a href="https

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier, to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period **FY 2017-18**, as per proviso to Section 16(4) of the CGST Act, 2017 the aforesaid relaxations shall not be applicable to the claim of ITC made in the **FORM GSTR-3B** return filed after the due date of September 2018 return till the due date of

furnishing returns for March 2019, if supplier had not furnished details of the said supply in his **FORM GSTR-1** till the due date of furnishing **FORM GSTR 1** for March 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the *bonafide* errors committed in reporting during **FY 2017-18 and 2018-19**. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for **FY 2017-18 and 2018-19** and not to the completed proceedings. However, these instructions will apply in those cases for **FY 2017-18 and 2018-19** where any adjudication or appeal proceedings are still pending.

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

Sanjay Mangal Principal Commissioner (GST)

## <u>Agenda Item 7(xiv): Clarification regarding the treatment of statutory dues under GST law in</u> respect of the taxpayers for whom the proceedings have been finalised under the Insolvency and <u>Bankruptcy Code, 2016</u>.

In some cases, the insolvency or bankruptcy proceedings are initiated against a corporate debtor due to default in payment of their debts in timely manner, in accordance with the provisions of the **Insolvency and Bankruptcy Code**, 2016 (IBC).In such cases, claims are required to be filed by the tax officers in respect of statutory dues pending against such corporate debtor before the appropriate authority specified under IBC. The adjudicating authority under IBC may pass an order approving the resolution plan in respect of such entity. In number of cases, as a result of such proceedings, the amount of government dues, payable by the said taxpayer, as per resolution plan approved by the adjudicating authority, may be totally extinguished or may be reduced vis-à-vis the amount claimed by the tax officers. Doubts are being raised by various tax authorities regarding the modalities for implementation of the order of the adjudicating authority under IBC, after finalization of the proceedings thereof, with respect to demand for recovery against such corporate debtor under the CGST Act, 2017.

2. As per Section 84 of the CGST Act, 2017, if the government dues against any person under the CGST Act, 2017 are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

# 2.1 Section 84 of the CGST Act, 2017 reads as follows: "Section 84 - Continuation and validation of certain recovery proceedings.-

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this Section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then-

(b) where such Government dues are reduced in such appeal, revision or in other proceedings-

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

*(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;* 

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal."

2.2 Further, Rule 161 of the CGST Rules, 2017 prescribes **FORM GST DRC-25** for issuing order for such reduction of demand. Rule 161 reads as follows:

Rule 161. Continuation of certain recovery proceedings . -

The <u>order</u> for the reduction or enhancement of any demand under Section 84 shall be issued in FORM GST DRC- 25.

3. The word 'other proceedings' is not defined in the CGST Act, 2017. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan.

3.1 The issue was deliberated by the Law Committee in its meetings held on 12.10.2022 and 05.12.2022. The Law Committee was of the view that as the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act, 2017 or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of the CGST Act, 2017.

3.2 Law Committee was also of the view that in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner mayissue an intimation in FORM GST DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

3.3 The Law Committee, accordingly, recommended issuing a Circular to clarify the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under the Insolvency and Bankruptcy Code, 2016. Draft Circular recommended by the Law Committee is enclosed as Annexure – I.

4. Law Committee also observed that whereas as per Section 84 of the CGST Act, 2017 a demand notice (in case where the demand has been enhanced) and an intimation (in case where the demand has been reduced) are to be issued to the taxable person or any other person, the relevant Rule, i.e. Rule 161 of the CGST Rules, 2017 uses only the word "order". Hence, there is a requirement to amend Rule 161, as below, to align the same with Section 84 of the CGST Act, 2017:

Rule 161. Continuation of certain recovery proceedings . -

*The* <u>order/intimation/ notice</u> for the reduction or enhancement of any demand under Section 84 shall be issued in FORM GST DRC- 25.

5. Law Committee also recommended that **FORM GST DRC 25** may also be amended slightly, to specifically include the authorities under IBC in the said FORM. The proposed amended **FORM GST DRC-25** is enclosed as **Annexure – II**.

6. Accordingly, the recommendations of the Law Committee as detailed in **paras 3.3, 4 and 5 above** are placed before the GST Council for deliberation and approval.

## CBIC-20016/11/2022-GST Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing

### New Delhi, dated the xx December, 2022

To,

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

Madam/Sir,

# Subject: Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under the Insolvency and Bankruptcy Code, 2016- regarding.

Attention is invited to Circular No.134/04/2020-GST dated 23rd March, 2020, wherein it was clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of CIRP (Corporate Insolvency Resolution Process). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

2. Representations have been received from the trade as well as tax authorities, seeking clarification regarding the modalities for implementation of the order of the adjudicating authority under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC") with respect to demand for recovery against such corporate debtor under the CGST Act, 2017 as well under the existing laws and the treatment of such statutory dues under the CGST Act, 2017 and existing laws, after finalization of the proceedings under IBC.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under Section 168(1) of the CGST Act, 2017 hereby clarifies as follows.

4.1 Section 84 of the CGST Act, 2017 reads as follows:

..

"Section 84 - Continuation and validation of certain recovery proceedings.-

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this Section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then(b) where such Government dues are reduced in such appeal, revision or **in other** proceedings-

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give **intimation** of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal."

4.2 As per Section 84 of the CGST Act, 2017 if the government dues against any person under the CGST Act, 2017 are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.

4.3 The word 'other proceedings' is not defined in the CGST Act, 2017. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Section 84 of the CGST Act, 2017.

5. Rule 161 of the CGST Rules, 2017 prescribes **FORM GST DRC-25** for issuing intimation for such reduction of demand specified under the Section 84 of CGST Act, 2017. Accordingly, in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in **FORM GST DRC-07/DRC 07A** against the corporate debtor, and where the proceedings have been **finalised** against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in **FORM GST DRC-25** reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

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

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

(Sanjay Mangal)

Principal Commissioner (GST)

#### FORM GST DRC – 25

[See Rule 161]

Reference No << --- >>

<<Date >>

To, GSTIN -----Name -----Address -----

Demand Order No.:	Date:
Reference number of recovery:	Date:
Period:	
Reference No. in Appeal or Revision or any other proceeding	Date:

#### **Continuation of Recovery Proceedings**

This has reference to the initiation of recovery proceedings against you vide above referred recovery reference number for a sum of Rs.....

(Amount in Rs.) Act Tax Interest Penalty Fees Other Dues Total Arrears 2 3 4 1 5 6 7 Central tax State / UT tax Integrated tax Cess

> Signature Name Designation

Place:

Financial year: .....

]1

# Agenda Item 7(xv): Amendment in provisions related to OIDAR Services under the IGST Act, 2017

Taxation of cross border e-commerce services poses a significant challenge due to physical absence of supplier in India and services by very nature being intangible and difficult to track. India introduced a unique concept of Online Information Database Access and Retrieval (OIDAR) Services in the erstwhile Service Tax law in 2016 and with implementation of GST, carried forward a similar levy in GST regime as well. OIDAR is intended to tax digitally supplied services nature of which renders their supply impossible to ensure in the absence of information technology. With the growth of digital economy, the OIDAR services are expected to grow immensely in volume. Thus, it becomes pertinent to take steps to ensure compliance under GST by OIDAR service providers.

## **1. PRESENT LEGAL PROVISIONS**

### **1.1 DEFINITION OF OIDAR:**

Section 2(17) of the IGST Act, 2017 defines "Online Information and database access or retrieval services", as services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, —

(*i*) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(*iv*) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming;

#### **1.2** PLACE OF SUPPLY & TAXABILITY OF OIDAR UNDER GST:

Sub-section 12 of Section 13 of the IGST Act, 2017 lays down the place of supply provisions for OIDAR services as follows:

The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following noncontradictory conditions are satisfied, namely:—

Page **396** of **531** Agenda for 48th GSTCM Volume 1 (a) the location of address presented by the recipient of services through internet is in the taxable territory;

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(c) the billing address of the recipient of services is in the taxable territory;

(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

### **1.3 PAYMENT OF TAX**

Section 14 of the IGST Act, 2017 deals with special provision for payment of tax by a supplier of OIDAR services. The Section is as under,

(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a **non-taxable online recipient**, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in nontaxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(b) the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorize delivery; and

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services. Special provision for payment of tax by a supplier of online information and database access or retrieval services.

(2) The supplier of online information and database access or retrieval services referred to in subsection (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

#### 1.4 NON-TAXABLE ONLINE RECIPIENT

Section 2(16) of the IGST Act, 2017 defines "non-taxable online recipient" as any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

*Explanation.*—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

### 1.5 COMPULSORY REGISTRATION:

#### Section 24(xi) of the CGST Act, 2017:

The registration is compulsory for every person supplying online information and database access or retrieval services (OIDAR) from a place outside India to a person in India, other than a registered taxable person.

The supplier (or intermediary) of online information and database access or retrieval services shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme in Form GST REG-10 (Section 14(2) of the IGST Act, 2017 read with Rule 14 of CGST Rules, 2017).

#### **1.6 RETURN FILING:**

In terms of Section 39 of the CGST Act, 2017 read with Rule 64 of the CGST Rules, 2017, every registered person providing online information and data base access or retrieval services from a place outside India to a person in India other than a registered person shall file return in **FORM GSTR-5A** on or before the twentieth day of the month succeeding the calendar month or part thereof.

It is to be noted that GSTR-5A is required to be filed only by the service provider (or his representative) providing OIDAR services from outside India to a non-taxable online recipient in India. Other categories of OIDAR service providers (like those supplying OIDAR services from India) will have to file regular returns (GSTR 1, 3B) prescribed for general categories of registered persons.

2. As it becomes pertinent to take steps to ensure compliance under GST by OIDAR service providers, various ways need to be explored to do so. One way is to designate the payment gateways or AD Banks as reporting entities for GST purposes to file information on such foreign remittances processed by them for specified services such as OIDAR. Also, possibility can be explored of imposing some liability in form of TCS on such payment gateways with regard to payment transactions for OIDAR services through them by supplier located in non-taxable territory to recipients in India, as a mechanism to collect the revenue upfront. It is pertinent to note that while the above alternatives may be deliberated and explored in the future, amendments in law may be required for exploring the abovementioned alternatives so as to reduce the requirement of interpretation for deciding whether the said supply is covered under the scope of OIDAR services or not for taxation under GST.

#### **3. PROPOSED LAW RELATED CHANGES**

#### 3.1 Definition of non-taxable online recipient

**3.1.1** As per Section 14 of the IGST Act, 2017 on supply of OIDAR services by any person located in a non-taxable territory and **received by a non-taxable online recipient**, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services. A "non-taxable online recipient" is defined under Section 2(16) of the IGST Act, 2017 to mean any Government, local authority, governmental authority, an individual or any other person **not registered** and receiving online information and database access or retrieval services **in relation to any purpose other than commerce, industry or any other business or profession**, located in taxable territory.

There are two requirements under this definition:

- (a) Service recipient is not registered under the GST law, and
- (b) Service recipient uses the OIDAR services for any purpose other than commerce, industry or any other business or profession.

**3.1.2** Above are twin cumulative conditions which both need to be fulfilled for a person to be considered as non-taxable online recipient. It is pertinent to note that the second condition of non-business is very difficult to ascertain and not capable of being substantiated by the service provider who is located in the non-taxable territory. This condition not being met can potentially result in the service being outside the levy. Further, any person who is otherwise not required to register under

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GST but is receiving OIDAR services in relation to any purpose related to commerce, industry or any other business or profession is required to pay tax under reverse charge basis as per Notification No. 10/2017-Integrated Tax(Rate) dated 28<sup>th</sup> June, 2017. As a result, such person receiving OIDAR services is required to take compulsory registration under GST as per clause (iii) of Section 24 of the CGST Act, 2017. This puts additional burden on these otherwise exempt entities to register only for the purpose of complying with RCM on import of OIDAR services for business purposes and it may be practically very difficult to ensure implementation of the same, considering nature of OIDAR services.

Further, in some countries, the only condition is that the recipient should be an unregistered 3.1.3 person and to this end only responsibility which is cast on the service provider is to check if the service recipient has furnished his registration number. Similar mechanism may be adopted under GST in India as well. If the person located in taxable territory is receiving OIDAR services from a service provider located in non-taxable territory and the said person receiving OIDAR services does not furnish his GSTIN number to the OIDAR service provider, it may be assumed that the recipient is unregistered and thus may be covered under the definition of "non-taxable online recipient". If the said person receiving OIDAR services furnishes his GSTIN number to the OIDAR service provider, the recipient will be required to pay tax under reverse charge basis. Thus, removing the second condition from the definition of non-taxable online recipient i.e. service recipient uses the OIDAR services for any purpose other than commerce, industry or any other business or profession, would make the administration of the levy easier and also make it easier for the service provider to comply. However, there may be requirement to keep the entities, which are required to be registered solely for the purpose of TDS on supplies made to them as per clause (vi) of Section 24, read with Section 51, of the CGST Act, 2017 within definition of non-taxable online recipients, so as to exclude such entities from requirement of payment of tax on RCM basis on OIDAR supplies from a service provider located in non-taxable territory.

**3.1.4** Thus, the definition of non-taxable online recipient under Section 2(16) of the IGST Act, 2017 may be amended as under:

"(16) "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and unregistered person receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

*Explanation.* For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution; "

Explanation.—For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of Section 24 of Central Goods and Services Tax Act, 2017.

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#### 3.2 Issue of minimal human intervention

**3.2.1** Currently for a service to be classified as OIDAR services under Section 2(17) of the IGST Act, 2017 an essential condition is that the supply of such service must be essentially automated and should involve minimal human intervention. However, many a times interpretation of what is 'human intervention' and what is 'minimal' becomes contentious and litigative. Representations have been received from taxpayers asking for clarity on the meaning of the term "minimal human intervention".

**3.2.2** The intention of GST on OIDAR services is to remove the anomaly of taxation between similar services provided by a resident and a non-resident supplier. Any supply of services by a resident supplier electronically whether with or without or minimal human intervention is subject to levy of GST. Restricting the scope of GST on cross border supply by non-resident suppliers only on those services with minimal human intervention does not provide a level playing field.

**3.2.3** Further, many countries are doing away with the requirement of "minimal human intervention'. Thus, the definition of OIDAR services under Section 2(17) of the IGST Act, 2017 may be amended as under:

(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply<del>essentially automated and involving minimal human intervention and</del> impossible to ensure in the absence of information technology and includes electronic services such as,—

(i) advertising on the internet;

(ii) providing cloud services;

*(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;* 

*(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;* 

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming;

4. Law Committee deliberated on the issue in its meeting held on 05.12.2022 and approved the above mentioned law amendments proposed in para 3 above.

5. Accordingly, the agenda note is placed before the GST Council for deliberation and approval.

### <u>Agenda Item 7(xvi): In Section 17 of the CGST Act, 2017 regarding ITC in respect of CSR</u> (Corporate Social Responsibility) expenditure

Doubts have been raised by trade as well field formations in respect of availability of ITC on CSR expenditure incurred by companies in accordance with the provisions of Companies Act, 2013 due to various contradictory advance rulings. Some of these advance rulings are as follows:

#### 1.2. Telangana AAR ruling in Bambino Pasta Food Industries Private Limited (2022):

The question before the AAR was whether ITC is available on CSR expenditure spent by the company. The AAR observed that the Companies Act, 2013 requires Companies with a specified net worth or net profit to incur a minimum of 2% of their net profit towards their corporate social responsibility and failure to do so attracts penalty under sub- section 7 of Section 135 of the said Act which may go upto a maximum of Rs.1 Cr. Thus, the running of the business of a company will be substantially impaired if they do not incur the said expenditure. Therefore, AAR Ruled that the expenditure made towards corporate responsibility under Section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business and hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.

1.3. UP AAR ruling in Dwarikesh Sugar Industries Ltd (2020): Two questions were placed before the AAR, namely –

(a) whether CSR expenses under Companies Act, 2013 qualify as being incurred in the course of business and eligible for ITC in terms of Section 16 of the CGST Act, 2017 ; and

(b) whether free supply of goods as part of CSR activities is restricted under Section 17(5)(h) of the CGST Act, 2017.

The ruling refers to the definition of "business" under Section 2(17) of the CGST Act, 2017 as well as the obligation cast upon companies under Section 135 of Companies Act, 2013 to mandatorily spend 2% of its profit on CSR expenditure. Further, any failure to comply with CSR expenditure norms would invite penalty against the defaulting companies. As CSR activities are compulsorily required to be undertaken by companies in order to run its business, it becomes an essential part of its business process as a whole. Thus, the said **CSR activities are to be treated as incurred "in the course of business**". Unlike gifts which are voluntary and occasional in nature, CSR expenditure is not incurred voluntarily. Therefore, **AAR Ruled that it cannot be treated as 'gift' in terms of Section 17(5)(h) of the CGST Act, 2017 and accordingly, ITC in respect of CSR expenditure is not restricted.** 

1.4. Kerala AAR ruling in Polycab Wires Pvt. Ltd(2019): The question before AAR was to determine the admissibility of ITC in relation to goods that are supplied free of cost to Kerala State Electricity board (KESB) for flood restoration work. The applicant stated that since GST amount was paid while procuring such supplies, they are entitled to avail ITC on the same. However, the AAR Ruled that such supplies are in the nature of 'gifts' in terms of Section 17(5)(h) of CGST Act, 2017 and therefore, ITC is inadmissible on the same.

1.5. **Gujarat AAR ruling in Adama India Private Limited (2022):** The AAR inter alia observed that as per Rule 4(1) of the Companies (CSR Policy) Rules, 2014 (for the period prior to 23-1-2021), the CSR activities undertaken by the company shall exclude activities undertaken in pursuance of its normal course of business. As per Section 2(d) of the Companies (CSR policy) Amendment Rules

2021 (w.e.f. 23-1-2021), 'Corporate Social Responsibility' does not include activities undertaken in pursuance of normal course of business of the company. Accordingly, the AAR found that the CSR activities are not activities undertaken in pursuance of applicant's normal course of business. The AAR Ruled that CSR activities, as per the Companies (CSR Policy) Rules, 2014 are those activities excluded from normal course of business of the applicant and therefore not eligible for ITC, as per Section 16(1) of the CGST Act, 2017.

2. From the foregoing, it appears that there are contradictory rulings on the issue as to whether the CSR expenditure can be considered as the expenses incurred in the course of business. One view is that CSR expenditure is incurred to meet the obligations of corporate social responsibility under Section 135(5) of the Companies Act, 2013 and non-compliance on this count attracts penal action. It is also claimed that Section 16 of the CGST Act, 2017 entitles a registered person to take credit of input tax charged on any supply of goods or services which are used or intended to be used in the course or furtherance of his business and that CSR expenditure being mandatory under the Companies Act, such expenses should be considered to be in the course or furtherance of business and accordingly, ITC should be available in respect of inputs and input services for CSR activities in terms of Section 16(1) of the CGST Act, 2017. However, another view is that 'Corporate Social Responsibility' does not include activities are not activities undertaken in pursuance of applicant's normal course of business. Accordingly, input tax credit may not be available to the registered person on CSR expenditure under Section 16(1) of the CGST Act, 2017.

3.1 Section 135(5) of the Companies Act, 2013 reads as under:

#### Section 135(5) of the Companies Act, 2013:

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of Section 134, specify the reasons for not spending the amount.

*Explanation.*—For the purposes of this Section "average net profit" shall be calculated in accordance with the provisions of Section 198.

3.2 Further, Section 16(1) of the CGST Act, 2017 reads as follows:

#### Section 16(1) of the CGST Act, 2017:

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

3.3. Besides, Section 17(1) of the CGST Act, 2017 reads as under:

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#### Section 17(1) of the CGST Act, 2017:

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is **attributable to the purposes of his business**.

4. Further, as per Section 17(5)(h) of the CGST Act, 2017 notwithstanding anything contained in Section 16(1), input tax credit is not available in respect of **goods** disposed of by way of gift or free samples. There are divergent rulings of AAR as to whether goods supplied free of cost under CSR can be termed as gifts or not for the purpose of Section 17(5) (h), as detailed in Para 1.3 and 1.4 above. Further, restriction in Section 17(5)(h) is only with respect of supply of goods as gifts and not is respect of free services supplied as part of CSR.

5.1. Parallel needs to be drawn from another tax law i.e. the Income Tax Act. Explanation 2 to Section 37(1) of the Income Tax Act, 1961 provides that the expenditure incurred by an assessee on CSR activities shall not be deemed to be an expenditure incurred by the assessee for the purposes of business or profession. Thus, Income Tax Act categorically states that CSR expenditure shall not be treated as being in the 'course or furtherance of business', as under:

#### Section 37 (1) of Income Tax Act, 1961:

(1) Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Explanation 1. For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Explanation 2. For the removal of doubts, it is hereby declared that for the purposes of subsection (1), <u>any expenditure incurred by an assessee on the activities relating to corporate</u> <u>social responsibility referred to in Section 135 of the Companies Act, 2013 (18 of 2013) shall</u> <u>not be deemed to be an expenditure incurred by the assesse for the purposes of the business or</u> <u>profession</u>.

5.2. While no deduction as business / professional expenditure in respect of CSR expenditure is allowed under Income Tax Act for the purpose of calculation of tax liability, it appears only logical that in GST law also no benefit of ITC may be provided in respect of such CSR expenditure.

6. In view of the above, the Law Committee in its meeting held on 05.12.2022 opined that ITC in respect of CSR expenditure incurred by Companies under Section 135 of the Companies Act, 2013 should not be allowed. To unambiguously state such position, the Law Committee recommended that such CSR expenditure may be included in the list of blocked credit under Section 17(5) as under:

(5) Notwithstanding anything contained in sub-section (1) of Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of the following, namely:-

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.....

(*j*) goods or services or both received by a taxable person and which are used or intended to be usedfor activities relating to his obligations under corporate social responsibility referred to in Section 135 of the Companies Act, 2013 (18 of 2013);

.....

7. Accordingly, the proposal at para 6 is placed for deliberation and approval of the Council.

## <u>Agenda Item 7(xvii): Issues related to place of supply in terms of the proviso to Section 12(8) of the IGST Act, 2017</u>

Place of supply (PoS) of services by way of transportation of goods, including by mail or courier, where location of supplier and recipient is in India, is specified in sub-section (8) of Section 12 of the IGST Act, 2017. The said sub-section reads as follows:

"The place of supply of services by way of transportation of goods, including by mail or courier to, -

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation:

Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods."

**1.2** The proviso was inserted in the aforesaid sub-section vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

**2.1** Further, in terms of clause (a) of sub-section (5) of Section 7 of the IGST Act, 2017, supply of goods or services or both are treated as an inter-state supply when the supplier is located in India and the place of supply is outside India. Applicability of the aforesaid proviso of sub-section (8) of Section 12 for determination of the PoS has given rise to doubts in respect of the availment of input tax credit (ITC) by the recipient of such services. The same is illustrated as under:

X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an Air Freight Agency Z, who is also registered under GST in the state of West Bengal.

The following may be observed in the above scenario:

(a) The PoS of the service provided by Z to X shall be the destination of goods i.e. Singapore, in terms of the proviso to sub-section (8) of Section 12 of IGST Act;

(b) Z, the supplier of services for transportation of goods by air shall charge IGST on supply of said service from X in terms of sub-section (5) of Section 7, read with sub-section (8) of Section 12 of the IGST Act, 2017. However, Z while furnishing his **FORM GSTR-1** may report the place of supply as "Other Territory".

(c) PoS being different from the location of the recipient of services, doubts arise in respect of the availment of input tax credit by X. Also, there are doubts regarding the correct state code under which the place of supply has to be declared in **FORM GSTR-1**.

(d) Section 16 of the CGST/SGST Act, 2017, which deals with eligibility and conditions for taking input tax credit, does not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India.

**2.2** Effect of insertion of the aforesaid proviso in determining the PoS is summarized as under:

Prior to insertion of the proviso in Section 12(8)		After insertion of the p	roviso in Section 12(8)
Location of the supplier of services	West Bengal	Location of the supplier of services	West Bengal
Location of the recipient of services	West Bengal	Location of the recipient of services	West Bengal
Place of supply	West Bengal	Place of supply	Singapore
Tax to be charged by the supplier	CGST + WBGST	Tax to be charged by the supplier	IGST

**2.3** Similar would be the case in respect of supply of services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India w.e.f. 01.10.2022.

**3.1** The aforesaid supply of services by way of transportation of goods by an aircraft or by a vessel from customs station of clearance in India to a place outside India was exempted from IGST from 25.01.2018 till 30.09.2018 *vide* Notification No . 2/2018-Integrated Tax (Rate) dated 25.01.2018. The said exemption was extended from time to time, the last one being vide Notification No.07/2021-IntegratedTax (Rate) dated 30.09.2021extending the exemption till 30.09.2022. No further extension from exemption was provided for the supply of the aforesaid services after 30.09.2022. Thus, during the period from 01.07.2017 to 24.01.2018, when the aforesaid supplies were taxable and were supplied to a registered person, PoS was determined based on the location of such registered person involving no dispute in availing of ITC by the said registered recipient, as the proviso to Section 12(8) was inserted in the IGST Act, 2017 only w.e.f. 01.02.2019.

**3.2** However, w.e.f. 01.10.2022, supply of services by way of transportation of goods by an aircraft or by a vessel from customs station of clearance in India to a place outside India has become taxable and the PoS in respect of supply of such services by a person located in India to a registered person located in India would be outside the country as per proviso to Section 12(8) of the IGST Act, 2017. Thus, IGST would be payable on the said supply as illustrated in para 2.1 above, raising doubts regarding availment of input tax credit by the recipient.

### 4. **Recommendations of the Law Committee**

The Law Committee deliberated on the issue in its meeting held on 05.11.2022 and 23.11.2022 and recommended the following:

a. A Circular may be issued for clarifying that input tax credit would be available to the registered person located in India, in respect of receipt of services of transportation of goods where supplier of the service is based in India, and where the place of supply is outside India in terms of the proviso to sub-section (8) of Section 12 of the IGST Act, 2017 and that in such cases, PoS is to be declared in FORM GSTR-1 on the common portal under the state code

"96- Foreign Country" (and <u>not</u> under "97-Other Territory"). The draft Circular as recommended by the Law Committee is attached as **Annexure-A**.

b. No useful purpose is being served by the proviso to Section 12(8) of IGST Act, 2017 inserted w.e.f. 01.02.2019. On the other hand, the proviso is giving rise to complications in such cases as highlighted above. Therefore, the Law Committee recommended that the proviso to Section 12(8) of IGST Act, 2017 may be omitted.

5. Accordingly, the recommendations of the Law Committee as detailed in **para 4 above**, are placed before the GST Council for deliberation and approval.

#### Annexure-A

#### DRAFT Circular No. //2022-GST

F. No. - GST Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing

New Delhi, Dated.....2022

To,

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

Madam/Sir,

### Subject: Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of Section 12 of the IGST Act, 2017 – Reg

Attention is invited to sub-section (8) of Section 12 of IGST Act, 2017, which provides for the place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India. As per clause (a) of the aforesaid sub-section, the place of supply of services by way of transportation of goods, including by mail or courier, to a registered person shall be the location of such registered person. However, the proviso to the aforesaid sub-section which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019 provides that where the transportation of goods is to a place outside India, the place of supply of service, as per the proviso to sub-section (8) of Section 12 of IGST Act, is the concerned foreign destination and not the State where the recipient is registered under GST, doubts are being raised regarding the availment of input tax credit of the said services by the recipient located in India.

2. In order to clarify this issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by Section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under:

Sl. No	Issue	Clarification
1.	In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?	The place of supply of services by way of transportation of goods, including by mail or courier, where both the supplier and the recipient are located in India, is determined in terms of sub-section (8) of Section 12 of the IGST Act, 2017 which reads as follows: "(8) The place of supply of services by way of transportation of goods, including by mail or courier to,— (a) a registered person, shall be the location of such person; (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation: <b>Provided that where the transportation of goods</b> is to a place outside India, the place of supply shall be the place of destination of such goods" Hence, in case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported in accordance with the proviso to the sub-section (8) of Section 12 of IGST Act which was inserted vide the Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019. <b>Illustration</b> : X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo operator Z, who is also registered under GST in the state of West Bengal. In this case, the place of supply of the services
		provided by Z to X is the place of destination of goods i.e., Singapore, in terms of the proviso to sub-section (8) of Section 12 of IGST Act.
2.	In the case given in Sl. No. 1, whether the supply of services will be treated as inter-state supply or intra-State supply?	The aforesaid supply of services would be considered as inter-state supply in terms of sub-section (5) of Section 7 of the IGST Act since the location of the supplier is in India and the place of supply is outside India. Therefore, IGST would be chargeable on the said supply of services.
		In respect of the illustration given in Sl. No. 1. above, Z

-		
		would charge IGST from X in terms of sub-section (5)
		of Section 7 of the IGST Act, for supply of services by
		way of transportation of goods.
3.	In the case given in Sl. No. 1, whether	Section 16 of the CGST Act lays down the eligibility
	the recipient of service of	and conditions for taking input tax credit whereas,
	transportation of goods would be	Section 17 of the CGST Act provides for apportionment
	eligible to avail input tax credit in	of credit and blocked credits under circumstances
	respect of the said input service of	specified therein. The said provisions of law do not
	transportation of goods?	restrict availment of input tax credit by the recipient
		located in India if the place of supply of the said input
		service is outside India. Thus, the recipient of service of
		transportation of goods shall be eligible to avail input
		tax credit in respect of the IGST so charged by the
		supplier, subject to the fulfilment of other conditions
		laid down in Section 16 and 17 of the CGST Act.
		In the illustration given in Sl. No. 1 above, X would be
		eligible to take input tax credit of IGST in respect of
		supply of services received by him from Z, subject to
		the fulfilment of other conditions laid down in Section
		16 and 17 of the CGST Act.
4.	In the case mentioned at Sl. No. 1,	
	what state code has to be mentioned	
	by the supplier of the said service of	The supplier of service shall report place of supply of
	transportation of goods, where the	such supply by selecting State code as '96-Foreign
	transportation of goods is to a place	Country' from the list of codes in the drop-down menu
	outside India, while reporting the said	available on the portal in FORM GSTR-1.
	supply in FORM GSTR-1?	

**3.** It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

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

(Sanjay Mangal) Principal Commissioner (GST)

### Agenda Item 08: Issues recommended by GSTN

#### Agenda Item 8 (1) : Proposed Changes in HR Policies and Transition Management from GSTN

1.1 The GST Council in its  $27^{th}$  meeting held on  $4^{th}$  May 2018 and the Union Cabinet in its meeting held on 26th September 2018 decided to convert GSTN into a fully-owned Government company. As per this decision, 50% equity of the company is held by the Central Government and the balance 50% is held by the various States and Union Territories. The due process for the same has been completed on **30<sup>th</sup> June 2022**.

1.2 Union Cabinet in its meeting dated 26<sup>th</sup> September 2018 gave following directions in relation to the HR policy of GSTN as a government company.

# Flexible hiring & appropriate remuneration policy may be evolved by GSTN considering criticality of the IT manpower, prevailing market compensation etc. and placed before the GST council for its approval in due course.

1.3 The decision of the Union Cabinet was subsequent to similar directions which were given by GST Council in its meeting dated 4<sup>th</sup> May 2018.

1.4 A transition period of five years was provided to the company to work under the old HR policy. Accordingly, now the new HR policy is being placed before GST Council for approval.

1.5 The HR policy has been made taking into consideration that the compensation of employees hired from the Market was fixed in the year 2014 and since then 8 years have elapsed without any change. This has led to difficulty in hiring new talent, old executives moving out of GSTN for better salaries and stagnation of existing executives.

1.6 GSTN followed three step process to finalize the proposal. First, the compensation benchmarking study was done by M/s Deloitte. Second, the HR and Remuneration Committee (a Sub-Committee of GSTN Board) went through the proposal and finalized its report on HR policies and Transition Management with suitable changes. Third, the Board of GSTN approved the proposal on HR policies and Transition Management in its 51<sup>st</sup> Meeting held on 16<sup>th</sup> Nov 2022.

#### 1.7 Summary of the proposal approved by the GSTN Board:

1.7.1 The policy has been made by the GSTN board to cater to the needs of a lean and dynamic IT company providing services to taxpayers and tax administrations. An executive summary of the same is presented below for the approval of GST Council. Further, the entire document from Annex I to Annex XI is placed for reference and approval.

#### 1.7.2 New Grade Structure

- a. The management levels are proposed to be revised to three instead of existing four (i.e. Senior, Middle and Junior).
- b. It is proposed to introduce designations prevalent in IT industry for hiring technical manpower and corresponding equivalent non-tech designations. Both kind of designations shall be implemented for future hiring after approval.
- c. Addition of two grades is proposed i.e. 5 c Executive / Associate Engineer at level 5 and 4 b Associate VP/Principal Engineer at level 4 is proposed.
- d. The employees of GSTN (both regular and tenured) would be placed in 5 levels and 10 grades. The levels and grades to be followed in future are shown in Table below:

Table	-	1
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Level	Existing Grades	New Grades	Designation	Years of Experience
Level 1	G1	1	Chairman CEO	20 years +
Level 2	G2	2	EVP	18 years
Level 3	G3	3a	SVP	15-18 years
	G4	3b	VP	14-16 years
	G5	4a	Assistant VP / Chief Engineer	12-14 years
Level 4	New	4b	Associate VP / Principal Engineer	10-12 years
	G6	4c	Sr. Manager/ Technical Lead	8-11 years
	G7	5a	Manager /Sr. Engineer	7-10 years
Level 5	G8	5b	Assistant Manager/ Engineer	5-9 years
	New	5c	Executive / Associate Engineer	0-5 years

Senior Management Grades in Level 1, 2 &3 Middle Management Grades in Level 4 Junior Management Grades in Level 5

### 1.7.3 New Pay Ranges:

a. The pay ranges applicable as per the approved proposal for employees of **GSTN hired from the market** (not on Deputation) is detailed in the table below.

	Table – 2 New Ranges* Annual Cost to Company (CTC) and Existing Pay Ranges					
Leve l	Grade	Designation	Min	Median	Max	
1	1	Chairman CEO	93,13,000	1,46,17,000	2,09,30,000	
	(Old Range)		1,00,00,000	-	-	
2	2	EVP	58,20,000	88,59,000	1,22,40,000	
_			45,69,396	60,92,528	76,15,660	
	3a	SVP	41,57,000	61,95,000	84,41,000	
3			33,12,902	44,17,302	55,21,503	
C	3b	VP	29,70,000	42,43,000	61,62,000	
			22,95,628	30,60,837	38,26,046	
4	4a	Assistant VP /Chief	22,80,000	34,30,000	48,83,000	

	Table – 2 New Ranges* Annual Cost to Company (CTC) and Existing Pay Ranges					
Leve l	Grade	Designation	Min	Median	Max	
		Engineer				
			15,02,615	20,03,487	25,04,359	
	4b	Associate VP /Principal Engineer	18,24,000	27,44,000	42,47,000	
	Newly introduced Grade	-	-	-	-	
	4c	Sr. Manager/ Tech Lead	15,41,000	23,33,000	36,92,000	
			10,41,943	13,89,258	17,36,572	
	5a	Manager / Sr. Engineer	11,67,000	17,15,000	26,37,000	
			7,12,500	9,50,000	11,87,500	
5	5b	Assistant Manager/ Engineer	9,84,000	14,66,000	22,42,000	
C			4,57,500	6,10,000	7,62,500	
	5c	Executive/ Associate Engineer	7,03,000	10,86,000	16,37,000	
	Newly introduced Grade	-	-	-	-	

\*The pay ranges shown above are inclusive of monetised benefits.

**Note**: The rows in white are the new pay ranges and the grey coloured rows are the existing pay ranges. The new salary of the existing executives will be fixed as per the transition management policy referred at **para 1.7.4** (complete details at Annexure-IV)

- b. The CTC figures in the Pay ranges are exclusive of Gratuity as per the provisions of the Gratuity Act. Gratuity will be paid to regular employees only, tenured employees shall not be paid Gratuity as the tenure shall be of 4 years.
- c. Welfare Benefits viz. Medical Insurance shall be over and above the CTC.
- d. The regular, tenured and employees on deputation from Government Departments on the pay roll of GSTN will be eligible for being paid the monetised benefits. The monthly monetised benefits/entitlements shall be in the range of 14,000 to 75,000 per month depending on the rank.
- e. Hot Skills Allowance (HSA) for any Hot Skill prevalent in the IT industry and required in GSTN may be offered as a payment of discretionary amount. Based on the market trends and study/reports by consulting firms, the HSA list shall be revised annually. It is to be given to not more than ten percent of the sanctioned strength. (Shall be proposed by GSTN HR and approved by CEO, GSTN).

#### 1.7.4 **Transition Management:**

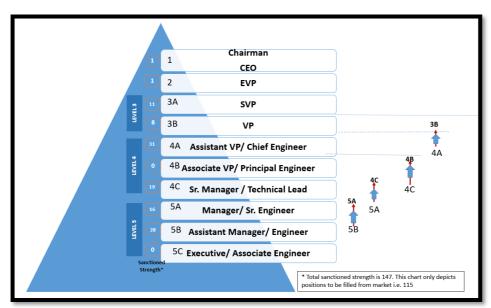
- a. In future, GSTN shall hire employees on a tenure basis with each tenure being of four years. Based on performance of an employee, a new tenure may be granted. The details of this policy are provided under the heading recruitment guidelines.
- b. Existing employees of GSTN would not be converted to tenure employee and would be mapped to the new grade structure on as is where basis (i.e. designation) and the salary correction shall be done by granting the following benefits:
  - Transition Increment
  - Progression along with an Increment to eligible employees at the time of transition (FY 2022-23).
  - Outlier Management at the time of transition (FY 2022-23).

#### 1.7.5 **Transition increment** shall be based on the following table:

No	Criteria	Particulars of Transition Increment
1	All existing regular employees with more than 4 years tenure at same grade.	Transition increment with amount equivalent to one increment- as per the Remuneration Committee approved percentage for corresponding management level.
2	All existing regular employees with more than 6 months (should have completed probation period successfully) but less than 4 years at same grade.	Transition increment on pro rata basis - as per the RC approved percentage for corresponding management level.

Table - 3

1.7.6 **Progression**: The grade up to which each grade of employees in the organization can progress



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during transition is depicted in the chart below:

- a. Eligibility at the time of transition for progression shall be as follows:
  - i. All existing employees up to Senior Manager level, with more than 4 years tenure at same grade and having secured 18 & above merit points in past four years subject to the condition that the employee has been awarded a rating of "A" in Financial Year 2021-22.
  - ii. Existing employees at Assistant Vice President level with 7 years or more tenure at same grade having secured 32 & above merit points in the past seven years and have been awarded a rating of "A" in the Financial Year 2021-22 to be given one time progression to the level of Vice President.
- b. Employees with less than 4 years at same grade at all levels shall not be eligible for progression at the time of transition.
- c. Employees of the Level of 2 & 3 i.e. VP, SVP & EVP shall not be eligible for progression to next grade.

1.7.7 **Outlier Management**: During the time of progression in the process of transition, employees shall be given increment so that their salaries reach the minimum of the new pay range. Similarly, while giving either transition or progression increment, if an employee's salary has reached or breached the maximum, his/her salary would be capped at the maximum of the pay range or shall not be given an increment at all.

1.7.8 **Transition of NISG employees:** The positions occupied by NISG employees shall be advertised and the positions shall be filled up after interviews. If any employee on NISG payroll gets selected he/she shall be offered a new contract of 4 years directly with GSTN as per the Recruitment Guidelines of GSTN (Part II). They shall also be eligible for transition increment as per Table-3 above.

### 1.7.9 **Performance Management Policy:**

In the performance management policy it is envisaged that suitable changes be made in rating scale, rating distribution and variable pay etc. which in turn shall bring meritocracy in the organization.

a. A bell-shaped curve would be followed for rating distribution to achieve performance differentiation and rewarding good performance while finalizing the performance ratings for Variable Pay and Progression Increment. The distribution of various appraisal grading proposed to be achieved is as follows:

Final Score in Appraisal Process	Performance Rating	% of ratings to be awarded in each group (i.e. Technology & Non Technology)
85.1 and Above	A+	20%
70.1 to 85	А	40%
60.1 to 70	В	30%
50.1to 60	С	5%
Below 50	D	5%

Table - 4

b. The employees shall be paid PLI based on their individual ratings in the performance appraisal process after moderation of ratings to fit the bell shaped curve defined in above table. The percentage of PLI disbursement at each rating is detailed in the following table (**Table 5**):

Final Score in Appraisal	Mod. Perf. Rating	<b>Rating Description</b>	% PLI disbursement
85.1 and Above	A+	Exceeds Performance Standards	110
70.1 to 85	А	Achieves     Performance       Standards	100
60.1 to 70	В	Slightly Below Performance Standards	80
50.1to 60	С	Barely Achieves Performance Standards	70
Below 50	D	NeedstoImprovePerformance	50

Table- 5

- c. Outlier Management: The following guidelines (**clause d** to **h**) would apply to those employees whose pay does not fall within the new pay range for their respective grade after giving the annual/progression increment.
- d. If employee's salary is below their grade minimum after giving annual/progression increment; such employees would be given pull to minimum increment to bring the employee to the minimum of the pay range.
- e. If employee's salary goes above their new grade's maximum pay while giving the annual/progression increment the following would be adopted:
- f. In such cases, the quantum of annual/progression increment shall be capped at the maximum of the grade pay range.
- g. Such employees would be given minimum salary increase (i.e. 50%) based on the rating only for next 2 years.
- h. Also, in case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

#### 1.7.10 Recruitment Guidelines for Hiring Market Recruits

Following new policy elements are proposed to be added to the existing recruitment guidelines.

- a. In future, hiring of tenured employees shall be for a contract period of 4 (four) years directly with GSTN.
- b. A balance shall be maintained between the number of regular employees of GSTN and tenured employees of GSTN. The ratio shall be reviewed from time to time.
- c. After completion of existing contract of employees (4 years), it shall be examined if the role performed by the concerned employee is required or not. If the role is required in GSTN, it shall be further examined if the concerned employee has rendered meritorious service before initiating the rehiring process.

- d. GSTN proposes to engage independent Consultants for its various verticals, for a tenure of 2 years for specific projects. The remuneration of the independent consultants shall be in the range of 60,000 to 3, 80,000.
- e. A maximum of 25 number of Independent Consultants may be engaged by GSTN. The hiring shall however, depend on the actual requirement at a particular point of time. These engagements shall be above the sanctioned strength of 147 positions in GSTN.

#### 1.7.11 Revision in Miscellaneous Entitlements and Leave Rules:

- a. The proposal is to revise number of leave admissible as per present policy (EL 20 to 30), (SL 7 to 8), (CL 7 to 8) and accumulation limits to be revised for earned leave (30 to 50) and sick leave (21 to 30). For serving employees, option will be given to employees for encashment of 50% of the EL balance at the end of calendar year.
- b. All reimbursements viz. telephone bill, newspaper, OPD etc. are proposed to be dis-continued and a fixed monetised value shall be paid on a monthly basis to the employees. It would form a part of CTC but would be shown separately as monetised benefits. This amount would also be admissible to deputationists.
- c. The official tour related entitlements such as daily allowance and room tariff etc. are also proposed to be revised to offset inflation.

#### 1.7.12 Allowances to Deputationists:

Allowances admissible to deputationists are also proposed to be revised as they were fixed in the year 2014. These officers are business process specialists who are needed for two reasons. First, to convert law into a viable and programmable business process, and second, to interact with tax administrations, tax payers and technologists as a bridge to deliver the product and services to the satisfaction of these stakeholders.

- a. Deputationists would continue to be paid their parent cadre Basic pay and DA.
- b. The PLI paid to deputationists shall be replaced by an IT and Professional Allowance. The rate shall vary between 40% - 50% of the Basic Pay plus DA.
- c. There would be an increase of 10 to 20 percent in the HRA of deputationists to offset inflation as GSTN is not an authorized office for allotment of Govt. quarters.
- d. There would be an increase of ₹ 6000/- to ₹ 11000/- in the fuel allowance of deputationists as cars in GSTN are provided only to the senior most officers. The senior officer's including Joint Secretary level officers shall be given an option to either avail company car or receive ₹ 50,000/- as fuel allowance using which they can hire a car themselves.
- e. Fixed monetised amount per month in lieu of LTC and CEA shall be paid.

1.7.13 **Dates of Implementation**: The new HR Policy shall be implemented from 1<sup>st</sup> Jan 2023 onwards in a staggered manner, over the first quarter of the calendar year 2023.

1.7.14 **Estimated Cost:** The Estimated Cost of the proposed changes based on present manpower strength in GSTN would be approximately ₹ 5.66 crore per annum which is an increase of around 12 percent in the total wage budget of GSTN which at present stands at ₹ 46.53 crore.

## 1.8 Accordingly, the following proposal is placed before the GST Council for consideration and approval:

- a. The new HR policy (Annexures I to X1) approved by the GSTN Board in its 51<sup>st</sup> meeting held on 16<sup>th</sup> Nov 2022, for which the summary has been presented in this agenda, may please be approved.
- b. The power to review and approve operational, HR and administrative matters from time to time may kindly be delegated to the Board of GSTN as these are regular Company matters requiring intervention based on market conditions.
- c. In case of deputationists from Central and State Government, any review or change in these approved proposals shall also need approval of the Union Finance Minister.

## Agenda Item 8 (2): Proposal for Changes in the Revenue Model of GSTN and transition to the new Revenue Model

2.1 The present revenue model of GSTN was approved by the empowered committee of States finance ministers in the year 2016. On GSTN becoming a government company a review of this model was done and it was felt that there are limitations in the present model and change is required.

2.2 To briefly recapitulate, presently, GSTN receives funds from Central and State governments based on the invoices it raises as per the present revenue model. The present Revenue Model of GSTN has the following limitations, which need to be addressed:

- a. Existing Revenue Model does not provide any funding options for the capital expenditure post-go-live of the GST Project. This is a serious gap for an evolving project as periodic CAPEX would be needed in the foreseeable future also. Currently, the user charges received from the Centre and States Governments (OPEX) are being used for CAPEX also.
- b. For the daily operation of GSTN, there are no provisions for minimum working capital that should be maintained.
- c. There is no clarity on the treatment of Interest earned on the surplus funds available with GSTN, i.e. whether it should be treated as GSTN's income or the Government's contribution.

2.3 To address the above limitations a new Revenue Model has been designed and placed before the Audit Committee of GSTN (a subcommittee of the GSTN Board) for deliberation and suggestions. The Audit Committee of GSTN is chaired by the independent Director Shri Anand Sinha (Ex-Deputy Governor of RBI). The suggestion and guidance of the committee have been incorporated in the new revenue model. The same has approval of the GSTN management also.

2.4 The salient aspects of the four important changes proposed in the existing revenue model are as follows:

### 2.4.1 **Funding for Capital Expenditures**

2.4.1.1 GSTN is an evolving technology platform which needs regular capital expenditure. Funding for future capital expenditure can be arranged by multiple methods. Options for meeting the capital expenditure of GSTN have been evaluated, and funds for capital expenditure by way of Grant-in-Aid from the Centre and States Governments is the best option available in terms of ease of the procedure and also the accounting treatment.

2.4.1.2 In the case of term loans from banks, the cost of Interest would be an additional cost to the Governments. Therefore Grant in Aid for CAPEX is proposed for the approval of the GST council. For the past i.e. till FY 2021-22, the accounting treatment for CAPEX shall not be changed.

### 2.4.2 Working Capital Requirement for Smooth day-to-day Operations

2.4.2.1 For working capital requirements, GSTN will follow the current model of collecting the Advance User Charges in future also. The Users Charges demand cycle would managed in a way that enough funds for regular operation of six months are available at all times. Thus it will cater to the working capital requirement of six months of operations which is presently assessed at Rs 300 crore (It will be reviewed by GSTN Board periodically).

### 2.4.3 Treatment of Interest Earned on Surplus Funds

2.4.3.1 GSTN proposes to adjust the Interest earned to reduce the invoice raised to the Centre and States Governments. The Interest earned will be adjusted in the invoices based on the weighted

average balance of Advance User Charges received from the respective Governments during the years. For the Interest earned in the earlier years GSTN would follow the same methodology.

### 2.4.4 Continuity of Credit Facility

2.4.4.1 **GSTN would continue to keep the Credit Facility to the tune of Rs. 500 Crore or as assessed by the GSTN Board from the commercial banks to cater for the emergency needs** of either Capital Expenditure or Revenue Expenditure. Such Credit Facility will be backed by the Government Guarantee from the Central Government.

2.5 **The Revised Revenue Model (Annexure-A) is placed for approval of the GST Council.** Any incidental changes further needed shall be approved by the Chairman GSTN.

## Agenda Item 8 (3): Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC.

3.1 As per the Revenue Model of GSTN approved by the Empowered Committee of State Finance Ministers (EC) in its meeting held on 30<sup>th</sup> August 2016, cost incurred on the project along with GSTN's own expenses are shared equally by the Centre and States in the form of User Charges to be remitted by them in two (2) installments on a half-yearly basis by 1<sup>st</sup> March and 1<sup>st</sup> September of the year.

3.2 Further, as per Para iii (b) of the Revenue Model "Any Government that fails to pay the Advance User Charges (AUC) before the due date will pay the defaulted amount together with interest at the rate at which GSTN borrows money from the banks for this purpose".

3.3 Status of Payment of AUC as on 07<sup>th</sup> December 2022

3.3.1 As per the approved Revenue Model, GSTN had raised demand for the payment of AUC to the Central and State Governments for the FY 2020-21 and 2021-22. The status of AUC demanded and received (as on date) is given below:

			(Rs. in Cror	es)
<b>Financial Year</b>	Amount demanded	Amount received	Amount Pending	Pending States
			8	Ŭ
2020-21	539.36	539.36	-	NIL
2021-22	474.46	474.27	0.19	Ladakh – 0.10
				Mizoram – 0.09

3.4 Waiver of Interest on late payment of AUC for FY 2020-21 and 2021-22

- 3.4.1 Late payment of AUC for FY 2020-21
  - a. The GST Council in its 42<sup>nd</sup> & 43<sup>rd</sup> meeting held on 5<sup>th</sup> /12<sup>th</sup> Oct 2020 and 28<sup>th</sup> May 2021 respectively approved the extension of payment of AUC of FY 2020-21 till 31<sup>st</sup> March 2021 and subsequently till 31<sup>st</sup> Dec 2021.
  - b. However, some of the States remitted the amount of AUC for FY 2020-21 after expiry of extension period i.e.31st December 2021. No payment for FY 2020-21 is pending now.
  - c. The interest payable on the delay remittance of AUC has worked as Rs.0.087 crore (Annexure-B), the interest is calculated considering the rate of interest @8.25%, the lending rate of IDFC bank, which is as per the Revenue Model.

3.4.2 Late payment of AUC for FY 2021-22

- a. For the FY 2021-22, there were no extension granted on the remittance of AUC for FY 2021-22. Accordingly, the interest on delayed remittance of AUC has been worked out for the periods after the due date i.e. 1<sup>st</sup> May 2021 and 1<sup>st</sup> September 2021 for 1<sup>st</sup> Instalment and 2<sup>nd</sup> Instalment respectively.
- b. The details of Interest payable of Rs.15.27 Crores by the State Governments and CBIC for delay in remitting the amount of AUC or for amount yet to be paid by State Governments are placed at **Annexure-C**.

3.5 **Proposal**: Keeping into consideration the above and past practice of waiver of the interest amount payable on AUC, following proposal is submitted for the kind consideration and approval of the Council:

- a. The interest payable by the defaulting Governments of Rs.0.087 Crores for FY 2020-21 due to delayed payment of AUC till 07<sup>th</sup> December 2022 may be waived of.
- b. The interest payable by the defaulting Governments of Rs.15.27 Crores for FY 2021-22 due to delayed payment of AUC till 07<sup>th</sup> December 2022 may be waived of.

c. It is also requested that State and Central Governments may pay their due in time so that in future there is no need for waiver of interest by the GST Council.

#### Agenda Item 8 (4): Data Archival Policy for the GST System

4.1 GST data has been increasing rapidly every year on account of increase in taxpayer base, improved compliance and introduction of new initiatives by the GST Council such as EWB & e-invoice. Further, in consideration of the time limitation under Section 73 and 74, the data of 2017 has to be retained in production up to 2025. This is a huge data which leads to GST System performance issues and hence, a data archival policy is needed.

4.2 The issue was deliberated by the LC and a sub-committee consisting of Bihar, Gujarat, Maharashtra, GSPTW and GSTN was formed to suggest a data archival policy for the GST system. The recommendations of the subcommittee were submitted to LC on 24 September 2022.

4.3 In its meeting dated 12 October 2022 LC deliberated upon the recommendations of the subcommittee and approved the archival policy. The salient features of the policy are as follows:

- a. All data which may be needed under section 73 and 74 to issue SCN (Show Cause Notice), for which the time period has not expired, will be kept in a live production environment. This data would be available to both taxpayers and tax officers for download.
- b. A separate archival data lake shall be created. After the expiry of the period in clause (a), data will be kept in the archival data lake in the following manner:
  - (i) In granular form for taxpayers having cases under litigation during the period of litigation.
  - (ii) In summary form for the rest of the taxpayers.
- c. Further, for cases under litigation and cases not under litigation, two different formats has been finalized and the data in such format would be removed from production and kept in a separate data lake.
- d. Data shall be deleted from the archival lake after **seven** years where there is no litigation and on the conclusion of the litigation where there is litigation. The facility would be given to the jurisdictional officers to report the conclusion of litigation.
- e. Tax officers shall have access to the archival data lake. Taxpayers shall also have access to archival data lake in cases where there is an ongoing litigation.
- f. Clause (a) shall also apply to the data stored in the BIFA Lake.

4.4 The above draft data archival policy is submitted before GST Council for its kind information.

# Agenda Item 8 (5): Implementation of facility to Generate Document Identification Number in GST Back Office for Model 2 States incompliance with the Supreme Court judgement in W.P 320 of 2022.

5.1 Hon'ble Supreme Court in its judgement of W.P. No. 320 of 2022 dated. 18.07.2022 directed Union of India/**GST council** to issue advisories to the states for implementing Document Identification Number (DIN) generation system. It was felt that the system generated Document Identification Number (DIN) will bring transparency and accountability in the tax administrations.

5.2 In this regard, the operating para of the judgement is reproduced as under for ease of reference:

Para 7 of Writ Petition, "In view of the implementation of the GST and as per Article 279A of the Constitution of India, **the GST Council** is empowered to make recommendations to the States on any matter relating to GST. The GST council can also issue advisories to the

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respective states for implementation of the DIN system, which shall be in larger public interest and which may bring in transparency and accountability in the indirect tax administration. Therefore, we dispose of the present writ petition by directing the Union of India / **GST council** to issue advisory/ instructions/ recommendations to the respective states regarding implementation of the system of electronic (digital) generation of a DIN in the indirect tax administration, which is already being implemented by the States of Karnataka & Kerala. We impress upon the concerned State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration at the earliest.

5.3 In relation to generation of DIN, it was discussed in LC on 07<sup>th</sup> September, 2022. Following directions were received by GSTN from the law committee:

- a. A facility for electronic generation of DIN for manual communications, similar to that available with CBIC, be made available by GSTN to states.
- b. An advisory may also be issued by GSTN that the reference number generated on the documents issued on the common portal is also an identification number of the document. GSTN may also examine providing a facility for verifying the reference number without logging on the portal.

5.4 GSTN is in process of development of this functionality and currently it is in the documentation for coding stage. The functionality will be having the following features:

- a. The Back Office automation of GSTN regarding all important business processes uses "case management system" and for each case generates reference numbers. Therefore, the requirement as directed in the judgment of Hon'ble Supreme Court applies only to communications outside the case management system.
- b. In case of such manual communications (Outside case management system) from tax officers to taxpayers, basic information would be required to be entered by the tax officer to generate a reference number (RFN) for that communication. The reference number can be used by the Tax administration as an identification number of the document issued manually.
- c. A facility will be provided to the taxpayers on the GST portal to verify the authenticity of the RFN mentioned in the manual communication. The facility will display the details of RFN.
- d. It will work in the same way as DIN functionality of CBIC, except that it will be called RFN instead of DIN.

5.5 The status is submitted before the GST Council as Hon'ble Supreme Court had given the direction to the GST Council.

#### **Revised Revenue Model of GSTN**

#### 1) Sharing of User Charges between Centre and States:

i. The GST System infrastructure managed by GSTN will be used by taxpayers, tax administrations, banks etc. but the user charges will be paid entirely by the Central Government and the States Governments in equal proportion i.e. 50:50 on behalf of all the users. The States share will be apportioned to individual States in proportion to the number of active dealers in the respective States at the end of period (month/quarter/year). For calculation of the Advance User Charges, number of active dealers in the States as on 31st December of the previous year or any date specified by GSTN will be considered.

#### 2) Operating Expenses:

- i. On 1st January or a suitable date, of every financial year, GSTN will issue demand letters for payment of Advance User Charges for the next financial year to the Central and the States Governments.
- ii. Advance User Charges will be paid by the respective Governments in two equal instalments. First Instalment will be paid on or before 31s March or any other date as decided by GSTN, of the financial year in which the demand letters are issued for the next financial year. Second Instalment will be paid on or before 30th September or any other date as decided by GSTN, of the relevant financial year for which the demand is raised.
- iii. User Charge for the next year will be comprised of the following components:
  - a. Operating expense payments to be made to the Managed Service Provider next financial year-(as per contract).
  - b. Payments of Revenue Expenditures to be made in the next financial year on account of Change Request issued to MSP or any Service provider.
  - c. Payments of Revenue Expenditures to be made in the next financial year on account of new projects/activities based on the new requirements.
  - d. GSTN's own estimated annual operational expenditure for the next financial years.
  - e. Depreciation amount as per the Company Law on the assets purchased other than through Grant-in-Aid.
  - f. Amount of Interest Cost payable to the bank in the next financial year, if any.
  - g. Guarantee fee payable to the GoI next financial year, if any.
- iv. Amount calculated above will be apportioned to Centre and States Government in the ratio of 50:50 and portion of the States Governments will be apportioned between the States on the basis of number of active dealers in the respective State.
- v. GSTN will raise the user charges bills periodically (monthly/quarterly/half yearly/annual ) as per below mechanism:
  - a. Bills for the use of GST Portal and Services (the Front End):

- i. For this purpose, the periodic per dealer user charge will be calculated by subtracting expenses on backend system as per contract from total amount of user charges as defined above and dividing this amount by two (since this expense is to be shared equally by the Central and State Governments) and further dividing the amount so obtained by total number of active dealers.
- ii. Bill for the Central Govt. will be raised by multiplying per dealer periodic charges as derived above with the total number of active dealers as on the last day of the period.
- iii. Bill for each State Govt. will be raised by multiplying per dealer periodic charges as derived above with the numbers of active dealers of the respective State as on the last day of the period.
- b. Bills for the use of Back End of GST System:
  - i. For this purpose, per dealer user charge will be calculated by dividing total expenses on backend system as per contract by total number of active dealers in Model-2 states.
  - ii. Bill for each Model 2 state will be raised by multiplying per dealer user charge as derived above with the number of active dealers in that state as on the last day of the period.
- vi. The amount of these bills will be set off against the advance user charges paid by the respective Government in the manner indicated below:
  - a. If the advance user charges paid by a Government exceeds the total amount of the bills for the year, the excess amount will be adjusted against the advance payment to be made by that Government for the next year.
  - b. If the advance user charges paid by a Government is less than the total amount of the bills for the year, the amount of shortfall will be paid by that Government by 30th April of the following year.
  - c. In case States/centre fails to pay the Advance users charges within stipulated time, interest will be levied @12% per annum on the due amount.

### 3) Working Capital Requirements:

- i. GSTN will raise demand letters for Advance User Charges post finalization of Annual Budget for the next financial year. GSTN will request the Governments to pay Advance User Charges in two equal instalments with the interval of six months. For smooth functioning of the GST System Project (including e-way bill and e-invoicing), GSTN would require sufficient funds in advance atleast for the next six months of operations. The billing cycle would be so managed that GSTN has adequate funds for smooth functioning for next six months.
- ii. In case, requirement of additional working capital requirement arises, governments would be approached for the additional amount.

#### 4) Treatment of Interest earned on Surplus Funds:

i. Interest earned on the surplus funds available with GSTN will be apportioned between the Governments and adjusted against the invoices on the basis of weighted average

balance of Advance User Charges received from the respective Governments during the years.

#### 5) Funding for Future Capital Expenditures:

- i. GSTN may request for funds for capital expenditure from the Centre and States Governments based on the approved capital expenditure plan for the year in the form of Grant-in-Aid. In case any urgent need of capital expenditure arises, which was not part of Budget, a separate request would be made to the Governments. Such funds request would be on the basis of 50% from Centre Government and 50% from the States Governments. Each State's share would be calculated based on the number of active dealer in the respective States.
- ii. Unutilized amount of Grant-in-Aid along with the interest earned thereon will be carried forward to the next financial year and will be adjusted against the demand of next year.

#### 6) Credit Facility from the Commercial Banks:

i. GSTN would continue to keep the Credit Facility to the tune of Rs. 500 Crore from the commercial banks to cater the emergency needs of either Capital Expenditure or Revenue Expenditure. Such Credit Facility would be backed by the Government Guarantee.

#### Annexure-B

Calculation of Interest on pending payment of Advance User Charges for FY 2020-21 as on 07/12/2022:

Sl. No.	CENTRE/STATE/ UT	Interest Liability for Instalment of FY 2020-21 (Rs. In Crores)
1	Andhra Pradesh	0.084
2	Dadra & Nagar Haveli and Daman & Diu	0.000
3	Mizoram	0.000
4	Andaman & Nicobar	0.002
	Total	0.087

## Calculation of Interest on pending payment of Advance User Charges for FY 2021-22 as on 07/12/2022

Sl. No.	CENTRE/STATE/ UT	Interest Liability for Instalment of FY 2021-22	Interest Liability for Instalment of FY 2021-22		
		First Instalment	Second Instalment		
1	CBIC	3.24	4.67		
2	Andhra Pradesh	0.32	0.18		
3	Arunachal Pradesh	0.01	0.01		
4	Assam	-	0.05		
5	Bihar	0.39	0.23		
6	Chhattisgarh	0.03	-		
7	Goa	0.03	0.03		
8	Gujarat	0.23	0.40		
9	Haryana	0.06	0.03		
10	Himachal Pradesh	0.07	0.03		
11	Jharkhand	0.16	0.10		
12	Jammu & Kashmir	-	0.03		
13	Karnataka	0.09	0.02		
14	Kerala	0.24	0.14		
15	Ladakh	0.007	0.005		
16	Madhya Pradesh	0.08	0.04		
17	Maharashtra	0.41	0.18		
18	Manipur	0.01	0.01		
19	Meghalaya	0.013	0.003		
20	Mizoram	0.01	0.01		
21	Nagaland	0.01	0.01		
22	Punjab	0.29	0.17		
23	Sikkim	0.002	0.004		
24	Tamil Nadu	0.42	0.15		
25	Tripura	-	0.01		
26	Telangana	0.36	0.21		
27	Uttar Pradesh	0.55	0.77		
28	Uttarakhand	0.003	0.028		
29	West Bengal	0.04	0.06		
30	Chandigarh	0.011	0.002		
31	Daman & Diu and Dadra & Nagar Haveli	0.001	0.003		
32	Delhi	0.15	0.39		
33	Puducherry	0.003	0.002		
34	Andaman & Nicobar	0.001	0.004		
35	Lakshadweep	0.0004	0.0002		

10001 7.20 0.02		Total	7.26	8.02
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III	Compensation and Remuneration policy
IV	Transition Management
V	Performance Management Policy
VI	Recruitment Guidelines for Hiring Market Recruits (Part-II)
VII	Engagement of Independent Consultants
VIII	Leave Rules
IX	Miscellaneous Entitlements
Х	Compensation rules for deputationists
XI	Dates of implementation & Difficulty Removal

#### Annexure-I

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so		OF PRESENTATION	GIN	
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#### Background

- 1. The GST Council in its 27th meeting held on 4th May 2018 and the Union Cabinet in its meeting held on **26th September 2018** have decided to convert GSTN into a fully-owned Government company. 50% equity of the company to be held by the Central Government and the balance 50% to be held by the various States and Union Territories. The transition was completed on 30th June 2022. 2. Extracts from the minutes of the decision by Union Cabinet on 26 Sep 2018 are given below:
- Since the current staff are hired on market driven salaries as regular employees of GSTN, their continuation at the current terms & conditions may not be possible after change in the ownership structure of GSTN. Therefore, for ensuring continuity of operation without any disruption, existing regular employees may be allowed to be continued for a period up to 5 years on the same terms & conditions on which they were appointed. For these years, GSIN may be given the flexibility of hiring people through contract on the terms
- & conditions similar to those used by GSTN earlier while hiring regular employees. The existing employees on deputation may be continued on the same terms & conditions till the completion of their tenure. Also, for the next 5 years, new employees on deputation will be continued to be hired on the terms & conditions similar to those earlier used by GSTN.
- · Flexible hiring & appropriate remuneration policy may be evolved by GSTN considering criticality of the IT manpower, prevailing market compensation etc. and placed before the GST council for its approval in due course.

#### Rationale for the proposed changes in the HR Policy

1. Attrition: The compensation of employees hired from the Market had been fixed in the year 2014 and since 8

years have elapsed without any change, the salary ranges have become redundant. The fallout can be seen from

the attrition data given below which is progressively increasing over the years:

Attrition data	2018-19	2019-20	2020-21	2021 - 22	2022-23 (Up to Sep 2022)
Market Hire Attrition	7	4	11	14	10
Attrition %	6%	5%	10%	14%	15%

2. Stagnation : Besides the above, most of the employees who have joined GSTN in the years 2014/2015 are still in

their respective grades as there is no provision for career progression. At present it is also getting difficult to hire

technical manpower in GSTN in the existing grades and pay ranges. Therefore, a revision is warranted.

#### Background

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3. GSTN is not a CPSE because share of Centre is 50% i.e. less than 51 %. Confirmation in this regard has been received from DPE. Hence, all decisions would rest with GSTN Board and GST Council.

4. The Board of GSTN in its meeting dated 30th June 2022 decided that the HR and Remuneration committee shall jointly deliberate on the HR Policy of GSTN and recommend the policies for the approval of the Board. Accordingly, the Committee deliberated on the HR Policy on 15th & 23rd September 2022. The salient features of the policy, as approved by the Committee, is detailed in Para 2 of the Agenda for the Board. It has been detailed in the following slides for approval.

#### **Financial Impact of Revision in HR Policies**

#### Total Revenue budget of GSTN for 2022-23 - 602.75 Cror 1.

- Total Salary Budget (SB) of GSTN for 2022-23 (Excluding Deputation Salary) 35.85 Crore 2.
- (a) GSTN payroll 15.42 + (b) Third Party Payroll 17.85 + (c) Welfare Benefits 2.58
- Total increase in wage bill on account of proposed revision 4.89 Cr 3.
- 4. Management fee savings from discontinuation of NISG 0.88Crore (Annual)
- 5. Net percentage increase in wage bill (Excluding Deputation Salary) 11.18%
- 6. Salary budget for employees on deputation(FY 2022-23) 10.67 crore
- 7. Total increase in wage bill on account of revision in allowances for deputationists 0.56 Cr
- 8. Total Present Salary Bill (Market + Deputation) 46.52 Cr
- 9. Total increase in expenditure of the filled positions (4.89+0.56) i.e. (S.no. 3+ 7) 5.45 Cr
- 10. Total expected increase in expenditure if all vacancies were filled 8.30 Cr
- 11. Total percentage of increase in wage bill with the filled positions (Market + Deputation) 11.71%
- 12. Total percentage of increase in wage bill if all vacancies are filled 17.84%
- 13. Revised Salary bill would be (46.52 + 5.45) 51.97 Cr

For kind consideration: The decision on issues involved should be seen from good HR Practice and not from the perspective of budget, as the expenditure involved on the issue is quite low. The effort should be to hire and retain best talent from market as well as deputation. ( All calculat are based on person in position as on 1st July 2022

#### **Existing and Proposed Grade Structure**

an & CEC The grade and designation structure was defined L2 . 0.3 ior Vice Pre for employees sourced through both deputation Senior 1.3 64 and through private channels in the 8th Board G 5 tant Vice P Middle L4 meeting in 2014 as shown alongside. 66 67 L 5 unior 68

1. The management levels are proposed to be revised to three nstead of existing four keeping in view the industry practices in the IT sector.

- 2. It is proposed to introduce designations prevalent in IT industry for hiring technical manpower and corresponding equivalent non-tech designations. Both kind of designations shall be implemented for future hiring after approva
- Addition of two grades is proposed i.e. 5 c Executive / Associate Engineer at level 5 and 4 b Associate VP/Principal Engineer at level 4 in line with generally accepted designations in the industry.
- 4. The proposed grade structure is detailed in the following slide.


#### **Existing and Proposed Grade Structure**

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Level	Existing Grades	Proposed Grade	Designation	Years of Experience
Level 1	G1	1	Chairman	-
Level 1	G1	G1 1 CEO		20 years +
Level 2	G2	2 EVP		18 years
Level 3	G3	за	SVP	15-18 years
Level 3	G4	3p	VP	14-16 years
	$G_5$	48	Assistant VP / Chief Engineer	12-14 years
Level 4	-	4b	Associate VP / Principal Engineer	10-12 years
	G6	4c	Sr. Manager/ Technical Lead	8-11 years
	G7	5a	Manager /Sr. Engineer	7-10 years
Level 5	G8	5b	Assistant Manager/ Engineer	5-9 years
	-	5c	Executive / Associate Engineer	o-5 years
Managamen	t : Grades in Lev	11 282	Middle Management : Grades in Level 4	Junior Management : Grades in

#### Existing and Proposed Pay Ranges (Details Later)

Existing pay ranges in Table 1 were approved 8 years ago and market aligned pay ranges are in Table 2 below (Figures represent the Yeary Emoluments – CTC per annum). The "Broad Pay Range Approach" was being followed in GSTN which is proposed to be retained as all the levels encompass different roles and therefore the salaries are paid to each role based on IT industry benchmarking and last drawn salary of individual incumbent.

	Table	1 : Existing Pa	y Ranges				Table 2 : Proposed Pay Ranges		
					Level	Grade	Designation	Min	Max
Level	Grades	Designation	Min	Maximum	Level 1	1	CEO	93,12,596	2,09,30,4
	G-1	Chairman	Person	Specific	Level 2	2	EVP	-	
Lı	G-1	CEO	1,00,0	0,000	Level 2	2	EVP	58,20,373	1,22,40,0
L2	G-2	EVP	45,69,396	76,15,660	Level 3	3a	SVP	41,57,409	84,41,35
Les			43,09,390	/0,15,000	Dever 2	3p	VP	29,69,578	61,61,64
	G-3	SVP	33,12,902	55,21,503		40	Assistant VP / Chief Engineer	22,80,365	48,83,8
L3	G-4	VP	22,95,628	38,26,046	Level 4	4b	Associate VP / Principal Engineer	18,24,292	42,46,8
	G-5	AVP	15,02,615	25,04,359		4c	Sr. Manager/ Technical Lead	15,40,828	36,92,9
L4	G-6	SM	10,41,943	17,36,572		5a	Manager / Sr. Engineer	11,67,294	26,37,8
	G-7	Manager	7,12,500	11,87,500	Level 5	5b	Assistant Manager/ Engineer	9,84,239	22,42,7
L5	G-8	AM	4,57,500	7,62,500		5¢	Executive/Associate Engineer	7,03,028	16,37,0

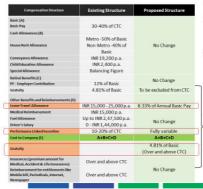
PROPOSED COMPENSATION STRUCTURE

#### A. Proposed Composition of CTC

CTC will comprise of the following components:

- Fixed Base Salary : Basic Pay (30-40% of CTC) Fixed Cash Allowances: 1. 2.
- HRA, PF and LTA as a percentage of CTC .
  - Conveyance Allowance, CEA, Medical Reimbursement, Fuel Allowance and Driver's Salary as fixed amounts
- Special Allowance as a balancing figure
   Variable Pay: Performance Linked Incentive (PLI) as a percentage of CTC viz. 10%, 15% and 20% at Junior, middle and Senior management levels respectively.
- 4. Gratuity, Insurance premium, Reimbursement for Mobile Phone, Periodicals, Internet, Newspaper etc. are exclusive of the CTC.

Grade	Designation	Basic (Mont	noluments TC)		
		Min	Max	Min	Max
5a	Manager/ Engineer	26,097	59,466	8,94,763	20,38,850
5b	Assistant Manager/ Engineer	18,641	43,406	6,39,116	14,88,212



#### **Proposed Changes**

Gratuity – At present it is offered at the standard 4.81% & is included in the CTC. As per the Gratuity Act, this is proposed to be excluded from the CTC to comply with the law.

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- th th with the law.
  2. Leave Travel Allowance - It is proposed to pay 8.33% of Basic salary (without any change in the CTC) as per industry practice instead of current practice of paying fixed amounts.

- practice instead of current practice of paying fixed amounts.
  3. Hot skills allowance A discretionary amount for Hot Skills to be paid during hiring for niche skills. This would cease when the skills are easily available.
  4. Joining Bonus A discretionary payout negotiated with the candidate and not necessarily paid to all. To be recovered proportionately as per the guidelines in case the executive resigns within 2 yrs.
  5. Additional components would continue to be paid. Insurance premium, Reimbursement for Mobile Phone, Periodicals, Interret, Newspaper etc. are exclusive of the CTC.

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### B. Proposed Pay Ranges

Level	Level Grade Designation		Min	P25	Median	P75	Max
Level 1	1	CEO	93,12,596	1,19,61,077	1,46,17,456	1,79,37,662	2,09,30,433
Level 2	2	EVP	58,20,373	70,77,561	88,59,063	1,06,77,180	1,22,40,019
T 1	3a	SVP	41,57,409	49,84,197	61,95,149	74,14,708	84,41,392
Level 3	3p	VP	29,69,578	34,85,452	42,43,253	53,34,322	61,61,601
	4α	Assistant VP / Chief Engineer	22,80,365	26,68,805	34,30,508	41,32,352	48,83,891
Level 4	4b	Associate VP / Principal Engineer	18,24,292	21,69,760	27,44,407	35,95,147	42,46,861
	4c	Sr. Manager/ Tech Lead	15,40,828	18,93,221	23,33,647	30,98,172	36,92,923
	5a	Manager / Sr. Engineer	11,67,294	14,12,852	17,15,916	22,28,900	26,37,802
Level 5	5b	Assistant Manager/ Engineer	9,84,239	11,20,211	14,66,596	18,45,852	22,42,735
	5c	Executive/ Associate Engineer	7,03,028	8,48,645	10,86,367	13,18,466	16,37,033

### C. Comparison of Proposed Pay Range & CPSE Pay Range

Grade	Destaurt	Min	Max		
Jrade	Designation	Difference	%	Difference	%
1	CEO	37,46,492	+40%	1,04,16,681	+50%
2	EVP	15,41,953	+26%	36,83,179	+30%
3a	SVP	4,46,673	+11%	-2,16,992	-3%
Зр	VP	-62,702	-2%	-17,22,327	-28%
4a	Assistant VP / Chief Engineer	-4,48,687	-20%	-23,93,581	-49%
4b	Associate VP / Principal Engineer	-6,01,532	-33%	-24,24,155	-57%
4c	Sr. Manager/Technical Lead	-5,39,768	-35%	-22,51,637	-61%
5a	Manager /Sr. Engineer	-6,16,074	-53%	-27,12,302	-1039
5b	Assistant Manager/ Engineer	-5,01,901	-51%	-25,12,913	-1129
5c	Executive/Associate Engineer	-4.61.884	-66%	-24,40,150	-1409

Note: Pay Ranges are the CTC figures exclusive of Gratuity, Health Insurance etc. The CTC figures of CPSE excludes Cafeteria benefits (+) denotes Proposed Ranges are more and (-) denotes that CPSE Ranges are more

### C. Comparison of Proposed Pay Range & CPSE Pay Range

	Comparison	Propose	d Pay Ranges	CPSE Aligned Pay Ranges (Excluding Cafeteria Benefits*)		
Grades	Designation	Min	Max	Min	Max	
CMD Sch- A)	Chairman	Pers	on Specific	61,84,560	1,14,41,436	
Director Sch- A)	CEO	93,12,596	2,09,30,433	55,66,104	1,05,13,752	
Eg	EVP	58,20,373	1,22,40,019	42,78,420	85,56,840	
E8	SVP	41,57,409	84,41,392	37,10,736	86,58,384	
E7	VP	29,69,578	61,61,601	30,32,280	78,83,928	
E6	AVP/ Pr. Engineer	22,80,365	48,83,891	27,29,052	72,77,472	
E5	Chief Manager/ Sr. Tech Lead	18,24,292	42,46,861	24,25,824	66,71,016	
E4	Sr.Manager/Tech Lead	15,40,828	36,92,923	20,80,596	59,44,560	
E3	Manager/ Sr. Engineer	11,67,294	26,37,802	17,83,368	53,50,104	
E2	Deputy Manager/Sr. Engineer	9,84,239	22,42,735	14,86,140	47,55,648	
Ei	Assistant Manager/Engineer	7,03,028	16,37,033	11,64,912	40,77,192	

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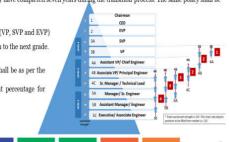
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### Introduction to Proposed Progression Policy

- The eligible employees up to Senior Manager level, who have completed four years, will be given progression to the next grade along with an increment during the transition process. The same policy shall be implemented henceforth.
- 2. Similarly, the eligible employees at Assistant Vice President level will be given progression to the next grade (VP) along with an increment if they have completed seven years during the transition process. The same policy shall be implemented henceforth.
- 3. The employees at Level 2 & 3 (VP, SVP and EVP) will not be given any progression to the next grade.
- 4. The progression increment shall be as per the
- RC approved annual increment percentage for
- the respective Financial Year.



### Introduction to Proposed Progression Policy

- 5. The effect of progression increment at the time of transition shall be given as per the date approved by the Board of GSTN/ GST Council.
- 6. Irrespective of progression given to individual employees to higher grade, the level wise sanctioned positions approved initially by the Board will be followed for the purpose of filling the positions in future. Eg. An AVP might be given a progression to the level of VP. However, on his resignation the post will be filled up as AVP.

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		GN	Transition Management	ต์พื
			A. Transition of Existing Employees :	
			The following three steps are proposed during transition of existing regular employees and those on NISG payroll:	
			i. Transition Increment	
June -			ii. Progression along with an Increment to eligible employees at the time of transition (FY 2022-23)	l.
	TRANSITION MANAGEMENT		iii. Outlier Management at the time of transition (FY 2022-23).	
70	TRANSITION MANAGEMENT		B. The increase in salary for existing employees during transition is proposed to be an average of 11 percent	ent
			(0.2% to 11% - 52 employees), (11.1% to 28% - 10 employees) and (45 % - only 2 employees) as their sala	ries are
			very low and therefore, requires correction. It is less than what is often being given to Government empl	oyees
			during Pay commission.	
			C. Transition of employees on NISG Payroll to GSTN as tenured employees.	
		10		10
Step (i) Transition Increment		ต์พ		61

The tenure based scenarios of existing employees who will be eligible for transition increment shall be as per the table below:

 No
 Employees to be transitioned
 Proposed Transition Increment

<ul> <li>Transition increment with amount equivalent to one increment- as per the RC approved percentage for corresponding management level.</li> </ul>
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Transition increment on prorata basis - as per the RC approved percentage for corresponding management level.
No transition increment is proposed.

of the respective employee.

The formula for calculating transition increment for employees at point No. 2 shall be:

(<u>Tenure in months</u>) x (RC approved level wise percentage increase) 48 
 Step (ii) Progression along with an increment to eligible employees at the time of transition (FY 2022-23)
 Image: Comparison of the state of the st

No	Criteria for Progression	Summary of Proposed considerations
1	Existing employees up to Senior Manager level: • with more than 4 years tenure at same grade and • have secured 8k above merit points in past 4 years and • also have been awarded a rating of "A" in FY 2021-22.	Progression to the next grade in the proposed grade structure along with an increment. The rate of progression increment would be the percentage approved by the RC <sup>*</sup> for the grade from which the employee is being progressed. (In total such employee gets grade change and two increments ic. Progression + Transition).
2	Existing employees at Assistant Vice President level: • with 7 years or more feature at same grade and • have secured 3& above merit points in past 7 years and • also have been awarded a rating of "A" in FY 2021-22 to be given one time progression to Vice President level.	Progression to Vice President level in the proposed grade structure along with an increment. The rate of progression increment would be the percentage approved by the RC <sup>+</sup> for the grade of Assistant Vice President. (In total such employee gets grade change and two increments ic. Progression + Transition).
3	Existing employees at the level of VP & above	No progression is proposed as it will make the organization top heavy.
4	Employees with less than 4 years at same grade at all levels	No progression is proposed.

### Step (ii) Progression along with an increment to eligible employees at the time of transition (FY 2022-23)

Grade wise ageing of employees								
Rank	o – 6 months	6 months – 4 years	4 years – 7 years	7 years and above				
SVP	1	1	1	4				
VP	4	6	2	1				
AVP	1	3	2	5				
SM	1	4	2	1				
Manager	1	6	3	2				
Assistant Manager	1	10	3	0				
Total	9	30	13	13				

Note: The number of eligible employees for progression during transition are shown in green (i.e. 16 employees)

### Step (iii) Outlier management at the time of transition (FY 2022-23)

Outlier management at the time of progression during transition shall be done with following guiding principles:

- If employee's salary is below the new grade's minimum pay after giving progression increment: Such employees would be given pull to minimum increment to bring the employee close to the minimum of the pay range.
  - Pull to minimum increment shall be given at the time of transition to only those employees who are progressing to the next grade.

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- ii. Pull to minimum increment at the time of progression during transition shall be looked into with reference to the minimum of the pay range to which the employee is being progressed.
- iii. The pull to minimum increment shall be capped such that it is not more than the RC approved average increment percentage for the employee's current grade.

iv. As a result of above, it is not necessary that the employee will reach to the minimum of the pay range.

2. If employee's salary goes above their new grade's maximum pay while giving the progression increment: In such cases the quantum of progression increment shall be capped at the maximum of the new grade of the employee. Also, In case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

### B. Transition Of NISG Employees to GSTN as tenured employees

### Guidelines for transition:

- The employees on NISG payroll will be offered a new contract of four years directly with GSTN by revising terms & conditions of the contract (to legally make it strong). The contract for hiring of NISG employees shall be suitably drafted to protect the interest of the company.
- 2. It shall be examined if the role performed by the concerned employee is required or not. If the role is required in GSTN, it shall be further examined if the concerned employee has rendered meritorious service. The following steps would be taken in this regard:
- If the above conditions are fulfilled, the employee may be offered next tenure based contract for 4 years with GSTN directly after internal review.
- ii. If the role is not needed or the performance of employee is below par, CEO may decide to relieve the employee concerned on any date decided by the management. If the management decides to relieve the employee, he/she shall be given three months notice.
- iii. The position shall be advertised if the role is needed in the organization.
- 3. The tenure on the payroll of NISG and tenure on contract directly with GSTN shall be considered in conjunction as relevant experience for the purpose of giving progression
- The transition plan of NISG employees is detailed in the next slide.

### B. Transition Of NISG Employees to GSTN as tenured employees

The employees on NISG Payroll shall be transitioned to four years tenured employment with GSTN in four batches as per the

Transition Plan	Number of employees	Schedule of batch wise transition of employees on NISG payroll to be considered for on boarding
Employees who have gone through at least one annual performance appraisal cycle.	16	<ol> <li>First batch of 10 employees in the order of tenure (who have served max.tenure with GSTN), basis the past performance appraisal ratings shall be transitioned to GSTN Payroll after the approval of the Board.</li> <li>Second batch of 6 employees in the order of tenure (who have served max.tenure with GSTN), basis the past performance appraisal ratings shall be transitioned to GSTN Payroll w.e.f. u*April 2023.</li> </ol>
Employees who would complete probation period by 31st Oct 2022	7	<ol> <li>Such employees (7 in nos.) shall be transitioned to GSTN payroll w.e.f. 1<sup>st</sup> July 2023, basis the performance report submitted by their respective reporting manager for confirmation of the employee.</li> </ol>
Employees who will not complete probation period on 31st Oct 2022	7	4. Such employees shall be transitioned to GSTN payroll w.e.f. 1 <sup>st</sup> Oct 2023

# SECTION 2

### Performance Management Policy

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- The Performance Appraisal process would have the following steps:
- 1. Employees joining on or before 31st Dec in a FY shall be eligible for Annual Appraisals for the period worked.
- The appraisal shall be initiated at the beginning of the financial year by goal setting process.
- Performance assessment would comprise of KRAs (70%) Behavioral Competencies (15%) & Functional Competencies (15%).
- 4. Thereafter at the end of the financial year Self assessment would done by the employee, then reporting manager would give the evaluation and the reviewing manager awards the final rating.
- A Performance Management Committee (PMC) headed by the CEO would be formed annually to moderate the payment of PLI and Progression Increment.
- 6. A bell shaped curve would be introduced in order to moderate the payment of Variable Pay (PLI) and Progression along with increment. All eligible employees shall be divided into two groups viz. Technology and Non-Technology for moderation.

### Performance Management Policy

- 7. The employees shall be entitled to the following based on the ratings awarded in the Annual Appraisals
  - a) Annual Increment based on rating awarded by reviewing manager
  - b) Variable Pay: Performance linked incentive (PLI ) based on moderated rating awarded by PMC
  - c) Progression along with an Increment based on moderated rating awarded by PMC.
- 8. The rating scale is proposed as below

Rivel General Annual Annual - 1-	Relation Ration Conto	Proposed
Final Score in Annual Appraisals	Existing Rating Scale	Rating Scale
85.1% and Above	А	A+
70.1% to 85%	В	А
60.1% to 70%	С	В
50.1% to 60 %	D	С
Below 50%	E	D
DCIOW 5076	L	D

### Performance Management Policy

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### (A) Annual Increment:

- 1. The Annual increments will be given based on ratings awarded by the reviewing manager.
- The RC may decide the increment percentage across levels in the range of 0.8 to 1.8 times of the industry average increment taking into account the industry practice and attrition observed by GSTN in the last financial year.
- The formula for calculation of Annual Increment shall be weightage of rating awarded to the employee multiplied by RC approved percentage increase (Level wise).
- Full increment would be given to the employee who have joined in the first quarter of the FY i.e. ist April to 30th June.
- Pro-rata increment would be given to those employees who have joined in the period of 1st July to 31st Dec.
- 6. No Increment would be given to the employees who join in the last quarter i.e. ist Jan to 31st March. The increment for this period shall be paid as arrears in the next evaluation cycle on pro rata basis as per rating.

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### Performance Management Policy

Outlier management at the time of annual increment will be done with following guiding principles in future, for FY 2022-23 for which assessment would be done in FY 2023-24 and

- If employee's salary is below their grade's minimum pay after giving annual increment: Such employee would be given pull to minimum increment to bring the employee close to the minimum of the grade's pay range
  - i. Pull to minimum increment shall be given to only those employees who have secured top rating of A+ in the appraisals
  - The pull to minimum increment shall be capped such that it is not more than the RC approved average increment percentage for the respective management level.
  - iii. As a result of above, it is not necessary that the employee will reach to the minimum of the pay range
- 2. If employee's salary goes above their grade's maximum pay while giving the annual increment: In such cases the quantum of annual increment shall be capped at the maximum pay of the grade of the employee. Such employees would be given minimum increase of 50% based on the rating from next FY which shall be available only for 2 years. Thereafter, salary of such employees shall freeze.

### Performance Management Policy

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- (B) Variable Pay Performance Linked Incentive (PLI) :
- 1. The proposed compensation structure will have the Variable Pay component fully variable as opposed to existing practice of disbursing 50% of variable pay at the end of Financial Year w
- 2. PLI will be fully variable and impacted by the performance rating (bell-shaped distribution) as per table below



3. The employees who have joined on or before 31st Dec in the respective FY, will be paid on the basis of assessment for the period worked on prorata basis

4. The employees who have joined in last quarter (1st Jan - 31st March) will be paid 75% of the PLI for the period worked without assessment (i.e. less than or equal to a quarter) on prorata basis

5. The PLI would be paid based on ratings of employees decided by the PMC. The amount of PLI would range between 50 and 110 per cent.

### GN Performance Management Policy (C) Progression Policy (FY 2023-24 onwards) n will allow an employ riteria, detailed below ee to progress one grade above along with one increment, if he/she meets the eligibility crite Criteria for Progression (FY 2023-24 onwards) Particulars For the employees from Grade 5c up to Grade 4b (Ass te Vic

Performance Management Policy

### Salient Features of Grade Progression Policy for future:

- 1. List of eligible employees shall be prepared by HR based on defined eligibility criteria.
- 2. Performance Management Committee (PMC) shall be constituted annually for every appraisal cycle and would comprise of CEO, Head of Support, EVP and any other member nominated by CEO. The PMC shall be headed by the CEO

President) min 4 years at the same grade as on 31st March of the

- 3. Performance Management Committee would select employees for progression based on interview
- 4. The administrative reporting after progression may continue to a person at same grade
- 5. The tenure on the payroll of NISG and tenure on contract directly with GSTN shall be considered in conjunction as relevant experience for the purpose of giving progression
- 6. Irrespective of progression given to individual employees to higher grade, the level wise sanctioned positions approved initially by the Board will be followed for the purpose of filling the positions. E.g. An AVP might be given a progression to the level of VP. However, on his resignation the post will be filled up as AVP. Overall total sanctioned strength shall not be breached within the organization

ຜົ ent Policy Performance Manage CEO ЗA SVP Performance Management Policy ଗ୍ୱୋ

Outlier management at the time of progression shall be done with following guiding principles in future for FY 2022-23 and assessment in FY 2023-24 onwards

- 1. If employee's salary is below the new grade's minimum pay after giving progression increment: Such employees would be given pull to minimum increment to bring the employee close to the minimum of the pay range.
  - Pull to minimum increment shall be given at the time of progression to only those employees whose salary is i below the minimum.
  - ii. Pull to minimum increment at the time of progression shall be looked into with reference to the minimum of the pay range to which the employee is being progressed.
  - iii. The pull to minimum increment shall be capped such that it is not more than the effective increment percentage for employee's current grade
  - iv. As a result of above, it is not necessary that the employee will reach to the minimum of the pay range.
- 2. If employee's salary goes above their new grade's maximum pay while giving the progression **increment:** In such cases the quantum of progression increment shall be capped at the maximum of the new grade of the employee. Also, In case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

### Performance Management System (PMS) (D) Other Guidelines for PMS

shall not be higher than one year salary of the executive

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- 1. The employees at Level 2 & 3 (VP, SVP and EVP) who have spent more than six years (to be counted from the date of implementation of the policy) and secured 27 & above merit points in the past will only be given one extra inc ment but
- the designation will not change. The increment percentage will be as per the RC approved percentage for that level 2. The pull to minimum shall be given at the time of annual increment/progression and shall be given only once in a ncial year at the earliest opportunity i.e. it shall be given either on increment or on progr sion to employees wh
- progressed in a financial year (either of that described in slide no. 30 or 35 ). 3. In case value added by the employee is not commensurate with the salary being paid by the employer, the termination process may be initiated to bring fresh knowledge about the technology within the organization by hiring younger talent GSTN may authorise HR to negotiate termination of service on case to case basis, paying one time severance pay which

### Recruitment Guidelines for Hiring Market Recruits (Part II)

- After four years, it shall be examined if the employees have rendered meritorious service and can be offered next tenure based on review by a Committee comprising of internal members of GSTN. External members can also be co-opted in the Committee, if deemed necessary by CEO. 4. After four years, it
- A search committee would be formed for recruitment of positions at VP & above level and Executive Search firms would be engaged to search and identify the best suitable candidates for the profile.
- 6. The existing employees shall be eligible to apply for the advertised vacancies.
- concentent age for employees in GSTN shall be 60 years. If hiring is done at age greater than that provided in Recruitment guidelines it shall be clearly brought out before the approving authority for the hiring. 7. The Retirement age for employees in GSTN shall be 60 years. If hiring is done at age greater than that
- 8. The employment through NISG shall be discontinued to save the extra cost incurred except for specific reasons of role being temporary, to be approved by CEO. GSTN will continue hiring Technical Assistants/Executive Assistants/TSTs from agencies like NICSI, Nippon which provide hiring as a service on need basis against the sanctioned positions (45).

### Recruitment Guidelines for Hiring Market Recruits (Part II)

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The recruitment guidelines was approved by Hon'ble Finance Minister in March 2021. The same shall be called as recruitment guidelines (Part I) hereinafter and the provisions in it shall continue to be followed. The proposed changes to the Recruitment guidelines (Part I) shall be termed as Part II.

### Hiring in future would be for a contract period of four years directly with GSTN, thereafter the following process shall be followed

- 1. The salary range for future hiring of engineers at levels 4&5 shall start at P25 of the proposed pay ranges for technology positions subject to negotiations & last drawn salary of the prospective candidates
- 2. Experienced candidates for technology & non- technology positions, on being hired from market would be given a minimum of 20% increase from last salary drawn and this can lead to offered salary being less than the minimum/P25 of the proposed pay range defined for that level. This is the current industry practice
- 3. The proposal for hiring in future on 4 year tenure (contract) shall be reviewed from time to time to

### Recruitment Guidelines for Hiring Market Recruits (Part II)

- 11. GSTN would start brand building initiatives for establishing GSTN as employer of choice for attracting
- 12. If the contract ends, the employee shall be eligible for rehiring after a cooling off period of one week to one month provided there is continued need for that role within the company and the performance of the employee is satisfactory
- 13. In case of resignation, the employee may be relieved before three months by either buying out the notice period or obtaining waiver from the CEO, GSTN.
- **6** C 14. Deserving Executive Assistants who have been serving in the organization for 4 years or more would be
- on need outso to make the same the same to be same to be introduced on the introduce

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### **Engagement of Independent Consultants**

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### **Engagement of Independent Consultants**

A maximum of 25 number of Independent Consultants for a short tenure may be engaged in GSTN based on requirement over and above the sanctioned strength of 147.

- i. The engagement shall be initially for a period of two years which may be extended up to three years, depending on the performance evaluation.
- ii. The Guidelines have been drawn up on the same pattern that is being followed by various Ministries in the Government of India.
- iii. They shall be engaged only for fixed periods of time for short term projects or works in GSTN; they shall be paid fixed amounts of money and there would be no employer-employee relationship with these manpower. The Maximum age limit is 67 years.
- iv. Approving authority for hiring may be decided (Chairman or CEO).

v. Experience, Age and Qualification Remuneration for engaging Independent consultants

-				
Position	Upper Age Limit	Post qualification Experience Years	Relevant experience (No. of years)	
Young Professionals	35 years	Minimum 0 - 1 year	0	
Associate	45 years	Minimum 1-3years	1	
Consultant	50 years	Minimum 8 years	3	
Senior Consultant	65 years	15 years and above	5	

vii. The remuneration will be inclusive of all applicable taxes and no other facility or allowance will be allowed viii. The range of remuneration for each of the positions are as given in the table below.

Position	Remuneration per month (Rs.)*	IT Skills Allowance**
Young Professional	60,000	20,000
Associate	80,000 - 1,45,000	30,000
Consultant	1,45,000 - 2,65,000	40,000
Senior Consultant	2,65,000 - 3,30,000	50,000

\*Same as per the latest circular of Ministry of Con \*\*This is an additional allowance to hire IT Skills

\*\*\* This is an additional allowance to hire IT Skills
\*\*\* Remuneration over and above the rates mentioned in the table for deserving candidates may be paid with the approval of Chairman GSTNL is: Remuneration for any selected candidates shall be fixed, based on the following:

a. The range of Remuneration proposed in the above table for the position in which the candidate has been selected b. Years of Experimence
c. Last Pay Drawn

### Leave Policy

### Miscellaneous Benefits

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1. Revision in number of leave admissible as per present policy (EL 20 to 30), (SL 7 to 8), (CL 7 to 8)

- 2. Accumulation limits revised for earned leave (30 to 50) and sick leave (21 to 30)
- 3. Option to be given to employees for encashment of 50% of the EL balance at the end of calendar year
- 4. The policy to be adopted for allowing employees to Work from home shall be decided at CEO level. An appropriate SOP for the same shall be put in place.
- The proposed revision in benefits shall be applicable to all employees (i.e. Market Hires & Deputationists).
- i. 20% increase in the existing limits as per the grade for purchasing mobile handset but it shall be replaced after three years from the last purchase against the existing practice of two years.
- ii. Employees can claim food allowance amounting to 25% of Hotel rates on production of bills or only 15% of Hotel rates without production of bills while on tour.
- iii. 20% revision is proposed for room tariff in Tier 1 cities like Delhi, Mumbai, Bangalore, Chennai, Kolkata, Pune & Ahmedabad
- iv. The OPD reimbursement policy started during COVID shall continue.

### **Recognising Talent for Exemplary Performance**

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To reward the excellence in performance, two awards as follows are proposed:

- i. Employee of the month: One employee from each function (i.e. Technology, Services & Support/others) shall be given buffet dinner coupons for up to 4 family members.
- ii. Best team of the quarter: Module & Function wise best performing team will be selected for the reward. Company sponsored buffet dinner coupons for all the concerned team members
- iii. A committee will be formed to decide the winners and GSTN will negotiate the coupon rates with nearby hotels

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### **Revision in Allowances for Employees on Deputation**

- The allowances for employees on deputation would be implemented after due approval from the competent authority. Till the time the same is approved the allowances being paid to deputationists shall be continued.
- 2. The following Allowances admissible to deputationists in GSTN require revision as in some cases the amounts paid in GSTN are less than what is admissible in Government currently as the allowances in GSTN are static whereas the allowances in Government are linked to Dearness Allowance:
  - i. Fuel Allowance
  - ii. Leave Travel Allowance (LTA)
  - iii. Children Education Allowance (CEA)
  - iv. Medical Reimbursement
- 3. PLI being paid to deputationists shall be dis-continued.
- 4. Employees on deputation in GSTN shall be given IT and Training Allowance as per the new proposed policy.
- 5. The HRA is proposed to be revised by approximately 10-20%

Revision in Allowances for Employees on Deputation

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### In in Allowances for Employees on Deparation

### Transition policy for deputationists:

- 1. The old policy to continue till the new policy is approved;
- 2. New deputationists to be on boarded as per the new policy after the same has been approved;
- 3. Existing deputationists (20) were on boarded as per the advertised old policy and therefore would be
  - given option to change their perks as per the new policy or stay with old policy for balance of their tenure.

### **Revision in Allowances for Employees on Deputation**

1. Fuel A	1. Fuel Allowance										
Details	Chairman (L 16)	CEO (L 15)	EVP (L 14)	SVP (L 13)	VP (L 12)	AVP (L 11)	Associate VP (Level 10 with 5 yrs in the Level)	SM (L 10)	Manager (L9)	AM (L8)	Executive (L.7)
GSTN (Old Fuel Allowance)	Company Car	Company Car	Company Car	Company Car	14000	12000	-	10000	-	9000	8000
GSTN (Proposed Fuel Allowance per month)	Company Car	Company Car	Company Car	Company Car	25000	21000	19000	17500	16500	15500	14000
Proposed fractional hike	-	-	-	-	1.79	1.75		1.75	-	1.72	1.75

### 2. Leave Travel Allowance

The reimbursement of LTA as practiced in the Government of India shall be followed based on block years' adopted by the Government.

Revision in Allowances for Employees on Deputation

2.	House	Rent	All	lowance

Designation	Pay Level	Basic Pay Range (As on Date)	Present HRA paid in GSTN	Proposed	
Chairman	L-16	205400-224400	1,25,000	1,50,000 *	1
CEO	L-15	182200-224100	1,10,000	1,25,000 *	1
EVP	L-14	144200-218200	80,000	1,00,000	
SVP	L-13	123100-215900	70,000	85,000	*Company lease facility
VP	L-12	78800-209200	60,000	80,000	along with maintenance
AssistantVP	L-11	67700-208700	50,000	75,000	and GST may be provided
Associate VP	L-10 (with 5 years experience in the level)	56100-177500	-	70,000	by GSTN for Chairman & CEO. Lease can be considered for
Senior Manager	L-10	56100-177500	40,000	65,000	other levels as an optional
Manager	L-9	53100-167800	-	60,000	facility.
Asstt. Manager	L-8	47600-151100	40,000	55,000	* GSTN employees are not
Executive	L-7	44900-142400	40,000	50,000	entitled to General Pool

**Revision in Allowances for Employees on Deputation** 

### 3. IT and Training Allowance

- The PLI being paid to deputationists shall be done away with as it is a not for profit company and an IT and Training Allowance introduced which shall be similar to Training Allowance paid in the Government.
- Payment of Training Allowance is followed in the Government in Training Institutes where officials are paid 30
  per cent of basic pay without levy of Income Tax on the amount which effectively adds up to nearly 40 percent of
  Basic Pay (30% + IT of 31.2%).
- iii. GSTN is a critical network for collection of revenue and therefore attracting talent is necessary for its success. GSTN platform is responsible for collecting revenues every month of 1 lakh cr. and filing of returns to the tune of 1.8 cr. every month.
- iv. Unlike field revenue officers who have statutory process and functions. GSTN roles are very service and facilitation oriented. Therefore GSTN needs to attract talent by paying IT and Training allowance.

### Revision in Allowances for Employees on Deputation

v. The IT and Training Allowance shall be introduced in GSTN for deputationists as per table in the subsequent slide to compensate the deputationists for the following:

- GSTN imparts regular training to the trade directly and through preparation of audio-visual training
  material and officials not only monitor development but also are exclusive faculty to impart trainings to
  tax officers on the modules and therefore, are entitled to training allowance as admissible in Training
  Institutes.
- Working 24 x 7 on the system at individual level without any support unlike in the Government;
- Performing integrated roles in the Company on account of very less sanctioned strength;
- Working under stress for completion and proper running of modules and introducing changes/fixes in the system which develops high pressure amongst the employees;
- Handling very high volumes of the transactions;
- · Attending Bridge Calls at odd hours for emergencies.

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### **Revision in Allowances for Employees on Deputation**

Designation	Pay Level	Basic Pay Range (As on Date)	Present PLI paid in GSTN (Percentage of Basic Pay & DA)	Proposed (Percentage of Basic Pay & DA
Chairman	L-16	205400-224400	50	40
CEO	L-15	182200-224100	50	40
EVP	L-14	144200-218200	50	45
SVP	L-13	123100-215900	50	45
VP	L-12	78800-209200	50	45
AssistantVP	L-11	67700-208700	50	50
Associate VP	L-10 (with 5 years experience in the level)	56100-177500	1.40	50
Senior Manager	L-10	56100-177500	50	50
Manager	L-9	53100-167800		50
Assistant Manager	L-8	47600-151100	50	50
Executive	L-7	44900-142400	50	50

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### Dates of implementation

Particulars	Dates of implementation		
Transition • Transition Increment • Progression Increment during transition • Pull to/near minimum for progression cases	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD		
Performance Management Policy • Annual Increment • PLI Based on Bell Curve for the Year 2022-23 & onwards • Progression Based on Bell Curve for the Year 2022-23 & onwards	FY 22-23 onwards (Assessment in FY 23-24 onwards) • 1 April 23 • 1 April 23 • 1 Oct 23		
Recruitment Policy	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD		
Leave Rules	1 Jan 2023		
Entitlements for Mobile Handset & other allowances	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD		
Reward and Recognition	1 Jan 2023		
Allowances for Deputationists	After approval by competent authority. Till such time old practice to be continued.		

### Saving and difficulty removal during implementation

- The issues not listed in the proposal shall continue to be guided as per the existing clauses in the HR Manual viz. Joining, Attendance, Grievance & Disciplinary procedures etc. After the in-principle approval of BOD/ Council, the HR Manual would be revised to incorporate the changes and all policies would be consolidated for adherence in future.
- 2. All existing decisions of the Board and Management taken prior to the date on which these policies become operational shall continue to apply for the specific case in which it was taken notwithstanding any conflict with the present policies provided that specific decision taken in relation to any of the past decisions to overrule the past decision shall lead to the new specific decision prevailing.
- Difficulty removal clause: Any difficulties/challenges during implementation of the transition process/policy shall be resolved by CEO, GSTN.
- Where there is a conflict or lack of clarity in this presentation, details as provided in the Annexures II to XI shall prevail.



Background, Rationale for the changes in the proposed HR Policy, Financial Impact of Revision in HR Policies and Existing and Proposed Grade Structure.

# 1. Background

**1.1 The GST Council in its 27th meeting held on 4th May 2018** and the Union Cabinet in its meeting held on **26th September 2018** decided to convert GSTN into a fully-owned Government company with 50% equity of the company to be held by the Central Government and the balance 50% to be held by the various States and Union Territories. The transition was completed on 30th June 2022.

# **1.1.1** Extracts from the minutes of the decision by Union Cabinet on 26<sup>th</sup> September 2018 are given below:

**1.1.2.** Flexible hiring & appropriate remuneration policy may be evolved by GSTN within the next five years considering criticality of the IT manpower, prevailing market compensation etc. and placed before the GST council for its approval in due course.

**1.1.3**. GSTN is not a CPSE because share of Centre is 50% i.e. less than 51 %. Confirmation in this regard has been received from DPE. Hence, it is proposed that all decisions would be approved by GSTN Board and GST Council.

**1.1.4**. The Board of GSTN in its meeting dated 30<sup>th</sup> June 2022 decided that the HR and Remuneration committee shall jointly deliberate on the HR Policy of GSTN and recommend the policies for the approval of the Board. Accordingly, the Committee deliberated on the HR Policy on 15<sup>th</sup> & 23<sup>rd</sup> September 2022. The salient features of the policy as approved by the Committee is detailed in the following slides for approval.

# 2. Rationale for the proposed changes in the HR Policy

**2.1** Attrition: The compensation of employees hired from the Market had been fixed in the year 2014 and since 8 years have elapsed without any change, the salary ranges have become redundant. The fallout can be seen from the attrition data given below which is progressively increasing over the years:

Attrition data	2018-19	2019-20	2020-21	2021 - 22	2022-23 (Up to Sep 2022)
Market Hire Attrition	7	4	11	14	10
Attrition %	6	5	10	14	15

# Table-1

**2.2** Stagnation :Besides the above, most of the employees who have joined GSTN in the years 2014/2015 are still in their respective grades as there is no provision for career progression. At present it is also getting difficult to hire technical manpower in GSTN in the existing grades and pay ranges. Therefore, a revision is warranted.

# 3. Financial Impact of Revision in HR Policies

- a. Total Revenue budget of GSTN for 2022-23 602.75 Crore
- b. Total Salary Budget (SB) of GSTN for 2022-23 (Excluding Deputation Salary) 35.85 Crore
- (i) GSTN payroll 15.42 + (ii) Third Party Payroll 17.85 + (iii) Welfare Benefits 2.58)
- c. Total increase in wage bill on account of proposed revision 4.89 Cr
- d. Management fee savings from discontinuation of NISG 0.88Crore (Annual)
- e. Net percentage increase in wage bill (Excluding Deputation Salary) 11.18%
- f. Salary budget for employees on deputation(FY 2022-23) 10.67 crore
- g. Total increase in wage bill on account of revision in allowances for deputationists -0.56 Cr
- h. Total Present Salary Bill (Market + Deputation) 46.52 Cr
- i. Total increase in expenditure of the filled positions (4.89+0.56) i.e. (S.no. 3+7) 5.45 Cr
- j. Total expected increase in expenditure if all vacancies were filled 8.30 Cr
- k. Total percentage of increase in wage bill with the filled positions (Market + Deputation) 11.71%
- 1. Total percentage of increase in wage bill hypothetically, if all vacancies are filled 17.84%
- m. Revised Salary bill would be (46.52 + 5.45) 51.97 Cr

**3.1** For kind consideration: The decision on issues involved should be seen from good HR Practice and not from the perspective of budget, as the expenditure involved on the issue is quite low. The effort should be to hire and retain best talent from market as well as deputation.

*Note: (All calculations are based on person in position as on 1<sup>st</sup> July 2022)* 

# 4. Existing and Proposed Grade Structure

**4.1** The grade and designation structure was defined for employees sourced through both deputation and through private channels in the 8th Board meeting in 2014 as shown alongside.

Levels	Grades	Designation	
L1	G1	Chairman & CEO	
L 2	G2	Executive Vice President	Ъ
1.2	G 3	Senior Vice President	r
L3	G 4	Vice President	Senior
L4	G 5	Assistant Vice President	Middle
	G 6	Senior Manager	Mid
G 7 L 5 G 8	G 7	Manager	J.
	G 8	Assistant Manager	Junior

- i. The management levels are proposed to be revised to three instead of existing four keeping in view the industry practices in the IT sector.
- ii. It is proposed to introduce designations prevalent in IT industry for hiring technical manpower and corresponding equivalent non-tech designations. Both kind of designations shall be implemented for future hiring after approval.
- iii. Addition of two grades is proposed i.e. 5 c Executive / Associate Engineer at level 5 and 4 b – Associate VP/Principal Engineer at level 4 in line with generally accepted designations in the industry.
- iv. The existing and proposed grade structure as well as pay ranges is detailed in the following paragraphs.

# 5. Existing and Proposed Grade Structure

Level	Existing Grades	Proposed Grade	Designation	Years of Experience
Level 1	G1	1	Chairman & CEO	20 years +
Level 2	G2	2	EVP	18 years
Level 3	G3	3a	SVP	15-18 years
	G4	3b	VP	14-16 years
Level 4	<i>G</i> 5	4a	Assistant VP / Chief Engineer	12-14 years
	-	4b	Associate VP / Principal Engineer	10-12 years
	G6	4c	Sr. Manager/ Technical Lead	8-11 years
Level 5	G7	5a	Manager /Sr. Engineer	7-10 years
	G8	5b	Assistant Manager/ Engineer	5-9 years
	-	5c	Executive / Associate Engineer	0-5 years

Table	-	3
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Senior Management: Grades in Level 1, 2 & 3 Middle Management: Grades in Level 4 Junior Management: Grades in Level 5

# 5.1 Existing and Proposed Pay Ranges

**5.1.1.** Existing pay ranges in Table 1 were approved 8 years ago and market aligned pay ranges are in Table 2 below (**Figures represent the Yearly Emoluments** – **CTC per annum**). The "Broad Pay Range Approach" was being followed in GSTN which is proposed to be retained as all the levels encompass different roles and therefore the salaries are paid to each role based on IT industry benchmarking and last drawn salary of individual incumbent.

Table -4
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	Existing Pay Ranges						
Level	Grades	Designation	Min	Max			
	G-1	Chairman	Person S	Specific			
L1	G-1	CEO	1,00,00,000 (P	erson specific)			
L2	G-2	EVP	45,69,396	76,15,660			
	G-3	SVP	33,12,902	55,21,503			
L3	G-4	VP	22,95,628	38,26,046			
	G-5	AVP	15,02,615	25,04,359			
L4	G-6	SM	10,41,943	17,36,572			
	G-7	Manager	7,12,500	11,87,500			
L5	G-8	AM	4,57,500	7,62,500			

	Proposed Pay Ranges				
Level Grade		Designation	Min	Max	
Level 1	Level 1 1 CEO		93,13,000	2,09,30,000	
Level 2	2	EVP	58,20,000	1,22,40,000	
Level 3	3a	SVP	41,57,000	84,41,000	
Level 5	3b	VP	29,70,000	61,62,000	
Level 4	4a	Assistant VP / Chief Engineer	22,80,000	48,83,000	
	4b	Associate VP / Principal Engineer	18,24,000	42,47,000	
	4c	Sr. Manager/ Technical Lead	15,41,000	36,92,000	
Level 5	5a	Manager / Sr. Engineer	11,67,000	26,37,000	
	5b	Assistant Manager/ Engineer	9,84,000	22,42,000	
	5c	Executive/ Associate Engineer	7,03,000	16,37,000	

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# **Compensation and Remuneration Policy**

### **1. APPLICABILITY:**

The changes in the grade structure and compensation structure approved by the Board shall be effective from the date proposed in Annexure XI.

# 2. GRADE STRUCTURE

**2.1.** The employees of GSTN (both regular and tenured) would be placed in 5 levels and 10 grades. The levels and grades to be followed in future are shown in **Table-1**.

**2.2.** The designations for technology and non- technology roles are also shown below which shall be followed henceforth.

Table - 1

Level	Existing Grades	New Grades	Designation	Years of Experience
Level 1	G1	1	Chairman CEO	20 years +
Level 2	G2	2	EVP	18 years
Level 3	G3	3a	SVP	15-18 years
	3 G4 3b	VP	14-16 years	
	G5	4a	Assistant VP / Chief Engineer	12-14 years
Level 4	New	4b	Associate VP / Principal Engineer	10-12 years
	G6	4c	Sr. Manager/ Technical Lead	8-11 years
	G7	5a	Manager /Sr. Engineer	7-10 years
Level 5	G8	5b	Assistant Manager/ Engineer	5-9 years
	New	5c	Executive / Associate Engineer	0-5 years

Senior Management Grades in Level 1, 2 &3 Middle Management Grades in Level 4

Junior Management Grades in Level 5

# **2.3.** Definition of responsibilities at each level has been defined in the table-2 below:

Table - 2

Level	Profile of a typical role in the Grade at this Level
1	Provides strategic leadership. Visioning, Goal setting & Strategy Formulation. Works with the Board and the GST council to define the future for the organisation and takes accountability for the goals defined
2	Provides operational leadership and drives goals, objectives, and culture. Contributes towards strategy formulation. Integrates and leads complex units and functions. Develops operating frameworks for the respective units
3	Requires high domain exposure with direct and indirect leadership. Involved in designing operational processes, structures, systems or methods for strategy implementation. Would be responsible for delivery. Leads complex processes and contributes to business through personal, professional and technical leadership
4	Routine kind of work, requires domain expertise or high generalist exposure. May warrant some kind direct or indirect leadership. Involved highly in implementation. Oversee, coordinate and control functional processes towards departmental achievement of targets. Acts mostly as individual contributor or first line manager
5	Provides support in day-to-day operational activities. Works as individual contributor. Undertakes standardized routine processes and follow detailed instructions to complete the tasks assigned

# **3.** Compensation Structure

- **3.1.** The broad details of the constituents of CTC are enumerated below:
- **3.1.1.** Fixed Base Salary : Basic Pay (30-40% of CTC)

# 3.1.2. Fixed Cash Allowances:

- i. HRA 50% of Basic Salary in metro cities, 40% of Basic Salary in non-metro cities
- ii. PF 12% of Basic Salary.
- iii. LTA 8.33% of Basic Salary.
- iv. Special Allowance payable as a balancing amount.
- v. Conveyance Allowance Payable as a fixed amount of ₹ 19,200/- per annum for the levels up to Manager in GSTN.
- vi. Child Education Allowance Payable as a fixed amount of 2,400/- per annum.
- vii. Medical Reimbursement Payable as a fixed amount of 15,000/- per annum.
- viii. Monetised benefits as detailed in Para 4.1.2 (Though included in CTC shall not be considered for any increments.)
- ix. Fuel Allowance and Driver's Salary is payable as fixed amounts to Senior Manager and above grades. Employees eligible for Fuel Allowance & Driver Salary can either claim reimbursement by producing bills or claim amounts without bill on payment of income tax. The amounts payable on this account grade-wise is shown in the table below:

Grade	Designation	Fuel Allowance Per Month (Rs.)	Driver Salary Per Month (Rs.)
1	Chairman CEO	20,625	12,000
2	EVP		
3a	SVP	15,000	10,000
3b	VP		,
4a	Assistant VP / Chief Engineer		
4b	Associate VP / Principal Engineer	12,692	8,000
4c	Sr. Manager/ Technical Lead		
5a	Manager /Sr. Engineer		
5b	Assistant Manager/ Engineer Executive / Associate Engineer	Conveyance allowand	ce of 19,200 per annum
5c			

Table – 3

**3.1.3.** Variable Pay: Performance Linked Incentive (PLI) is payable as a percentage of CTC and it will be fully variable. The percentage of variable pay will be 10%, 15% & 20% at Junior, middle and senior level respectively. PLI i.e. the variable portion of the CTC shall be disbursed after completion of the performance appraisal process. The methodology to be adopted for release of annual increments and payment of PLI are described in the Performance Management Policy.

**3.1.4.** Other components: There would be certain other benefits payable to the employees which would not form a part of the CTC as this would be paid as per Acts and Rules in vogue. Besides, certain welfare measures provided to the employees would also not form a part of the CTC. The details in this regard is given below:

- a) Gratuity shall be over and above the CTC to be paid as per the Payment of Gratuity Act. This will be only applicable for the regular employees of GSTN, as future hiring would be on contract for a tenure of four years and would not come under the ambit of Gratuity.
- b) Insurance premium shall be exclusive of the CTC.
- c) Hot Skills Allowance (HSA) may be offered while hiring the candidate for the required skill set as the percentage of Basic Pay. It is a discretionary amount which shall be given for the tenure of 4 years.
- i. The eligibility for HSA will be for individuals who not only possess a hot skill but also use that skill at least 50% of the time when performing their jobs.
- ii. HSA would not be taken into consideration while calculating the ceiling for freezing the salary.
- iii. HSA will be decided at the time of hiring the candidate for the required skill set, if it is a Hot Skill for GSTN.
- iv. Individuals must continue securing 'A+' or 'A' rating to maintain their eligibility for HSA for the entire tenure.

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- v. HSA will not be a part of CTC for the purpose of annual increments, PLI and retiral benefits like PF.
- vi. Based on the market trends and study/reports by consulting firms, the HSA list shall be revised annually. It is to be given to not more than ten percent of the sanctioned strength based on the criteria listed above (Shall be proposed by GSTN HR and approved by CEO).

The list of Hot Skills presently identified by the Consulting firms in the context of GSTN is given in below table:

Table	-	4
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Identified Hot Skills for GSTN	Percent of Basic Pay
BIFA - Scrum Master	18%-20%
BIFA - Architects	18%-20%
(platform & data)	
BIFA - UI/UX	15%-17%
BIFA - Data Science Lead	15%-17%
Business Analyst	12%-14%
Data Science Lead	15%-17%
Data Modelers	15%-20%

d) Joining Bonus may be offered while hiring the candidate. It is a discretionary payout negotiated with the candidate and not necessarily to be paid to all. This shall be paid based on the need of GSTN to hire and retain critical resources for its functioning. It may be recovered if the new employee quits early.

i. The value of joining bonus to be paid level wise would be in the range of INR 1,00,000 to INR 3,50,000 as shown in Table below:

Level	Grade	Designation	Joining Bonus
1	1	Chairman	
1	1	CEO	-
2	2	EVP	3,50,000
3	3a	SVP	3,00,000
	3b	VP	3,00,000
	4a	Assistant VP / Chief Engineer	2,50,000
4	4b	Associate VP / Principal Engineer	
	4c	Sr. Manager/ Technical Lead	2,00,000
	5a	Manager /Sr. Engineer	1,50,000
5	5b	Assistant Manager/ Engineer	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
	5c	Executive / Associate Engineer	1,00,000

Table - 5

ii. The employee would have to serve the organization for a minimum period of 2 years failing which he/she would have to return the joining bonus. The amounts of recovery on this account is given in the table below:

Tenure with GSTN	Percentage recovery of the bonus
Less than 6 months	100%
6 months – 1 year	75%
1 – 1.5 years	50%
1.5 – 2 years	25%

Table - 6

**Note:** The payment of Hot skills Allowance and Joining bonus shall be decided on individual basis by the Management of GSTN depending on the business need or requirement for certain kinds of skills at particular point of time. All the factors for recruitment of a particular resource viz. urgency of GSTN to hire for a particular position, the criticality of the role in GSTN etc. would be considered critically in order to arrive at the decision whether the hot skills allowance and/or joining bonus would be paid to a particular candidate. There would be no bar to pay both the Hot Skills Allowance and the Joining Bonus to the same candidate in case he/she is very deserving as decided by the Management of GSTN.

# 4. PAY RANGES

The pay ranges applicable for employees of GSTN hired from the market has been detailed in the table below.

	Table – 7 New Pay Ranges *- Annual Cost to Company (CTC)						
L e v e l	Grade	Designation	Min	P25	Median	P75	Max
1	1	Chairman CEO	93,13,000	1,19,61,000	1,46,17,000	1,79,38,000	2,09,30,000
2	2	EVP	58,20,000	70,78,000	88,59,000	1,06,77,000	1,22,40,000
3	3a	SVP	41,57,000	49,84,000	61,95,000	74,15,000	84,41,000
	3b	VP	29,70,000	34,85,000	42,43,000	53,34,000	61,62,000
4	4a	Assistant VP /Chief Engineer	22,80,000	26,68,000	34,30,000	41,32,000	48,83,000
	4b	Associate VP /Principal Engineer	18,24,000	21,69,000	27,44,000	35,95,000	42,47,000
	4c	Sr. Manager/ Tech Lead	15,41,000	18,93,000	23,33,000	30,98,000	36,92,000
5	5a	Manager / Sr. Engineer	11,67,000	14,12,000	17,15,000	22,28,000	26,37,000
	5b	Assistant Manager/ Engineer	9,84,000	11,20,000	14,66,000	18,45,000	22,42,000
	5c	Executive/ Associate Engineer	7,03,000	8,48,000	10,86,000	13,18,000	16,37,000

\*The pay ranges shown above are inclusive of monetised benefits.

**4.1.** The CTC figures in the Pay ranges are exclusive of Gratuity. Gratuity will be paid to regular employees only, tenured employees shall not be paid Gratuity.

4.1.1 Welfare Benefits

- i. Group Medical Insurance
- ii. Group Term Life Insurance
- iii. Group Personal Accidental Insurance

These would be over and above the CTC as a welfare measure for the employees of GSTN.

# 4.1.2 Monetised Benefits Payable Monthly:

a) The regular, tenured and employees on deputation from Government Departments on the pay roll of GSTN are eligible for being paid the monetized benefits detailed in the table below on a monthly basis.

Designations	Existing Grades	Monthly monetised
(Grades)	(Pay Level- Deputationists)	benefits payable*
Chairman (1)	G1	75000
CEO (1)	G1 (Level 15)	70000
EVP (2)	G2 (Level 14)	65000
SVP (3a)	G3(Level 13)	60000
VP (3b)	G4(Level 12)	50000
Assistant VP/Chief Engineer (4a)	G5(Level 11)	40000
Associate VP/ Principal Engineer (4b)	(Level 10+ 5 yrs exp in that level)	33000
Sr. Manager /Tech Lead (4c)	G6(Level 10)	28000
Manager / Sr. Engineer (5a)	G7(Level 9)	22000
Assistant Manager / Engineer (5b)	G8(Level 8)	17000
Executive / Associate Engineer (5c)	G9 (Level 7)	14000

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\*The monthly monetised benefits/entitlements comprise of the following:

- Mobile Handset
- Mobile/Broadband Bill
- Newspaper/Periodicals
- Hospitality
- Health & Wellness Allowance (OPD)
- Office Bag

Hereafter, the reimbursements on the above elements shall be discontinued.

- b) The amounts mentioned in the above table would be payable to the employees on a monthly basis and would form a part of CTC but would be shown separately as monetised benefits.
- c) CTC including the monetised benefit shall be capped at the maximum of the pay range of the concerned employee. While granting annual increment or progression increment, monetised benefits shall not be taken into account.
- 5. The Pay, Allowances and Monetised Benefits shall be revised once there is a gap of 33 percent based on the market trends and study/reports by consulting firms. Revision shall be approved by the Board of GSTN.

\*\*\*\*

Annexure IV

### Transition

1. **Applicability:** The transition management plan shall be implemented from the date of approval by the GST Council.

### 1.1 **Purpose & Scope:**

1.1.1. Since the company is being converted into a Government owned company, the future hiring has to be appropriately aligned so as to maintain the flexibility for GSTN to hire appropriate talent for the Company. Existing employees would also be mapped to the new grade structure and the salary correction shall be done by giving the following:

- a. Transition Increment
- b. Progression along with an Increment to eligible employees at the time of transition (FY 2022-23).
- c. Outlier Management at the time of transition (FY 2022-23).

1.1.2. The existing employees on the payroll of GSTN shall be transitioned into the new grade structure on as is and where is basis (i.e. by designation).

1.1.3. The monetised benefit shall not be considered while arriving at new pay during transition and would be included in the CTC even in cases where the employee's pay reaches or breaches the maximum of the pay range. However, after transition the amount would be considered as part of CTC and policy of outlier management shall be applicable thereafter.

1.1.4. The positions occupied by NISG employees shall be advertised and the positions shall be filled up after interviews. If any employee on NISG payroll gets selected he/she shall be offered a new contract of 4 years directly with GSTN as per the recruitment guidelines of GSTN. The employees on NISG payroll who are not selected in the interview process shall either be continued till their existing contract with NISG completes or may be given three months' notice as per the contract of the employees with NISG.

1.1.5. Hiring through NISG may not be continued in future.

# 1.2 New Grade Structure and Transition to new grades:

New pay band, grade wise is provided in (Table -1) with the following salient features:

- 1.2.1 Two new grades would be introduced in GSTN in order to align the grades to the Industry practices. These are: Grade 5 c Executive / Associate Engineer at level 5 and Grade 4 b Associate VP at level 4. The grades are detailed in Table-1 below. The designations for Tech & non- tech levels & grades have also been given in Table-1 below.
- 1.2.2 There will be a total of 5 levels and 10 grades in the Company. The roles that would be performed by each level of employee in the Company has been defined in **Table -2** below.

Levels	Existing Grades	New Grades	Designations
1	G1	1	Chairman & CEO
2	G2	2	EVP
3	G3	3a	SVP

Table - 1

	G4	3b	VP
4	G5	4a	Assistant VP / Chief Engineer
	-	4b	Associate VP / Principal Engineer
	G6	4c	Sr. Manager / Technical Lead
5	G7	5a	Manager /Sr. Engineer
	G8	5b	Assistant Manager/ Engineer
	-	5c	Executive / Associate Engineer

Senior Management Grades in Level 1, 2 &3 Middle Management Grades in Level 4 Junior Management Grades in Level 5

# Table - 2

Level	Profile of a typical role in the Grade at this Level
1	Provides strategic leadership. Visioning, Goal setting & Strategy Formulation. Works with the Board and the GST council to define the future for the organisation and takes accountability for the goals defined
2	Provides operational leadership and drives goals, objectives, and culture. Contributes towards strategy formulation. Integrates and leads complex units and functions. Develops operating frameworks for the respective units
3	Requires high domain exposure with direct and indirect leadership. Involved in designing operational processes, structures, systems or methods for strategy implementation. Would be responsible for delivery. Leads complex processes and contributes to business through personal, professional and technical leadership
4	Routine kind of work, requires domain expertise or high generalist exposure. May warrant some kind of direct or indirect leadership. Involved highly in implementation. Oversee, coordinate and control functional processes towards departmental achievement of targets. Acts mostly as individual contributor or first line manager
5	Provides support in day-to-day operational activities. Works as individual contributor. Undertakes standardized routine processes and follow detailed instructions to complete the tasks assigned

# 1.3 Compensation and remuneration guidelines for future hiring and transition

**1.3.1.** The guidelines for compensation and remuneration will be applicable as per Annexure III (Compensation & Remuneration Policy of GSTN) for the purpose of transitioning the existing employees to new grade structure and pay ranges.

**1.3.2.** The existing practice in GSTN is that gratuity forms a part of the CTC for regular employees which is paid at the time of their exit. However, after the transition, as per the new policy their compensation structure shall be modified such that gratuity shall be excluded from CTC to comply with the law. In case employees are on boarded for a period of four years, Gratuity shall not be applicable as per the Act.

**1.3.3.** It is also proposed to pay LTA as 8.33% of Basic salary, instead of current practice of paying fixed amounts.

**1.3.4.** Performance Linked Incentive (PLI) will be fully variable and impacted by the performance rating (bell-shaped curve) as opposed to existing practice of giving 50% of variable pay at the end of Financial Year without assessment. The percentage of variable pay will be 10%, 15% & 20% at Junior, middle & senior levels respectively.

### **1.4 Process and methodology of transition increment:**

**1.4.1.** The compensation & remuneration policy has not been revised since 2014 and employees who have spent a considerable amount of time in GSTN have stagnated in their current roles due to lack of revision in pay ranges. A transition increment shall be given to all the regular employees as per the RC approved percentage for FY 2021-22 (i.e. 13.13, 10.6, 9.7 at the junior, Middle and Senior management levels respectively). The increment at the time of transition shall be given to the employees considering need for the salary correction so that the employees are brought into the new pay ranges. The details of how employees would be brought into the pay ranges are detailed in the subsequent paragraphs.

**1.4.2.** The tenure based scenarios of existing employees who will be eligible for transition increment is shown in following **Table:** 

No	Criteria	Particulars of Transition Increment
1	All existing regular employees with more than 4 years tenure at same grade.	Transition increment with amount equivalent to one increment- as per the RC approved percentage for corresponding management level -refer para 1.4.1.
2	All existing regular employees with more than 6 months (should have completed probation period successfully) but less than 4 years at same grade.	Transition increment on pro rata basis* - as per the RC approved percentage for corresponding management level -refer para 1.4.1.

Table	-3
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\*The calculation of the effective increment on pro rata basis shall be based on the below formula:

 $Transition increment = \{Tenure (In Months) / 48 Months\} x \{RC approved increment percentage for the respective management level\}$ 

**1.4.3.** The transition increment shall be given to all the employees of GSTN as per above Table. However, <u>transition increment shall be restricted to the maximum of the pay range of the respective employee</u>.

# 1.4.4. The process of recruiting employees on NISG payroll to GSTN Payroll as tenured employees

- i. The positions occupied by NISG employees in GSTN shall be advertised. The employees currently working in GSTN will also be given the option to apply for advertised vacancies. This process shall be completed within the next one or two months as per the Recruitment Rules of GSTN and actual induction shall be done after the approval of the GST Council.
- ii. If any employee is selected he/she shall be offered a new contract for 4 years on GSTN payroll.
- iii. If any employee is not selected he/she may be relieved after giving three months' notice or allowed to be continued till completion of his contract with NISG.
- iv. Progression of NISG executives only after contract with GSTN. The period worked under NISG to be considered relevant experience for the purpose.
- v. During the recruitment process, if any NISG employee is selected for any position to be recruited in GSTN as tenured employee, he/she shall be given one transition increment proportionately as detailed in Para 1.4 above. However, if any external candidate is selected for the position, he/she shall be inducted as per the recruitment guidelines of GSTN.

**1.4.5.** Consultants hired on GSTN payroll prior to implementation of Recruitment Guidelines would be offered, on a case to case basis, a new contract with a tenure of 2 years as per the new guidelines of hiring consultants for short tenure at appropriate level when their existing contract gets over.

# 2. Career Progression during transition

# 2.1. Introduction:

During the formation of GSTN as a Section 8 company and thereafter during the initial phase of its functioning, career progression was not envisaged as the project was in its nascent stage. After conversion of GSTN into a fully owned Government company and also due to the fact that the GST System has now stabilised substantially, keeping in view that the employees hired laterally who joined the company in its initial phase have completed more than 6/7 years in the company without any career progression, the career progression for employees on regular employment as well as tenured employees have been contemplated during the transition process of the company from a Private Limited company to a fully owned Government company. The details and methodology of career progression is detailed below:

# 2.2. Salient Features:

**2.2.1.** The progression shall be based on the eligibility criteria consisting of performance and minimum service at the same grade.

**2.2.2.** On the basis of defined eligibility criteria at each grade existing employees shall be considered for progression, which will allow an employee to move to one grade above if he/she meets the eligibility criteria of spending 4 years tenure or more at same grade (for employees up to Senior Manager grade), 7 years or more at the same grade (for employees at Assistant VP grade) with top performance ratings.

**2.2.3.** There would be change in designation as per the proposed grade structure.

**2.2.4.** The eligible employees shall be given one increment as approved by the Remuneration Committee for the financial year 2021-22 for the current grade (i.e. grade from which the employee is being progressed) as a progression increment during transition.

**2.2.5.** The eligible employees up to Senior Manager will be given one progression increment on progression to the next grade after completion of four years (Progression policy is explained later).

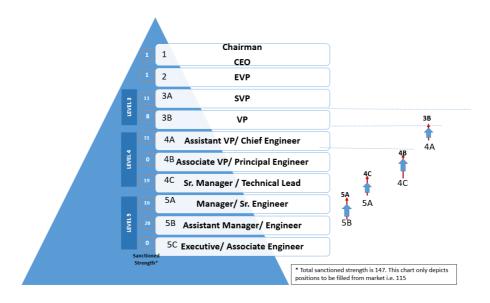
**2.2.6.** The eligible employees at Assistant Vice President Grade will be given one progression increment on progression to the next grade (VP) if they have completed seven years in the organization.

**2.2.7.** The employees at Level 2 & 3 (VP, SVP and EVP) will not be given any progression to the next grade.

**2.2.8.** The effect of progression increment shall be given as per the date approved by the GST Council for implementing the transition.

**2.2.9.** Irrespective of progression given to individual employees to higher grade, the level wise sanctioned positions approved initially by the Board will be followed for the purposes of filling the position. eg. An AVP might be given a progression to the level of VP. However, on his resignation the post will be filled up as AVP.

**2.2.10.** The grade up to which each grade of employees in the organization can progress during transition is depicted in the chart below:



### 2.3. Merit Points:

Merit points would be considered for preparing the list of eligible employees for progression as given in Column (3) in following **Table**.

Existing Rating Scale	Rating Description	Merit Points	
(1)	(2)	(3)	
А	Exceeds Performance Standards	5	
В	Achieves Performance Standards	4	
С	Slightly Below Performance Standards	3	
D	Barely Achieves Performance Standards	2	
Е	Needs to Improve Performance 1		

Table – 4

# 2.4. Eligibility Criteria for one time progression at the time of transition:

# Table – 5

Sl. No.	Employee to be progressed	Particulars of Progression
1	All existing employees up to Senior Manager level, with more than 4 years tenure at same grade and having secured 18 & above merit points in past four years subject to the condition that the employee has been awarded a rating of "A" in Financial Year 2021-22.	<ul> <li>i. Progression to the next grade in the proposed grade structure with amount equivalent to one increment.</li> <li>ii. The rate of the progression increment would be the percentage approved by the Remuneration Committee for the grade from which the employee is being progressed.</li> <li>iii. In total such employees shall get grade change and two increments (i.e. transition and progression increment).</li> </ul>
2	Existing employees at Assistant Vice President level with 7 years or more tenure at same grade having secured 32 & above merit points in the past seven years and have been awarded a rating of "A" in the Financial Year 2021-22 to be given one time progression to the level of Vice President.	<ul> <li>i. Progression to Vice President Level in the proposed grade structure with amount equivalent to one increment.</li> <li>ii. The rate of the progression increment would be the percentage approved by the Remuneration Committee for the grade from which the employee is being progressed.</li> <li>iii. In total such employees shall get grade change and two increments (i.e. transition and progression increment). Such employees shall be required to sign an undertaking that the administrative reporting after progression may continue to an employee of the same grade (i.e. VP).</li> <li>iv. Role and responsibilities shall continue to be the same in most cases.</li> </ul>
3	Employees with less than 4 years at same grade at all levels	No progression is proposed.
4.	Employees of the Level of 2 & 3 i.e. VP, SVP & EVP	No progression is proposed.

# 2.5. Salary & Emoluments

Pay, Allowances & benefits which are linked to the pay drawn by an employee at higher grade shall become applicable after the progression to next grade.

**2.6.** Outlier Management at the time of transition: The following guidelines would apply to those employees whose pay does not fall within the new pay range for their respective grade after giving the progression increment. This could either be below the minimum of the pay range or above the maximum of the pay range.

**2.6.1.** If employee's salary is below the new grade's minimum pay after giving progression increment: Such employees would be given pull to minimum increment to bring the employee to the minimum of the pay range.

- a) Pull to minimum increment shall be given at the time of transition to only those employees who are progressing to the next grade.
- b) Pull to minimum increment at the time of progression during transition shall be looked into with reference to the minimum of the new pay range to which the employee is being progressed.

**2.6.2.** If employee's salary goes above their new grade's maximum pay while giving the progression increment: In such cases the quantum of progression increment shall be capped at the maximum of the new grade of the employee. Also, In case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

\*\*\*\*

Annexure - V

# **Performance Management Policy**

**1 Applicability:** The new performance management policy and its terms & conditions shall apply from FY 2022-23.

The management by objectives (which essentially means that Manager and the employee agree on specific performance goals and then develop a plan to reach the same) approach shall be followed for Performance Management System for existing employees i.e. the regular and tenured employees on the pay rolls of GSTN.

# 1.1 **Performance Planning**

**1.1.1. Goal setting process:** At the beginning of the financial year the Departmental Head should communicate Goals/Objectives/ Key Result Areas (KRAs) to the employees through the immediate reporting manager at all levels.

- a) Ideally the key result areas and work output should be defined at this stage. Any modifications in the KRAs should be completed at this stage.
- b) This is to be done through discussions and by keeping in view the individual role objective /function.
- c) The KRAs should be measurable & objective.

**1.1.2. Components of Performance Assessment:** There shall be a prescribed performance appraisal form for all levels of employees in GSTN and the same shall be used for assessing the performance as per the defined parameters in the form. The prescribed percentages for assessment of each employee is given below:

- a) Key Result Areas This aspect would be accorded 70% weightage.
- b) Assessment of Functional Competencies This aspect would be accorded 15% weightage
- c) Assessment of Behavioural Competencies This aspect would be accorded 15% weightage

**1.1.3. Performance Rating Description:** Overall ratings must be provided against the following five point rating scale.

Table -	1
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Final Score in Appraisal Process	Performance Rating	Rating Description
85.1 and Above	A+	Exceeds Performance Standards
70.1 to 85	А	Achieves Performance Standards
60.1 to 70	В	Slightly Below Performance Standards
50.1to 60	С	Barely Achieves Performance Standards
Below 50	D	Needs to Improve Performance

**1.1.4. Performance Management Committee:** A Performance Management Committee (PMC) shall be constituted annually at the beginning of each financial year and would comprise of CEO, Head of Support, EVP (Technology & Services) and any other member nominated by CEO. The PMC shall be headed by the CEO. The terms of reference of the Committee would be as follows:

- a) Moderate the performance ratings awarded by the reviewing manager after the Annual Appraisal process of all the employees in order to achieve the prescribed bell shaped curve for the purposes of paying PLI and to implement Career Progression.
- b) The moderated performance ratings would be used for deciding PLI disbursement.
- c) Based on the moderated performance ratings the eligible employees for progression would be decided.
- d) They could either award an overall higher or lower percentage in any of the rankings than what is prescribed in the following guidelines depending upon the circumstances of the organisation and individual contributions of the employees (for e.g. the percentage of A is prescribed at 50 percent which can either be reduced or increased based on due justification). Thus, the Committee shall have the power to make any exception to the percentages prescribed for the bell shaped curve depending on the performance of the individual contributors.
- e) The exception so granted shall not be more than 5% of the total number of performance ratings in each group.
- f) The Committee shall exercise the power to moderate the performance ratings of the employees such as either one level higher or lower, based on the detailed deliberations and after discussions with the employee, his reporting manager or reviewing manager, if need be.
- g) The Performance Management Committee would conduct the interviews of the candidates to be considered for Progression.
- h) The Committee would also deliberate & decide on the representations submitted by the employees detailing their grievances, if any, on the performance rating.
- i) The meeting of the Committee shall be convened as and when required during the year.

# **1.2 Performance Evaluation Process :**

**1.2.1.** All employees who have **joined on or before 31**<sup>st</sup> **December** shall be considered for the Performance Appraisals.

**1.2.2.** At the end of each financial year, the performance of an employee shall be reviewed against the Objectives / Key Result Areas set at the beginning of the year in the performance planning phase as detailed in Para-1.1.1 above.

**1.2.3.** The employee should fill a Performance Appraisal Form as a part of self-assessment and submit the same to the Reporting Manager.

**1.2.4.** The Reporting Manager shall hold a formal discussion with the Employee and record his/her observations/comments and ratings in the form.

**1.2.5.** It should then be submitted to the reviewing manager who shall review, and if required, hold necessary discussions with the Employee and his/her Reporting Manager and record his observations and ratings based on the overall performance of the employee.

**1.2.6.** Identification of performance gaps must be done and training need identification must be recorded in the appraisal forms by the reporting manager/reviewing manager. Training needs identified through this process shall be fulfilled as per the training policy.

**1.2.7.** The performance ratings given by the reviewing manager shall be moderated by the PMC.

**1.2.8.** The ratings awarded by the reviewing manager as well as moderated by the PMC would be communicated to the employee and would serve in the process for providing the following:

- a) Annual increment based on Ratings awarded by the reviewing manager.
- b) **PLI** based on the moderated rating awarded by the PMC.
- c) Career Progression on fulfilment of the eligibility criteria (Para 2.4) based on the moderated rating awarded by the PMC.

**1.2.9.** These appraisals should give a feedback to the employee on his/her performance and would also enable the employee to focus, if need be, on the areas which require development.

**1.2.10.** The employees may appeal against the rating of the reviewing manager and/or the moderated rating given by the PMC.

**1.2.11.** The PMC shall review and deliberate on the appeals received and convey their decision which shall be final.

**1.2.12.** The decision of the PMC shall be communicated to the concerned employee and all benefits that accrue to the employee, based on revised rating shall be given, if required.

**1.2.13.** Employees on deputation will follow the appraisal process (APAR) laid down by their parent departments and guidelines issued by GoI/State Governments concerned.

# 1.2.14. Guidelines for Managing Annual Appraisal Process

- a) The three level assessment shall be followed viz. Self-Assessment by the employee, Reporting Manager Evaluation, final evaluation by the Reviewing Manager.
- b) The Appraisal forms & formats shall be made available by HR after announcing the appraisal cycle timelines from time to time during the year.
- c) The KRAs/Objectives defined at the beginning of the year can be modified in situations like change of reporting manager, matrix reporting structure, change in role/grade due to progression or getting hired for a different role through Internal Job Posting (IJP) etc.
- d) In case of matrix reporting there will be provision for incorporating KRAs & resulting feedback from concerned reporting managers.
- e) A lenient bell-shaped curve would be followed for rating distribution to achieve performance differentiation and rewarding good performance while finalizing the

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performance ratings to start with. However, the employees on deputation will not be considered for rating distribution and application of bell-shaped curve.

 f) Irrespective of the level, the moderation shall be done after dividing the number of employees of all levels into two groups viz. Technology & Non-Technology as detailed below:

Technology Roles	Non - Technology Roles	
Software & IT Infrastructure	Finance & Accounts	
Governance, Risk, Compliance	HR	
Project Management	Administration	
BIFA - Technical	Procurements & Contracts	
	Services	
	Legal	
	Other functions	

### Table-2

- g) The maximum percentage of employees to be placed in a particular rating (viz. A+, A etc.) has been detailed in the **Table-3** below.
- h) The Performance Management Committee shall decide the moderation percentages of employees' ratings as per the adapted bell shaped rating distribution detailed in Table 3 given below.
- i) Rounding-off at each rating (viz. A+, A etc.) shall be done on the higher side i.e. any decimals arrived at during calculation of the percentage shall always be taken to the higher numeral.
- j) The exception may be so granted by PMC that it shall not be more than 5% of the total number of performance ratings in each group.
- k) The impact of the bell shaped curve will be on calculation of the PLI as it is performance based. It shall also apply to career progression.
- 1) Annual increment will be based on the performance rating given by the reviewing manager and it will **not be impacted** by changes in the performance ratings due to application of adapted bell shaped curve.

Final Score in Appraisal Process	Performance Rating	% of ratings to be awarded in each group (i.e. Technology & Non Technology)
85.1 and Above	A+	20%
70.1 to 85	А	40%
60.1 to 70	В	30%
50.1to 60	С	5%
Below 50	D	5%

Table -3

# 1.2.15. Determination of Annual Increment Percentage

a) **Remuneration Committee (RC):** Based on the industry benchmark and other factors the agenda for determining the Annual Increments would be prepared by HR and approved by the Remuneration Committee.

# b) Eligibility & applicability:

- i) Full increment would be given to the employees who have joined in the first quarter of the FY i.e. 1st April to 30th June.
- ii) Pro-rata increment would be given to those employees who have joined during the period from 1st July to 31st Dec.
- No Increment would be given to the employees who join in the last quarter i.e. 1st Jan to 31st March. The increment for this period shall be paid as arrears in the next evaluation cycle on pro-rata basis as per performance rating.
- iv) Annual increment will be based on the performance rating given by the reviewing manager and it will not be impacted by the moderation of rating to achieve the defined bell shaped distribution of ratings.
- v) The effect of annual increment shall be given to only those employees who were working with GSTN on 30<sup>th</sup> April or thereafter. Any employee who is relieved from GSTN before 30<sup>th</sup> April of the financial year shall not be eligible for annual increment.

# c) Factors to be considered for deciding yearly salary increments:

- i) Previous year's performance rating of the employee.
- ii) The exact salary increment percentage for every level will be determined annually by HR as per the data published in Salary Increase Survey Report for IT Sector (i.e. product companies, IT Application Development etc.) by consulting firms and placed before the Remuneration Committee (RC) for their approval.

# d) Guiding principle for grant of annual increment:

- i)The salary increase percentage for each level to be adopted in GSTN (either higher or lower than percentage proposed in Salary Increase Survey Report) shall be approved by the RC. The annual increment or progression increment shall be granted exclusive of monetised benefits.
- ii)The salary increase percentage for each level to be adopted in GSTN on the higher side may only range between 1.1 and 1.8 times of the percentage increase proposed in the Salary Increase Survey Report to be decided by the RC. On the lower side, the percentage would not be less than 0.8 per cent.
- iii)The differential of 1.1 1.8 from the average salary increase of the IT industry may be approved by RC upon considering the attrition rate for a small sized organization like GSTN. Whenever, the attrition rate is above 10%, such a differential in the range of 1.1-1.8 may be approved by RC.
- iv)Once the percentage to be adopted in GSTN for each level is decided by the RC (termed as X), the following rating based weightages given in Table -4 would be adopted for granting increments to employees.

Rating	Weightage of Rating	Rating Description
A+	1.1	Exceeds Performance Standards
А	1	Achieves Performance Standards

### Table -4

В	0.80	Slightly Below Performance Standards
С	0.70	Barely Achieves Performance Standards
D	0.50	Needs to Improve Performance

- v) Effective percentage increase for every employee shall be based on the rating awarded by the reviewing manager.
- vi) Formula for the calculation is:
   Effective Salary Increment Percentage = Weightage of rating (As per the Table-4 above) multiplied by X.
- vii) This effective salary increment percentage will be applied to current CTC to arrive at the annual increment amount.
- viii) Illustration for calculation of Effective salary Increment percentage based on rating is given below:

	Average IT Industry Salary Increase		Effective Salary Increment Percentage based on Performance Rating				
Level		RC Approved Percentage	Exceeds Performance A+	Satisfactory Performance A	Slightly Below Satisfactory B	Barely Meets Performance Standard C	Needs Improveme nt D
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
		(1.2 times of	Weightage of rating				
		column 2)	1.1	1.0	0.8	0.7	0.5
Sr. Management	5%	6	6.6%	6%	4.8%	4.2%	3%
Middle Management	8%	9.6	10.56%	9.6%	7.68%	6.72%	4.8%
Junior Management	9%	10.8	11.88%	10.8%	8.64%	7.56%	5.4%

**1.2.16. Outlier Management at the time of Annual Increment:** The following guidelines would apply to those employees whose pay does not fall within the new pay range for their respective grade after giving the annual increment. This could either be below the minimum of the pay range or above the maximum of the pay range.

**1.2.17.** If employee's salary is below the grade minimum after giving annual increment: Such employee would be given pull to minimum increment to bring the employee to the minimum of the grade's pay range. It shall be given if employee scores a rating of A+ in the current appraisal cycle.

- a) Increment given for addressing the pull to minimum cases shall be such that it is at least taking the salary of the employee to the minimum of the respective pay range.
- b) Pull to min approach shall not be followed at the time of hiring or hired through IJP (i.e. internal candidate is hired against the advertised position).

**1.2.18.** If employee's salary goes above their grade's maximum pay while giving the annual increment: In such cases the quantum of annual increment shall be capped at the maximum pay of the grade of the employee. The maximum pay of the grade shall be calculated inclusive of the monetised benefit. Such employees would be given minimum salary increase i.e. 50% based on the rating from next financial year to offset inflation.

- a) Performance rating awarded by reviewing manger would be used to calculate the 50% increment.
- b) This increase shall be available only for 2years.

Page **465** of **531** Agenda for 48th GSTCM Volume 1 c) The salary of such individuals shall freeze after 2years.

**1.2.19.** Any exception to be given to employees on account of exceptional achievements/skills etc. shall be approved by the Performance Management Committee.

# **1.3.** Performance Linked Incentive (PLI)

**1.3.1. CTC** of an employee will be a combination of fixed pay and variable pay. The proposed compensation structure will have the Variable Pay component, fully variable. Variable Pay would be called as Performance Linked Incentive (PLI).

**1.3.2.** Level wise PLI percentages will be as follows:

Level	Grade	Existing Designation	PLI = Percent of CTC	
Level 1	1	CEO		
Level 2	2	EVP	20%	
Level 3	3A	SVP	20%	
Level 5	3B	VP		
	4A	Assistant VP / Chief Engineer		
Level 4	4B	Associate VP / Principal Engineer	15%	
	4C	Sr. Manager/ Technical Lead		
Level 5	5A	Manager / Sr. Engineer		
	5B	Assistant Manager/ Engineer	10%	
	5C	Executive/ Associate Engineer		

Table - 5	5
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**1.3.3. PLI Disbursement Percentages:** The employees shall be paid PLI based on their individual ratings in the performance appraisal process after moderation of ratings to fit the bell shaped curve defined. The percentage of PLI disbursement at each rating is detailed in the following table:

Final Score in Appraisal Process	Moderated Performance Rating	<b>Rating Description</b>	PLI disbursement (Percent of Variable Pay)
85.1 and Above	A+	Exceeds Performance Standards	110
70.1 to 85	А	Achieves Performance Standards	100

60.1 to 70	В	Slightly Below Performance Standards	80
50.1to 60	С	Barely Achieves Performance Standards	70
Below 50	D	Needs to Improve Performance	50

# **1.3.4.** Eligibility & applicability for PLI:

- **a)** The employees who have joined **on or before 31st Dec of the financial year** shall be paid on the basis of assessment for the period worked on pro-rata basis.
- **b)** The employees who have joined in last quarter (1st Jan March 31st) shall be paid 75% of the PLI for the period worked on pro-rata basis without assessment (i.e. less than or equal to a quarter).

# **1.3.5.** Eligibility for PLI in case of separation from the company:

- **a)** If the employee has worked for the entire previous FY and has served till 31st March then PLI will be paid for the financial year on the basis of moderated performance rating.
- **b)** If the employee is relieved anytime during the financial year, he /she shall be eligible for PLI on the basis of performance rating by the reviewing manager for the duration worked on pro rata basis.

**1.4. Performance Improvement Plan (PIP):** The non- performing employee shall be given 3 months' time to improve and if there is no improvement in performance he/she may be terminated after following the process of documenting the whole procedure.

- **a)** Employees may be put on PIP, if they fail to achieve the minimum objective/KRA set for them i.e. upon securing a rating of "D" in the annual appraisal process. Such employee will be asked to improve his/her performance within a period of three months, which may be extended for another three months based on recommendations of the Unit Head.
- **b)** The reporting manager should initiate the PIP by explicitly sending an email stating the KRAs where improvement is required and the time period given for showing improvement.
- **c)** Such employee shall be given a fair chance to improve his/her performance and will be monitored very closely by his/her Reporting Officer against the set parameters for improving his/her performance. They would also be given mentoring and counselling.
- **d)** The periodic review of performance also should be documented by the reporting manager and report must be submitted at the end of each month to HR. Any written warnings thereafter shall be issued by HR.
- e) At the end of the period, if the performance of the employee kept on watch list is found to have improved and duly verified by unit head, his/her services would be continued without any change in terms & conditions of his/her employment.
- **f)** In case an employee fails to improve, his/her services would be terminated as per the relevant clause in his/her appointment letter.

# **1.5.** Termination Policy

- **a)** In case value added by the employee is not commensurate with the salary being paid by the employer, the termination process may be initiated to bring fresh knowledge about the technology within the organization by hiring younger talent.
- **b)** GSTN may authorise HR to negotiate termination of service on case to case basis, paying one time severance pay which shall not be higher than one year salary of the executive.

# 2 Career Progression

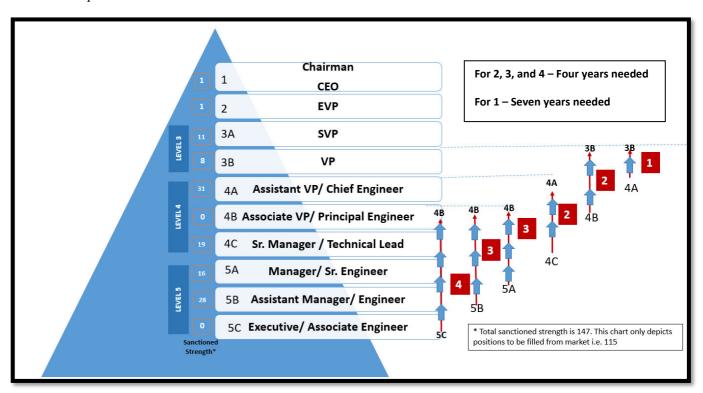
# 2.1. Introduction:

During the formation of GSTN as a Section 8 company and thereafter during the initial phase of its functioning, career progression was not envisaged as the project was in its nascent stage. After conversion of GSTN into a fully owned Government company and also due to the fact that the GST

System has now stabilised substantially, keeping in view that the employees hired laterally who joined the company in its initial phase have completed more than 6/7 years in the company without any career progression. Hence, the career progression for employees on regular employment as well as tenured employees have been contemplated during the transition process of the company. This shall be implemented w.e.f. 1<sup>st</sup> Oct. 2023. The details and methodology of career progression is detailed below:

# 2.2. Salient Features:

- a) The progression shall be based on the eligibility criteria of exemplary performance and minimum service at the same grade. The final decision for progression will be based on the interview by Performance Management Committee (PMC) after employees have been shortlisted on the basis of defined eligibility criteria at each grade.
- **b)** Progression will allow an employee to move to one grade above if he/she meets the eligibility criteria of spending 4 years tenure or more at same grade (for employees up to Associate Vice President grade) and 7 years or more at the same grade (for employees at Assistant Vice President grade) with top performance ratings.
- c) There would be change in designation as per the proposed grade structure.
- d) Administrative reporting after progression may continue to an employee at the same grade.
- e) The eligible employee shall be given one progression increment based on the percentage approved by the Remuneration Committee for the corresponding financial year {Effective percentage increase = Weightage of Rating (refer Table 4 above) multiplied by X i.e. the RC approved percentage}.
- f) The progression increment would be the effective percentage increase for the grade from which the employee is being progressed.
- **g)** The employees from Grade 5c up to Grade 4b (Associate Vice President) will be given one extra increment on progression to the next level after completion of four years.
- **h)** The employees at Grade 4a (Assistant Vice President) will be given one extra increment on progression to the next level (VP) after completion of seven years.
- i) The employees at Level 2 & 3 (VP, SVP and EVP) who have spent more than six years and secured 27 and above merit points in the past will only be given one extra increment without any progression to next grade. The counting of the six years would commence only from the date of implementation of the new policy. The increment percentage will be as per the effective percentage increase for that grade. This increment shall be effective from 1st October.
- **j)** The tenure on the payroll of NISG and tenure on contract directly with GSTN shall be considered in conjunction as relevant experience for the purpose of giving progression increment.
- k) The effect of progression increment shall be given from 1st October.
- 1) Pay & benefits which are linked to the pay drawn by an employee at higher grade shall become applicable.
- **m**) Irrespective of progression given to individual employees to higher grade, the level wise sanctioned positions approved initially by the Board will be followed for the purposes of filling the position e.g. an AVP might be given a progression to the level of VP. However, on his resignation the post will be filled up as AVP.



**n**) The grade up to which each grade of employees in the organization can progress is depicted in the chart below:

# 2.3. Merit Points:

The employees who have been rated as per the rating scale in Column (1) till FY 2021-22, will be given the merit points as defined in Column (4) in the table below. In future column (2) & (4) would be considered for the purpose of eligibility for progression. Since there is a change in the rating scale, equivalent merit points as given in the table below shall be considered for preparing the list of eligible employees for progression by HR:

Old	New	Rating	Merit Points
Rating	Rating	Description	
Scale	Scale		(4)
(1)	(2)	(3)	
А	A+	Exceeds Performance Standards	5
В	A	Achieves Performance Standards	4
С	В	Slightly Below Performance Standards	3
D	C	Barely Achieves Performance Standards	2
Е	D	Needs to Improve Performance	1

Table	- 7	
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# 2.4. Eligibility Criteria:

Items Criteria for Progression			
	Criteria for rrogression		
Qualifying Service	<ul> <li>i. For the employees from Grade 5c up to Grade 4b (Associate Vice President) min 4 years at the same grade as on 31<sup>st</sup> March of the respective year</li> <li>ii. For the employees at Grade 4a (Assistant Vice President) min 7 years at the same grade as on 31<sup>st</sup> March of the respective year</li> </ul>		
Performance Rating in Current Year	iii. Top Rating of A+ in the current year		
Merit Points	<ul><li>iv. 18 and above up to Associate VP in last 4 years</li><li>v. 32 and above for Assistant VP in last 7 years</li></ul>		
Alternative avenues of progression	Applying and competing with external candidates as per IJP policy		

Table -8

# Note:

1. Eligibility shall be determined upon fulfilling ALL the conditions listed at point no. (i) to (iv)/(v) in the above table.

2. The progression increment shall be effective from 1st October each year.

# 2.5. Selection process for Progression:

- a) The HR would prepare the list of eligible employees for progression on the basis of the eligibility criteria defined in para 2.4, after the completion of Annual Appraisal process.
- b) The performance ratings after the application of bell shaped distribution as defined in Table Nos. 2 and 3 shall be used to arrive at the potential employees to be interviewed for progression.
- c) The eligible employees will be interviewed by the Performance Management Committee and final decision will be declared thereafter.

**2.6. Outlier Management:** The following guidelines would apply to those employees whose pay does not fall within the new pay range for their respective grade after giving the progression increment.

2.6.1. If employee's salary is below their grade minimum after giving progression increment: Such employees would be given pull to minimum increment to bring the employee to the minimum of the pay range.

- a) Pull to minimum increment at the time of progression shall be looked into with reference to the minimum of the pay range to which the employee is being progressed.
- **b)** Pull to min approach shall not be followed at the time of hiring or hired through IJP (i.e. internal candidate is hired against the advertised position).

2.6.2. If employee's salary goes above their new grade's maximum pay while giving the progression increment: In such cases the quantum of progression increment shall be capped at the maximum of the new grade of the employee. Also, In case the employee's salary has already reached or breached the maximum pay of the new grade while awarding progression, no progression increment would be admissible to him/her.

2.6.3. **Any exception** to be given to employees on account of exceptional achievements/skills etc. shall be approved by the Performance Management Committee.

**3** Appeal process: The employees can submit their grievance, if any, in writing to Head HR. However, it would be a time bound process i.e. within 15 days of declaration (or last date notified by HR department) of the performance evaluation results i.e. after the completion of the moderation process (fitting of the Bell-shaped Curve).

- **a)** The representations made by the employees will be reviewed by the Performance Management Committee and final decision on representations will be taken.
- **b)** The proceedings of the Performance Management Committee will record all representations and facilitate the resolution.
- c) The Performance Management Committee members may speak with the employee, reporting manager and reviewing manager to satisfy the concerns raised by the employee.
- **d)** Resolution of the Performance Management Committee will be communicated to the employee by Head HR.

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# Annexure - VI

# **Recruitment Guidelines for Hiring Market Recruits (Part-II)**

# **1.** Short Title and Commencement

**1.1** This policy will be called as Recruitment Guidelines for hiring Market Recruits (Part-II) (For GSTN from private sector). This shall be read with the Recruitment Guidelines approved by the Hon'ble Finance Minister in March 2021 (to be called Part-I hereinafter). The Recruitment Guidelines (Part-I) were also approved by the Board of GSTN in its 44<sup>th</sup> meeting held on 11<sup>th</sup> January 2021 before being placed before the Hon'ble Finance Minister for approval. This was subsequently got approved in the GST Council as well in the 43<sup>rd</sup> Meeting on 28<sup>th</sup> May 2021.

**1.2** All the provisions of the Recruitment Guidelines (Part-I) would remain unchanged and be followed except (i) tenure of market recruits which are proposed to be changed as was envisaged in Para 7 (iii) (b) of the Recruitment Guidelines (Part-I) and (ii) the Pay Ranges of the Market Recruits as envisaged in Schedule-III of the Recruitment Guidelines (Part-I) which mentioned that the pay ranges to be aligned with market as required for market recruits from time to time. Comparison of change from Recruitment Guidelines (Part-I) and (Part-II) is detailed in Table 1 below:

Sl. No.	Subject	Para No. of Recruitment Guidelines (Part-I)	Para No. of Recruitment Guidelines (Part-II)
1.	Tenure of Market Recruits	7 (iii) (b)	Para No. 2
2.	Pay Ranges of the Market Recruits	Schedule III	Included in Para No. 4 of Annexure-III (Compensation and Remuneration Policy)

Table 1

**1.3** The policy shall come into force from the date it is approved by the GST Council.

# **Guidelines for Selection and Recruitment**

Hiring of tenured employees shall be for a contract period of 4 (four) years directly with GSTN.

- **a.** The policy for hiring in future on 4 years tenure (contract) shall be reviewed from time to time to maintain appropriate balance between regular (37 Nos.) & tenured employees.
- **b.** The selection process shall comprise of an objective skill-based test for positions in Technology functions.
- **c.** Job rotation within Technology, Support & Services every 3 years shall be done upon acquiring new skills. Executives are expected to acquire new skills.

- **d.** A search committee would be formed for recruitment of positions at VP & above level and Executive Search firms would be engaged to search and identify the best suitable candidates for the profile.
- e. GSTN would do brand building initiatives for establishing GSTN as employer of choice for attracting good talent. This would involve showcasing its work at various IT forums/conferences.
- **f.** If any position occupied by any employee in GSTN becomes vacant, the same shall be filled by 4 year tenured employment.
- **g.** In order to have a balance between the regular and tenured employees in GSTN, if any position occupied by regular GSTN employee becomes vacant due to whatever reason, it shall be filled from amongst the existing tenured employees hired on contract. The decision as to whom to induct into GSTN regular rolls shall be taken by CEO, GSTN after assessing the requirement as well as the antecedents of the employees.

# **Sourcing Channels**

**3.1** The Company shall adopt one or more of the following methods while recruiting:

Channel 1: Sourcing from Company's internal resources (Through internal job posting i.e., IJP) Channel 2: Recruitment and Manpower Agency(s)

Channel 3: Campus Recruitment

Channel 4: Sourcing through advertisements in company website, job portals, newspapers, professional social media platforms like LinkedIn etc.

- Channel 5: Direct Applications
- Channel 6: Employee Referrals

**3.2** The HR department will receive applications from all the channels used, shortlist candidates by assessing their academic qualifications and experience and organize screening of candidates through initial round of interview by the appropriate Screening Committee and submit a panel of shortlisted candidates for Interview.

**3.3** The selection shall be made by the Selection Committee. The selection shall be based on written examination, if required, for the post, performance in the interview or both, as the case shall be. All appointments shall be made from the list prepared by the Selection Committee.

# 3.3.1 Channel 1: Sourcing from Company's Internal Resources Internal Job Posting (IJP)

- **a.** The purpose is to nurture high potential talent within the organization by providing them suitable career growth opportunities. Priority and efforts should always be made to fill in specific vacancies from its existing human resource pool.
- **b.** The process for internal recruitment would be enforced through **Internal Job Posting (IJP) Policy** by inviting job applications from existing employees along with external candidates for advertised positions and communication including the job profile, candidate profile, eligibility (who can apply), application deadline etc. would be made available by HR to the existing employees of the GSTN if they wish to apply for open positions.
- c. The guidelines as laid down in the IJP policy should be referred for internal recruitment.
- **d.** Eligibility for Internal Job Posting (IJP): All existing regular and tenured employees who have spent a minimum of two years in the current role/ Grade with a performance rating of at least A (i.e., Meets Performance Standards) or above in last two appraisal cycles can apply for IJP released for positions within GSTN. The tenure in the current role/ grade will be calculated on the basis of the date of communication of IJP.
- e. The Internal candidates shall compete with external candidates for the advertised post.
- **f.** Employee must also seek an approval from the HoD concerned and Reporting Manager before applying for the IJP both of whom shall reply within 3 working days failing which it shall be deemed approved.
- **g.** Any employee who holds any warning letter on disciplinary grounds in last one year shall not be eligible to apply through IJP.
- **h.** Applications from the concerned employee should be forwarded to HR department of GSTN for further processing.

# i. Guidelines for employees:

- An employee can apply for only one vacancy at any point in time. However, the employee should be prudent while applying for roles that do not match his/her skills and experience. In case of any query regarding the role, employee should make efforts to seek all details/clarifications from the HR Team, before applying.
- ii) An employee who has not been successful in the IJP can apply for another internal role only on the basis of the following guidelines:
  - For the same role After six months. This duration is required to help the employee address the developmental needs identified for him/her during the assessment process. This period will be calculated on the basis of the date the IJP is closed.
  - For a different role Can apply immediately after receiving the developmental feedback from the previous application.

# 3.3.2 Channel 2: Recruitment and Manpower Agency (s)

- **a.** The job profile and eligibility criteria will be properly conveyed to the empanelled HR Agency(s).
- **b.** The HR Agency would invite applications following its own procedures by giving reasonable publicity through print media, internet, headhunting etc. The vacancy announcement will be uploaded on GSTN website too.
- **c.** The HR Agency will receive applications, shortlist candidates by assessing their academic qualifications, relevance of skills and experience, Age and after holding initial round of interview submit a panel of shortlisted candidates to GSTN's HR department.
- **d.** The candidates' profiles provided by the Agency(s) will be screened by the GSTN's Screening Panel, which will prepare a panel of candidates for final round of Interview by GSTN along with the profiles received from other sourcing channels.
- e. The Agency is expected to operate with the highest standards of accountability and integrity. In order to do so, the Agency should also declare any possible Conflict of Interest to the knowledge of GSTN beforehand.

# 3.3.3 Channel 3: Campus Recruitment

- **a.** The HR Department shall make campus presentation in the reputed engineering colleges based on NIRF ranking. A graded policy for offering remuneration shall be adopted for campus hiring based on NIRF ranking i.e. the students from higher ranked colleges shall be offered a higher remuneration vis-vis students from lower ranked colleges who would be comparatively offered lesser remuneration.
  - **b.** The presentation shall comprise of the Company profile, Employee Value propositions, Career opportunity, the recruitment process, dates for written test, if any, and eligibility criteria.
  - **c.**Recruitment drive at the campus comprises of the pre-placement talk followed by sharing of the shortlisted list of interested students by the Campus placement coordinator basis the criteria shared by GSTN HR department. This is followed by technical round interview and personal interview.

# **3.3.4** Channel 4: Sourcing through Company Website, Job Portals, Print Media & Professional Social Media Sites like LinkedIn etc.

- **a.** The HR department will upload the job openings on GSTN's website as well as on external job portals to which GSTN may subscribe to. The same may be published in the leading newspaper(s) (for EVPs and SVPs) and professional social media sites like LinkedIn etc (for all ranks)
- **b.** Copies of the advertisements shall also be circulated internally.
- **c.** The HR department will receive applications, shortlist candidates by assessing their academic qualifications and experience and organize screening of candidates through initial round of interview by the appropriate Screening Panel and submit a panel of shortlisted candidates for Interview along with the profiles received from other sourcing channels.

# 3.3.5 Channel 5 – Direct Applications

Direct applications received from time to time would be kept in the live databank of GSTN & whenever a vacancy arises, relevant applications from this data bank will be considered along with applications received through the other sourcing channels.

# 3.3.6 Channel 6 – Employee Referrals

We believe that our people, as employees of GSTN, are the best suited to recommend top talent to GSTN. Equipped with the knowledge of GSTN values, work culture and processes, our people know how to be selective about the candidates we hire. The Employee Referral Policy is our way of strongly encouraging our people to recommend their friends and excolleagues with whom they have personally interacted, to GSTN.

#### a. Who can recommend referrals?

- The **'employee staff'** category, which includes the following, is eligible to recommend candidates:
  - i. Regular full-time employees (Market hires and deputationists)
- ii. Tenured Employees
- iii. Contract employees through third party
- iv. Independent consultants

# b. Process :

- i. The HR department will upload the current openings on GSTN Intranet and also circulate the same among GSTN employees through email, notice boards etc.
- ii. The referral must be made against a relevant job requisition and should be shared with the HR department using an employee referral form.
- iii. All referral résumés will be valid and in active consideration only for a period of 90 days from the date of submission of the resume/ application against a relevant open job requisition.
- iv. No employee referral can be made in relation to a fresher.

#### c. Criteria for pay-out of referral bonus:

The employee referral will be considered valid for pay-out only if it has been made through the employee referral process.

- **i.** Referral bonus will be paid to the referrer subject to the following conditions:
- The new hire completes 90 calendar days of service with the organisation,
- The referrer should be working with GSTN at the time the new hire completes 90 calendar days of service, and
- The new hire would not have resigned at the time of payment to the referrer.
- **ii.** The Referral bonus amount will be paid through the next payroll cycle and will be subject to deduction of tax as applicable.
- **iii.** Referrer will **NOT** be eligible for referral bonus if:
  - He/she is part of the selection process and has any influence in the hiring decision (e.g., hiring for own teams/project),

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- The referred candidate is in the direct reporting line of the referrer
- **iv.** If the referred candidate is selected for a different position than the original position against which the candidate was referred, the referral bonus will be paid to the referrer.
- V. Referral Bonus Pay-out Grid If the referred candidate is selected for an employment, the referrer will be eligible to get referral bonus as per the grid below, subject to fulfilment of the criteria for payment of referral

	Table 2			
S. No.	Referral Bonus Pay-out Grid			
	Grade at which referred candidate is hired	Referral Bonus (INR)		
1	3 a, 3 b, 2,1	25,000		
2	4 a, 4 b, 4 c	15,000		
3	5 a, 5 b, 5 c	10,000		

#### **Pay Fixation and Offer Letter:**

Following guiding principles are to be used as reference while deciding the hiring salaries of incumbents in the respective grades:

- **a.** Once a candidate is finally selected and is to be recruited, the HR Recruitment SPOC shall negotiate the CTC to be offered based on "grade -wise approved salary structure" of GSTN; salary level of existing employees similarly placed and the current compensation package of the candidate.
- **b.** Pay Fixation in the Grade Pay should consider i) Candidates Experience (in comparison to min threshold experience desired from the job as specified in the Job Description) and ii) Candidates last drawn Compensation.
- **c.** While deciding the offer, the time duration elapsed since their last appraisal or salary hike would also be considered.
- **d.** The salary range for future hiring of engineers at levels 4&5 shall start at P25 of the proposed pay ranges for technology positions subject to negotiations & last drawn salary of the prospective candidates.
- e. Experienced candidates for technology & non- technology positions, on being hired from market would be given a minimum of 20% increase from last salary drawn. This can lead to offered salary being less than the minimum/P25 of the proposed pay range defined for that level. This is the current industry practice.
- **f.** Once the CTC offered is accepted by the candidate, the selected candidate shall be issued a Letter of Offer/Intent in the prescribed format.
- **g.** The selected candidate may be considered for the payment of hot skills allowance (Over and above the CTC) and joining bonus as detailed below:

# 4.1 Hot skills allowance (HSA):

a. The niche/hot skills are compensated with a higher pay through additional premium pay in

the IT application services sector. These skills being high in demand, a skill premium value is identified for each of them through the market compensation data analysis.

- **b.** It shall be a discretionary payout to be negotiated with the candidate and not necessarily to be paid to all.
- **c.** It is for salary differentiation for roles with a requirement for such niche skills. It shall be paid as 12%-20% of base salary, this premium is over and above the CTC.
- **d.** The premium value associated with each skill shall be tracked regularly to ensure that GSTN is able to offer compensation as per the market value of a concerned skill and at the same time avoid overpaying for urgent skill requirements which may be hard to hire for.
- e. The negotiated and decided HSA shall be paid for the entire tenure of 4 years.

# 4.1.1 Eligibility for HSA:

- **a.** The eligibility for HSA will be for individuals who not only possess a hot skill but also use that skill at least 50% of the time when performing their jobs.
- **b.** Based on the market trends and study/reports by consulting firms, the HSA list shall be revised annually with approval of the CEO.
- **c.** It is to be given to not more than ten percent of the sanctioned strength based on the criteria listed above (Shall be proposed by GSTN HR and approved by CEO).
- **d.** HSA would not be taken into consideration while calculating the ceiling for freezing the salary.

#### 4.1.2 Methodology for HSA payment

- **a.** HSA will be decided at the time of hiring the candidate for the required skill set, if it is a Hot Skill for GSTN.
- **b.** Individuals must continue securing 'A+' or 'A' rating to maintain their eligibility for the HSA
- **c.** HSA not a part of CTC for the purpose of annual increments, PLI and retiral benefits like PF, Gratuity computation etc.
- **d.** The list of identified Hot Skills for GSTN and corresponding HSA percentages shall be paid as per the table below.

Identified Hot Skills for GSTN	HSA percentages (at the rate of basic pay)
BIFA - Scrum Master	18%-20%
BIFA - Architects (platform & data)	18%-20%

#### Table 3

BIFA - UI/UX	15%-17%
BIFA - Data Science Lead	15%-17%
Business Analyst	12%-14%
Data Science Lead	15%-17%
Data Modelers	15%-20%

# 4.2. Joining Bonus

- **a.** The candidates with niche/hot skills are paid Joining Bonus for attracting talent and ensuring joining after accepting the offer in the IT application services sector.
- b. Market Value of joining bonus level wise ranges from INR 1,00,000 to INR 3,50,000
- **c.** It is a discretionary payout negotiated with the candidate and not necessarily to be paid to all as per the table below:

Level	Grade	Joining Bonus	
Level 1	1	-	
Level 2	2	3,50,000	
Level 3	3a	3,00,000	
	3b	3,00,000	
Level 4	4a	2,50,000	
	4b	_,,	
	4c	2,00,000	
Level 5	5a	1,50,000	
	5b	· ·	
	5c	1,00,000	

Table 4

#### d. Retention Clause for Joining Bonus:

Minimum service requirement of 2 years with clause for return of joining bonus in case of separation within 2 years; through the Full and Final Settlement shall be as per the below approach:

Table :	5
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Tenure with GSTN	Percentage recovery of the joining bonus
Less than 6 months	100%
6 months – 1 year	75%
1 – 1.5 years	50%
1.5 – 2 years	25%

**Note:** The payment of Hot skills Allowance and Joining bonus shall be decided on individual basis by the Management of GSTN depending on the business need or requirement for certain kinds of skills at particular point of time. All the factors for recruitment of a particular resource viz. urgency of GSTN to hire for a particular position, the criticality of the role in GSTN etc. would be considered critically in order to arrive at the decision whether the hot skills allowance and/or joining bonus would be paid to a particular candidate. There would be no bar to pay both the Hot Skills Allowance and the Joining Bonus to the same candidate in case he/she is very deserving as decided by the Management of GSTN.

**Rehiring of tenured employees:** After completion of existing contract of employees (4 years), it shall be examined if the role performed by the concerned employee is required or not. If the role is required in GSTN, it shall be further examined if the concerned employee has rendered meritorious service. The following steps would be taken in this regard:

- **i.** If the condition of rendering meritorious service, objectively determined, is fulfilled the employee may be offered next tenure-based contract for 4 years with GSTN directly after internal review and after giving one week to one month cooling off period;
- **ii.** A Committee shall be formed for such internal review, comprising of internal members of GSTN. External members can also be co-opted in the Committee, if deemed necessary by CEO.
- **iii.** If the role is not needed or the performance of the employee is below par, CEO may decide to relieve the employee concerned at the end of their contract with GSTN or by giving him three months' notice;
- iv. The employee shall be informed about the decision to retain/relieve him before three months of the termination of the contract, after internal review;
- v. If the employee concerned is relieved, the position shall be advertised and fresh recruitment initiated.
- vi. In case of resignation, the employee may be relieved before three months by either allowing the employee to buy out the notice period or obtaining waiver from the CEO, GSTN.

# **Re-hiring of Ex-Employees**

- **a.** Re-Hiring ex-employees brings along some benefits as the returnees benefit the company as they come with a fresh perspective, additional skills and wider experience. Additionally, they are familiar to organizations culture, systems and process and thus have a quick learning curve to hit the ground running. An employee who leaves the Company can be considered for rehiring subject to the following:
- **b.** The employee concerned must have had a good track record of performance and satisfactory conduct while he/she was in Company's employment;
- **c.** Re-hiring will be treated as fresh employment and the past service will not be considered for any purpose whatsoever. The process for selection will remain the same and the individual candidate will have to go through the assessments/personal interviews as is the case with any other candidate.
- **d.** There needs to be a cooling off period of 6 Months before employee can be considered for rehiring.

Deserving Executive Assistants who have been serving in the organization for 4 years or more would be considered for tenured contract with GSTN based on requirement. Their engagement shall be based on open advertisement. Total number at any point shall not exceed 4 in numbers.

\*\*\*\*

# Annexure- VII

# Guidelines for Engagement of Independent Consultants in the Goods and Services Tax Network (NOTE: Para 10 of Recruitment Guidelines (Part I) shall be replaced by these guidelines)

**1. Background:** Goods and Services Tax Network (GSTN) has built Indirect Taxation platform for GST to help taxpayers in India to prepare, file returns, make payments of indirect tax liabilities and do other compliances. It provides IT infrastructure and services to the Central and State Governments, taxpayers and other stakeholders for implementation of the Goods and Services Tax (GST) in India.

1.1 The GST System Project is a unique and complex IT initiative as it established for the first time a uniform interface for the taxpayer under indirect taxes through a common and shared IT infrastructure between the Centre and States. The Centre and State indirect tax administrations which used to work under different laws, regulations, procedures and formats and consequently the IT systems worked as independent sites, were integrated into one system with uniform formats and interfaces for taxpayers and other external stakeholders. GSTN provides a strong IT Infrastructure and Service back bone which enables capture, processing and exchange of information amongst the stakeholders (including taxpayers, States and Central Governments, Accounting Offices, Banks and RBI).

1.2 The work of GSTN has been increasing over the period of time due to increase in the number of taxpayers, resulting in filing of increased number of returns by the taxpayers and substantial increase in collection of revenue. Interlinking of data with various other Government Agencies for efficient and effective monitoring of the taxpayers has further expanded the project.

1.3 The work of GSTN would expand over the next few years as the Government of India plans to achieve the \$5 trillion economy which would essentially mean an increase in the overall turnover of Goods and Services in the country. Besides, the digital and physical infrastructure of GSTN would also have to be increased to cope with the increase in number of taxpayers and tax collections.

1.4 Keeping in mind all these developments, GSTN needs to strengthen itself with high quality resources in the required areas. Therefore, GSTN proposes to engage independent Consultants for its various Verticals. This would also allow GSTN to make assessment of additional manpower vis-à-vis sanctioned strength by initially hiring Independent Consultants and eventually converting some of the roles of Independent Consultants into tenured executives.

# 2. Type and Tenure of Engagement

- a) The Engagements shall be at the level of Independent Consultants (ICs).
- **b)** The engagement will be purely on a contractual basis.
- c) Approving authority for hiring shall be at the level of CEO and a report of the same shall be submitted to the Board on periodical basis.
- **d)** These independent consultants would get lump sum payment and not get benefits of regular or tenured executives of GSTN.

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- e) These engaged personnel shall have the status of an independent consultant vis-a-vis, GSTN and shall not be regarded, for any purposes, as being either a 'staff member' or an 'official' of GSTN. Accordingly, nothing within or relating to the Contract shall establish the relationship of employer and employee, or of principal and agent, between GSTN and the Individual Consultants.
- **f)** The engagement shall be initially for a period of two years which may be extended up to three years, depending on the performance evaluation. After three years further extension in only exceptional cases shall be permissible based on the performance and organizational needs with the approval of the CEO, GSTN, keeping the Board informed of the number of independent consultants engaged periodically.
- **g)** No extension shall be given to an independent consultant after the age of 67 years has been attained by him/her.

**3.** Qualification, Experience and Vacancies: Applicants with following qualifications and experience would be considered for engagement as Independent Consultants.

Table 1		
Discipline	Education Qualification*	
Services Department	Graduate or Masters (With extensive GST/Customs/Indirect Taxes knowledge)	
Technology Department	Graduate (B.Sc, BE, B.Tech) or Masters (MCA, MBA, M.Tech) equivalent degree with adequate domain knowledge will be considered.	
Support Department	Graduate or Master's Degree with adequate domain knowledge in the concerned Wing will be considered.	

# 3.1. Essential Education Qualification:

\*For the candidates having degrees from universities/institutes from outside India, Times/OS ranking of such universities/institutes will be taken into account.

# **3.2** Experience, Age and remuneration:

Table 2

Position	Upper Age Limit	Post qualification Experience Years	Relevant experience (No. o1 years)
Young Professionals	35 years	Minimum 0 -1 year	0
Associate	45 years	Minimum 1 - 3 years	1

Consultant	50 years	Minimum 8 years	3
Senior Consultant	65 years	15 years and above	5

\* Experience includes up to 3 years for Ph.D. holder, provided no work experience is counted during those 3 years.

3.3. Number of Independent Consultants: A maximum of 25 number of Independent Consultants may be engaged by GSTN. The recruitment shall however, depend on the actual requirement at a particular point of time. These engagements shall be above the sanctioned strength of 147 positions in GSTN.

**3.**4 Independent Consultants shall be appointed for such projects which are short term in nature and requisite skill is either not available within GSTN or the workload of the project needs an Independent Consultant.

3.5. This would also allow GSTN to make assessment of need to augment sanctioned strength from time to time based on the use of these appointments as Independent Consultants as an interim arrangement.

3.6. Approving authority for hiring shall be at the level of CEO and a report of the same shall be submitted to the Board on periodical basis.

#### 4. **Remuneration and Annual Enhancement**

#### 4.1. Remuneration

a) The remuneration will be inclusive of all applicable taxes and no other facility or allowance will be provided by GSTN except providing laptop for working in the office with policy on laptop being applicable. The range of remuneration for each of the positions are as given in the table below:

Remuneration per month (Rs.)	IT Skills Allowance
60.000	
60,000	20,000
80,000 - 1,45,000	30,000
1,45,000 - 2,65,000	40,000
2,65,000 - 3,30,000	50,000
	1,45,000 - 2,65,000

Table	3
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b) Remuneration for any selected candidates shall be fixed, based on the following:

i) The range of Remuneration proposed in the above table for the position in which the candidate has been selected.

- ii) Years of Experience
- iii)Last Pay Drawn
- iv) Remuneration over and above the rates mentioned in the table for deserving candidates may be paid with the approval of Chairman GSTN.

**4.2. TA/ DA:** The Independent Consultants may be required to travel to any place in India. While on tour, TA *I* DA will be admissible to Young Professional, Associate, Consultant and Senior Consultants as are admissible to Assistant Section Officer (Level 7), Section Officer (Level 10), Under Secretary (Level 11) and Director (Level 13) of the Central Government, respectively.

# 4.3. Annual Enhancement of Remuneration

- a) The remuneration of an independent consultant shall be reviewed after completion of every year of tenure of the independent consultant.
- **b)** The enhancement in remuneration will be based on his / her performance during the year after the recommendation of the Committee constituted for this, as per the following criteria: -
- i) Performance shall be judged on the basis of Annual Performance Assessment grading.
- ii) Performance management of the candidates would be based on clearly defined KPls/KRAs for the relevant role and achievement of the same.
- iii) Total enhancement in remuneration shall not exceed 10% annually in any case.
- c) The Remuneration Enhancement shall be purely based on the Performance management methodology adopted by GSTN for all its employees.

# 5. Orientation and Training:

- a) A capacity building programme shall be designed for these resources for the modules on which they would work, in association with an MSP. Each hired resource shall undergo the orientation-cum-training programme.
- b) There shall be an Induction Module which each of the hired resources shall go through where the Independent Consultants would be inducted within GSTN.
- c) Apart from this, there shall be role specific modules which the resources will go through after joining in their position on an intermittent basis.

6. Terms of Reference: The terms of reference shall include the outputs to be delivered and the functions to be performed. The outputs and functions shall be specific, measurable, attainable, results - based and time-bound. Detailed TOR will be drawn by respective divisions in GSTN to which ICs are posted. The TOR will be deemed to be part of the contract.

#### 7. Payment:

- **a)** The Independent Consultants will be paid monthly remuneration within 7 days after completion of the month.
- **b)** The Income Tax or any other tax liable to be deducted, as per the prevailing rules will be deducted at the source before effecting the payment, for which GSTN will issue TDS certificates. Individual consultants shall be liable to pay Goods and Services Tax, as applicable. GSTN undertake no liability for taxes or other contribution payable by the Individual Consultant on payment made under this contract.

# 8. Working Hours and Leave:

- **a)** Working Hours shall normally be from 9.30 AM to 6.00 PM with flexi time of 1 hour on both sides during working days including half an hour lunch break in between. However, in exigencies of work, Independent Consultants may be required to sit late and may be called on Saturday / Sunday and other holidays also.
- **b)** Independent Consultants will be eligible for 08 days leave during the period of one year, on pro-rata basis subject to the prior written approval of the controlling officer. Unavailed leave cannot be carried forward to the next year. Further, leave up to one month can be considered without remuneration with the prior approval of controlling Officer. However, in exceptional cases like need for professional development, training etc., this condition may be relaxed with the approval of Chief Executive Officer, GSTN, subject to official exigencies.
- c) Apart from above, the women Independent Consultants may be eligible for maternity leave as per the Maternity Benefit (Amendment) Act, 2017 issued by Ministry of Labour & Employment vide letter No. S-36017/03/2015-SS-I dated 12th April, 2017.

# 9. Termination:

- **a)** The engagement can be terminated at any time by GSTN by giving 30 days' notice or pay in lieu thereof. Similarly, the Independent Consultant may also resign after giving notice for a similar period.
- **b)** GSTN reserves the right to terminate any Independent Consultant at any stage in the event of a serious failure to perform the task assigned or of failure to observe any standards of conduct.

# 10. Title Rights, Copyrights, Patents and Other Proprietary Rights:

- a) Title to any equipment and supplies that may be furnished by GSTN to the Independent Consultant for the performance of any obligations under the Contract shall rest with GSTN, and any such equipment shall be returned to GSTN at the conclusion of the contract or when no longer needed by Independent Consultant.
- **b)** GSTN shall be entitled to all intellectual property and other proprietary rights, including, but not limited to, patents, copyrights and trademarks with regard to products, processes, inventions, ideas, know-how or documents and other materials which the Independent Consultant has developed for GSTN.

# 11. Force Majeure and other Conditions:

a) The Force majeure clause shall be applicable under this guidelines and any act arising from causes beyond the control and without the fault or negligence of the individual independent consultant shall not be attributable to the consultant.

**12.** Audits and Investigations: The Independent Consultants shall be liable to refund any excess amounts paid to them which are brought out/highlighted by auditors during post audit of GSTN.

13. Settlement of Disputes: GSTN and the Independent Consultant shall use their best

efforts to amicably settle any dispute, controversy or claim arising out of the Contract or the breach, termination or invalidity thereof.

**14. Arbitration:** Any dispute, controversy or claim between the parties arising out of the Contract, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to the CEO, GSTN for arbitration. The CEO, GSTN may appoint an arbitrator for the settlement of the controversy.

**15. Conduct of Independent Consultants and Conflict of Interest:** The Individual Independent Consultant shall be expected to follow all the rules and regulations of GSTN which are in force. He/ she will be expected to display utmost honesty, secrecy of office and sincerity while discharging his / her duties. In case the services of the Individual Independent Consultant are not found satisfactory or found in conflict with the interests of the GSTN*I* Government of India, his/her services will be liable for discontinuation without assigning any reason. Decision to terminate any such contract shall need approval of the CEO.

# 16. General terms and conditions:

- a) GSTN may require the Independent Consultant to submit a Statement of Good Health from a recognized physician prior to commencement of work in any offices or premises of GSTN.
- b) The Independent Consultant shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of his/her obligations under the Contract, as well as for arranging, at the Individual Independent Consultant's sole expense, such life, health and other forms of insurance as the Independent Consultant may consider to be appropriate to cover the period during which the Individual Independent Consultant provides services under the Contract.
- c) The engagement as Independent Consultant is subject to verification of documents related to educational qualification and experience. If any information/ documents submitted by Independent Consultant are found false *I* wrong at any stage, his/ her engagement will be terminated immediately and appropriate action will be taken against him / her as per rules.
- d) In the unfortunate event of the death, injury or illness while serving GSTN, the Independent Consultant or the next of kin shall not be entitled to any compensation or Appointment.
- e) The period of engagement would commence from the date of joining at GSTN.
- f) The period of engagement as Independent Consultant will not confer any claim or right for subsequent engagement / employment with GSTN or any other Government Department at a later date.
- g) Where the CEO, GSTN is of the opinion that it is necessary or expedient to do so, he may by order and for reasons to be recorded in writing, relax any of the above provisions or impose more conditions which are reasonably required for the functioning of independent consultants and are in the interest of GSTN.

**17.** Consultants already working in GSTN desirous to avail the benefits of revised scheme will have option to close to enter into a new contract for the balance of their tenure under this policy.

\*\*\*\*

# Leave Rules

#### 1. Short Title And Commencement

- 1.1. These rules may be called the GSTN Employees Leave Rules, 2023.
- **1.2.** They shall come into force with effect from 1<sup>st</sup> Jan 2023.

# 2. Extent Of Application

**2.1.** These rules shall apply to all regular employees, tenured employees directly employed with GSTN for a period of four years but shall not apply to those on contract through third party, casual employment and those engaged as Independent consultants.

**2.2.** Employees on deputation shall follow the leave rules of their parent department or the Central Government Rules as applicable.

# 3. Definitions

**3.1.** In these rules, unless the context otherwise requires:

- a) "Company" means 'Goods & Services Tax Network'.
- b) "Sanctioning Authority" with reference to the exercise of any powers under these rules means the officer or the authority to whom such powers are delegated in accordance with the schedule of delegation of powers and/or any other order issued in general or in particular.
- c) "Employee" means a person appointed to any position in the Company and will include a person on probation, a deputationist in the Company, and a re-employed person but shall not include Apprentices.
- d) "Month" means the calendar month.
- e) "Year" means the calendar year.

#### 4. General Conditions For Grant Of Leave

**4.1.** An employee before proceeding on leave shall furnish in the application the details about his leave and get it approved from reporting manager.

**4.2.** Unauthorised absence from duty will render an employee liable to disciplinary action.

**4.3.** Except in an emergency, application for leave for three days or less shall be made at least twenty-four hours prior to the time from which it is required. Applications for leave for more than three days shall be made at least two days before the date from which the leave is required.

**4.4.** An employee who desires to extend his leave shall apply to the sanctioning authority giving reasons for extension well in time so as to reach the sanctioning authority before the expiry of leave already granted. He shall not avail the same before it is sanctioned, except in case of an emergency.

**4.5.** If the application for extension of leave is on the grounds of illness of the employee, it shall be accompanied by a Medical Certificate if the leave is for more than 3 days.

**4.6.** Except as provided otherwise under these rules, any kind of leave may be granted in combination with or in continuation of any other kind of leave.

**4.7.** Holiday or a series of holidays including RH may be combined with any other type of leave. The rules do not restrict any type of combination.

**4.8.** Leave shall be sanctioned by reporting officer in accordance with delegation of authority. In case of special leave, approval from reviewing officer is also required.

**4.9.** Leave regularization in case of short leave or any missed punching cases, request to be submitted to manager for approval as defined in Attendance rules.

**4.10.** In case of resignation, employees shall ordinarily be allowed to avail EL and SL or CL with due approvals. However, the relieving of the employee may be extended by the number of leave availed by the employee during the notice period. The total number of leave shall not be in excess of five working days in total. In case of any exceptions the approving authority would be CEO, GSTN.

**4.11.** Any restricted holiday can be availed during the notice period after the approval of reporting manager.

**4.12.** When applying for a half day leave, employee is required to spend a minimum of 4 business hours at office. Half day leave can be used in the Casual Leave and Sick Leave category and in the Earned Leave category only if there is no other leave available.

**4.13.** In case of a Bandh/Voting/Natural calamity or any situation decided by the CEO, the affected special advisory may be issued for the same by HR with CEO's approval. Such periods will be treated as special casual leave.

**4.14.** The employee will be eligible for leave proportionate to the period of service computed from the date of joining.

**4.15.** In the event of separation, all forms of Leave that accrue on an annual basis will be computed on a pro-rata basis.

**4.16.** If the leave account of employee doesn't have sufficient leave balance, the notice period may be extended in case employee applies for leave during the notice period subject to salary deduction for the number of days leave is availed.

**4.17.** In case of any exceptions the approving authority would be CEO, GSTN.

**4.18.** Employees will need to seek approval (written/email/HRMS) in the prescribed format before proceeding for leave from the authority as specified in Table below

**4.19.** The reporting manager shall be authorised to approve leave. However, if more than 5 days of leave is requested the approval will be required to be taken from the next level in the hierarchy.

# 5. Kinds and amount of leave admissible:

- **5.1.** Earned Leave Each employee will be entitled to **30 days of earned leave** in a calendar year. It will be credited on a monthly basis at the rate of 2.5 days per month.
  - a) Only 10 days of accumulated ELs (earned in the respective calendar year) will be carried forward at the end of calendar year and rest of the accumulated ELs, if any, shall be enchased at the end of calendar year.
  - b) If the EL balance is less than 10 in that case all the ELs will be carried forward and it will not be encashed at the end of calendar year.

- c) Employee cannot accumulate more than **50 days** of ELs over the years. However, after reaching the maximum accumulation limit of 50, on 1st Jan in next calendar year employee will be eligible for 30 days of EL to be credited to leave account as per policy.
- d) For serving employees option will be given to employees for encashment of 50% of the EL balance at the end of calendar year. This facility would be available for each of the FY here after (i.e. 1st Jan 2023 onwards).
- e) If the employee who is in service chooses to take the encashment of EL, it shall be allowed only at the end of calendar year or on termination of service during the year.
- f) Maximum Earned Leave that can be availed continuously, should not exceed 30 days. If due to any exigency, more than 30 days of continuous leave is required, in addition to the approval from reporting & reviewing officer, it should also be approved by the CEO.
- g) The accumulated EL up to a maximum of 50 days will be encashed only at the time of exit.
- 5.2. Casual Leave Each employee will be entitled to Casual leaves of 8 days in a Calendar year.
  - a) CL shall be credited at the time of joining on prorata basis for a new employee depending on the date of joining.
  - b) For the existing employee 8 CLs will be credited on annual basis on 1<sup>st</sup> of January.
  - c) CL cannot be encashed and it cannot be carried forward.
  - d) CL may be granted for half day also. If casual leave for half day is taken, the lunch interval shall be taken as a dividing line.
- 5.3. Sick Leave An employee is entitled to 8 days of Sick leaves (SL) in a Calendar year.
  - a) SL shall be credited at the time of joining on prorata basis for a new employee depending on the date of joining.
  - b) For the existing employee 8 SLs will be credited on annual basis on 1<sup>st</sup> of January.
  - c) Maximum accumulation of SLs can be up to **30 days** which will **not be** en-cashable at the time of separation or at the end of calendar year.
  - d) Even SL can be taken for half day. If SL for half day is taken, the lunch interval shall be taken as a dividing line.
  - e) An application for grant of leave or extension of leave on medical grounds must be accompanied by a Medical Certificate if the leave is more than 3 days.
- **5.4.** Special Leave Maternity leave, Paternity Leave & Compensatory Off will be treated as Special Leave. The duration and other terms of the Maternity leave will be as per the Maternity Benefits Act.
- **5.4.1.** Maternity Leave Applicable to all eligible women employees as per Maternity Benefits Act-1961 and amendment in 2017. Women employees with less than two surviving children shall be entitled to Maternity Leave not exceeding **26 weeks**. Maternity leave will not commence earlier than **8 weeks** prior to the expected date of delivery.
  - a) A women employee (with less than two surviving children) who legally **adopts** a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of **12 weeks** from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

- b) During such period, she shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.
- c) In case of miscarriage or medical termination of pregnancy, a woman employee shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit, for a period of **6 weeks** immediately following the date of her miscarriage or medical termination of pregnancy.
- d) Maternity leave shall not be debited against the leave account including adoption cases.
- e) Maternity leave will be non-encashable in nature.

**5.4.2.** Paternity Leave- A male employee with less than 2 surviving children, may be granted paternity leave to be approved by the reviewing manager for a period of up to 15 days, during the confinement of his wife for childbirth i.e. up to 15 days before or up to six months from the date of delivery of the child.

- a) Paternity leave will also be admissible on adoption of child.
- b) During such period of 15 days, he shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.
- c) The paternity Leave may be combined with leave of any other kind if approved by the competent authority.
- d) If paternity leave is not availed of within the period specified above, such leave shall be treated as lapsed.
- e) The paternity leave shall not be debited against the leave account of the employee.
- f) Paternity leave will be non-encashable in nature.

# 5.4.3. Compensatory Off-

- a. Employees up to Assistant Vice President grade (with prior approval of Head of Unit) who are required to report for duty in order to attend regular office work on an official holiday/ weekly off/ weekends are entitled to compensatory off, If employee has worked for more than 6 hours.
- b. In order to avail compensatory off, employees will have to utilize the leave within the next 6 months, failing which Compensatory off will lapse.

#### 6. Encashment of leave:

- a) In case of resignation/expiry of tenure, the employee shall be granted leave encashment for the leave balance of EL (up to a maximum of 50 days) as on the date of relieving and the same shall be paid with the full and final settlement of the employee. Any accumulated EL balance in excess of 50 days will be considered lapsed.
- b) Encashment of leave shall be calculated based on CTC.
- c) The Earned Leave will be encashed by the serving employee only at the end of the calendar year as per Para 5.1.
- d) In case an employee dies while in service, cash equivalent of the Earned leave that the deceased employee has accumulated would be paid to the employee's dependent as per the last drawn CTC.
- e) In case the services are terminated by serving notice, encashment may be allowed in respect of EL admissible to him/her.

# 7. Attendance Rules:

- a) Office Timings applicable for all employees will be 09:30 AM to 06:00 PM
- b) The above timings will include a 30 minute lunch break from 1:30 PM to 2:00 PM

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- c) Employees may be required to work beyond office hours due to exigencies of work without any overtime allowance.
- d) Saturdays and Sundays will be non-working days.
- e) Attendance Recording: Regular record of attendance will be kept for all employees.
- f) Flexi Timing: A general flexi time of 30 minutes shall be allowed subject to the employee completing his scheduled working hours. Need based Flexible work timing can also be allowed on approval from Unit Head/CEO
- g) Work from Home will be allowed as per the defined Work From Home Policy (Annexure)
- h) An employee reporting late on a particular day, will be required to take prior permission from her/ his Reporting Manager
- Subject to the provisions of flexi time (clause vi above), late coming to office by an hour, twice a month may be ignored. Each subsequent late coming (beyond 15 minutes) would attract deduction of half-day leave from the employee's leave credit and in case there is no leave balance salary will be deducted.
- j) In case of unavoidable delays in reaching office, the employee must inform her/ his Reporting Manager through SMS/phone call/email.
- k) If an employee leaves before the closing time of office, without permission from her/ his Reporting Manager, he/ she will be penalized by half a day deduction from her/ his leave account and in case there is no leave balance then in that case salary will be deducted.

#### 8. Leave Without Pay (LWP):

- a) An employee who has exhausted all his/her leave may be granted leave without pay for such number of days, either at a stretch or intermittently, as the Company deems fit. The employee will be required to obtain prior approval of the approving authority before proceeding on leave. The decision of the CEO will be final in all such cases.
- b) National Holidays, Paid Holidays, Saturdays and Sundays falling between Leave without Pay will be treated as Leave without Pay.
- c) An employee on LWP, will not be entitled to any compensation, including salary, allowances, retirals, leave accumulation and other benefits / entitlements. It shall also not be considered in reckoning the period of service for progression or confirmation after probation.

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#### **Miscellaneous Entitlements**

# 1. Applicability:

The new entitlements shall be applicable after the proposal is approved by the GST Council (Date).

# 2. Recognizing Talent for Exemplary Performance

- 2.1 To reward the excellence in performance of employees and also to promote good and healthy team spirit in the organization, two awards as follows are proposed:
  - a) Employee of the month: One employee from each function (i.e. Technology, Services & Support/others) shall be given buffet dinner coupons for up to 4 family members every month.
  - **b)** Best team of the quarter: Module & Function wise best performing team will be selected for the reward. Company sponsored buffet dinner coupons for all the concerned team members every quarter.

# 3. Official Travel

# 3.1 Room Tariff

- a) The room tariff for Tier 1 cities viz. Delhi, Mumbai, Bangalore, Chennai, Kolkata, Ahmedabad, Pune room shall be as given in column 3 below.
- b) The remaining cities may be classified as Tier 2 and the existing limits given in column 2 below for room tariff may be continued.

Grades	Limits for Tier 2 Cities (inclusive of tax)	Room Tariff for Tier 1 Cities (inclusive of tax)
(1)	(2)	(3)
1	As per actual	As per actual
2	Not exceeding Rs. 12000/-	Not exceeding Rs. 17000/-
3a – 3b	Not exceeding Rs. 12000/-	Not exceeding Rs. 17000/-
4a – 4c	Not exceeding Rs. 7000/-	Not exceeding Rs. 10000/-
5a - 5c	Not exceeding Rs. 7000/-	Not exceeding Rs. 10000/-

#### Table - 1

# **3.2 Daily Allowance on Tour:**

a) The per diem shall be applicable as per column 2 in table below.

Grades	Per Diem/Daily Allowance (Rs.)
(1)	(2)
1	6000
2	4000
3a - 3b	4000
4a – 4c	3000
5a – 5c	3000

#### Table - 2

b) The local conveyance shall be reimbursed on actual basis on production of bills.

# 3.3 Local Travel Entitlements

- a) Employees may avail the services of the vehicles hired by GSTN for official local travel. In case of exigencies, employees would get reimbursement of actual fare by public transport. In case employee is using own vehicle for Local travel due to official work, employee may claim conveyance as per rates proposed.
- b) The rates of transportation by four wheeler and two wheeler shall be as given in the table below:

Personal Conveyance Mode	Rates
Four Wheeler	Rs.24per Km
Two Wheeler	Rs. 12per Km

#### Table - 3

#### 4. **Relocation Expense**

- a) Currently the entitlement of SVP & above is J class for work related travel. However, for relocation purposes the entitlement is economy class. The same is now being changed and the entitlement for relocation purposes for SVP and above shall be J Class.
- b) Entitlement for transportation of personal effects for all levels shall be Rs.50 per km as per the following table.

Table - 4	
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Grades	Rates for Transportation of personal effects	Air Travel Entitlements
1.	2.	3.
1	Rs. 50 per km	Air (J Class)
2	-do-	-do-
3a	-do-	-do-
3b	-do-	Air (Economy Class)
4a – 4c	-do-	-do-
5a – 5c	-do-	-do-

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### Annexure-X

### **Compensation Rules for Deputationists**

1. These rules shall be called the "compensation rules for deputationists in GSTN" and shall include all employees in GSTN who are on deputation irrespective of whether they join GSTN from the Central Government, State Government or from PSUs.

**1.1** The following Pay and Allowances shall be paid to deputationists working in GSTN unless and otherwise the Pay and Allowances are defined and prescribed by the Department of Revenue while approving or processing the deputation or anytime thereafter:

- a) Basic Pay shall be as admissible in the parent department or fixed in GSTN based on Recruitment Guidelines of GSTN as per the Central Government Pay Matrix. The Basic Pay of State Government employees shall be fixed as per the Central Government Pay Matrix provided they give an undertaking that they opt for Central Government Pay Scales along with allowances admissible in GSTN. In case any employee opts for the State Government pay scales, they would be paid the Pay and allowances as admissible in the respective State Government.
- b) Dearness Allowance as admissible in the Central Government. This would be admissible to State Government Employees on deputation in GSTN only if they have opted for the Central Government pay scales otherwise they would be paid the dearness allowance admissible in their respective State Government.
- c) The following Allowances would be paid to the employees on deputation in GSTN. These allowances would be paid to the State Government employees only if they have opted for the Central Government Pay scales otherwise they would be paid the allowances as admissible in their respective State Governments.

**1.2 House Rent Allowance:** The employees would be paid house rent allowance at the following rates as they are not eligible for allotment of accommodation under the Central Government Pool of accommodation. However, no HRA would be admissible, if the Central Government allows General Pool Accommodation to any of the executives of GSTN on such representation being made as a special case:

Designation	Pay Level	Basic Pay Range ( As on Date)	House Rent Admissible per month	
Chairman	L-16	205400-224400	1,50,000 *	
CEO	L-15	182200-224100	1,25,000 *	
EVP	L-14	144200-218200	1,00,000	
SVP	L-13	123100-215900	85,000	
VP	L-12	78800-209200	80,000	

Table	- 1
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Assistant VP	L-11	67700-208700	75,000		
Associate VP	L-10 (with 5 years' experience in the level)	56100-177500	70,000		
Senior Manager	L-10	56100-177500	65,000		
Manager	L-9	53100-167800	60,000		
Assistant Manager	L-8	47600-151100	55,000		
Executive	L-7	44900-142400	50,000		

**Note (i)** \* Company lease facility along with maintenance and GST may be provided by GSTN for Chairman and CEO.

(ii) Lease shall include self-lease also.

**1.3** Fuel Allowance: The fuel allowance shall be paid to the employees on deputation at the following rates:

# Table-2

Details	Chairman (L 16)	CEO (L 15)	EVP (L 14)	SVP (L 13)	VP (L 12)	AVP (L 11)	Associate VP (Level 10 with 5 yrs in the Level)	SM (L 10)	Manager (L 9)	AM (L 8)	Executive (L 7)
Fuel Allowance (per month)	Company Car	Company Car	Company Car Or 50000	Company Car Or 45000	25000	21000	19000	17500	16500	15500	14000

**1.3.1** EVPs and SVPs would be given an option to either avail a Company provided Car or opt for getting the monthly fixed amount mentioned in the table above.

**1.4 Other Allowance:** The employees on deputation to GSTN are neither entitled for Leave Travel Allowance nor for Children Education Allowance as is admissible to them in the Government. These allowances have been monetised and the same would be paid to the deputationists on a monthly basis to different grades of employees as detailed in the following table:

Table - 3

Designations	Other Allowance to be paid monthly	
	(Rs.)	

SVP and above	17000
Up to VP	9000

**1.5 IT and Professional Allowance:** IT and Professional Allowance shall be paid to the employees on deputation in GSTN as per the following table:

Table - 4

Designation	Pay Level	Basic Pay Range ( As per 7 <sup>th</sup> CPC)	Proposed (Percentage of Basic Pay & DA)
Chairman	L-16	205400-224400	40
CEO	L-15	182200-224100	40
EVP	L-14	144200-218200	45
SVP	L-13	123100-215900	45
VP	L-12	78800-209200	45
Assistant VP	L-11	67700-208700	50
Associate VP	L-10 (with 5 years' experience in the level)	56100-177500	50
Senior Manager	L-10	56100-177500	50
Manager	L-9	53100-167800	50
Assistant Manager	L-8	47600-151100	50
Executive	L-7	44900-142400	50

- a) The above rules shall be admissible to the employees on deputation in GSTN with effect from the date the same is approved by the GST Council. Till the time same is approved, the allowances being paid under the old policy shall be continued and if this is not approved exit option should be given in further consultation with competent authority (GST Council).
- b) New deputationists to be on boarded as per the new policy after the same has been approved;

- c) Existing deputationists were on boarded as per the advertised old policy and therefore, would be given option to change their perks as per the new policy or stay with old policy for the balance of their tenure.
- d) Any revisions to Pay, Allowances and Monetised Benefits for deputationists shall be as per the company policy after approval of the Board of GSTN.

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# Dates of implementation and saving & difficulty removal during implementation

# 1. Dates of implementation

Table - 1

Particulars	Dates of implementation	
<ul> <li>Transition</li> <li>Transition Increment</li> <li>Progression Increment during transition</li> <li>Pull to/near minimum for progression cases</li> </ul>	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD	
<ul> <li>Performance Management Policy</li> <li>Annual Increment</li> <li>PLI Based on Bell Curve for the Year 2022-23 &amp; onwards</li> <li>Progression Based on Bell Curve for the Year 2022-23 &amp; onwards</li> </ul>	<ul> <li>FY 22-23 onwards (Assessment in FY 23-24 onwards)</li> <li>1 April 23</li> <li>1 April 23</li> <li>1 Oct 23</li> </ul>	
Recruitment Policy	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD	
Leave Rules	1 Jan 2023	
Entitlements for Mobile Handset & other allowances	First day of the month after BOD & GST Council approves the proposal for transition or any other date decided by the BOD	
Reward and Recognition	1 Jan 2023	
Allowances for Deputationists	After approval by competent authority. Till the time same is approved, the allowances being paid under the old policy shall be continued and if this is not approved exit option should be given in further consultation with competent authority (GST Council).	

# 2. Saving and difficulty removal during implementation

- a) The points not listed in the proposal shall be continued as per the existing clauses in the HR Manual viz. Joining, Attendance, Grievance & Disciplinary procedures etc. After the in-principle approval of BOD/ Council of these documents (Presentation & Agenda), the HR Manual would be revised to incorporate these changes and revised manual issued with the approval of the CEO, GSTN.
- b) All existing decisions of the Board and Management taken prior to the date on which these policies become operational shall continue to apply notwithstanding any conflict with the present policies provided that specific decision taken in relation to any of the past decisions to overrule the past decision shall lead to the new specific decision prevailing.
- c) Difficulty removal clause: Any difficulties/challenges during implementation of the transition process/policy shall be resolved by CEO, GSTN for employees up to the level of Senior Vice President and by Chairman, GSTN for employees of the level of EVP & above. The resolution shall be provided based on the generally accepted principles laid down in the policies.

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# <u>Agenda Item 09: Report of Group of Ministers on constitution of Goods and Services Tax</u> <u>Tribunal</u>

# GOM CONSTITUTED VIDE OM NO. A-50050/150/2018-CESTAT-DOR

As per the provisions of the CGST Act, 2017, each bench of the Tribunal is composed of one Judicial Member, one Technical Member (Centre) and one Technical Member (State). However, in its order dated 20.09.2019 in WP 21147 of 2018 – Revenue Bar Association Vs. Union of India, Hon'ble High Court of Madras held that "*The number of expert members therefore cannot exceed the number of judicial members on the bench*" and struck down the relevant provisions of the law.

2. In addition to this, Hon'ble Supreme Court of India has laid down various principles with respect to appointment to Tribunals, conditions of service etc. in various other judgements.

3. Accordingly, certain draft amendments were placed before the GST Council in its 47<sup>th</sup> Meeting held on 28<sup>th</sup> -29<sup>th</sup> June, 2022 in Chandigarh and the Council decided that the matter be referred to a Group of Ministers.

4. The GoM was mandated to recommend necessary amendments required in the GST Laws to ensure that the legal provisions—

- (a) maintain the right federal balance;
- (b) are in line with the overall objective of uniform taxation within the country; and
- (c) are in line with the principles outlined in various judgements of Courts in relation to various aspects of Tribunal and are legally sustainable.

5. The GoM held two meetings for detailed deliberation on a list of issues. The first meeting was held on 26<sup>th</sup> July 2022 in hybrid mode and deliberated and resolved many issues. The GoM considered the original draft discussed in the 47<sup>th</sup> meeting of the GST Council and the views expressed by Members during the meeting. The GoM took note of various judgments of Hon'ble Supreme Court in various cases pertaining to Tribunals in the country, including order of Supreme Court in CA 3067 of 2004 – R Gandhi Vs. Union of India, CA No. 8588 of 2019 – Rojer Mathews Vs. Union of India, WP (C) 804 of 2020 – Madras Bar Association Vs. Union of India. The GoM also took note of the Tribunal Reforms Act, 2021 passed by the Parliament, provisions of which govern the appointment of Members and Chairpersons of various Tribunals and their terms and conditions.

6. The GoM met the second time on 17<sup>th</sup> August 2022 in Bhubaneswar to discuss these issues and finalize its recommendations. The GoM has submitted its report with draft amendments to the CGST and SGST Acts.

7. It is submitted that the draft provisions state that the Chief Secretary of the State in which the Bench is located, shall be a member of the Selection Committee for selection of Technical Member (State) in the Bench. There could be a situation where the Council may constitute a Bench for more than one State. In such cases, it is proposed that Chief Secretary of one of the States to which the jurisdiction of the Bench extends may be nominated by the Council to the Selection Committee. Accordingly, following proviso is proposed to sub-section (5) of Section 110:

**Provided** that where the jurisdiction of a Bench extends to more than one State, the Council shall nominate Chief Secretary of one of such States to be the Member under sub-clause (i) of clause (c).

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8. The final report and recommendations of the GoM is submitted before the GST Council for consideration and approval. It is also proposed that the draft amendments may be approved subject to changes during legislative vetting.

**OCTOBER**, 2022

# REPORT OF THE GROUP OF MINISTERS ON CONSTITUTION OF THE GOODS AND SERVICES TAX TRIBUNAL

SUBMITTED TO THE GST COUNCIL

GOM CONSTITUTED VIDE OM NO. A-50050/150/2018-CESTAT-DOR

Page **505** of **531** Agenda for 48th GSTCM Volume 1 The Goods and Service Tax Appellate Tribunal (GSTAT) constituted under Section 109 of the Central Goods and Services Tax Act, 2017 provides for the GST Tribunal which isto be the second appellate authority within the GST framework. The process of original adjudication as well as the first appeal happens through individual officers under the Act but the second appeal against the orders of the first appellate authorities under Central as well as State GST Act lies with the GST Tribunal constituted under the CGST Act. GST Appellate Tribunal has been provided the responsibility to hear appeals under all the four GST laws namely the CGST Act, SGST Act, UTGST Act and the IGST Act passed by the Central as well as State tax officers. Therefore, this is the first common forum at which the dispute resolution process converges under all GST laws and both tax administrations.

#### 1. Background

1.1 As per the provisions of the CGST Act, 2017, each bench of the Tribunal is composed of one Judicial Member, one Technical Member (Centre) and one Technical Member (State). In its order dated 20.09.2019 in WP 21147 of 2018 – Revenue Bar Association Vs. Union of India, Hon'ble High Court of Madras held that "*The number of expert members therefore cannot exceed the number of judicial members on the bench*" and struck down the relevant provisions of the law.

1.2 In addition to this, Hon'ble Supreme Court of India has laid down various principles with respect to appointment to Tribunals, conditions of service etc. in various other judgements.

1.3 Accordingly, certain draft amendments were placed before the GST Council in its 47<sup>th</sup> Meeting held on 28-29 June 2022 in Chandigarh and the Council decided that the matter be referred to a Group of Ministers.

#### 2. Constitution of GoM

2.1 Based on the decision in the 47<sup>th</sup> meeting of the GST Council, the Group of Ministers (GoM) on Goods and Services Appellate Tribunal was constituted with following composition:

	Name	Designation and State	
1.	Sh Dushyant Chautala	Deputy Chief Minister, Haryana	Convenor
2.	Sh Buggana Rajendranath	Finance, Planning, Commercial Taxes, Skill Development & Training and Legislative Affairs Minister, Andhra Pradesh	Member
3.	Sh Mauvin Godinho	Transport, Industries, Panchayat and Protocol Minister, Goa	Member
4.	Sh Niranjan Pujari	Finance and Parliamentary Affairs Minister, Odisha	Member
5.	Sh Shanti Kumar Dhariwal	Local Self Government, Urban Development and Housing, Law &Legal Affairs and Legal Consultancy Office, Parliamentary Affairs Department Minister, Rajasthan	Member

	Name	Designation and State	
6.	Sh Suresh Kumar Khanna	Finance and Parliamentary Affairs Minister, Uttar Pradesh	Member

2.2 The GoM was mandated to recommend necessary amendments required in the GST Laws to ensure that the legal provisions—

- (a) maintain the right federal balance;
- (b) are in line with the overall objective of uniform taxation within the country; and
- (c) are in line with the principles outlined in various judgements of Courts in relation to various aspects of Tribunal and are legally sustainable.
- 2.3 The order of constitution of the GoM is placed at <u>Annexure A</u>.

#### 3. Meetings of the GoM

3.1 The GoM held two meetings for detailed deliberation on a list of issues. The first meeting was held on 26<sup>th</sup> July 2022 in hybrid mode and deliberated and resolved many issues. The GoM considered the original draft discussed in the 47<sup>th</sup>meeting of the GST Council and the views expressed by Members during the meeting. The GoM took note of various judgments of Hon'ble Supreme Court in various cases pertaining to Tribunals in the country, including order of Supreme Court in CA 3067 of 2004 – R Gandhi Vs. Union of India, CA No. 8588 of 2019 – Rojer Mathews Vs. Union of India, WP (C) 804 of 2020 – Madras Bar Association Vs. Union of India. The GoM also took note of the Tribunal Reforms Act, 2021 passed by the Parliament, provisions of which govern the appointment of Members and Chairpersons of various Tribunals and their terms and conditions.

3.2 The GoM met for the second time on 17<sup>th</sup> August 2022 in Bhubaneswar to discuss these issues.Various issues discussed by GoM and the decisions are listed in this report.

#### 4. National Vs State Tribunals

4.1 The GoM recognized that this is the most critical issue that needs to be discussed and resolved, which will have an impact on decisions on various other issues as well. The GoM deliberated on whether GST Appellate Tribunal should be a National Tribunal with benches across the country or there should be independent State Tribunals with jurisdiction in individual States. During the 47<sup>th</sup>Council meeting and later through written comments, some States had argued for separate State Tribunals.

4.2 The GoM noted that when the GST law was originally considered by the Council, this issue was discussed at length and the Council had opted in favour of a National GST Appellate Tribunal.During the 7<sup>th</sup> GST Council meeting held on 22-23 December 2016, it was noted "*the Secretary to the Council explained that it was proposed to have a National Tribunal with State level benches to facilitate creation of coordinate benches whose judgments would have persuasive value for each other and this would help settle the jurisprudence faster*".The GoM discussed the pros and cons of having one national tribunal vis-à-vis having thirty-one State Tribunals.

4.3 Hon'ble Minister from Goa stated that the GST legal framework has been designed in the spirit of cooperative federalism and the CGST/SGST Acts are *pari materia* in nature. Therefore, there should be one Tribunal at the national level with benches of the same in every State. The Convener of the GoM acknowledged that this argument is valid even today, more than ever, and there is a need to have one National Tribunal for GST since we have chosen for One Nation One Tax.The Convener

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stressed on the need to have persuasive value of the orders passed by the GST Tribunal across the country for successful implementation of the GST Act. He further highlighted that while taking any decision, interest of the taxpayers should be kept at top priority and from taxpayers' perspective having a National Tribunal with State level benches will be extremely beneficial and taxpayer friendly.

4.4 During discussions, Members from Orissa, Andhra Pradesh and Goa agreed with the decision of the Convener to opt for a National Tribunal with such number of benches (discussed later in this report) as may be needed in each State based on their size.However, Members from Uttar Pradesh and Rajasthan argued for separate National Tribunal and State Tribunals and they expressed that their views may be recorded accordingly.

#### 5. Search-cum-Selection Committee

5.1 The next important issue pertains to the method of selection. The GoM took note of the Search-cum-Selection Committee (ScSC) composition as mandated in the judgment of Hon'ble Supreme Court in Madras Bar Association (2020) case.

5.2 Many States had proposed that the ScSC for Technical Member(State) could be headed by the Chief Justice of the High Court of the State concerned rather than Chief Justice of India or a Judge of Supreme Court nominated by him. The GoM took note that the ScSC for Technical Member(State) and ScSC for other Members cannot be different for the same Tribunal. Since all Members of the Tribunal are equal in terms of their roles and responsibilities, they should all go through the same selection and appointment process.

5.3 GoM concluded that keeping in view the judgement of Hon'ble Supreme Court in Madras Bar Association (2020) case, the most legally tenable option would be to have ScSC chaired by Chief Justice of India or a Judge of Supreme Court nominated by him and the President of the Tribunal (with the President to be replaced by a retired Judge in cases where the President cannot be Members of ScSC) and two officers as members of ScSC.

5.4 The GoM concluded that while one of the officers in ScSC could be a Secretary of Central Government, the other should be the Chief Secretary of the State in which the bench is located for selection of Technical Member (State). For all other Members, Chief Secretary of any State may be nominated by the Council for a period of one year. The GoM acknowledged that this would give necessary representation of the State concerned in the ScSC and it would be as per the spirit of the order of Hon'ble Supreme Court.

5.5 The Chairman of the Committee shall have the casting vote and Revenue Secretary shall be the Member Convener of the Committee with no vote, as per the judgement of Apex court in Madras Bar Association (2020) case.

#### 6. Composition of a bench of the Tribunal

6.1 This is one of the main points on which the legal provisions were struck down and have to be reformulated. The GoM discussed this issue in detail and concluded that the bench should consist of one Judicial and one Technical Member. The Technical Member should be a Technical Member (Centre) or a Technical Member (State) in a 50:50 ratio in every State.

6.2 In cases where there is a difference of opinion between two members, the President may add a third Member from another bench in the same State. If a Member in that State is not available, the same could be taken from a bench in another State. The GoM concluded that a bench larger than that would be impractical and inefficient in terms of speedier conclusion of cases.

6.3 Finance Minister, UP argued that having a 3-member bench with two Judicial Members and one Technical Member should be considered so that the question of 1-1 split does not arise. This proposal was deliberated and the GoM concluded that split verdicts would happen in relatively limited number of cases and it would be more efficient to have a third Member only in those cases rather than in all cases.

6.4 The GoM also considered the provision relating to cases that can be heard by a single Member and suggested that the same may be raised to Rs.50 lakh from current limit of Rs.5 lakh, where no question of law is involved.

#### 7. Qualification of Members

#### **Technical Members**

7.1 The GoM considered the qualification of Technical Members (State) in great detail. The GoM took note that the minimum qualification that Hon'ble Supreme Court has laid down in R. Gandhi case is that of Additional Secretary/ Secretary in Central Government. It acknowledged that the requirement of experience of 25 years in Group 'A' posts in Central Government for Technical Member (Centre) would be in line with that judgment but officers of the same rank in State Government would not be available. The GoM concluded that keeping the spirit of the judgments of Apex Court on this matter, it would be advisable to mirror the same requirement for State officers as well, i.e. experience of 25 years in Group 'A' posts in State Government. Officers of the level of Additional Commissioner and above in the State are highly skilled and knowledgeable. They have spent considerable time in tax administration and have extensive experience and are fit for appointment in Tribunals.

7.2 However, the GoM also took note of the fact that in many States, the recruitment is not at Group 'A' level and even the senior most officer in the State hierarchy would not have spent 25 years in Group 'A'.The GoM concluded that, in such cases, the States should have flexibility to reduce this requirement of 25 years in Group 'A' on the recommendations of the Council.This would enable every State to offer their most experienced and competent officers for appointment as Technical Member (State).However, GoM concluded that while the experience in Group 'A' post could be reduced depending on the situation in a State, the officers should have total 25 years of Government service.

7.3 The GoM also noted that some flexibility may be required in fixing the rank as some States do not have the rank of Additional Commissioner altogether or may not have officers in the rank of Additional Commissioner due to various reasons. However, Finance Minister, Andhra Pradesh highlighted that there should be some limit below which the rank should not be allowed to be reduced. In this regard, GoM felt that the rank should be such that the officers are, at least one level senior to the First Appellate level as they would be hearing appeals against their orders.

7.4 The GoM is of the opinion that every State would ensure that the best and most experienced officers of their State are made available for appointment to the Tribunal and every State would ensure that the qualification is not diluted beyond what is required to meet this objective.Since, these actions will be taken after seeking necessary recommendation of the Council based on proposal of the State concerned, it would ensure that undue dilution of qualifications does not happen.

7.5 The GoM discussed in detail the issue of officers of only that State being appointed as Technical Member (State) in which the bench is located. The GoM saw value in this proposition as every State has its own local issue despite GST being a uniform tax system. GoM evaluated that one way could be to allow only officers of that State for appointment in that State and totally prevent officers of other States from even being eligible.

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7.6 Hon'ble Minister from Goa opined that though this may be beneficial to larger States, smaller States which do not have large cadres of tax officers will face a challenge in finding the appropriate candidate. GoM accepted this view and also observed that for vacancies in a bench located in a State,making officers of other States ineligible could be overly restrictive and could even be open to legal challenge. GoM concluded that the better option would be that officers of the State could be given first preference in appointment for Technical Member (State) in benches in that State. If, for some reasons, officers of that State are not available, suitable officers from other States could be considered for appointment.

7.7 The GoM considered that All India Service officers that have requisite experience in tax administration are eligible for appointment as Technical Member (State), similar dispensation should be there for Technical Member (Centre) as well. The GoM concluded that such officers should also be considered eligible for appointment as Technical Member (Centre) as well. GoM felt that this would expand the pool of selection for Technical Member (Centre).

#### Judicial Members

7.8 Finance Minister, Orissa pointed out that the proposed qualification of District Judge/Additional District Judge qualified to be appointed as High Court Judge is vague and could cause issues. Accordingly, GoM considered and decided in favour of adoption of combined experience of 10 years as District Judge/Additional District Judge for appointment as Judicial Member, noting that, today, this qualification exists for eight Tribunals under Tribunal Reforms Act, 2021.

7.9 The GoM also discussed eligibility of Advocates for appointment as Judicial Members. The GoM noted that this point was examined by the Madras High Court in the Revenue Bar Association case and that Court held that "the argument that section 109 & 110 of CGST Act, 2017 and TNGST Act, 2017 are ultra vires, in so far as exclusion of lawyers from the scope and view for consideration as Members of the Tribunal, is rejected.". The Court held that just because Advocates are eligible in some other Tribunals, the fact that the GST law does not make them eligible for appointment cannot be held to be against Article 14. However, Hon'ble High Court recommended that including lawyers for being eligible for appointment as Judicial Members should be considered.

7.10 The GoM acknowledged the recommendation made by the Hon'ble High Court and discussed that the eligibility conditions for Members of the Tribunal is a policy decision to be taken by the GoM and GST Council. The GoM discussed the issue in detail and concluded that at this stage there is no reason to depart from the original decision taken by the Council while finalizing the GST laws and a decision regarding the same may be taken later after seeing the experience of working of GST Appellate Tribunal for few years.

#### 8. Term of appointment and re-appointment

8.1 The GoM discussed merits and demerits of re-appointment and having a retirement age of 67 years for Members and 70 years for Chairman.Member from Goa argued that reappointment is helpful in case of smaller States where enough eligible officers may not be available.Convener also argued that no scope for re-appointment would significantly shorten effective tenure and discourage talent from being attracted. However, GoM also noted that re-appointment may work against newer talent being inducted in the Tribunal.

8.2 GoM noted that currently proposed provisions of retirement age are in line with the Tribunal Reforms Act, 2021 and that the Apex Court in its Judgment in Madras Bar Association (2020) case has sought for reappointment to be provided. GoM discussed that these are policy issues and should be decided based on the requirement of this Tribunal. The GoM discussed that the retirement age and re-

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appointment provisions should be such that they ensure availability of best candidates for the Tribunal. Therefore, the GoM concluded that it is better to have early retirement at the age of 65 years for Members and 67 years for President and recommends retirement age of 65 years against 67 years for Members and 67 years against 70 years for President.

8.3 Members of the GoM discussed that re-appointment is an important provision since there may be instances where new members may not be available for replacing the sitting Members and it is also important to provide suitable re-appointment opportunity to sitting Members. Therefore, a balanced view was adopted by the GoM and it was concluded that it is better to have a term of four years with possible re-appointment for another two years.

8.4 The issue of transfer of Members by the President was also considered by the GoM. The GoM discussed that since the entire set up of GST Tribunal is new, it was better if there is flexibility in the law for unforeseen circumstances. The GoM noted that while a situation of transfer of a Member appointed for four years may rarely arise, a complete bar on to transfer in the law may not be advisable as such exigencies may arise. After detailed discussion and evaluating the merits and demerits, the GoM concluded that the proposed provision ensures required balance and could be retained.

#### 9. Number of Benches in each State

9.1 The Convenor proposed that for deciding number of benches in each State, Council should adopt a guiding formula. The GoM considered a formulation that States with population upto 2 crore may have one bench, States with population more than 2 crore and upto 5 crore may have upto two benches, States with population more than 5 crore and upto 10 crore may have upto three benches, States with population more than 10 crore and upto 15 crore may have upto four benches and States with population more than 15 crore may have upto five benches. Hon'ble Member from Rajasthan suggested that their State being a geographically big State may require three benches to avoid making people travel long distances.

9.2 Hon'ble Member from Andhra Pradesh expressed whether population is a better criterion or should the number of benches be linked to number of registered persons in a State. It was discussed that GST being a consumption-based tax, population would be a better proxy for consumption. Additionally, population is a steadier parameter as compared to number of registered persons, which would go up or down with registration and cancellation.

9.3 The GoM concluded that there should be some guiding principle for any State to request and the Council to recommend the number of benches in each State. The GoM finally concluded that States with less than 5 crore population may have upto maximum 2 benches and no State shall have more than 5 benches.

#### 10. Summary of Recommendations

- 10.1 The recommendations of the GoM on various issues are finalised below:
  - (i) There should be one National GST Appellate Tribunal with as many benches as may be required, in every State, depending on the size of the State.
  - (ii) The Search-cum-Selection Committee should be chaired by the Chief Justice of India or a Judge of Supreme Court nominated by him. The other members of the Committee should be the President of the Tribunal (or a retired Judge of Supreme Court or Chief Justice of High Court nominated by Chief Justice of India if the President is not available), one Secretary of Central Government and Chief Secretary of the State in which the bench is located for selection to the post of Technical Member (State) or

Chief Secretary of a State to be nominated by Council for all other Members for a period of one year.

- (iii) Each bench should consist of a Judicial Member and a Technical Member, who could be Technical Member (Centre) or Technical Member (State) in 50:50 ratio in every State. Single Member bench should be empowered to hear cases with tax implication upto ₹ 50 lakh.
- (iv)Basic qualification for becoming Technical Member should be 25 years of experience in Group A posts. For Technical Member (State), State Government should have the flexibility to reduce the experience requirement in Group A service with the approval of Council due to certain State specific limitations but with total experience of 25 years of Government Service and rank not below that of First Appellate Authority in the State.
- (v) High Court Judges orJudges who have combined experience of 10 years as District Judge and/or Additional District Judge should be eligible for appointment as Judicial Member.
- (vi)President and Members should have retirement age of 67 and 65 years respectively and have term of four years with provision for re-appointment for another two years.
- (vii) States with less than 5 crore population should have maximum 2 benches and no State should have more than 5 benches.
- 10.2 The draft provisions as approved by GoM are at Annexure B.

#### A-50050/150/2018-CESTAT-DOR Government of India Ministry of Finance Department of Revenue \*\*\*

New Delhi, dated 6th July, 2022

#### OFFICE MEMORANDUM

## Subject: Constitution of Group of Ministers (GoM) on Goods and Services Tax Appellate Tribunal (GSTAT).

In its 47<sup>th</sup> meeting held on 28-29 June 2022 in Chandigarh, the GST Council discussed the changes required in provisions pertaining to the GST Appellate Tribunal in the GST Laws to bring it in conformity with judgements of the Courts in relation to various aspects concerning Tribunals. In the aforesaid meeting, the Council has decided to constitute a GoM to look into the issues involved.

2. Accordingly, a Group of Ministers on Goods and Services Tax Appellate Tribunal is being constituted with following composition:

Sl.No	Name	Designation and State	
1.	Shri Dushyant Chautala	Deputy Chief Minister, Haryana	Convenor
2.	Shri Buggana Rajendranath	Minister for Finance & Planning, Commercial Taxes, Legislative	Member
		Affairs, Skill Development and Training, Andhra Pradesh	
3.	Shri Mauvin Godinho	Minister for Transport, Industries, Panchayat and Protocol, Goa	Member
4.	Shri Shanti Kumar Dhariwal	Minister for Local Self Government, Urban Development and Housing, Law and Legal Affairs, Rajasthan	Member
5.	Shri Suresh Kumar Khanna	Minister for Finance and Parliamentary Affairs, Uttar Pradesh	Member
6.	Shri Niranjan Pujari	Minister for Finance and Parliamentary Affairs, Odisha	Member

3. The GoM on GSTAT shall recommend necessary amendments required in the GST Laws to ensure that the legal provisions—

- (a) maintain the right federal balance;
- (b) are in line with the overall objective of uniform taxation within the country; and
- (c) are in line with the principles outlined in judgements of Courts in relation to various aspects of Tribunal and are legally sustainable.

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4. The GoM shall submit its report for consideration of the Goods and Services Tax Council by 31.07.2022. While making its recommendations, the GoM may consult legal experts.

5. The GoM shall be assisted by Joint Secretary (Revenue).

or. ha

(**Dr.N. Gandhi Kumar**) Director (State Taxes) Tel. 011-23092613

To,

- 1. All Members of GoM and Officers
- 2. Revenue Secretary, North Block, New Delhi
- 3. Chairperson, CBIC, North Block, New Delhi
- 4. GST Council Secretariat, New Delhi
- 5. PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
- 6. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.

#### Annexure B

#### Amended Section 109, 110 and 114 of CGST Act

#### **109.** Constitution of Appellate Tribunal and Benches thereof

(1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by Benchesconstituted under subsection (3) and sub-section (5).

(3) The Principal Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of a Technical Member (Centre) or a Technical Member (State).

(4) The jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply shall lie only with the Principal Bench.

(5) In addition to the Principal Bench, Government shall, by notification, constitute such number of Benches at such locations as may be recommended by the Council, based on the request of the State Government.

(6) Benches, other than Principal Bench, shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (4).

(7) The President shall, by general or a special order, distribute the business or transfer cases among the Benches.

(8) Each Bench of the Appellate Tribunal shall consist of a Judicial Member and a Technical Member (Centre) or a Technical Member (State).

(9) The senior most Judicial Member within such Benches as may be prescribed, shall act as the Vice President for such Benches and he shall exercise such powers of the President as may be prescribed but for all other purposes shall continue to be considered as a Member.

(10) Where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed fifty lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single Member.

(11) If the Members of a Bench differ in opinion on any point or points, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points to another Member from a Bench within the State or another State, where no such Member is available in a Bench within the State, and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer Members from one bench to the other.

(13) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

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# 110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc

(1) A person shall not be qualified for appointment as—

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court<del>;</del>

- (b) a Judicial Member, unless he
  - (i) has been a Judge of the High Court; or

(ii) has, for a combined period of ten years, been a District Judge or an Additional District Judge;

(c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A or of the All India Service with at least three years of experience in the administration of an existing law or goods and services tax, and has completed at least twenty-five years of service in Group A;

(d) a Technical Member (State) unless he is or has been an officer of State Government or an officer of the All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, higher than the First Appellate Authority, as may be notified by the concerned State Government, on the recommendations of the Council and has completed twenty-five years of service in Group A with at least three years of experience in the administration of an existing law or the goods and services tax or in the field of finance and taxation:

**Provided** that the State Government may, on the recommendations of the Council, by notification, reduce the requirement of completion of twenty-five years of service in Group A in respect of officers of such State where no person has completed twenty-five years of service in Group A, subject to such conditions, and till such period, as may be specified in the notification:

**Provided** further that the officer should have completed twenty-five years of service in the Government.

(2) The President, Judicial Member, the Technical Member (Centre) and Technical Member (State) shall be appointed by the Government on the recommendations of a search-cum-selection Committee constituted under sub-section (5):

**Provided** that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the Technical Member of the Principal Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

**Provided** further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the Technical Member of the Principal Bench shall discharge the functions of the President until the date on which the President resumes his duties.

(3) While making selection for Technical Member (State), first preference shall be given to officers who have worked in the State Government of the State to which the jurisdiction of the Bench extends.

(4) In making appointments, the Government shall ensure that, over a period of time, there is adequate balance in the number of appointments as Technical Member (Centre) and number of

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appointments as Technical Member (State), overall, as well as, in every State in such manner as may be prescribed.

(5) The search-cum-selection Committee shall consist of—

(a) the Chief Justice of India or a Judge of Supreme Court nominated by him— Chairperson of the Committee;

- (b) Secretary of the Central Government nominated by the Cabinet Secretary Member;
- (c) Chief Secretary of

(i) the State in which the Bench is located, in case of appointment of Technical Member (State) in the Benches; or

(ii) a State to be nominated by the Council, in all other cases — Member;

(d) one Member, who—

(i) in case of appointment of a President of a Tribunal, shall be the outgoing President of the Tribunal; or

(ii) in case of appointment of a Member of a Tribunal, shall be the sitting President of the Tribunal; or

(iii) in case of the President of the Tribunal seeking re-appointment or where the outgoing President is unavailable or the removal of the President is being considered, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India; and

(e) Secretary of the Department of Revenue in the Ministry of Finance of the Central Government — Member Secretary.

(6) The Chairperson shall have the casting vote and the Member Secretary shall not have a vote.

(7) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be.

(8) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the search-cum-selection Committee.

(9) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, the salary of the President and the Members of the Appellate Tribunal shall be such as may be prescribed, and allowances and other terms and conditions of service shall be same as applicable to Central Government Officers carrying the same pay:

**Provided** that neither salary and allowances nor other terms and conditions of service of the Presidentor Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment:

**Provided** further that, if the President or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be prescribed.

(10) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the President of the Appellate Tribunal shall hold office for a term of four

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years from the date on which he enters upon his office, or until he attains the age of sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.

(11) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.

(12) The President or any Member may, by notice in writing under his hand addressed to the Government resign from his office:

**Provided** that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(13) The Government may, on the recommendation of the search-cum-selection Committee, remove from the office the President or a Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

**Provided** that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(14) The Government, on the recommendations of the search-cum-selection Committee, may suspend from office, the President or a Judicial or Technical Members in respect of whom proceedings have been initiated under sub-section (13).

(15) Subject to the provisions of article 220 of the Constitution, the President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the Principal Bench or the Benches where he was the President or, as the case may be, a Member.

#### 114. Financial and administrative powers of President

The President shall exercise such financial and administrative powers over the Appellate Tribunal as may be prescribed.

#### Amended Section 109, 110 and 114 of SGST Acts

#### 109. Constitution of Appellate Tribunal and Benches thereof

Subject to the provisions of this Chapter, the Goods and Services Tax Tribunal constituted under the Central Goods and Services Tax Act, 2017 shall be the Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority under this Act.

#### Sections 110 and 114 can be deleted

#### Common amendments in Sections 117, 118 and 119

Amendment required to harmonise the terminology – "National and Regional Benches" to be replaced with "Principal Bench" and "State and Area Benches" to be replaced with "Benches".

#### <u>Agenda Item 10: Closure of Group of Ministers (GoM) on levy of Covid Cess on Pharma and</u> <u>Power in Sikkim.</u>

In pursuance of the decision of the GST Council at its 43<sup>rd</sup> meeting on 28<sup>th</sup> May, 2021, a Group of Ministers (GoM) was constituted on levy of Covid Cess on Pharma and Power in Sikkim vide OM dated 11.06.2021 issued by Department of Revenue (DoR) vide F. No. S-31011/12/2021-DIR(NC)-DOR. The GoM consisted of the following members:

Sl. No	Name	Designation & State	
1	Sh. Basavaraj Bommai	Minister for Home Affairs, Karnataka	Convenor
2	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3	Sh. T S Singh Deo	Minister for Commercial Taxes, Chhattisgarh	Member
4	Sh. K.N. Balagopal	Minister for Finance, Kerala	Member
5	Sh. Niranjan Pujari	Minister for Finance, Odisha	Member
6	Sh. B.S. Panth	Minister for Tourism & Industries, Sikkim	Member
7	Sh. Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh	Member

2. The GoM examined the proposal moved by Government of Sikkim on levy of Covid Cess on Pharma and Power in Sikkim and made the following recommendations:

- a. State of Sikkim may levy a cess of 1% on of the turnover of pharmaceutical sector (excluding the unorganized sector) restricted to only intra-State supplies.
- b. Since levy of cess on power generation does not fall within the purview of GST, this call may be taken by the State of Sikkim.
- c. Regarding the special package of assistance by Government of India, the matter was under the ambit of Central Government and not the GST council so a decision would be taken by Central Government.

3. The GoM submitted its final report in the 45th GST Council Meeting held on 17<sup>th</sup> September, 2021. Consequently, the GoM has completed its mandate. Accordingly, Agenda for closure of the GoM is placed before the GST Council.

#### <u>Agenda Item 11: Closure of Group of Ministers (GoM) to examine the feasibility of</u> <u>implementation of e-way bill requirement for movement of gold and other precious stones.</u>

In pursuance of the decision of the GST Council at its 37<sup>th</sup> meeting on 20th September, 2019, a Group of Ministers (GoM) was constituted to examine the feasibility of implementation of e-way bill requirement for movement of gold and other precious stones vide OM dated 22.11.2019 issued by GST Council Secretariat vide F. No. 591/GOM/Mvmt Of Gold & Pre. Stones/GSTC/2019.

2. The Terms of Reference for the GoM were to examine the feasibility of implementation of e-Way bill requirement for movement of Gold and precious Stones or otherwise and to suggest a mechanism for controlling tax evasion without compromising on security aspects that may arise from its implementation.

3. The GoM examined the feasibility of implementation of e-way bill requirement for movement of gold and other precious stones. The final report of the GoM was tabled in the 47th GST Council Meeting held on 28<sup>th</sup>-29<sup>th</sup> June, 2022. The following recommendations were made by the GoM:

#### A. E-way bill for intra-state movement of gold and precious stone:

- i.
- i. The states should be allowed to decide about imposition of the requirement of e-way bill for intra-state movement of gold and precious stones within their states.
- ii. There will be a minimum threshold value of Rs.2 Lakh, and the states can decide any amount including or above this amount as minimum threshold for generation of E-way bill for intra-state movement of gold/precious stones in their state.
- iii. Only part 'A' on the e-way bill will be required to be filled in such cases, without any need for filling Part 'B' of the e-way bill.
- iv. Further, modalities of generation of e-way bill for intra-state movement of gold/precious stones will be as suggested by NIC/GSTN.
- v. For deciding about implementation of such a system of e-way bill for intra-state movement of gold and precious stones within the state as well as regarding the threshold value to be adopted for generation of such e-way bill within the state, the procedure of consultations with the jurisdictional Principal Chief Commissioner/Chief Commissioner of Central Tax, or any Commissioner authorized by him, should be followed by the States.
- vi. Once e-way bill requirement for movement of gold and precious stones is decided, the corresponding suitable amendment in CGST Rules, 2017 would have to be carried out. While finalizing amendment in Rules, it is to be ensured that in case of supply of gold by registered persons to unregistered buyers, the requirement of e-way bill generation is mandated on registered supplier only.
- B. E-invoicing for gold and precious stones:

i. E-invoicing should be made mandatory for B2B transactions by all taxpayers supplying gold/precious stones (goods of HSN 71) and having annual aggregate turnover above Rs.20 Crore.

II. GSTN, in consultation with NIC, to work out the modalities and timelines for implementation of the proposed requirement of e-invoicing for gold/precious stones.

#### C. Levy of GST on RCM basis on Old Gold:

i. (i.) The issue of levy on GST on reverse charge mechanism (RCM) basis on purchase of

old gold by registered dealers/jewellers from unregistered persons may be referred to Fitment Committee for detailed examinations.

4. The recommendations made by the GoM were accepted by the GST council and it was decided that the states are at liberty to the implement the said recommendations in their respective States. Consequently, the GoM has completed its mandate. Accordingly, Agenda for closure of the GoM is placed before the GST Council.

#### Agenda Item 12: GST Data sharing with Ministries and Departments

1. The present Agenda is regarding GST data sharing with Ministries and Departments. After the introduction of GST, large amount of quality data is available with the GST system that can be used within Government for various purposes, including better decision making and better targeting of Government resources. Further, Department of Revenue and State Tax departments have been receiving request from different Ministries/Departments/Agencies, at Central as well as State levels, seeking data related to GST.

The requests for data can be broadly classified into four categories as under:

#### A. Validating GSTIN using GSTN validation API with the following data field.

These requests are from those agencies that take the GSTIN from their clients for their purpose. Examples could include procurement, subsidy and other benefits. These agencies may like to verify the validity of the GSTIN given by the entity. GSTN has a publicly available facility on their portal, called "search taxpayer", where the details of the taxpayer for a given GSTIN is made available, including the legal name, trade name, address, date of registration, whether it is Aadhaar authenticated, major goods and services that the entity deals in and even the filing status. While this information is available on the portal, it has to be accessed through manual intervention for each GSTIN.

It is proposed that since this facility is anyway available publicly, it could be made through APIs to Government Ministries, Departments and Agencies so that their IT systems can easily access this information.

Any agency that wants to carry out validation through API route and access basic registration data (which is otherwise available on the GST portal on open basis or to registered persons), could approach GSTN directly for the same. GSTN should review the data being made available publicly and to registered entities to make it more useful to other agencies.

## **B.** Aggregated GST data which does not involve disclosure of any personally identifiable information of a taxpayer etc.

The second set of data sharing request pertain to aggregate information, mainly for planning and decision-making purposes. For example, aggregate information of e-way bill can give important insights into movement of goods, that would be useful for National and State Highway organisation. Details of gross GST collection every month is being widely used for macro-economic monitoring.

It is proposed that the aggregate information as may be available from those fields of various statements under GST legal framework that are credible and have a system to ensure its correctness, even if on a risk- based system, but which do not reveal the identity of a taxpayer or an identifiable set of tax payers in any way, can be shared with Government Ministries, Department and Agencies for planning and better decision making.

Any agency that intends to access summary data pertaining to GST should give the details in the following format to Department of Revenue and thereafter DoR shall process the request and get it placed before the GST Implementation Committee for a decision on sharing of the data.

- 1. Centre/State Government
- 2. Ministry/ Department
- 3. Name of Agency
- 4. Data items on which aggregation needs to be done

Form	Field

5. Data items of which aggregates are required

Form	F	ield

- 6. Period for which data is to be aggregated
- 7. Whether one time or recurring
- 8. Periodicity, if recurring
- 9. Purpose for which data is being sought
- 10. Details of Contact Person
  - a. Name
  - b. Designation
  - c. Phone
  - d. Email

It can also be considered that a subset of this information can be made available even in public domain so that they are available even to industry and research organisations. Currently, details of GST collection and settlement are put in public domain with a delay as per the decision of the GST Council. Depending on request of data that are frequently been received, a decision could be taken to put the data in public domain for wider use.

#### C. Dis-aggregated data which does not disclose the identity of the tax payer

Apart from the aggregate data, at times agencies request for disaggregated data but with the identity of taxpayer masked. Such data can include details relating to individual e-way bills with the GSTIN of the supplier and the recipient removed. While most of the requirements can be met using aggregate data, many use advance analytics requiring disaggregated data. This would also allow mapping of datasets across IT platforms of different agencies using identifiers that cannot be traced back to the supplier or the recipient

It is proposed that this information could be shared with Government Ministries, Department and Agencies if they are able to demonstrate that their use case requires disaggregated data and there is value in sharing dis-aggregated data for such a use case.

Any agency that intends to access summary data pertaining to GST should give the details in the following format to Department of Revenue. Department of Revenue shall process the request and get it placed before the GST Implementation Committee for a decision on sharing of the data.

- 1. Centre/State Government
- 2. Ministry/ Department
- 3. Name of Agency
- 4. Mode of Sharing
- 5. Data items to be shared

Form	Field

- 6. Purpose for which data is being sought
- 7. Reason why the objective cannot be achieved through aggregated data and can only be achieved through disaggregated data
- 8. Details of Contact Person
  - a. Name
  - b. Designation
  - c. Phone
  - d. Email

**D.** Any data sharing request that does not fall under the above category should only be done with specific approval of the GST Council/GST Implementation Committee on a case to case basis. It may be noted that at previous occasions, data of individual taxpayers has been shared with Government agencies where the legal framework required providing such

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data, like with National Authority Chemical Weapons Convention (NACWC), Cabinet Secretariat, MSME registration etc. These have been done after approval of the GSTC/GIC. At specific instances, data is being shared with enforcement agencies for enforcement purposes and where GST data is required as an evidence.

2. The proposal further provides that the sharing of data should be subject to following general conditions:

**a.** The user agency should ensure safety and security of the data received from GST system and put in place proper IT and administrative mechanisms to ensure safety of data shared.

**b.** The user agency should use the data only for the purpose it was shared and not disseminate the data further to other agencies.

**c.** The user agency should not use the raw data for commercial benefits since this data has been acquired from the compliances furnished by taxpayers. Agencies can, however, charge for value added services made available based on the data shared.

**d.** For data shared on recurring basis, right to access may be revoked at any time if it is found that it is not in public interest.

- 3. The GST data is collectively owned by Centre and States and is held by GSTN under the guidance of GST Council. In view of same, decision has to be taken by both Centre and States as to how the GST data of the taxpayer can be shared with other departments/Ministries for their use.
- 4. Accordingly, the above agenda is placed before the GST Council for approval.

#### Agenda Item 13: Review of revenue position under Goods and Services Tax

1. The Figure below shows the trend and Table 1 shows the details of the collection in FY 2022-23 vis-à-vis FY 2021-22.

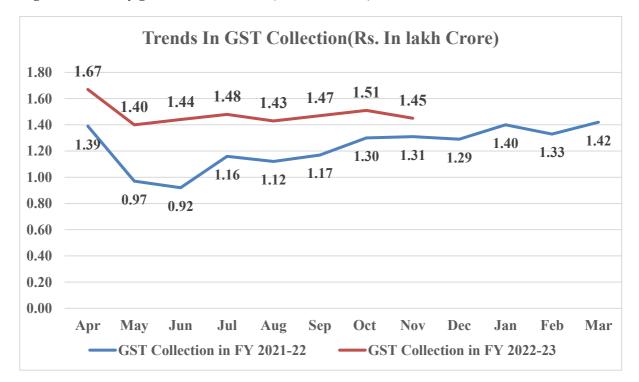


Figure 1: Monthly gross GST collection (in ₹ lakh crore)

GST Collection	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22
CGST	25,306	25,751	24,710	25,271	26,039	25,681
SGST	32,406	32,807	30,951	31,813	33,396	32,651
IGST	75,887	79,518	77,782	80,464	81,778	77,103
Domestic	35,785	38,098	35,715	39,249	44,481	38,468
Imports	40,102	41,420	42,067	41,215	37,297	38,635
Comp Cess	11,018	10,920	10,168	10,137	10,505	10,433
Domestic	9,821	9,925	9,151	9,282	9,680	9,616
Imports	1,197	995	1,018	856	825	817
Total	1,44,616	1,48,995	1,43,612	1,47,686	1,51,718	1,45,867

**2.** Table 2 shows the IGST collected, refunded and settled/apportioned during FY2022-23 till November, 2022.

	(Figures in Rs. Crore)
Collections (+)	6,22,861
Recovery from IGST Ad-hoc apportionment(+)	-
Refunds (-)	1,01,088
Settlement (-)	
i. CGST	2,56,325
ii. SGST	2,15,038
Ad-hoc Settlement (-)	-
i. CGST ad hoc	24,500
ii. SGST ad hoc	24,500
Net (1+2-3-4-5)	1,410
	Recovery from IGST Ad-hoc apportionment(+) Refunds (-) Settlement (-) i. CGST ii. SGST Ad-hoc Settlement (-) i. CGST ad hoc ii. SGST ad hoc

Table 2: IGST Collection/Settlement/Apportionment/Refund in FY 2022-23

Source: PrCCA, CBIC

#### **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 November 2022 and the compensation released are shown in the table below:

#### Table 3: Compensation Cess collected and compensation released

					(Figures in	n Rs. Crore)
	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23 (till Nov)
Opening Balance		21,466	47,271	55,736	9,734^	9,344
Compensation Cess collected (net)	62,612	95,081	95,551	85,191	1,04,609	82,467
Compensation released	41,146	69,275	1,20,498	1,36,988	97,500	1,15,662
Balance	21,466	47,271	55,736*	3939	16,844 <sup>\$</sup>	(23,851)

\* 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

^ Centre had transferred Rs. 5,795 crore from CFI to cess fund as part of an exercise to apportion balance IGST pertaining to 2018-19 on 08.03.2022

\$ Balance GST compensation cess available is Rs. 16844 crore. However, taking into account the interest of back to back loan of Rs. 7,500 crore, GST compensation cess carried forward to FY 2022-23 as opening balance is Rs. 9344 crore

#### **Trends in Return filing**

5. The table 4 shows the trend in return filing in FORM GSTR-3B and GSTR-1 till due date for return period Apr'22 to Oct'22. Tables 5and 6 show the State wise filing for these months.

Return Period	GSTR-3B (%)	GSTR-1(%)
Apr'22	78.55	55.14
May'22	75.85	57.35
Jun'22	77.20	54.50
Jul'22	76.87	56.12
Aug'22	76.14	54.61
Sep'22	75.14	53.41
Oct'22	75.91	59.09

Table 4: Return filing (GSTR-3B/GSTR-1) till due date

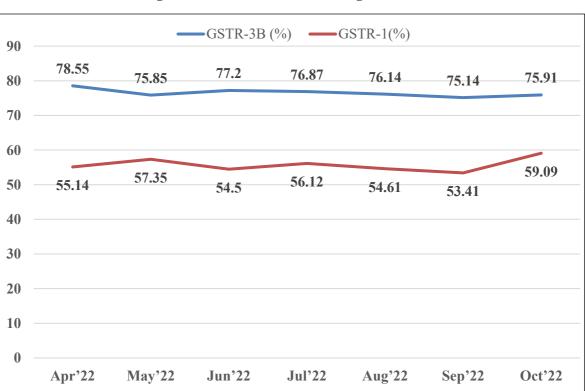


Figure 3: GSTR-3B/GSTR-1 Filing till due date

States	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22
Jammu and Kashmir	82%	78%	80%	80%	79%	79%	79%
Himachal Pradesh	81%	76%	79%	78%	76%	77%	77%
Punjab	82%	80%	80%	80%	79%	77%	78%
Chandigarh	85%	83%	82%	83%	82%	78%	82%
Uttarakhand	76%	73%	75%	73%	72%	71%	72%
Haryana	80%	78%	79%	78%	78%	75%	77%
Delhi	81%	79%	80%	78%	79%	76%	77%
Rajasthan	80%	78%	78%	78%	77%	76%	77%
Uttar Pradesh	81%	78%	78%	78%	78%	75%	77%
Bihar	69%	57%	71%	69%	68%	68%	69%
Sikkim	63%	62%	68%	62%	63%	64%	60%
Arunachal Pradesh	50%	51%	56%	53%	53%	53%	53%
Nagaland	66%	66%	67%	66%	67%	65%	65%
Manipur	55%	53%	57%	56%	54%	55%	53%
Mizoram	63%	61%	65%	64%	64%	63%	60%
Tripura	75%	73%	77%	76%	74%	73%	74%
Meghalaya	60%	60%	69%	60%	61%	67%	60%
Assam	68%	66%	68%	68%	66%	66%	67%
West Bengal	81%	79%	80%	80%	79%	78%	79%
Jharkhand	78%	76%	78%	77%	76%	75%	76%
Odisha	75%	72%	75%	74%	73%	72%	72%
Chhattisgarh	68%	66%	68%	69%	66%	68%	67%
Madhya Pradesh	78%	74%	75%	76%	74%	75%	76%
Gujarat	87%	85%	85%	85%	85%	85%	85%
Dadra and Nagar Haveli	79%	75%	76%	77%	77%	75%	75%
Maharashtra	75%	73%	75%	75%	73%	74%	73%
Karnataka	78%	76%	77%	77%	76%	74%	76%
Goa	62%	60%	64%	61%	61%	65%	63%
Lakshadweep	69%	68%	70%	67%	73%	71%	67%
Kerala	77%	74%	75%	76%	73%	72%	73%
Tamil Nadu	83%	80%	80%	80%	79%	78%	80%
Puducherry	79%	75%	75%	75%	75%	72%	75%
Andaman and Nicobar Island	65%	62%	63%	64%	63%	64%	62%
Telangana	70%	67%	69%	67%	67%	67%	67%
Andhra Pradesh	76%	75%	76%	76%	75%	73%	76%
Ladakh	68%	68%	71%	68%	66%	72%	65%
Other Territory	76%	22%	68%	74%	73%	67%	69%
All-India	79%	76%	77%	77%	76%	75%	76%

 Table 5: State-wise Return filing (GSTR-3B) till due date (Apr'22-Oct'22)

States	Apr-22	May- 22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22
Jammu and Kashmir	37%	41%	36%	41%	39%	38%	43%
Himachal Pradesh	56%	57%	49%	56%	54%	49%	59%
Punjab	72%	74%	69%	72%	71%	68%	74%
Chandigarh	75%	77%	73%	75%	74%	72%	77%
Uttarakhand	51%	53%	47%	50%	50%	46%	54%
Haryana	68%	70%	67%	67%	68%	65%	70%
Delhi	69%	71%	70%	69%	70%	69%	71%
Rajasthan	62%	66%	58%	63%	63%	59%	67%
Uttar Pradesh	48%	51%	46%	48%	48%	45%	52%
Bihar	27%	29%	27%	27%	27%	25%	31%
Sikkim	32%	34%	34%	34%	34%	27%	35%
Arunachal Pradesh	21%	24%	23%	23%	23%	21%	26%
Nagaland	29%	29%	29%	29%	28%	27%	29%
Manipur	21%	23%	22%	24%	22%	24%	25%
Mizoram	20%	21%	20%	20%	20%	20%	21%
Tripura	42%	46%	43%	44%	42%	38%	47%
Meghalaya	25%	26%	28%	27%	24%	24%	28%
Assam	33%	37%	33%	36%	35%	30%	39%
West Bengal	51%	53%	51%	53%	52%	47%	55%
Jharkhand	43%	43%	43%	45%	44%	41%	47%
Odisha	37%	40%	35%	38%	38%	33%	41%
Chhattisgarh	44%	48%	42%	46%	46%	42%	51%
Madhya Pradesh	48%	51%	42%	47%	47%	41%	56%
Gujarat	79%	82%	78%	79%	79%	78%	82%
Dadra and Nagar Haveli	72%	73%	71%	72%	73%	72%	76%
Maharashtra	60%	63%	60%	63%	61%	60%	66%
Karnataka	52%	56%	53%	55%	53%	51%	58%
Goa	44%	47%	48%	47%	44%	51%	52%
Lakshadweep	42%	52%	52%	56%	50%	49%	54%
Kerala	56%	59%	55%	60%	50%	54%	60%
Tamil Nadu	58%	58%	57%	59%	55%	55%	61%
Puducherry	51%	52%	50%	52%	49%	50%	54%
Andaman and Nicobar Island	38%	42%	39%	40%	41%	38%	43%
Telangana	43%	44%	42%	43%	41%	41%	46%
Andhra Pradesh	48%	52%	49%	51%	49%	46%	54%
Ladakh	27%	31%	34%	30%	26%	35%	32%
Other Territory	74%	74%	72%	75%	73%	69%	75%
All-India	55%	57%	55%	56%	55%	53%	59%

 Table 6: State-wise Return filing (GSTR-1) till due date (Apr'22-Oct'22)

Agenda for 48th GSTCM Volume 2

**Confidential** 



# Agenda for

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

17<sup>th</sup> December 2022

Volume – II



Agenda for 48th GSTCM Volume 2



#### **GST Council Secretariat**

#### New Delhi

5<sup>th</sup> Floor, Tower-II, Jeevan Bharti Building, New Delhi 25<sup>th</sup> November, 2022

#### **OFFICE MEMORANDUM**

Subject: Notice for the 48<sup>th</sup> Meeting of the GST Council scheduled to be Convened on 17<sup>th</sup> December, 2022

The undersigned is directed to refer to the subject stated above and to convey that the 48<sup>th</sup> Meeting of the GST Council will be held on 17<sup>th</sup> December, 2022 through virtual mode (Video Conferencing). The schedule of the Meeting is as follows:

• Saturday, 17<sup>th</sup> December, 2022: 11:00 A.M. onwards

2. In addition, an **Officers Meeting** will be held on  $16^{th}$  December, 2022 as per the following schedule:

• Friday, 16<sup>th</sup> December, 2022: 11: 00 A.M. onwards

3. The agenda item and other details for the  $48^{th}$  Meeting of the GST Council will be communicated in due course of time.

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

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

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

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

5. Chairman, GST Network.

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Agenda for 48th GSTCM Volume 2

# Agenda Item 14 : Report of Group of Ministers (GoM) on Capacity Based Taxation and Special Composition Scheme in certain sectors on GST

The GST Council, in its 42<sup>nd</sup> Meeting, held on 5<sup>th</sup> and 12<sup>th</sup> October 2020, decided that a **Group** of **Ministers (GoM)** may be formed to discuss and analyze the issues pertaining to the Capacity based taxation on Pan Masala, Reverse Charge Mechanism in mentha oil, special composition scheme on brick kilns, stone crushers, etc.

2. Accordingly, a Group of Ministers (GoM) on Capacity-based Taxation and Special Composition Scheme in Certain Sectors in GST had been constituted on 24.05.2021, with Shri Niranjan Pujari, Hon'ble Minister for Finance, Odisha, as the Convener of the GoM. The GoM comprises of Ministers from Delhi, Haryana, Kerala, Madhya Pradesh, Uttar Pradesh and Uttarakhand. The Group of Ministers had three detailed meetings on 6<sup>th</sup> July, 2021, 31<sup>st</sup> August, 2021, and 07<sup>th</sup> July, 2022. Inputs to GoM were also provided by a Group of Officers after its meeting that was held on 17.08.2021.

# 3. The Interim Report on two issues, namely, special composition scheme for brick kiln sector and imposition of levy of GST on reverse charge basis on mentha oil & allowing its exports only against LUT with the consequential refund of accumulated input tax credit was placed and considered by the GST Council in its 45<sup>th</sup> Meeting held on 17<sup>th</sup> September, 2021 [Agenda Item 9: Volume 2].

4. Thereafter, the 3<sup>rd</sup> detailed meeting of GoM was held on 07<sup>th</sup> July, 2022, wherein the GoM deliberated comprehensively including on challenges associated with and complexities involved in the implementation of capacity based levy on pan masala, gutkha, chewing tobacco and other similar tobacco products, need to curb evasion to plug the tax leakages with a view to augment the revenue and study alternate possible systemic & administrative mechanisms to enhance compliance & enforcement measures. The Final Report of the Group of Ministers (GoM) on capacity-based taxation and Special Composition Scheme for certain sectors is placed in the **Annexure** for the consideration of the Council.

#### Annexure



# **FINAL REPORT**

### GROUP OF MINISTERS On

## Capacity based taxation and Special Composition Scheme in Certain Sectors in GST

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## I. Context

**1.** In the existing GST legal framework, GST is a destination-based tax that is levied on supply of goods or services or both as per the Article 366(12A) of the Constitution of India.

2. However, on the basis of the observations made by certain states regarding the fall in the revenue realization after the roll-out of the GST regime from certain evasion prone commodities, a need was felt to examine the possibility to levy GST based on the capacity of manufacturing unit and introduce special composition schemes in such evasion-prone sectors like pan masala, gutkha, brick kilns, sand mining etc., and to explore any other suitable administrative or systemic mechanism(s) to plug the existing leakages in these sectors in order to augment the revenue realised from such sectors.

**3.** Further, certain other issues were raised pertaining to the Mentha Oil sector. These issues were regarding fraudulent exports/fake invoicing menace, tax incidence falling on the mentha farmers, among others, a need was felt to examine the impact of levy of GST on reverse charge basis on mentha oil, with a view to augment the revenue from the sector.

4. While discussing these issues in its 42nd Meeting, held on 05<sup>th</sup> October, 2020, the GST Council considered it appropriate to form a Group of Ministers (GoM) for looking into the possibility of Capacity based taxation and Special Composition Scheme in certain sectors in GST.

#### II. Group of Ministers and its Terms of Reference

5. On the basis of the recommendation made by the GST Council in its  $42^{nd}$  Meeting, a Group of Minsters (GoM) was constituted under the Chairmanship of Shri Niranjan Pujari, Hon'ble Finance Minister of Odisha. The constitution of GoM is given at **Annexure - A**.

6. As per the Terms of Reference (ToR) given to the GoM, it has to-

- 6.1. To examine the possibility to levy GST based on the capacity of manufacturing unit and special composition schemes in certain evasion-prone sectors like pan masala and gutkha, brick kilns, sand mining, etc. with reference to the current legal provisions.
- 6.2. To examine whether any change is required in the legal provisions to allow such levy.
- 6.3. To examine the impact of such levy on the destination nature of the current GST design.
- 6.4. To examine any other administrative or systemic mechanism to plug leakages in these sectors.
- 6.5. To examine the impact of levy of GST on reverse charge on mentha oil and to examine if there could be other class of supplies that could be subjected to reverse charge to augment revenue.

#### III. Deliberations of the GoM

7. The Group of Ministers had three detailed meetings on 6<sup>th</sup> July, 2021, 31<sup>st</sup> August, 2021, and 07<sup>th</sup> July, 2022. Inputs to GoM were also provided by a Group of Officers after its meeting that was held on 17.08.2021.

8. In the  $2^{nd}$  Meeting of the GoM, held on  $31^{st}$  August 2021, it was decided that an Interim Report containing the recommendations of the GoM on two issues, namely, special composition scheme for brick kiln sector and imposition of levy of GST on reverse charge basis on mentha oil & allowing its exports only against LUT with the consequential refund of accumulated input tax credit may be submitted to the GST Council. It was felt that further discussion is required on the remaining mandate of the GoM regarding the capacity-based taxation on pan masala, gutkha, chewing tobacco, etc., and the same may be included in the final report of the GoM to be issued at a subsequent date after further deliberations.

**9.** Accordingly, an Interim Report was placed for the consideration of the GST Council in its 45<sup>th</sup> Meeting held on 17<sup>th</sup> September, 2021 [Agenda Item 9: Volume 2]. The Interim Report of the GoM is placed at **Annexure-B**.

10. Thereafter, the  $3^{rd}$  detailed meeting of GoM was held on  $07^{th}$  July, 2022, to deliberate on the remaining mandate of the GoM.

**11.** The Group of Ministers while emphasising the rampant evasion in the sector consisting of pan masala, gutkha, chewing tobacco, etc., felt an immediate need to put in additional intervention(s) to plug the tax leakages with a view to augment the revenue from these commodities.

**12.** The GoM extensively deliberated on the issues like broad challenges associated with and complexities involved in the implementation of capacity based levy in the sector and the alternate possible systemic & administrative mechanisms to curb evasion and enhance compliance & enforcement measures; the revenue realization figures [pre and post GST rollout] and the inferences thereof; the international best practices to curb illicit trade in tobacco sector like track and trace mechanism; specific tax based compensation cess levy to boost first stage [manufacturer level] collection of revenue.

**13.** The deliberations held in the GoM in its third meeting, leading up to its recommendations, are summarized in the foregoing paragraphs.

#### IV. Capacity based taxation

**14.** The following challenges associated with, and complexities involved in the implementation of capacity-based taxation were considered by the GoM:

- a) The current legal framework for GST, including the relevant constitutional provision, provides supply as the taxable event and does not appear to provide authority for capacity-based levy;
- b) Capacity-based levy enhances the interface between the taxpayer unit and the officers and such interface confines to jurisdictional officers only, that is therefore distortionary and could be a cause of collusion.
- c) Capacity-based taxation is extremely complex and requires frequent changes in rate structure, without any guarantee of commensurate increase in the revenue [as was observed in the Central Excise regime];

- d) It suppresses competition and goes against the small producers, who are not capable of making huge investment in capital infrastructure.;
- e) Experience of capacity-based regime in excise regime was not encouraging. It leads to disputes/litigations, tapering followed by a sharp fall in revenue after initial jump in revenue. In later years, revenue improved for the reason that the duty was raised manifold.
- f) It is the evasion prone industry that is seeking imposition of capacity-based levy and mostly pushed by the larger players in the sector. This in itself does not provide assurance as regards to the effectiveness of the capacity-based taxation, and in fact, it could be construed otherwise; and
- g) Globally, other countries are also facing challenges of tax evasion in tobacco products. However, capacity-based levy is not resorted to for curbing such evasion. Instead, countries have opted for technological solution to track and trace such products in the entire supply chain.

15. It was observed by the GoM that the overall revenue realization from the sector after the rollout of GST has increased significantly, wherein most of the major producing and consuming states have witnessed a sizable increase in their revenue realization from the sector in comparison to the VAT regime. In view of these revenue figures, it was inferred that the effectiveness of GST with its inherent supply chain tracking nature and associated technological mechanisms like e-way Bill, e-invoicing, etc. was superior in comparison to the erstwhile capacity-based levy of the central excise regime for strict enforcement and to augment the revenue from this evasion-prone sector. It was also seen from the experience of the erstwhile capacity-based taxation, which was in place during the Central Excise regime, that the revenue realisation from these products from FY 2009-10 to FY 2014-15 reflected a negative Compound Annual Growth Rate (CAGR), despite frequent restructuring and upward revision of the then duty structure. Thus, to summarize, it was observed by the GoM that the features that has come in with the roll-out of GST has not only helped to overcome most of the above-mentioned challenges associated with and complexities involved in the erstwhile capacity-based taxation but has also significantly boosted the revenue realisation from these products in comparison to the Central Excise and VAT regime.

16. The Members echoed the view that the idea behind examination of the issue was to suggest measures to plug leakages as there is rampant evasion in the sector. In this context, the option of capacity-based levy came up as an idea in absence of any better option before the GoM. However, if there are better options available, it would be prudent to deploy those measures rather than going for capacity-based levy, which, as felt, does not fit with GST and also may not be in tune with the Constitutional mandate in GST.

**17.** The GoM deliberated the whole issue at length and examined all possible options for enhancing the compliance in the sector. The GOM identified certain additional compliance measures with respect to different aspects of production and supply, namely: -

- a. **Registration and Details of Machines**: Any person who deals with pan masala, chewing tobacco and such other tobacco products, as specified, in any manner, shall in addition to his registration, take registration of the machines used in relation to such goods, in the manner as prescribed;
- b. Thus, **there would be a mandatory registration of each machine**; this would require disclosure of the details like make and model of each machine, number of tracks, packing capacity of each track, total packing capacity of each machine, total number of machines installed in the factory;
- c. **Special Monthly Return:** Maintaining of records and periodic filing of Special Monthly Return with details such as Machine wise production, Shift wise production, machine

disposed off with all its details, machine added with all its details, Inputs procured and utilized in quantity and value terms, Product-wise and brand-wise details of clearance in quantity and value terms, shift-wise records of reading of electricity meters and DG set meters, waste generation stock, etc., in the manner as prescribed;

- d. **Certification of production capacity**: Production capacity and quantity in unit per pouch/container shall be duly certified by registered Chartered Engineer.
- e. **Copy of declaration in respect of production capacity** submitted to other department/agency/organization (if any), etc.;
- f. Disclosure of details of non-working/partially working machines, etc.;
- g. If required, installation of 24\*7 CCTV cameras by the manufacturers [it was however felt that this may be intrusive and be considered carefully];
- h. Prescribing a heavy penalty for running any unregistered machine.
- i. Gradually, the requirement of unique identification marking such as QR code or stamps, on each packet/pouch will be prescribed. The unique identifier shall enable determination of the following:
  - (a) the date, place and factory of manufacture;
  - (b) the machine used to manufacture;
  - (c) the production shift or time of manufacture;
  - (d) the product description, quantity and maximum retail sale price;
  - (e) any other relevant information, as may be prescribed.

**18.** The GoM also suggested that there is a need to further strengthen the tracking measures along the supply chain of these evasion-prone commodities through measures like mandatory e-invoicing [irrespective of turnover], mandatory e-way bill [irrespective of invoice value], mandatory FAST tag/RFID on the vehicle, vehicle tracking through Vahan app & GPS installation, priority alert in E-Way Bills for such products, and mandatory e-invoicing including B2C invoices under GST for such suppliers. These features would help for stricter enforcement in these sectors.

**19.** The issue of fake invoicing and fraudulent exports thereof for claiming undue refund was also taken up for discussion by the GoM and it was suggested that for commodities like pan masala, gutkha, chewing tobacco, and similar other goods, the IGST refund route on exports be closed, similar to the recommendation made for Mentha Oil and if necessary, exports may only be allowed against LUT with the consequential refund of accumulated input tax credit.

**20.** The GoM simultaneously emphasized that the Ease of Doing Business shall not be hampered on account of above suggested measures, and they shall be implemented on system based interface, to the maximum extent feasible, in order to avoid any potential harassment of the concerned suppliers.

#### V. Track and Trace Mechanism

**21.** Since illicit trade in tobacco sector is a global phenomenon, the GoM deliberated on the international best practices to tackle this menace.

**22.** In this Context, it was observed by the GoM that, in June 2018, India has submitted its instrument of accession to the Protocol to Eliminate Illicit Trade in Tobacco Products, which builds upon and complements Article 15 [Measures relating to the reduction of the supply of tobacco: Illicit trade in tobacco products] of the WHO Framework Convention on Tobacco Control (WHO FCTC), and that has entered into force on 25<sup>th</sup> September, 2018. The Article 8 of the said Protocol requires a time bound action under which India is committed to put in place a technology driven Track and Trace

system for Cigarettes by September, 2023, and for all tobacco products by September, 2028. The objective of the Protocol is the elimination of all forms of illicit trade in tobacco products.

23. The basic requirements of implementation of Track and Trace Mechanism was taken note of by the GoM like a unique, secure and non-removable identification markings, such as codes or stamps on all unit packets of tobacco; date and location of manufacture; manufacturing facility; machine used to manufacture tobacco products; production shift or time of manufacture; the name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer; the intended market of retail sale; product description; any warehousing and shipping; the identity of any known subsequent purchaser; the intended shipment route, the shipment date, shipment destination, point of departure and consignee, etc.

24. An illustration of the tobacco tracking and tracing mechanism is depicted in the picture below:

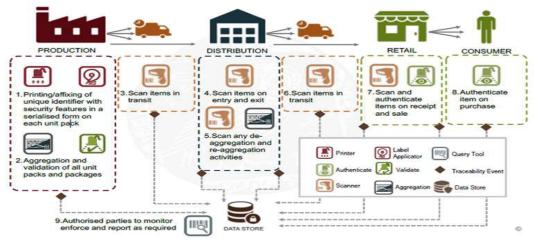


Figure 14: Tobacco Traceability Solution

Source: Guidebook on Implementing Article 8: Tracking & Tracing, WHO FCTC

**25.** It was further observed that the Track and Trace is a technology driven mechanism that has successfully been adopted by European Union, countries in Latin America, Africa (like Kenya) to curb tax evasion in the tobacco sector.

**26.** Accordingly, GoM suggested that efforts shall be made to implement Track and Trace Mechanism for all the tobacco products, preferably by the end of 2023, while carrying out the associated infrastructural, systemic & legal feasibility studies to implement the same.

#### VI. Conversion of *ad valorem* compensation cess rate to specific rate

27. The GoM observed that there exist greater leakages in the revenue at the later stages of the supply chain of such products and most of the end retailers of these products are below the threshold limit for mandatory GST registration. Consequently, the GoM recommended that the compensation cess levied on such evasion-prone commodities like Pan masala, gutkha, chewing tobacco, etc., shall be changed from the current *ad valorem* tax to specific tax based levy to boost the first stage [manufacturer level] collection of the revenue. Additionally, such a specific tax shall be linked to the retail sale price to maintain revenue buoyancy. Further, the tax structure for compensation cess levied on such commodities shall be further simplified by reducing the number of tax slabs and associated differential tax rates.

**28.** The GOM , in its extensive deliberations, also observed that these changes can be made in the compensation cess component of tax, as in the subsequent stages, there is no other ITC than the compensation cess paid in the previous stages.

**29.** An illustration of the same is depicted below:

Assuming a pouch of Pan Masala [HS 210	Assuming a pouch of Pan Masala [HS 2106 90 20] with Retail Sale Price of Rs. 5						
<b>EXISTING</b>	PROPOSED						
Ad valorem tax	Specific tax						
[GST @ 28%, Compensation Cess @	[GST @ 28%, Compensation Cess @ 'x' specific						
60%]	tax]						
(i) Retail price (incl of GST) = Rs 5	(i) Retail price (incl. of GST) = Rs 5						
(ii) The distribution and retail margin	(ii) The distribution and retail margin and post						
(@ 20% of retail price), including	manufacturing expense (@ 20% of retail						
all post manufacturing expenses	price) ~Rs 1/-						
~Rs 1	(iii) Only GST rate being ad valorem, the GST on						
(iii) Tax amount on the above margin	distributor and retailer margin=						
(@ 88%)= Rs 0.88	( <i>ii</i> )*0.28=0.28						
( <i>iv</i> ) Factory gate price = ( <i>i</i> )- ( <i>ii</i> + <i>iii</i> ) =	(iv) Factory gate price=(i)- (ii +iii) = Rs 3.72						
Rs 3.12	(v) Tax that will be paid by manufacturer:						
(v) Manufacturer pays GST+CC=	GST at ad valorem rate of 28% and						
(iv)*0.88/1.88=Rs 1.46	Compensation cess at specific rate.						
(vi) Distributer and retailer to pay	(I)Thus CC, specific rate						
GST+CC=(iii)=Rs 0.88	=(i)*0.6/1.88=1.6=32% of RSP						
(vii) Total tax=(iii)+(v)=2.34	(II) GST by manufacturer $=$ ((i)-						
(viii) However, this Rs 0.88 (refer v)	(ii+iii+1.6))*0.28/1.28=0.46						
may not be getting collected in	Thus, manufacturer will pay GST plus Cess						
several cases because of the fact	equal to Rs 1.6 (CC) + 0.46 (Cess)= Rs 2.06						
that it is evaded, or retailer is							
small.	(vi) Distributor to pay addl. tax= 0.28						
(ix) It may be feasible to convert CC	(vii) Therefore, in this instance a tax of Rs 2.06						
to specific rate, like cigarettes.	is collected from manufacturer instead of						
Doing so may not be feasible for	Rs 1.46 in the existing payment mechanism						
GST because of ITC chain.	[41.1% extra] Hence feasibility of post						
	manufacturing leakage is quite less.						
	Hence under specific rate for CC, in the						
	case of these items, i.e., pan masala,						
	tobacco, etc., the tax collection is likely to						
	increase significantly.						

**30.** The details of the tax structure for such evasion-prone commodities along with the suggested specific tax-based levy is given in **Annexure-C**.

#### VII. Recommendations of the GoM

- **31.** Based on the discussions outlined above, with a view to plug the leakages and improve the revenue collection from the concerned evasion-prone commodities like pan masala, gutkha, chewing tobacco, etc., the GoM has made the following recommendations:
  - **a.** Measures needs to be taken on priority to curb evasion on pan masala, chewing tobacco and similar products.

- **b.** Capacity based levy may not be prescribed. Capacity based levy is not in the spirit of GST levy and may not be permissible in terms of the Constitutional mandate in GST and statutory provisions thereof.
- **c.** To plug leakages/evasion of GST for these items, the measures as stated in Para 17 & 18 be taken on priority. These measures essentially entail registration of machines; special monthly return with details of machine, inputs, clearance, etc.; special compliance requirements like mandatory e-invoicing, mandatory e-way bill, mandatory FAST tag/GPS installation, mandatory unique identification marking, installation of CCTV cameras (after careful consideration), etc.; heavy penal action.
- **d.** The exports shall only be allowed against LUT with the consequential refund of accumulated input tax credit, similar to the recommendation made for Mentha Oil, to curb fake invoicing and fraudulent exports [Para 18].
- e. The Compensation Cess levied on such evasion-prone commodities like pan masala, gutkha, chewing tobacco, etc., shall be changed from the current *ad valorem* tax to specific tax-based levy to boost the first stage [manufacturer level] collection of the revenue [Details in Annexure-C].
- **f.** Efforts shall be made for implementation of Track and Trace Mechanism for all the tobacco products, preferably by the end of year 2023, while carrying out the associated infrastructural, systemic & legal feasibility studies to implement the same. and
- **g.** To ensure that interface remains minimal, the above measures may, to the extent feasible, be implemented on system-based interface in order to avoid any potential harassment of the concerned suppliers.

\*\*\*

#### ANNEXURE-A

#### S-31011/12/2021-DIR(NC)-DOR Government of India Ministry of Finance Department of Revenue

New Delhi, dated 24th May, 2021

#### OFFICE MEMORANDUM

#### Subject: Constitution of Group of Ministers (GoM) on Capacity based taxation and Special Composition Scheme in Certain Sectors on GST- reg.

In pursuance of the decision of the GST Council a Group of Ministers (GoM) on Capacity based taxation and Special Composition Scheme in Certain Sectors in GST has been constituted. The GoM shall consist of the following members:

Sl.	Name	Designation and State	
No.	Sh. Niranjan Pujari	Minister for Finance, Odisha	Convener
2.	Sh. Manish Sisodia	Deputy Chief Minister, Delhi	Member
3.	Sh. Dushyant Chautala	Deputy Chief Minister, Haryana	Member
4.	Sh. K N Balagopal	Minister for Finance, Kerala	Member
4. 5.	Sh. Jagdish Devda	Minister for Finance, Madhya Pradesh	Member
6.	Sh. Suresh Kumar	Minister for Finance, Uttar Pradesh	Member
7.	Khanna Sh. Subodh Uniyal	Minister for Agriculture, Uttarakhand	Member

 The terms of reference (ToR) for the GoM on capacity based taxation and special composition schemes in certain sectors in GST shall be as follows:

a. To examine the possibility to levy of GST based on the capacity of manufacturing unit and special composition schemes in certain evasion prone sectors like pan masala and gutkha, brick kilns, sand mining etc with reference to the current legal provisions.

b. To examine whether any change is required in the legal provisions to allow such levy.

c. To examine the impact of such levy on the destination nature of the current GST design.

d. To examine any other administrative or systemic mechanism to plug leakages in these sectors.

#### **ANNEXURE-A**

e. To examine the impact of levy of GST on reverse charge on mentha oil and to examine if there could be other class of supplies that could be subjected to reverse charge to augment revenue.

The GoM on Capacity based taxation shall be assisted by a Committee of 3. officers from Centre and States as convened by the GoM.

The secretarial assistance to this GoM will be provided by Joint Secretary (TRU-I), CBIC.

The GoM shall submit its recommendation to the Council within six months for 5. consideration of GST Council.

Bouddh) Director Tel.011-23092686

То

- 1. All Members of GoM and Officers
- Revenue Secretary, North Block, New Delhi
   Chairperson, CBIC, North Block, New Delhi
- 4. Joint Secretary, TRU-I, Department of Revenue, North Block, New Delhi
- GST Council Secretariat, New Delhi
   PS to Hon'ble Minister of Finance, Government of India, North Block, New Delhi
- 7. PS to Hon'ble Minister of State (Finance), Government of India, North Block, New Delhi.

## Agenda Item 9: Agenda Note on the basis of the Interim Report of the Group of Ministers (GoM) on capacity-based taxation and special composition scheme for certain sectors

The GST Council, during its **42<sup>nd</sup> Meeting** held on 05<sup>th</sup> and 12<sup>th</sup> October 2020, decided that a Group of Ministers may be formed to discuss and analyse the issues pertaining to the Capacity based taxation on Pan Masala, Reverse Charge Mechanism in mentha oil, special composition scheme on brick kilns, stone crushers, etc.

1.2 Accordingly, a Group of Ministers (GoM) on Capacity-based Taxation and Special Composition Scheme in Certain Sectors in GST has been constituted on 24.05.2021, comprising of the following members:

S.No.	Name (Shri)	Designation and State
1.	Niranjan Pujari	Minister for Finance, Odisha (Convener)
2.	Manish Sisodia	Deputy Chief Minister, Delhi
3.	Dushyant Chautala	Deputy Chief Minister, Haryana
4.	K N Balagopal	Minister for Finance, Kerala
5.	Jagdish Devdea	Minister for Finance, Madhya Pradesh
6.	Suresh Kumar Khanna	Minister for Finance, Uttar Pradesh
7.	Subodh Uniyal	Minister for Agriculture, Uttarakhand

1.3 The Terms of Reference (ToR) provided to the GoM are as follows:

- i. To examine the possibility to levy of GST based on the capacity of manufacturing unit and special composition schemes in certain evasion prone sectors like pan masala and Gutkha, brick kilns, sand mining etc. with reference to the current legal provisions.
- ii. To examine whether any change is required in the legal provisions to allow such levy.
- iii. To examine the impact of such levy on the destination nature of the current GST design.
- iv. To examine any other administrative or systemic mechanism to plug leakages in these sectors.
- v. To examine the impact of levy of GST on reverse charge on Mentha oil and to examine if there could be other class of supplies that could be subjected to reverse charge to augment revenue.

#### 2. Meetings of the GoM: -

2.1 In pursuance to the mandate provided to the GoM, the GoM has met twice till date through video conferencing mode. The first meeting of GoM was held on  $06^{\text{th}}$  July, 2021, which was followed by a meeting of Group of Officers deputed to assist the GoM on  $17^{\text{th}}$  August, 2021. Thereafter, the second meeting of the GoM was held on  $31^{\text{st}}$  August, 2021.

2.2 During these meetings, there was a lengthy deliberation and broad based consideration by the GoM, assisted by the Officers of DoR and the member states, on the proposals formulated on the basis of the Terms of Reference.

3. Based on the above, the GoM has submitted an Interim Report. The main proposals based on the Interim Report are as under:

#### a Capacity Based levy on Pan Masala and Tobacco products:

- The GoM has at length discussed the feasibility of Capacity based levy on pan masala and tobacco products.
- It was felt by the GoM that there exists a need for a deeper data analysis in this respect, through comparative state wise and product wise revenue figures in the pre and post GST regime in order to draw a clearer picture on revenue implications of such a move. In pursuance to this, such figures have been sought from all the states and UTs.
- Accordingly, considering the sensitivity of the matter and the quantum of revenue involved, the Group of Ministers has requested for an extension of three months for submitting its report on the issue of Capacity Based levy on Pan Masala and Tobacco products.

#### b. Special Composition Scheme in the sector of Brick Kiln, Sand mining, etc.: -

- The GoM, afterlong deliberation, and taking into account the various options including capacity based levy on production, decided that in order to augment the revenue realization from the sector, the most appropriate solution would be introduction of a special composition scheme in the brick kiln sector.
- Accordingly, the GoM has made the following recommendations in the brick kiln sector:
  - i. Special composition scheme may be instituted in the Brick Kiln sector prescribing a GST rate of 5%/6% (without ITC), along with a revised GST rate of 12% (with ITC);
  - ii. Threshold exemption limit in the sector may be reduced to Rs. 10 lakhs in order to increase the tax base, keeping in view the fact that majority of the firms in the sector are small and unorganized;
  - iii. This scheme may be instituted with effect from 01.04.2022;
- The feasibility of imposition of a similar special composition scheme in the sector of stone crushing/sand mining is still under examination by the GoM.

#### c. Reverse Charge Mechanism in Mentha Oil: -

- The proposal for implementation of Reverse Charge Mechanism (RCM) on Mentha oil to curb irregular refunds on exports was examined in a detailed manner by the GoM.
- Accordingly, the GoM has made the following recommendations:
  - i. Reverse Charge Mechanism on the first stage in the sector, as a measure to improve compliance;
  - ii. IGST refund route may be closed for mentha, and only refund by ITC route may be allowed with a predetermined ceiling on refund of ITC (in terms of per kg of Mentha exports, to be determined in an objective manner), as and when an amendment in the section 16 of the IGST Act comes into effect;
  - iii. The modalities for implementation of such changes may be worked out by the state of Uttar Pradesh.

# 4. Accordingly, an Agenda is placed before the GST Council for approval to the following proposals:

- i. Introduction of a Special Composition Scheme in the Brick Kiln sector with effect from 01.04.2022, prescribing a GST rate of 6%, without ITC, similar to the rate in the services sector. **The Council may deliberate on the GST rate;**
- ii. Increasing the GST rate on supply of bricks from 5% to 12% (with ITC), with effect from 01.04.2022;

- iii. Introducing the payment of GST liability under Reverse Charge Mechanism on the supply of Mentha, at the first stage of the supply;
- iv. Blocking of the IGST refund route on export of mentha, and allowing refund by ITC route only with a predetermined ceiling on refund of ITC (in terms of per kg of Mentha exports, to be determined in an objective manner), as and when amendment in the section 16 of the IGST Act comes into effect. In the interim, the exact modalities would be worked out by the state of Uttar Pradesh;
- v. Extension of the term of the GoM by **another 3 months** in order to further examine the remaining issues.

# ANNEXURE-C

Sl. No. of notification No. 1/2017- Compensation Cess (Rate) dated 28.06.2017	Chapter / Heading / Subheading / Tariff item	Description of Goods	Current <i>ad</i> <i>valorem</i> rate	Proposed specific rate for compensation cess*
1	2106 90 20	Pan Masala	60%	0.32R
5	2401	Unmanufactured tobacco (without lime tube) – bearing a brand name	71%	0.36R
6	2401	Unmanufactured tobacco (with lime tube) – bearing a brand name	65%	0.36R
7	2401 30 00	Tobacco refuse, bearing a brand name	61%	0.32R
19	2403 11 10	Hookah or gudaku tobacco bearing a brand name	72%	0.36R
20	2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku', not bearing a brand name	17%	0.12R
21	2403 11 90	Other water pipe smoking tobacco, not bearing a brand name	11%	0.08R
22	2403 19 10	Smoking mixtures for pipes and cigarettes	290%	0.69R
23	2403 19 90	Other smoking tobacco bearing a brand name	49%	0.28R
24	2403 19 90	Other smoking tobacco not bearing a brand name	11%	0.08R
25	2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name	72%	0.36R
26	2403 99 10	Chewing tobacco (without lime tube)	160%	0.56R
27	2403 99 10	Chewing tobacco (with lime tube)	142%	0.56R
28	2403 99 10	Filter khaini	160%	0.56R
29	2403 99 20	Preparations containing chewing tobacco	72%	0.36R
30	2403 99 30	Jarda scented tobacco	160%	0.56R
31	2403 99 40	Snuff	72%	0.36R
32	2403 99 50	Preparations containing snuff	72%	0.36R
33	2403 99 60	Tobacco extracts and essence, bearing a brand name	72%	0.36R
34	2403 99 60	Tobacco extracts and essence, not bearing a brand name	65%	0.36R
35	2403 99 70	Cut tobacco	20%	0.14R
36	2403 99 90	Pan masala containing tobacco 'Gutkha'	204%	0.61R

37	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name	0.43R
38	2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name	0.43R

\* "R" stands for retail sale price

**Explanation 1.** - For the purposes of this Annexure, "retail sale price" means the maximum price at which the above-mentioned goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale:

**Provided** that in case the provisions of the Legal Metrology Act, 2009 (1 of 2010) or the rules made thereunder or under any other law for the time being in force require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

Explanation 2. - For the purposes of this Annexure, -

(a) where on the package of any above-mentioned goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price.

(b) where the retail sale price, declared on the package of any above-mentioned goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price.

# Agenda Item 15 : Recommendations of the 17<sup>th</sup> IT Grievance Redressal Committee for approval/ decision of the GST Council:

The 17<sup>th</sup> meeting of the IT Grievance Redressal Committee (ITGRC) was held on 2<sup>nd</sup>December, 2022 at 10.30 AM in online mode over WebEx platform to resolve the grievances of the taxpayers arising out of the technical problems faced by them on the GSTN portal in relation to GST Compliance filings.

The agenda for the 17<sup>th</sup> ITGRC meeting covered the following issues:

- 1. Technical Issues requiring data fixes through back- end utilities
- 2. Agenda on reversal of interest on delayed filing of statement in Form GSTR-8 by e-commerce operators due to technical glitches

#### 2. <u>Recommendations of ITGRC on Data Fix issues:</u>

As per the SOP approved in the 15<sup>th</sup> ITGRC meeting for Technical issues requiring data fix of the processed incorrect data through backend utilities, GSTN identified twenty-eight (28) cases which required data fixes. However, one case was withdrawn by the GSTN.

The ITGRC then took note of the aforementioned cases of which 10 (ten) cases were of Category-1(Technical issues with no financial implication where data was known), 13 (thirteen) cases were of Category-2 (Technical issues where there was financial implications and the correct data was also known) and 04 (four) cases were of category-3 (Technical issues affecting locally with financial implication and where data was not known) and thesewere unanimously approved by the Committee.

#### 3. <u>Recommendations of ITGRC on Agenda on reversal of interest on delayed filing of statement</u> <u>in Form GSTR-8 bye-commerce operators due to technical glitches:</u>

The Committee observed that while filing statement in Form GSTR-8 for the month of February 2022, three taxpayers who were registered on the same PAN in different States, could not file the said statement due to system glitches.

All three impacted operators have deposited the liability for the month of February, 2022 by due date. For the month March, 2022, all operators have deposited the liability after due date but before fixing the defect.ForApril, 2022,only one operator has deposited the liability before fixing the defect but this was after the due date of liability. Since, there was no glitch in depositing the liability through challan, therefore, interest paid on delayed filing of statement may not be refunded in those cases who have paid the liability while filing the statement or before filing the statement but after fixing of the glitch.

In earlier cases also, the 15<sup>th</sup> ITGRC had adopted this approach in its meeting held on 12-08-2021. Based on the decision, Government had issued Notification No. 08/2022 dated 07-06-2022 for refunding the interest to those who had deposited the liability before filing the statement.

The ITGRC took note of the data fix and that interest waiver be recommended to GST Council for these taxpayers.

# <u>The recommendations of ITGRC as per attached Minutes of the 17<sup>th</sup> meeting of the ITGRC are</u> placed for information of the GST Council as Annexure - A (Attached below)

The GST Council may give its approval on the issues mentioned in Paras 2 and 3 above.

# <u>Minutes of the 17<sup>th</sup> Meeting of the IT Grievance Redressal Committee (ITGRC) held on dated</u> <u>02.12.2022 in online mode over WebEx Platform</u>

The 17<sup>th</sup> meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 02<sup>nd</sup> December, 2022 at 10.30 AM. The list of officers who attended the meeting is attached as **Annexure-1**. The agenda and annexure to agenda circulated for the meeting are attached as **Annexure-2 and Annexure-4**.

2. The Joint Secretary, GST Council Secretariat, welcomed all the members and gave a brief introduction that there were two (02) agenda points which included Data fixes and waiver of interest due to delay in filing the form GSTR-8 for e-commerce operators because of technical glitches. She further informed that in the 15<sup>th</sup> ITGRC meeting, a SOP on the mechanism to fix various glitches by the GSTN was approved. She also informed that data fixes having global financial implications needed prior approval of the ITGRC where as data fixes which had local implications would be fixed by GSTN and after fixation would placed before the ITGRC and that all these data fixes had local nature with or without financial implications. That is why these were fixed by the GSTN to present the agendas before the Committee.

**3.** Sh. Dheeraj Rastogi, Executive Vice President, GSTN informed the ITGRC that most of the return filing got affected because of some inconsistency in the data due to some unforeseen scenarios or duplicating the return which required data fixes and GSTN carried out these data fixes. Thereafter, he requested Shri Nirmal Kumar, Executive Vice President, GSTN to explain each of the cases regarding data fixes as to what kind of data error was found and what kind of data fixes had been done.

4. Sh. Nirmal Kumar, Executive Vice President, GSTN informed the Committee that the agenda comprised of the following three categories technical issues where data fix was done.

i. Technical issues with no financial implication where data was known. There were ten such cases.

**ii.** Technical issues where there was financial implications and the correct data was also known. In this category, there were thirteen cases.

**iii.** Technical issues affecting locally with financial implication and where data was not known. There were only five such cases.

He then made a power point presentation which is attached as Annexure-5.

**5.** First category of technical issues with no financial implication where data was known as follows:

S.	Issue reported	No. of	Module	<b>Detail Description</b>	Status
No.		Cases			
		Impacted			
1	Duplicate invoice issue in GSTR6 form. At the time of submission of return, the portal is showing "Error in Submission".	Impacted	GSTR6	The invoices and credit notes uploaded were processed by the portal while uploading the JSON. At the time of submission of return, the portal is showing "Error in Submission". The error report is showing that the ISD Invoices and ISD credit notes are duplicate but there is no duplication in either ISD invoices or ISD credit notes. Taxpayer is getting "Error in Submission" while filing the GSTR6 but then after generating Error report it is showing 'Duplicate ISD invoice'. Reason: According to the code flow invoice should be inserted into "UPLOADED_ISD_INVOICES", "UPLOADED_ISD_INVOICES", "ISD_INVOICES" tables during save. But for this user data is inserting into "ISD_INVOICE_DTL", "ISD_NOTE_DTL", "GSTR6SUBMIT" table also. When user submitting the form user getting the error as duplicate invoice is present in	This happened for only one TP and due to that code fix was not taken. Data fix done by ICR.
				below DTL Hbase table.	
2	Late fee reversal of GSTR6 taxpayer. Taxpayer was unable to file GSTR6 form in production environment for return period July, 2021 due to "Error in Submission".	1	GSTR6	The invoices and credit notes uploaded were processed by the portal while uploading the JSON. At the time of submission of return, the portal is showing "Error in Submission" and the report is showing that the ISD Invoices and ISD credit notes are duplicate. But there is no duplication in either ISD invoices or ISD credit notes. Reason: Taxpayer were unable to submit the GSTR6 due to the error "Duplicate ISD Invoice" displayed on the portal.	This happened only once so code fix was not taken. Data fix was done by Utility on 10th Feb 2022 via ICR:14811
3	DuplicateentriespresentinRTN_FILING_STAUS table.At thetimeof	1	GST0R1	Tax payer is getting error "Latest Summary is not available, Please generate summary and try again". Tax payer has already deleted history from the browser and tried different computer also but	Permanent fix will be deployed in production on Dec 2022.

4	GSTR-1 summary not generated by the system and there is no consolidated summary shown while filling GSTR-1.	2	GSTR4/3	getting the same error and unable to file the return. Reason: There are 2 entries presents in Return Filing Status table for GSTN 24AXLPT8085E1ZZ for return period 042022, hence tax payer is not able to proceed with filing.	GSTR4 quarter
	GSTR-4/ GSTR3B- "Error! Payment amount should not exceed the outstanding liability"- RQM: 14189. While filing GSTR4 some of taxpayer are getting the error "Issue while filing GSTR-4 - "Error! Payment amount should not exceed the outstanding ".			the time of submit (or in the new model at the time of Offset). The late fee thus calculated has three components. Reason: Negative late-fee has been applied to the ledger due to the logic. Further, as per the logic in GSTR-4 and GSTR-3B any negative liability is carried forward to the next return period using a pair of Credit/Debit entries.	form is disabled in prod. Permanent fix needs to be analyzed. Utility is used to fix the data.
5	GSTR9    Users have filed R9 but form status is RTF in DB and not filed on annual dashboard. Taxpayer has filed GSTR9 form, but status is still not filed on portal.	1	GSTR9	User has claimed that he has filed the form, but status is still not filed on portal. It is due the issue that entries got posted to ledger tables and cash is also debited for user's late fee. However, corresponding record is not updated from Ready To File to File in Return Filing Status table in return database. Therefore, user is still seeing form status as not filed even after filing and paying the late fee. Reason: Transaction handling between different data sources is not properly done.	Known issue across the application. Analysis is under progress. GSTR1 has similar issue which is in UAT and will be deployed on production in 29th Nov 2022, other modules may adopt this solution after discussion. Data fix in such cases is done through ICR.
6	Duplicate Amendable column in INVOICE_DTL table of Hbase.	83	GSTR1	On Analysis it is found that AMDBL column is present twice in "INVOICE_DTL" table for the same invoice. Hence while user trying to amend invoice from Upper case to lower case he	It is fixed in production on 26th April 2022.

	When Taxpayer is			is getting invoice in "In-Progress".	
	trying to amend			Reason: While analysing logs it is found	
	EXPORT invoices			that at the time of submit, since invoice	
	from upper case to			column were present with upper case,	
	lower case records			system validated it as different and	
	stuck in "In-			inserted AMDBL column with lower case.	
	Progress" Due to				
	duplicate Amdbl				
	column present in				
	"INVOICE DTL"				
	Table.				
7	When Taxpayer is	32	GSTR1	While analyzing, it is found that Meta	It is fixed in
	validating the	52	OSTRI	Data (MD) column is not present in	production on 26th
	C .			"Invoice Detail" table. The invoices went	*
					April 2022.
	Refund, system is			to error while adding to GSTR1 form due	
	giving error "RF-			to which Meta column was not inserted to "Invoice Dateil" Table though it is present	
	FCAS1007" and			"Invoice Detail" Table though it is present	
	not allowing to			in "Invoices" table.	
	file the Refund.			Reasons: - Since MD column is not	
				present in "Invoice Detail" table hence	
				user will not be able to raise refund for	
				affected invoices, validation will fail at	
				time of initiating refund.	
				- It is also noticed that due to connection	
				errors while inserting data to Invoice	
				Detail table, invoices went to error.	
8	CMP08  The end	64	CMP-08	Filing status is 'Not Filed' and taxpayer is	Partially fixed on
	user is unable to			not allowed to File GST CMP-08 again,	14th Jun 2021 in
	file GST CMP-08			as error is reflecting "Data for the internal	production.
	as error is			Transaction Id already Posted" while	Another RCA is
	reflecting "Data			filing.	Known issue
	for the internal				across the
	Transaction Id			Reason: For few taxpayers, all ledger	application.
	Already Posted"-			tables were updated successfully but	Analysis is under
	RQM: 21266. The			request status did not change from RTF to	progress. GSTR1
	taxpayer is unable			FIL in RTN_FILING_STATUS table.	has similar issue
	to file GST CMP-			Partially fixed on 14th Jun 2021 in	which is in UAT
	08 as error is			production. Another RCA is Known issue	and will be
	reflecting "Data			across the application. Analysis is under	deployed on
	for the internal			progress. GSTR1 has similar issue which	production in 29th
	Transaction Id			is in UAT and will be deployed on	Nov 2022, other
	Already Posted"			production in 29th Nov 2022, other	modules may
	while filing.			modules may adopt after discussion.	adopt after
	0			,	discussion.
9	Issue prior to	88	Recovery	The multiple recovery cases were created	Issue was before
	Migration of	00	leesvery	for single demand id through event_dtl	Migration of
					-
	-			iob. The user was facing a system error as	Tamil Nadu from
	Tamil Nadu.			job. The user was facing a system error, as the mentioned CRN's do not have the	Tamil Nadu from Modal 1 to Modal
	-			job. The user was facing a system error, as the mentioned CRN's do not have the demand details mapped to it.	Tamil Nadu fromModal 1 to Modal2.Issuewas

-		1			
	created in Case			Reason: Due to some technical issues in	permanently fixed
	management			event Job process, Multiple recovery	by executing a
	folder, where			cases were created without a reference of	utility job on 25th
	recovery cases			demand id in case management folder. As	Feb 2022.
	have no reference			a result, the case management folder had	
	to the Demand			unmapped recovery id which does not	
	order (for the 33-			require any action to be taken. We do not	
	state code – Tamil			have logs of that time to cross verify what	
	Nadu			was exact issue.	
	SR#601295). Tax				
	officers are facing				
	System error while				
	fetching the				
	recovery cases for				
	86 CRN's (Case				
	Reference				
	Number).				
10	Partial Data	6	GSTR1	This is a partial data movement issue	It is fixed in
	movement i.e.			before GSTR1 code improvement, where	production on 26th
	Data missing in			data is present in "INVOICES" table of	April 2022.
	INV_DETL table			HBase however few columns (OSPD,	
	of Hbase. System			TYPE) are missing in "INV_DETL"	
	is throwing error			table. Permanent fix has been done via	
	in GSTR-1 table			code improvement. However affected	
	9A and not			users, before code improvement, whose	
	allowing to submit			data is not sync for them, data fix is	
	amended invoice			required.	
	while amending			Reason: According to the older code flow	
	export invoices			invoice should be inserted from	
	from "without			"INVOCES" to "INV_DETL"table during	
	payment" to "with			submit, However some column	
	payment" type.			(OSPD,TYPE) are missing hence he is not	
				able to amend the invoice.	

EVP, GSTN informed that above cases were taken up on the request of either the taxpayer or the tax administration and required only data fixes which enabled the tax payer to file further returns or the tax administration was having certain orphan records which needed to be removed. There were no financial implications in these cases.

ITGRC took note of the data fixes done by the GSTN.

**6.** EVP, GSTN explained that in the second category, there were thirteen (13) cases having technical issues affecting locally with financial implications and where the correct data was known.

He then presented the cases with the help of a power point presentation which is attached as **Annexure-5**.

The details of the cases are mentioned as follows:

S.	Issue reported	No. of	Modul	Detail Description	Status
No.		Cases	e		
		Impacte			
		d			
1	Issue in GSTR6 form.	88	GSTR	In this issue, ISD invoices are not	It is fixed in
	Taxpayers were unable to		6	reflecting in GSTR2A form when	production on 15th
	view ISD invoices in			uploaded from GSTR6 form.	Feb 2022 via
	GSTR2A form, as GSTR2A			There are Multiple GSTR6 users	RQM:22445
	form is a read only where			who have raised ticket against	
	Supplier can see the			different supplier's GSTIN.	
	invoices added by the				
	recipient.			Reason: While adding the	
	<b>Financial Implication-YES</b>			multiple invoices through offline	
	Whether Correct Data			utility, due to the issue in code,	
	Known-YES			only the last invoice was getting	
				saved in	
				ISD_UNIT_RelationShipHbase	
				table and that is why user was	
				unable to view all their invoices	
				on the portal.	
				An ISD credit of Rs 52, 33,708/-	
				were made to be reflected in	
				GSTR2A.	

#### **Discussion and Decision:**

Additional Secretary (DoR) enquired whether only one cycle of return or multiple previous cycles of returns were affected and what the financial implications were.

EVP, GSTN informed that it was only one cycle of return as the problem was with the utility at that time and further that the financial implication was not really there as the invoices had to be shown in the counterparty's GSTR-2A so as to enable them to take credit.

Additional Secretary (DoR) instructed to provide financial implications while drawing the minutes.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impac			
		ted			
2	Recovery of TCS amount credited	37	Cash	Due to change in status from filed to	It is fixed
	twice in cash ledgers of suppliers.		Ledger	not filed or posting the records across	in
	(RQM: RET_R2X_18318).			two tax periods, taxpayer was able to	production.
	Suppliers have taken excess TCS			get the credit twice.	
	credit than due, either by filing				
	GSTR-2X more than once or by			Reason: It is suspected that following	
	accepting the same record across			scenarios may have caused the defect:	
	two tax periods.			Return filing status cache update issue	
	Financial Implication-YES			could have caused the issue. Second	
	Whether Correct Data Known-			scenario can be with XA transaction.	
	YES				
				The total amount of Rs 5,09,376 was	
				debited in the Cash Ledger.	

EVP, GSTN informed that in this case, GSTN reversed one entry from the double entries in the cash ledger and it is pro revenue. Further, as the taxpayers did not utilize the credit, no interest arises.

<b>S.</b>	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
3	Taxpayers were unable to file	2	GSTR5	Taxpayers were unable to file	Permanent fix
	GSTR5 form in production			GSTR5 form in production	on 16th Nov
	environment due to the error			environment due to the error	2021 via
	"Submission had some error".			"Submission had some error".	RQM: 22058
	Now reversal of late fee and				
	Interest in GSTR5 form is			Reason: Due to the code issue	
	requested.			(MYSQL upgrade), there was a delay	
	<b>Financial Implication-YES</b>			in providing the correct resolution to	
	Whether Correct Data Known-			the taxpayers, they were unable to	
	YES			file GSTR5 form within due date, so	
				late fee and Interest were charged to	
				the taxpayers. Although Taxpayers	
				have filed the form along with their	
				late fee and Interest, we have got the	
				request of late fee and interest	
				reversal from Daily ticket tracker.	
				A late fee amount of Rs 1550 (CGST	
				– 775 and SGST – 775) was waived	
				and an amount of Rs 2, 17.466	
				interest (CGST 108733, SGST	
				108733) is required post facto	

		approval reversal.	of	GST	Council	for	

JS, GSTCS enquired whether late fee and interest waived by GSTN was suo-moto because only in once case, interest has been waived off by issue of notification.

EVP, GSTN informed that only late fee was reversed as the same was paid by taxpayer at the time of filing delayed return due to defect in the GST System. As regard interest, GSTN requested ITGRC to recommend its waiver to GST Council, as done in the past.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
4.	Due to non-filling details of	1028	Cash	Due to non-filling details of liability	It is fixed in
	liability in table 6 of GSTR-4, the		Ledger	in table 6 of GSTR-4, the amount	production on
	amount paid through CMP-08 of			paid through CMP-08 of the year	31st Mar
	the year became excess tax paid			became excess tax paid and credited	2022 via
	and credited to negative liability			to negative liability statement.	CR:21592_A
	statement. The negative liability			Reason: Before recovery utility	
	was reduced by debiting the			execution, a select query was	
	amount from negative liability			executed to extract the impacted	
	statement. In some cases, the			records for recovery. In that select	
	amount has been debited twice.			query, we were ignoring those	
	<b>Financial Implication- YES</b>			records which were already	
	Whether Correct Data Known-			recovered.	
	YES			But in that select query, Return	
				Type='CMP08' was missed while	
				extracting the impacted records, only	
				GSTR-4 (Annual) was considered.	
				Status: It is fixed in production on	
				31 <sup>st</sup> Mar 2022 via CR:21592_A.	
				The total amount of Rs 2, 65, 67,031.	
				(CGST 1,32,71,615 , 1,32,71,615,	
				IGST – 23801) was re credited.	

Additional Secretary, GSTCS requested to explain the case in details.

EVP, GSTN explained that at the time of filing the annual return, the taxpayer had not filled up table 6 of GSTR-4 (Annual) due to which liability paid through Form GST CMP-08 became excess tax paid and credited to Negative Liability Statement. Some taxpayers have thereafter utilized the amount so credited, which was recovered by debiting their cash ledgers. In some cases, the amount was recovered twice, hence, the same was re-credited to their cash ledgers. To avoid such mistakes at the level of taxpayer, a reconciliation table has been provided for the convenience of taxpayers while filing the said return. An alert is shown if the taxpayer tries to file the said return without filling up table 6 in case of negative liability & he would not be able to file the return if the table is left blank and further informed that the issue of negative liability had been fixed in production permanently.

Additional Secretary, DoR enquired about the past negative recoveries.

EVP, GSTN informed that after the incident of data fix and noise in the social media, negative balance recoveries cases were assigned to the tax officers.

Additional Secretary, DoR observed that that was a revenue positive step.

EVP, GSTN informed that more than Rs. 100 crore had been recovered from the past cases where there was negative balance and the fix is pro revenue.

Additional Secretary, DoR instructed that financial implications whether positive or negative needed to be mentioned before finalization of the minutes.

<b>S.</b>	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
5	Cash ledger entries have been	2	Cash	Taxpayers having GSTIN	It is fixed in
	missed out or omitted after filing		Ledger	18AAACH0351E1Z4 and	production.
	R2X. Credit entry to be made in			19ALIPD4105A1ZS have accepted	
	the cash ledger (Table:			the TDS credit of return period	
	CASH_LDG) of taxpayers.			02/2022, 03/2022 respectively but	
	<b>Financial Implication- YES</b>			the credit entry is not available in	
	Whether Correct Data Known-			CASH_LDG table even though filing	
	YES			is done. Reason: Due to the	
				mismatch of row check value, credit	
				entry was not made to the cash ledger	
				(Table: CASH_LDG).	
				A total amount of Rs 49,062 (CGST	
				24531, SGST 24531) was credited to	
				the cash ledger.	

Additional Secretary, DoR enquired how only two taxpayers were effected despite being a generic problem.

GSTN informed that only two taxpayers had entered the values up to decimal places while others had entered up to integers.

Additional Secretary, DoR instructed that permanent fix for this may be done.

ITGRC took note of the data fixes done by the GSTN.

S. No.	Issue reported	No. of Cases Impact ed	Module	Detail Description	Status
6	Taxpayers are not able to file GST CMP-08 for the subsequent tax period. Financial Implication- YES Whether Correct Data Known- YES	3	CMP-08	It has been noticed that few composition taxpayers who have attempted to file statement in Form GST CMP-08 between 15th June' 21 to 8th July' 21, got redundant entries in their respective ledger tables and out of these cases, taxpayers who have liability open in any of the previous tax periods are unable to file non-nil statement for subsequent tax period. Reason: Due to XA removal, data for few taxpayers got impacted as rollback was not happening from ledger tables (RTN_LIAB_LDG/RTN_LIAB_MS TR/RTN_LIAB_MSTR_HIST) in case of any issue/exception like. An excess liability debited in the ledger of Rs 2,10,210 (CGST 1,05,105, SGST 1,05,105) was corrected.	Permanent fix is deployed in production on 9th Jul 2022.

#### **Discussion and Decision:**

S. No.	Issue reported	No. of Cases Impact ed	Module	Detail Description	Status
7	Re-credit of interest paid on late filing of statement in Form GSTR-8 by e-commerce operators due to system glitches. (Defect: RQM: RET_R8_19830). The post filing process for GSTR-8 in the previous month could not be completed due to which filing of next month was blocked. <b>Financial Implication- YES</b> <b>Whether Correct Data Known- YES</b>	116	GSTR-8	Since, filing of the statement is not mandatory every month, some operators have not filed the statement. The operators who have deposited the amount due by the due date but paid interest due to late filing of statement, are eligible for reversal of the interest paid. Reason: Upon analysis, it was seen that operator has filed statement and message posted for Kafka queue for post filing process. On processing of post filing process, transaction stuck- up in IP/ ER. When operator tried to file his next period's statement, application blocked him with the error message "Return filing process is not yet completed for the earlier period".	It is fixed on production.
				In 116 cases an interest amount of IGST Rs 76,01,603, CGST – Rs 27,23,696 and SGST/UTGST – Rs 27,23,696 was reversed which was approved by GST Council for credit to the Cash Ledgers of the impacted Operators vide notification 08/2022 and hence it was implemented.	

Additional Secretary, DoR enquired how interest was charged when payment was done on due date.

EVP, GSTN explained that after taxpayers filed GSTR-8 form, the record of 116 taxpayers got stuck in message queue itself due to technical issues and GSTR-8 could not be processed further. Therefore, system calculated the interest.

EVP, GSTN further informed that problem in GSTR-8 was due to some unforeseen scenarios. Interest reversal was required to be approved by GST Council for credit to the Cash Ledgers of the impacted Operators and notification 08/2022 was issued by the Govt. It was done therefore in compliance to that notification and no further waiver request was required to be made to GST COUNCIL, as done in the past, in this case.

S. No.	Issue reported	No. of Cases Impact ed	Module	Detail Description	Status
8	While filing GSTR4 Annual form, few taxpayers are getting incorrect auto populated amount in Table 5 where one quarter's data is missing. Financial Implication- YES Whether Correct Data Known- YES	12	GSTR4	Taxpayer is getting incorrect amount in table 5 of GSTR4 Annual form due to which taxpayers are not able to file their return as system is asking additional liability to be paid. This is an Adhoc exercise which will take some time and due to that, we have to apply data fixes on urgent basis considering ageing of tickets. Reason: Under analysis. An amount of Rs 32,55,026 (CGST – 16, 01,300, SGST – 16, 01,300, IGST – 52,426) was posted in Table 5 of Form GSTR-4.	permanent fix is under

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
9	TDS amount is credited to their	141	Cash	Cases where the amount of tax	Issue is fixed
	Cash Ledger by filing the TDS &		Ledger	deducted and reported in GSTR-7	in production
	TCS Credit received form twice			differs from the amount credited to	via RQM:
	for same tax period.			cash ledger of deductee through	RET_R7_191
	Financial Implication- YES			TDS/TCS credit received form.	11
	Whether Correct Data Known-				
	YES			Reason:	
				<ul> <li>When user login to the TDS and TCS credit received form, status is displayed from the cache details. As there is a problem with the cache, user was able to see status as 'Not filed'. But, in the Return Filing Status table, the status was existing as filed.</li> <li>In the second scenario, while amending the TDS record in R7, the status of the earlier TDS / TDSA record is verified in R2X related table</li> </ul>	

to check whether it is accepted and filed or not.
The amount of Rs 36.27 lakhs (CGST+SGST) was debited in the Cash Ledgers of concerned taxpayers.

Additional Secretary, DoR enquired as to the number of taxpayers who filed GSTR-7 and asked why only 141 taxpayers were affected. He further asked whether these were a technical glitch or a mistake of the taxpayer.

EVP, GSTN informed that some technical glitches occurred.

Additional Excise & Taxation Commissioner, Haryana observed that for TCS and TDS, concept of rejection or acceptance issue should not be there.

ITGRC took note of the data fixes done by the GSTN.

	Issue reported	No. of	Module	Detail Description	Status
<b>S.</b>		Cases			
No.		Impact			
		ed			
10	Correction in cash ledger balance	03	Cash	The balance could not be updated	CR#21982
	due to credit and debit happened		Ledger	due to credit and debit happening	has been
	simultaneously. The balance			simultaneously. It had happened due	raised for
	could not be updated due to			to defect in the system application.	permanent fix.
	credit and debit happening				This CR is
	simultaneously. It had happened			Reason: The issue had occurred due	aligned with
	due to defect in the system			to debit and credit entry in the cash	REAP team
	application.			ledger happening at the same time,	but yet to be
	Financial Implication- YES			which led to incorrect cash balance in	picked up for
	Whether Correct Data Known-			the cash ledger. The reason for	development.
	YES			occurrence of the issue is due to dirty	
				read where the two transactions	
				happened simultaneously and read	
				the same record.	
				An amount of Rs 689468 (CGST +	
				SGST – Rs 6,87,622, Interest – Rs	
				1296, Fee – Rs 550) was corrected in	
				the cash Ledger.	

ITGRC took note of the data fixes done by the GSTN. As regard interest, GSTN requested ITGRC to recommend its waiver to GST COUNCIL, as done in the past in these 3 cases.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
11	$R4X \parallel Few taxpayers are able to$	24	R4X	Taxpayers are unable to file their	It is fixed in
	file their return without clearing			further return period and getting error	production on
	liabilities in case the liability			message as "Liability for previous	31st Mar
	amount is already present in			tax period is yet to be paid. If error	2022 via CR:
	negative liability table.			persists quote error number LG9048	21592_A.
	Taxpayers are unable to file their			when you contact customer care for	
	further return period and getting			quick resolution."	
	error message as "Liability for			Desgent This issue start 1 and	
	previous tax period is yet to be			<b>Reason:</b> This issue started coming	
	paid.			post one recent major CR 21592	
	Financial Implication- YES Whether Correct Data Known-			implementation. In this CR, 'is Negative Value Allowed' flag was	
	YES			introduced to check whether credit	
	YES				
				entry of negative liability should be posted into Return Negative Liability	
				Statement History table or not. But	
				this new flag also stopped posting	
				debit entry to Return Negative	
				Liability Statement History table if	
				tax amount difference between Table	
				6 and table 5 (either outward supply	
				or inward supply) of GSTR4X is	
				greater than 10% or 1000 (whichever is less)	
				10 1000/	
				A total amount of Rs 92,050 (CGST	
				46,025, SGST – 46,025) was posted	
				in the Liability Ledger.	
	Discussion and Desision				

Additional Secretary, DoR enquired what kind of form taxpayer had to file in particular and what was the number.

EVP, GSTN explained that around14 lakh taxpayers filed GSTR-4 form which was a composition tax form.

Additional Secretary, DoR enquired why only 24 taxpayers were affected.

EVP, GSTN explained that that might be due to interruption in internet connection or logging out process while filing process was underway.

Additional Secretary, DoR asked the GSTN to provide exact technical glitch and the time line for which that persisted at the time of drawing the minutes.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
12	Users are able to file GSTR4	01	GSTR-8	Transaction handling was not proper	Partially fixed
	without clearing liabilities -: Re-			due to mix of Transaction Manager/	on 14th Jun
	computation of liability- RQM:			Non-Transaction Manager in GSTR-	2021 in
	17176 / 20801. GSTR-4: User			4. Due to this, in case of any failure	production on
	has filed GSTR-4 without			rollback was not done completely	14th Jun 2021
	clearing the liability amount.			from all the respective data sources.	via ICR-
	GST CMP-08: As per the issue			In this case, filing status has been	12663.
	reported by user, he is not able to			updated as "Filed" in return filing	Another RCA
	file CMP-08 as getting			status table without updating in	is Known
	'ERROR!! Liability for previous			ledger table besides the rollback of	issue across
	tax period is yet to be paid'.			liability setoff entries in ledger.	the
	Financial Implication- YES				application.
	Whether Correct Data Known-			Reason: User has filed GSTR-4	Analysis is
	YES			without clearing the liabilities and	under
				due to this, user is unable to file	progress.
				statement in Form GST CMP-08 for	
				next quarter.	
				An amount of Rs 1500 (CGST - Rs	
				750, SGST - Rs 750 ) was posted to	
				the liability ledger.	

Additional Secretary, DoR enquired why only one taxpayer got affected.

EVP, GSTN explained that that was due to corner scenarios and not a regular issue.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
13	Taxpayer has saved invoices in	01	ITC	ITC03 form: Taxpayer has saved	It is a single
	ITC-03 & submitted the form		Form	invoices in ITC-03 & submitted the	Taxpayer
	with 'NULL' check but unable to			form with 'NULL' check but unable	issue,
	offset the outstanding liabilities.			to offset the outstanding liabilities.	permanent fix
	<b>Financial Implication- YES</b>				not required.
	Whether Correct Data Known-				Data fix was
	YES			Reason: Taxpayer forgot to uncheck	done via ICR:
				the NIL checkbox while submitting	18439
				ITC03 form, however invoices were	executed on
				already added in the form. Now	4th Nov 2022.
				status is in 'Submitted" state and	
				taxpayer is not ready to file the form	
				as he is unable to offset the	
				corresponding liabilities.	
				An amount of Rs 3,68,778 (CGST -	
				Rs 1,84,389 SGST – Rs 1, 84,389)	
				will be paid on filing the said form.	

Additional Secretary, DoR said that if someone did a mistake in submitting the form with NULL check despite saving invoices then NIL check should get cancelled.

EVP, GSTN agreed that and informed that the same should be the taxpayer's option to check it.

ITGRC took note of the data fixes done by the GSTN. The GSTN calculated the financial implications of the all the thirteen cases discussed above which is attached as **Annexure-3**.

7. In the third category, EVP, GSTN explained that there were five (05) cases having technical issue affecting locally with financial implications and correct data was not known with certainty.

He then presented the cases with the help of a power point presentation which is attached as <u>Annexure-5</u>. The details of the cases are mentioned as follows:

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
1.	Taxpayers raised tickets stating	07	GSTR3	After login to the GSTN portal,	Permanent fix
	that they filed the GSTR-3B		В	taxpayer can open the GSTR-3B	is finalized
	returns but there is mismatch in			form window on multiple tabs at the	and it is with
	the data entered vis-à-vis			same instant. There is no restriction	REAP team.
	payment made. Ledgers are			to this behavior at present. Taxpayer	RQM:22721
	updated on the basis of payment			have filed the GSTR-3B returns but	
	table whereas pdf is generated on			there is mismatch in the data entered	
	the basis data entered.			vis-à-vis payment made.	
	Financial Implication- YES				
	Whether Correct Data Known-			Reason: Difference between data	
	NO			that was saved in HBASE and the	
				one that was posted to ledger db in	
				Return Liability Ledger and ITC	
				Ledger tables.	
1					

#### **Discussion and Decision:**

Additional Secretary, DoR enquired whether this was a technical fault or a mistake of taxpayer and whether the jurisdictional GST Authorities were informed.

EVP, GSTN explained that such cases were of technical fault and as per the SOP, first GSTN rectifies the technical error as the future return filing gets affected and after the approval from ITGRC, GSTN forwards the MIS report to the Jurisdictional GST Authorities for a check.

Additional Secretary, DoR enquired as to why GSTN does not check the errors before correcting the same and why the same should be brought to notice of ITGRC before checking the errors.

EVP, GSTN explained that as the error affects the future return submission process, GSTN fixes the same before checking and that from the next time onwards GSTN would come before ITGRC after getting all the errors checked.

Chairperson said that there is no need to change the current practice when GSTN is sending after checking the errors.

Additional Secretary, DoR enquired when data fix is done on 18.08.2022 then when the same was sent to the jurisdictional GST authorities for verification.

EVP, GSTN informed that permanent fix for this is in the process of development and will appear in the production after1-1/2 month. He further informed that they have noticed the same error in many cases.

Actually, when the taxpayers file NIL return through SMS or API but there is data in their GSTR-2A/2B due to which same data reflects in GSTR-3B then the discrepancies arise. Additionally, he informed the ITGRC that GSTN is contemplating to fix this like when the taxpayer has filed the NIL return they will not allowed to file the NIL return if the taxpayer delete those invoices.

Chairperson agreed with this.

The ITGRC took note of the data fix done by the GSTN and approved the same.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
2.	Taxpayers stuck up in filing	23	ITC	ITC01 form has to be filed within 30	This issue has
	Form GST ITC-01 for claiming		Form	days of becoming eligible to claim	been faced
	credit- RQM 23200. Newly			credit. Few taxpayers were stuck up	only once.
	registered taxpayers or taxpayers			in filing the said form between 29 <sup>th</sup>	Permanent fix
	opting out of composition			June, 2022 and 5 <sup>th</sup> July, 2022. One	not required.
	scheme or when exempted goods			taxpayer could not file the form as	All impacted
	become taxable, claim credit on			downtime started from 11:00 pm on	cases were
	closing stock u/s 18(1) of Act			16 <sup>th</sup> June, 2022.	executed on
	through Form GST ITC-01.				25th Aug
	Financial Implication- YES			Reason: Few taxpayers were unable	2022 in
	Whether Correct Data Known-			to file declaration in Form GST ITC-	production.
	NO			01 due to deployment of the change	
				in topology. "System was showing	
				following error - Your submit is in	
				progress. Check after sometime."	

#### **Discussion and Decision:**

Additional Secretary, DoR enquired about the financial implication to which EVP, GSTN told that GSTN had not calculated the financial implication, however, GSTN would mention that in the minutes. He further explained that data fixing is required for processing and the financial implication would be known only after processing of the data.

Chairperson enquired about whether this impacted the eligibility of the taxpayers opting out of the composition scheme and asked for more care to be taken while verification.

EVP, GSTN replied in affirmative and informed that this time all the data is fixes are done and from the next meeting onwards GSTN will do the first check and then data fixes will be done.

Additional Secretary, DoR instructed that GSTN should get a post-facto verification or physical checking and get the record from the jurisdictional GST authorities. That whatever had been done, that should have been verified also.

The ITGRC took note of the data fix done by GSTN and approved the same.

S. No.	Issue reported	No. of Cases Impact ed	Module	Detail Description	Status
3.	Data issue due to partial commit happened on click of reset button (RQM: RET_3B_15222). Financial Implication- YES Whether Correct Data Known- NO	02	GSTR- 3B	It may be recalled that initially, there was a four tier system of filing return in Form GSTR-3B, viz. Save, Submit, Offset liability and File . All saved entries used to become non- editable after clicking on 'Submit' button. Liability register and Credit ledger used to be updated at submit stage. In the beginning, lot of complaints were received due to freezing of entries before filing (at submit stage). In the beginning, returns lying at submit stage were reset from the backend as lot of complaints were received on account of inadvertent mistakes. Reason: This is an old issue when there used to be a reset button on the portal.	-

During the discussion, GSTN withdrew the said case as they were not having the full details.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
4.	Form GST ITC-03 filed without	38	ITC	After opting into composition	It is fixed in
	debit in the ledgers - RQM		Form	scheme, taxpayer had filed Form	production on
	21652. Taxpayer had filed Form			GST ITC-03 successfully but still it	15th June
	GST ITC-03 successfully but still			reflects as "NIL" Filed, even though	2022 via ICR:
	it reflects as "NIL" Filed, even			invoices are saved by taxpayer while	16751
	though invoices are saved by the			filing the said form. No ledger	
	taxpayer while filing the said			transactions had happened for the	
	form.			same.	
	<b>Financial Implication- YES</b>				
	Whether Correct Data Known-			Reason: Due to some technical	
	NO			issues, the details added were not	
				visible in UI. However, the NIL	
				filing details were saved and	
				transmitted at the time of filing.	
				Therefore, due to this defect, the	
				statement was filed as NIL. Invoice	

	details were still saved in the backend. However, it was not present in UI.
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ITGRC took note of the same and approved the data fix done by the GSTN.

<b>S.</b>	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
5.	Multiple Blocking of ITC credit	27	ITC		Out of 27
	– Details of impacted GSTINs.		Form		GSTINs, 26
					GSTIN have
	27 GSTINs involving multiple			27 (21+6) GSTINs involving	been
	blocking of ITC credits were			multiple blocking of ITC credits	unblocked.
	shared for backend correction of			were shared for backend correction	Rest 1 GSTIN
	the ITC ledgers by GSTN.			of the ITC ledgers by GSTN.	(33AAJFC74
	<b>Financial Implication- YES</b>				64K1Z5) was
	Whether Correct Data Known-			Reason: Due to technical issue CBIC	cancelled and
	NO			was unable to capture the response	now it is in
				after blocking ITC by taxpayer.	active status
				Officer tried multiple times with	so we are in
				same GSTIN to block the ITC.	process to
					unblock this
					GSTIN as
					well.

#### **Discussion and Decision:**

EVP, GSTN informed that the data fix was requested by CBIC and that was a technical issue of blocking of ITC multiple times. The ITGRC took note of the data fix and approved the same.

# 8. Agenda on reversal of interest on delayed filling of statement in form GSTR-8 by e-commerce operators due to technical glitches.

#### 8.1. Background

8.1.1 Section 52 of the GST Act mandates an e-commerce operator to collect tax at the specified rate on the net value of the supplies made through it by other suppliers where consideration has to be collected by the operator. The operator has to file the details of tax so collected in a statement in Form GSTR-8 on monthly basis. On the basis of statement so filed by operators, the tax collected is made available to the concerned suppliers for taking the credit into their cash ledgers.

8.1.2 The operators are not required to file the aforesaid statement for the month in which no supply has been made by any supplier through his portal. But the details provided in a statement of the month can be amended at the time of filing statement of the subsequent month if supplier has not taken action for taking the credit till such time or supplier had rejected the details uploaded by the operator. Additional amount is paid by the operator in case of upward amendment and he gets credit of the reduced amount in liability if amendment is made downwards.

8.1.3 There was no late fee payable by operators before October, 2022 on delayed filing of the statement of a month but interest was payable for delayed filing. Interest is computed by system based on the net liability and the period of delay.

8.1.4 Tax collected and paid in a statement can be adjusted in subsequent statement if goods supplied are returned. It means that liability is paid on net of basis in GSTR-8. Details are provided GSTIN wise for a tax period.

# 8.2. System glitches

8.2.1 While filing statement in Form GSTR-8 for the month of February, 2022, three taxpayers registered on the same PAN in different States, could not file the said statement due to system glitches. After receiving the complaints from the ECOs, the system application was rectified on 29<sup>th</sup> July, 2022. Thereafter, the operators had filed the statements for the month of February, 2022 and subsequent months.

8. 2.2 Due date of filing GSTR-8 of a tax period is 10<sup>th</sup> of the following month. Due to the defect, the filing of the said statement was delayed. Though, there was no late fee on delayed filing of GSTR-8 (before October, 2022) but interest becomes payable after the due date and same is computed by system. The operators have filed the statements of tax periods which became due till rectification of the defect with interest.

8.2.3 All three impacted operators have deposited the liability for the month of February, 2022 by due date. For the month March, 2022, all operators have deposited the liability after due date but before fixing the defect. For April, 2022, only one operator have deposited the liability before fixing the defect but after due date only. Since, there was no glitch in depositing the liability through challan, therefore, interest paid on delayed filing of statement may not be refunded in those cases who have paid the liability while filing the statement or before filing the statement but after fixing of the glitch.

8.2.4 In earlier cases also, in the 15<sup>th</sup> ITGRC had adopted this approach in its meeting held on 12-08-2021. Based on the decision, Government had issued notification vide Notification No. 08/2022 dated 07-06-2022 for refunding the interest who had deposited the liability before filing the statement.

## 8.3. Interest paid

Summary of the interest paid by the operators who had deposited the liability by due date or those had deposited after due date but before fixing the defect is given as under:

Type of defect	Tax deposit status	No. of stateme	Tax period	Amount o	f interest to	be re-credited
		nts		IGST	CGST	SGST/UTGS T
1	2	3	4	5	6	7
	Deposited by due date	3	Feb, 2022	0	27335	27335
Problem faced in	Deposited after due date	3	Mar, 2022	0	12668	12668
amendment of records	but before filing statement and fixing the defect	1	Apr, 2022	0	2653	2653
TOTAL		7			42656	42656

Note – Liability deposited after fixing the defect but before filing the return have not been included in the above table for reversal on interest.

## 8.4. Proposal for refund of interest paid

8.4.1 ITGRC may take a view to refund the interest paid by the operators detailed at para 3 on the pattern of proposal approved earlier and notification issued by Government for the same. Amount of interest to be refunded will be credited to cash ledger under respective major/minor head.

EVP, GSTN presented the agenda with the power point PPT which is attached below as Annexure-6.

## **Discussion and Decision:**

Additional Secretary, DOR asked about the amount involved in the issue at hand.

EVP, GSTN informed that about Rs.85 thousand is involved.

Additional Secretary, DOR said the same can be approved since the amount involved is small.

Chairperson said that if facts have been verified by GSTN then there should be no issue.

EVP, GSTN informed that in the 15<sup>th</sup> ITGRC meeting, same issue was taken up and approved by the ITGRC.

JS, GSTCS informed that a Notification No.08/2022-CT dated 07.06.2022 was also issued by GST Policy Wing.

Chairperson agreed with the same.

The ITGRC took note of the data fix and that interest waiver be recommended to GST Council for these taxpayers.

## Centre:

- i. Member (GST), CBIC –Smt. V. Rama Matthew (Chairperson of ITGRC)
- ii. Additional Secretary, DoR Sh. Vivek Aggarwal
- iii. Additional Secretary, GSTC- Sh. Pankaj Kumar Singh
- iv. Pr. DG, DG Systems Sh. S.R.Baruah
- v. Pr. Chief Commissioner, CGST, Delhi Zone Smt. Mallika Arya

#### States:

- i. Commissioner, State Tax, West Bengal Sh. Khalid Aizaz Anwar
- ii. Additional Excise & Taxation Commissioner, Haryana Sh. Siddharth Jain
- iii. Joint Commissioner (Computer System), State Tax, Tamil Nadu Sh. Thiru S. Ramasamy
- iv. Joint Commissioner, State Tax, Gujarat Sh. Mahesh Jani

#### **<u>GST Council Secretariat:</u>**

i. Joint Secretary, GSTCS- Smt. Ashima Bansal

## **Special Invitee:**

i. Executive Vice President, GSTN- Sh. Dheeraj Rastogi

#### Agenda on Data Fix issues

## <u>Technical Issues Requiring Data Fix of the Processed Incorrect Data through Backend</u> <u>Utilities</u>

The changes in GST law / Rules, the representations received from taxpayers and other stakeholders require alterations to be continuously made in the GST System. GSTN has therefore adopted an agile methodology of developing applications for GST System keeping it modular to handle frequent changes in law and rules incorporated in a running application. This has necessitated integrating all new application changes downstream being dependent on the module undergoing the change and led to following concerns:

- Some corner scenarios owing to varying taxpayer actions and system behaviour, when subjected to heavy load, go unhandled leading to inconsistent data persisting in GST System.
- > The data inconsistencies vary from ledger getting improper debits/credits, the return details stored in the system having incorrect information relating to situations where an irreversible commit has happened in the database.
- No option available to taxpayer to seek remedy in GST System leading to a need of performing data fixes through auditable utilities.

These issues generally have been noticed after

- A complaint is raised by taxpayer/ tax officer,
- Result of a periodic internal and external audits.

In order to resolve these issues, the processed incorrect data requires fixing, collecting correct data besides solving the software/platform issues being faced by respective stakeholders. Accordingly, GSTN has initiated fixing of technical issues identified, as per the SOP approved by the ITGRC in the15<sup>th</sup> meeting held on 12/08/2021, which is as below:

- **a.** Analysis of data discrepancy.
- **b.** Confirmation of discrepancy sought from MSP.
- **c.** Upon confirmation, utility to be created by MSP to extract similar cases from GST System data.
- **d.** A root cause analysis conducted to fix the issue and implemented by MSP in consultation with GSTN to rectify data inconsistency.
- e. Scripts created for data fix and tested in multiple cycles by MSP and GSTN.
- **f.** Approval note presented to competent authority to fix the issue.
- g. After approval, audit entries created for each change affecting the data.
- **h.** Scripts executed and post execution state of data stored for reference later.
- i. List of all such changes to be presented and explained to GST policy wing & ITGRC and periodic internal audit also to be undertaken.

# Data Fix cases are accordingly presented to ITGRC for deliberations and decision as mentioned in the attached Annexure.

## Annexure to the Agenda

## <u>Technical Issues Requiring Data Fixes through Backend Utility (Period -1st Jan 2022 to 11th Nov</u> <u>2022)</u>

S. No	Issue reported	Approv ed By	Date of App roval	No. of Case s Imp acte d	Fin anc ial Im plic ati on	Mod ule	Corr ect Data Kno wn / Not Kno wn	Detail Description	Status
1	Issue in GSTR6 form. Taxpayers were unable to view ISD invoices in GSTR2A form, as GSTR2A form is a read only where Supplier can see the invoices added by the recipient.	EVP (Service s)	25- 01- 2022	88	Yes	GST R6	Kno wn	In this issue, ISD invoices are not reflecting in GSTR2A form when uploaded from GSTR6 form. There are Multiple GSTR6 users who have raised ticket against different supplier's GSTIN. Reason: While adding the multiple invoices through offline utility, due to the issue in code, only the last invoice was getting saved in ISD_UNIT_RelationS hipHbase table and that is why user was unable to view all their invoices on the portal.	It is fixed in production n on 15th Feb 2022 via RQM:22 445
2	Duplicate invoice issue in GSTR6 form. At the time of submission of return, the portal is showing "Error in	EVP (Service s)	10- 02- 2022	1	No	GST R6	Kno wn	The invoices and credit notes uploaded were processed by the portal while uploading the JSON. At the time of submission of return, the portal is showing "Error in Submission". The error report is showing that	This happened for only one TI and due to tha code fiz was no taken. Data fiz

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	Submission".							the ISD Invoices and	done by
								ISD credit notes are	ICR.
								duplicate but there is	
								no duplication in either	
								ISD invoices or ISD	
								credit notes. Taxpayer	
								is getting "Error in	
								Submission" while	
								filing the GSTR6 but	
								then after generating	
								Error report it is	
								showing 'Duplicate	
								ISD invoice'.	
								Reason: According to	
								the code flow invoice	
								should be inserted into	
								"UPLOADED_ISD_N	
								OTES",	
								"UPLOADED_ISD_I	
								NVOICES",	
								"ISD_INVOICES"	
								tables during save. But	
								for this user data is	
								inserting into	
								"ISD INVOICE DTL	
								", "ISD NOTE DTL",	
								"GSTR6SUBMIT"	
								table also. When user	
								submitting the form	
								user getting the error	
								as duplicate invoice	
								because invoice is	
								present in below DTL Hbase table.	
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3	Issue prior to	EVP	08-	88	Yes	Reco	Kno	The multiple recovery	Issue
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	Tamil	s)	2022					single demand id	before
	Nadu.Clean up							through event_dtl job.	Migratio
	of recovery							The user was facing a	n of
	Cases created							system error, as the	Tamil
	in Case							mentioned CRN's do	Nadu
	management							not have the demand	from
	folder, where							details mapped to it.	Modal 1
	recovery cases								to Modal
	have no							Reason: Due to some	2. Issue
	reference to							technical issues in	was
	the Demand							event Job process,	permane
	order (for the							Multiple recovery	ntly
	33-state code –							cases were created	fixed by
	55-state coue -			l					IIACU Uy

SR#601295). Tax officers are facing System error while fetching the recovery cases for 86 CRN's (Case Reference Number).demand id in case management folder. As a result, the case a management folder. As a result, the case not require any action to be taken. We do not have logs of that time to cross verify what was exact issue.4Recovery of CRN's (Case Reference Number).EVP 24- 37Yes 2022Cash Ledg erKno bus to change in filed or posting the records across two tax periods, taxpayer was able to get the credit twice.It is fip produc n.5Late fee fee reversal of GSTR 6 s)EVP 26- 05-1No GST R6GST KnoThe invoices and treit notes uploaded bay way way was exact issueThis management folder. As a result from filed to not in filed or posting the records across two tax periods.5Late fee some record acros two tax periods.EVP 26-1No GST R6GST KnoThe invoices and redit notes uploaded bay only once										
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unable to file of submission of was a		unable to file							of submission of	was not
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		in production							-	Data fix
		•							e	was done
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		Submission .	1							LOP 1 1
		Submission .							ISD invoices or ISD	ICR:148
Taxpayer were unable		Submission .							credit notes. Reason:	ICR:148 11

								to submit the GSTR6 due to the error "Duplicate ISD Invoice" displayed on the portal.	
6	Taxpayers were unable to file GSTR5 form in production environment due to the error "Submission had some error". Now reversal of late fee and Interest in GSTR5 form is requested.	EVP (Service s)	26- 05- 2022	2	Yes	GST R5	Kno wn	Taxpayers were unable to file GSTR5 form in production environment due to the error "Submission had some error". Reason: Due to the code issue (MYSQL upgrade), there was a delay in providing the correct resolution to the taxpayers, they were unable to file GSTR5 form within due date, so late fee and Interest were charged to the taxpayers. Although Taxpayers have filed the form along with their late fee and Interest, we have got the request of late fee and interest reversal from Daily ticket tracker for the below mentioned taxpayers.	Permane nt fixon 16th Nov 2021 via RQM: 22058
7	Due to non- filling details of liability in table 6 of GSTR-4, the amount paid through CMP- 08 of the year became excess tax paid and credited to	EVP (Service s)	26- 05- 2022	1028	Yes	Cash Ledg er	Kno wn	Due to non-filling details of liability in table 6 of GSTR-4, the amount paid through CMP-08 of the year became excess tax paid and credited to negative liability statement. <b>Reason:</b> Before recovery utility	It is fixed in productio n on 31st Mar 2022 via CR:2159 2_A

Iiability statement. The negative liability was reduced by debiting the amount from negative liability statement. In some cases, the amount has been debited twice.Image: the system and the system and consolidated summary shown while effiling GSTR-1 summary shown while effiling GSTR-1EVP or or or or or or so or oconsolidated summary shown while effiling GSTR-1 summary shown effiling								1		
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9CashledgerEVP07-2YesCashKnoTaxpayershavingIt is fixed9CashledgerEVP07-2YesCashKnoTaxpayershavingIt is fixedentrieshave(Service06-LedgwnGSTINinbeenmisseds)2022Image: CashEvenImage: CashImage: Cashout or omittedafterfilingImage: CashImage: CashImage: CashImage: CashafterfilingImage: CashImage: CashImage: CashImage: CashImage: CashR2X.CreditImage: CashImage: Cash <th></th> <th></th> <th></th> <th></th> <th></th> <th></th> <th></th> <th></th> <th>_ <b>^</b></th> <th></th>									_ <b>^</b>	
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9CashledgerEVP07-2YesCashKnoTaxpayershavingIt is fixedentrieshave(Service06-202244LedgwnGSTINinbeenmisseds)202244er18AAACH0351E1Z4productioout or omittedafterfiling4444419ALIPD4105A1ZSR2X.Credit4444444									· · ·	
entries have been missed out or omitted R2X. Credit(Service 06- 202206- 2022Ledg erwnGSTIN 18AAACH0351E1Z4 and 19ALIPD4105A1ZS have accepted the TDSin	9	Cash ledger	FVP	07-	2	Ves	Cash	Kno		It is fived
been misseds)2022er18AAACH0351E1Z4productioout or omittedafter filingandn.19ALIPD4105A1ZSindR2X.CreditImage: Credit diamond di diamond diamond diamond diamond diamond diamond		e			-	100				-
out or omitted after filing R2X. Creditiiiiafter filing have accepted the TDSiii			•				0	** 11		
afterfiling19ALIPD4105A1ZSR2X.Credithave accepted the TDS			8)	2022			er			^ _
R2X. Credit have accepted the TDS										n.
		U								
entry to be credit of return period									<u>^</u>	
		entry to be							credit of return period	
made in the 02/2022, 03/2022		made in the							02/2022, 03/2022	

				1			1		
	cash ledger							respectively but the	
	(Table:							credit entry is not	
	CASH_LDG)							available in	
	of taxpayers							CASH LDG table	
								even though filing is	
								done. Reason: Due to	
								the mismatch of row	
								check value, credit	
								entry was not made to	
								the cash ledger (Table:	
								CASH_LDG).	
10	Taxpayers are	EVP	20-	3	Yes	CMP	Kno	It has been noticed that	
	not able to file	(Service	07-			-08	wn	few composition	Permane
	GST CMP-08	s)	2022					taxpayers who have	
	for the	2)						attempted to file	
								statement in Form	in
	subsequent tax								
	period.							GST CMP-08 between	*
								15th June' 21 to 8 th	
								July' 21, got redundant	Jul 2022.
								entries in their	
								respective ledger	
								tables and out of these	
								cases, taxpayers who	
								have liability open in	
								any of the previous tax	
								periods are unable to	
								file non-nil statement	
								for subsequent tax	
								period.	
								Reason: Due to XA	
								removal, data for few	
								taxpayers got impacted	
								as rollback was not	
								happening from ledger	
								tables	
								(RTN_LIAB_LDG/RT	
								N_LIAB_MSTR/RTN	
								_LIAB_MSTR_HIST)	
								in case of any	
								issue/exception like.	
11	Partial Data	EVP	25-	6	No	GST	Kno	This is a partial data	It is
	movement i.e.	(Service	07-	Ĩ	1.0	R1	wn	movement issue before	fixed in
		`	2022			1/1	** 11	GSTR1 code	productio
	Data missing	s)	2022						*
	in INV_DETL							improvement, where	n on 26th
	table of Hbase.							data is present in	April
	System is							"INVOICES" table of	2022.
	throwing error							HBase however few	
	in GSTR-1							columns (OSPD,	
						l	1		

				1	1	1	1	· · · ·	<b>1</b>
	table 9A and							TYPE) are missing in	
	not allowing to							"INV_DETL" table.	
	submit							Permanent fix has	
	amended							been done via code	
	invoice while							improvement.	
	amending							However affected	
								users, before code	
	export								
	invoices from							improvement, whose	
	"without							data is not sync for	
	payment" to							them, data fix is	
	"with							required.	
	payment"								
	type.							Reason: According to	
								the older code flow	
								invoice should be	
								inserted from	
								"INVOCES" to	
								—	
								during submit,	
								However some column	
								(OSPD,TYPE) are	
								missing hence he is	
								not able to amend the	
								invoice.	
12	Re-credit of	EVP	25-	116	Yes	GST	Kno	Since, filing of the	It is fixed
	interest paid	(Service	07-			R8	wn	statement is not	on
	on late filing	s)	2022			110		mandatory every	productio
	of statement in	5)	2022					month, some operators	n.
	Form GSTR-8							have not filed the	11.
	by e-							statement. The	
	commerce							operators who have	
	operators due							deposited the amount	
1	to system							due by the due date but	
	glitches.							paid interest due to	
	(Defect: RQM:							late filing of statement,	
	RET R8 1983							are eligible for reversal	
	0). The post							of the interest paid.	
	filing process							purdi	
					1	1	1		
1								Reason: Unon	
	for GSTR-8 in							Reason: Upon	
	for GSTR-8 in the previous							analysis, it was seen	
	for GSTR-8 in the previous month could							analysis, it was seen that operator has filed	
	for GSTR-8 in the previous month could not be							analysis, it was seen that operator has filed statement and message	
	for GSTR-8 in the previous month could not be completed due							analysis, it was seen that operator has filed statement and message posted for Kafka	
	for GSTR-8 in the previous month could not be							analysis, it was seen that operator has filed statement and message	
	for GSTR-8 in the previous month could not be completed due							analysis, it was seen that operator has filed statement and message posted for Kafka	
	for GSTR-8 in the previous month could not be completed due to which filing							analysis, it was seen that operator has filed statement and message posted for Kafka queue for post filing	
	for GSTR-8 in the previous month could not be completed due to which filing of next month							analysis, it was seen that operator has filed statement and message posted for Kafka queue for post filing process. On processing of post filing process,	
	for GSTR-8 in the previous month could not be completed due to which filing of next month							analysis, it was seen that operator has filed statement and message posted for Kafka queue for post filing process. On processing of post filing process, transaction stuck-up in	
	for GSTR-8 in the previous month could not be completed due to which filing of next month							analysis, it was seen that operator has filed statement and message posted for Kafka queue for post filing process. On processing of post filing process,	

								period's statement, application blocked him with the error message " Return filing process is not yet completed for the earlier period ".	
13	GSTR9    Users have filed R9 but form status is RTF in DB and not filed on annual dashboard. Taxpayer has filed GSTR9 form, but status is still not filed on portal.	EVP (Service s)	25- 07- 2022	1	No	GST R9	Kno wn	User has claimed that he has filed the form, but status is still not filed on portal. It is due the issue that entries got posted to ledger tables and cash is also debited for user's late fee. However, corresponding record is not updated from Ready To File to File in Return Filing Status table in return database. Therefore, user is still seeing form status as not filed even after filing and paying the late fee. Reason: Transaction handling between different data sources is not properly done.	Known issue across the applicati on. Analysis is under progress. GSTR1 has similar issue which is in UAT and will be deployed on productio n in 29th Nov 2022, other modules may adopt this solution after discussio n. Data fix in such cases is done through ICR.

14	Deviliant	EVD	17	02	NT	COT	IZ.		T4 ·
14	Duplicate	EVP	17-	83	No	GST D1	Kno	On Analysis it is found	It is
	Amendable	(Service	08-			R1	wn	that AMDBL column	fixed in
	column in	s)	2022					is present twice in	productio
	INVOICE_DT							"INVOICE_DTL"	n on 26th
	L table of							table for the same	April
	Hbase. When							invoice. Hence while	2022.
	Taxpayer is							user trying to amend	
	trying to							invoice from Upper	
	amend							case to lower case he	
	EXPORT							is getting invoice in	
	invoices from							"In-Progress".	
	upper case to								
	lower case							Reason: While	
	records stuck							analysing logs it is	
	in "In-							found that at the time	
	Progress" Due							of submit, since	
	to duplicate							invoice column were	
	Amdbl column							present with upper	
	present in							case, system validated	
	"INVOICE D							it as different and	
	TL" Table.							inserted AMDBL	
								column with lower	
								case.	
15	When	EVP	17-	32	No	GST	Kno	While analyzing, it is	It is
10	Taxpayer is	(Service	08-	52	110	R1	wn	found that Meta Data	fixed in
	validating the	s)	2022			ICI		(MD) column is not	
	statement in	5)	2022					present in "Invoice	n on 26th
	Refund,							Detail" table. The	April
	system is							invoices went to error	2022.
	giving error							while adding to	2022.
	"RF-							GSTR1 form due to	
	FCAS1007"							which Meta column	
	and not							was not inserted to	
	allowing to							"Invoice Detail" Table	
	file the							though it is present in	
	Refund.							"Invoices" table.	
	Keruna.							Reasons:	
								- Since MD	
								- Since MD column is not	
								present in "	
								Invoice Detail	
								" table hence	
								user will not	
								be able to raise	
								refund for	
								affected	
								invoices, validation will	
								fail at time of	
								initiating	
								refund.	
		1		1				10101100	

16	Taxpayers raised tickets stating that they filed the GSTR-3B returns but there is mismatch in the data entered vis-à- vis payment made. Ledgers are updated on the basis of payment table whereas pdf is	EVP (Service s)	17- 08- 2022	7	Yes	GST R3B	Not Kno wn	<ul> <li>It is also noticed that due to connection errors while inserting data to Invoice Detail table, invoices went to error.</li> <li>After login to the GSTN portal, taxpayer can open the GSTR-3B form window on multiple tabs at the same instant. There is no restriction to this behavior at present. Taxpayer have filed the GSTR-3B returns but there is mismatch in the data entered vis-à-vis payment made.</li> <li>Reason: Difference between data that was</li> </ul>	Permane nt fix is finalized and it is with REAP team. RQM:22 721
17	generated on the basis data entered. Taxpayers stuck up in filing Form	EVP (Service s)	17- 08- 2022	23	Yes	ITC Form	Not Kno wn	saved in HBASE and the one that was posted to ledger db in Return Liability Ledger and ITC Ledger tables. ITC01 form has to be filed within 30 days of becoming eligible to	This issue has been
	GST ITC-01 for claiming credit- RQM 23200. Newly registered taxpayers or taxpayers opting out of composition scheme or when exempted goods become taxable, claim	5)	2022				WII	claim credit. Few taxpayers were stuck up in filing the said form between 29 <sup>th</sup> June, 2022 and 5 <sup>th</sup> July, 2022. One taxpayer could not file the form as downtime started from 11:00 pm on 16 <sup>th</sup> June, 2022. Reason: Few taxpayers were unable to file declaration in Form	faced only once. Permane nt fix not required. All impacted cases were executed on 25th Aug 2022 in

	credit on						1	GST ITC-01 due to	moductic
									•
	closing stock							deployment of the	n.
	u/s 18(1) of							change in topology.	
	Act through							"System was showing	
	Form GST							following error – Your	
	ITC-01.							submit is in progress.	
								Check after	
								sometime."	
18	Data issue due	EVP	17-	2	Yes	GST	Not	It may be recalled that	Permane
	to partial	(Service	08-			R3B	Kno	initially, there was a	nt fix is
	commit	s)	2022				wn	four tier system of	not
	happened on							filing return in Form	required
	click of reset							GSTR-3B, viz. Save,	because
	button (RQM:							Submit, Offset liability	RESET
	RET_3B_1522							and File . All saved	
	2).							entries used to become	removed
	,							non-editable after	from
								clicking on 'Submit'	system.
								button. Liability	Old
								register and Credit	
								ledger used to be	periods
								updated at submit	*
								stage. In the	being
								beginning, lot of	-
								complaints were	backend
								received due to	query.
								freezing of entries	query.
								before filing (at submit	
								stage). In the	
								beginning, returns	
								lying at submit stage	
								were reset from the	
								complaints were received on account of	
								inadvertent mistakes.	
								mauventent mistakes.	
								Reason: This is an old	
								issue when there used	
								to be a reset button on	
								the portal.	

10	E COT	TUD	17	20	37	ITC			T. C. 1
19	Form GST	EVP	17-	38	Yes	ITC	Not	After opting into	
	ITC-03 filed	(Service	08-			Form	Kno	composition scheme,	in
	without debit	s)	2022				wn	taxpayer had filed	productio
	in the ledgers -							Form GST ITC-03	n on 15th
	RQM 21652.							successfully but still it	June
	Taxpayer had							reflects as "NIL"	2022 via
	filed Form							Filed, even though	ICR:
	GST ITC-03							invoices are saved by	16751
	successfully							taxpayer while filing	
	but still it							the said form. No	
	reflects as							ledger transactions had	
	"NIL" Filed,							happened for the same.	
	, , , , , , , , , , , , , , , , , , ,							happened for the same.	
	even though							Reason: Due to some	
	invoices are								
	saved by the							technical issues, the	
	taxpayer while							details added were not	
	filing the said							visible in UI.	
	form.							However, the NIL	
								filing details were	
								saved and transmitted	
								at the time of filing.	
								Therefore, due to this	
								defect, the statement	
								was filed as NIL.	
								Invoice details were	
								still saved in the	
								backend. However, it	
								· · · · · · · · · · · · · · · · · · ·	
20	W/1.11. C11	EVD	26	12	V	COT	V	was not present in UI.	A
20	While filing	EVP	26-	12	Yes	GST	Kno	Taxpayer is getting	Analysis
	GSTR4	(Service	08-			R4	wn	incorrect amount in	for
	Annual form,	s)	2022					table 5 of GSTR4	permane
	few taxpayers		28-					Annual form due to	nt fix is
	are getting		08-					which taxpayers are	under
	incorrect auto		2022					not able to file their	progress.
	populated							return as system is	
	amount in							asking additional	
	Table 5 where							liability to be paid.	
	one quarter's							This is an	
	data is							Adhocexercise which	
	missing.							will take some time	
	6							and due to that, we	
								have to apply data	
								fixes on urgent basis	
								-	
								considering ageing of	
								tickets.	
								Reason: Under	
								analysis.	

		DUD	1.4	1.1.1	<b>X</b> 7		17		I
21	TDS amount is	EVP	14-	141	Yes	Cash	Kno	Cases where the	Issue is
	credited to	(Service	09-			Ledg	wn	amount of tax	fixed in
	their Cash	s)	2022			er		deducted and reported	productio
	Ledger by		15-					in GSTR-7 differs	n via
	filing the TDS		09-					from the amount	RQM:
	& TCS Credit		202					credited to cash ledger	RET R7
	received form							of deductee through	_
	twice for same							TDS/TCS credit	
								received form.	
	tax period.							received form.	
								Reason:	
								login to the TDS and TCS	
								credit received	
								form, status is	
								displayed from	
								the cache	
								details. As	
								there is a	
								problem with	
								the cache, user	
								was able to see	
								status as 'Not	
								filed'. But, in	
								the Return	
								Filing Status	
								table, the	
								status was	
								existing as	
								filed.	
								• In the second	
								scenario, while	
								amending the	
								TDS record in	
								R7, the status	
								of the earlier	
								TDS / TDSA	
								record is	
								verified in R2X related	
								table to check	
								whether it is	
								accepted and	
								filed or not.	
22	While filing	EVP	28-	2	Yes	GST	Kno	GSTR4 calculates	GSTR4
	GSTR-4/	(Service	09-			R4/3	wn	applicable late fees at	quarter
1	GSTR3B-	s)	2022			В		the time of submit (or	form is
	"Error!	-,	29-			_		in the new model at	disabled
1	Payment		09-					the time of Offset).	
	•							· · · · · · · · · · · · · · · · · · ·	in prod.
	amount should		202					The late fee thus	Permane
	not exceed the							calculated has three	nt fix
	outstanding							components.	needs to
1	liability"-								be

	DOM 11105								
	RQM: 14189.							Reason: Negative late-	analyzed.
	While filing							fee has been applied to	Utility is
	GSTR4 some							the ledger due to the	used to
	of taxpayer are							logic. Further, as per	fix the
	getting the							the logic in GSTR-4	data.
	error "Issue							and GSTR-3B any	
	while filing							negative liability is	
	GSTR-4 -							carried forward to the	
	"Error!							next return period	
	Payment							using a pair of	
	amount should							Credit/Debit entries.	
	not exceed the								
	outstanding ".								
23	CMP08    The	EVP	03-	64	No	CMP	Kno	Filing status is 'Not	Partially
	end user is	(Service	10-			-08	wn	Filed' and taxpayer is	fixed on
	unable to file	s)	2022					not allowed to File	
	GST CMP-08	,						GST CMP-08 again,	2021 in
	as error is							as error is reflecting	productio
	reflecting							"Data for the internal	n.
	"Data for the							Transaction Id already	Another
	internal							Posted" while filing.	RCA is
	Transaction Id							rostea white hing.	Known
	Already							Reason: For few	issue
	Posted"-							taxpayers, all ledger	across
	RQM: 21266.							tables were updated	the
	The taxpayer							successfully but	applicati
	is unable to							request status did not	on.
	file GST							change from RTF to	Analysis
	CMP-08 as							FIL in	is under
								RTN FILING STAT	
	error 1s reflecting							US table.	progress. GSTR1
	"Data for the								has
	internal								similar
	Transaction Id								issue
	Already								which is
	Posted" while								in UAT
	filing.								and will
									be
									deployed
									on
									productio
									n in 29th
									Nov
									2022,
									other
									modules
									may
									adopt
									after

									discussio
									n.
	~					~ 1			
24	Correction in	EVP	25-	3	Yes	Cash	Kno	The balance could not	
	cash ledger	(Service	10-			Ledg	wn	be updated due to	2 has
	balance due to	s)	2022			er		credit and debit	been
	credit and		26-					happening	raised for
	debit happened		10-					simultaneously. It had	permane
	simultaneously		2022					happened due to defect	nt fix.
	. The balance							in the system	This CR
	could not be							application.	is
	updated due to								aligned
	credit and							Reason: The issue had	with
	debit							occurred due to debit	REAP
	happening							and credit entry in the	team but
	simultaneously							cash ledger happening	yet to be
	. It had							at the same time,	picked
	happened due							which led to incorrect	up for
	to defect in the							cash balance in the	develop
	system							cash ledger. The	ment.
	application.							reason for occurrence	
								of the issue is due to	
								dirty read where the	
								two transactions	
								happened	
								simultaneously and	
								read the same record.	
25	R4X ∥ Few	EVP	27-	24	Yes	R4X	Kno	Taxpayers are unable	
	taxpayers are	(Service	10-				wn	to file their further	in
	able to file	s)	2022					return period and	productio
	their return							getting error message	n on 31st
	without							as "Liability for	Mar
	clearing							previous tax period is	2022 via
	liabilities in							yet to be paid. If error	
	case the							persists quote error	21592_A
	liability							number LG9048 when	·
	amount is							you contact customer	
	already present							care for quick	
	in negative							resolution."	
	liability table.								

		1	1	1			1		
	Taxpayers are							Reason: This issue	
	unable to file							started coming post	
	their further							one recent major CR	
	return period							21592 implementation.	
	and getting							In this CR,	
	error message							'isNegativeValueAllo	
	as "Liability							wed' flag was	
	for previous							introduced to check	
	tax period is							whether credit entry of	
	yet to be paid.							negative liability	
	5 1							should be posted into	
								Return Negative	
								Liability Statement	
								History table or not.	
								But this new flag also	
								-	
								stopped posting debit	
								entry to Return	
								Negative Liability	
								Statement History	
								table if tax amount	
								difference between	
								Table 6 and table 5	
								(either outward supply	
								or inward supply) of	
								GSTR4X is greater	
								than 10% or 1000	
								(whichever is less)	
20	Users are able	EVP	27-	1	Yes	GST	Kno	Transportion handling	Doutiolly
26	to file GSTR4	(Service	10-	1	168	R4		Transaction handling	Partially fixed on
	without		2022			Λ4	wn	was not proper due to mix of Transaction	14th Jun
	clearing	s)	2022						2021 in
	e e							Manager/ Non-	
								Transaction Manager in GSTR-4. Due to	productio
	Re-								n on 14th
	computation of							this, in case of any failure rollback was	Jun 2021 via ICR-
	liability–								12663.
	RQM: 17176 /							not done completely	
	20801. GSTR-4: User							from all the respective	Another RCA is
								data sources. In this	
	has filed GSTR-4							case, filing status has	Known
								been updated as	issue
	without							"Filed" in return filing	across
	clearing the							status table without	the
	liability							updating in ledger	applicati
	amount. GST							table besides the	on.
	CMP-08: As							rollback of liability	Analysis
	per the issue							setoff entries in ledger.	is under
1	1	1	1	i i	1		1	1	progress.
	reported by								progress.
	user, he is not able to file							Reason: User has filed GSTR-4 without	progress.

	CMP-08 as getting 'ERROR!! Liability for previous tax period is yet to be paid'.							clearing the liabilities and due to this, user is unable to file statement in Form GST CMP-08 for next quarter.	
27	Taxpayer has saved invoices in ITC-03 & submitted the form with ' NULL' check but unable to offset the outstanding liabilities.	EVP (Service s)	27- 10- 2022	1	Yes	ITC Form	Kno wn	ITC03 form: Taxpayer has saved invoices in ITC-03 & submitted the form with 'NULL' check but unable to offset the outstanding liabilities. Reason: Taxpayer forgot to uncheck the NIL checkbox while submitting ITC03 form, however invoices were already added in the form. Now status is in 'Submitted" state and taxpayer is not ready to file the form as he is unable to offset the corresponding liabilities.	It is a single Taxpayer issue, permane nt fix not required. Data fix was done via ICR:184 39 executed on 4th Nov 2022.
28	Multiple Blocking of ITC credit – Details of impacted GSTINs. 27 GSTINs involving multiple blocking of ITC credits were shared for backend correction of the ITC	EVP (Service s)	08- 07- 2022	27	Yes	ITC Form	Not Kno wn	<ul> <li>27 (21+6) GSTINs involving multiple blocking of ITC credits were shared for backend correction of the ITC ledgers by GSTN.</li> <li>Reason: Due to technical issue CBIC was unable to capture the response after blocking ITC by taxpayer. Officer tried multiple times with same GSTIN to block</li> </ul>	1Z5) was cancelled and now

ledgers	by				the ITC.	status so
GSTN.						we are in
						process
						to
						unblock
						this
						GSTIN
						as well.

The financial implications of category-2	cases
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S.	Issue reported	No. of	Modul	Detail Description	Status
No.		Cases	e		
		Impacte			
		d			
1	Issue in GSTR6 form.	88	GSTR	In this issue, ISD invoices are not	It was fixed in
	Taxpayers were unable to		6	reflecting in GSTR2A form when	production on 15th
	view ISD invoices in			uploaded from GSTR6 form.	Feb 2022 via
	GSTR2A form, as GSTR2A			There are Multiple GSTR6 users	RQM:22445
	form is a read only where			who have raised ticket against	
	Recipient can see the			different supplier's GSTIN.	
	invoices added by the				
	Supplier.			Reason: While adding the	
	<b>Financial Implication-YES</b>			multiple invoices through offline	
	Whether Correct Data			utility, due to the issue in code,	
	Known-YES			only the last invoice was getting	
				saved in	
				ISD_UNIT_RelationShipHbase	
				table and that is why user was	
				unable to view all their invoices	
				on the portal.	
				An ISD credit of Rs 52, 33,708/-	
				were made to be reflected in	
				GSTR2A.	

S. No.	Issue reported	No. of Cases	Module	Detail Description	Status
110.		Impac			
		ted			
2	Recovery of TCS amount credited	37	Cash	Due to change in status from filed to	It is fixed
	twice in cash ledgers of suppliers.		Ledger	not filed or posting the records across	in
	(RQM: RET_R2X_18318 –			two tax periods, taxpayer was able to	production.
	TDS/TCS Credit Received Form).			get the credit twice.	
	Suppliers have taken excess TCS				
	credit than due, either by filing			Reason: It is suspected that following	
	GSTR-2X more than once or by			scenarios may have caused the defect:	
	accepting the same record across			Return filing status cache update issue	
	two tax periods.			could have caused the issue. Second	
	Financial Implication-YES			scenario can be with XA transaction.	
	Whether Correct Data Known-				
	YES			The total amount of Rs 5,09,376 was	
				debited in the Cash Ledger.	

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
3	Taxpayers were unable to file	2	GSTR5	Taxpayers were unable to file	Permanent fix
	GSTR5 form in production			GSTR5 form in production	on 16th Nov
	environment due to the error			environment due to the error	2021 via
	"Submission had some error".			"Submission had some error".	RQM: 22058
	Now reversal of late fee and				
	Interest in GSTR5 form is			Reason: Due to the code issue	
	requested.			(MYSQL upgrade), there was a delay	
	Financial Implication-YES			in providing the correct resolution to	
	Whether Correct Data Known-			the taxpayers, they were unable to	
	YES			file GSTR5 form within due date, so	
				late fee and Interest were charged to	
				the taxpayers. Although Taxpayers	
				have filed the form along with their	
				late fee and Interest, we have got the	
				request of late fee and interest	
				reversal from Daily ticket tracker.	
				A late fee amount of Rs 1550 (CGST	
				-775 and SGST $-775$ ) was waived	
				and an amount of Rs 2, 17.466	
				interest (CGST 108733, SGST	
				108733) is required post facto	
				approval of GST Council for	
				reversal.	

S. No.	Issue reported	No. of Cases Impact	Module	Detail Description	Status
		ed	~ 1		
4.	Due to non-filling details of	1028	Cash	Due to non-filling details of liability	
	liability in table 6 of GSTR-4, the		Ledger	in table 6 of GSTR-4, the amount	production on
	amount paid through CMP-08 of			paid through CMP-08 of the year	31st Mar
	the year became excess tax paid			became excess tax paid and credited	2022 via
	and credited to negative liability			to negative liability statement.	CR:21592_A
	statement. The negative liability			Reason: Before recovery utility	
	was reduced by debiting the			execution, a select query was	
	amount from negative liability			executed to extract the impacted	
	statement. In some cases, the			records for recovery. In that select	
	amount has been debited twice.			query, we were ignoring those	
	Financial Implication- YES			records which were already	
	Whether Correct Data Known-			recovered.	
	YES			But in that select query, Return	
I				Type='CMP08' was missed while	

extracting the impacted records, only GSTR-4 (Annual) was considered. <b>Status:</b> It is fixed in production on 31 <sup>st</sup> Mar 2022 via CR:21592_A
The total amount of Rs 2, 65, 67,031. (CGST 1,32,71,615 , 1,32,71,615, IGST – 23801) was re credited.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
5	Cash ledger entries have been	2	Cash	Taxpayers having GSTIN	It is fixed in
	missed out or omitted after filing		Ledger	18AAACH0351E1Z4 and	production.
	R2X. Credit entry to be made in			19ALIPD4105A1ZS have accepted	
	the cash ledger (Table:			the TDS credit of return period	
	CASH_LDG) of taxpayers.			02/2022, 03/2022 respectively but	
	<b>Financial Implication- YES</b>			the credit entry is not available in	
	Whether Correct Data Known-			CASH_LDG table even though filing	
	YES			is done. Reason: Due to the	
				mismatch of row check value, credit	
				entry was not made to the cash ledger	
				(Table: CASH_LDG).	
				A total amount of Rs 49,062 (CGST	
				24531, SGST 24531) was credited to	
				the cash ledger.	

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
6	Taxpayers are not able to file GST CMP-08 for the subsequent tax period. Financial Implication- YES Whether Correct Data Known- YES	3	CMP-08	It has been noticed that few composition taxpayers who have attempted to file statement in Form GST CMP-08 between 15th June' 21 to 8th July' 21, got redundant entries in their respective ledger tables and out of these cases, taxpayers who have liability open in any of the previous tax periods are unable to file non-nil statement for subsequent tax period.	Permanent fixis deployed in production on 9th Ju 2022.
				Reason: Due to XA removal, data for few taxpayers got impacted as rollback was not happening from ledger tables (RTN_LIAB_LDG/RTN_LIAB_MS TR/RTN_LIAB_MSTR_HIST) in case of any issue/exception like. An excess liability debited in the	
				ledger of Rs 2,10,210 (CGST 1,05,105, SGST 1,05,105) was corrected.	

S. No.	Issue reported	No. of Cases Impact	Module	Detail Description	Status
		ed			
7	Re-credit of interest paid on late filing of statement in Form GSTR-8 by e-commerce operators due to system glitches. (Defect: RQM: RET_R8_19830). The post filing process for GSTR-8 in the previous month could not be completed due to which filing of next month was blocked. <b>Financial Implication- YES</b> <b>Whether Correct Data Known- YES</b>	116	GSTR-8	Since, filing of the statement is not mandatory every month, some operators have not filed the statement. The operators who have deposited the amount due by the due date but paid interest due to late filing of statement, are eligible for reversal of the interest paid. Reason: Upon analysis, it was seen that operator has filed statement and message posted for Kafka queue for post filing process. On processing of	It is fixed on production.
				post filing process. On processing of post filing process, transaction stuck- up in IP/ ER. When operator tried to	

file his next period's statement,
application blocked him with the
error message "Return filing process
is not yet completed for the earlier
period ".
In 116 cases an interest amount of
IGST Rs 76,01,603, CGST – Rs
27,23,696 and SGST/UTGST - Rs
27,23,696 was reversed which
wasapproved by GST Council for
credit to the Cash Ledgers of the
impacted Operators vide notification
08/2022 and hence it was
implemented. I

S. No.	Issue reported	No. of Cases Impact ed	Module	Detail Description	Status
8	While filing GSTR4 Annual form, few taxpayers are getting incorrect auto populated amount in Table 5 where one quarter's data is missing. Financial Implication- YES Whether Correct Data Known- YES	12	GSTR4	Taxpayer is getting incorrect amount in table 5 of GSTR4 Annual form due to which taxpayers are not able to file their return as system is asking additional liability to be paid. This is an Adhoc exercise which will take some time and due to that, we have to apply data fixes on urgent basis considering ageing of tickets. Reason: Under analysis. An amount of Rs 32,55,026 (CGST – 16, 01,300, SGST – 16, 01,300, IGST – 52,426) was posted in Table 5 of Form GSTR-4.	Analysis for permanent fix is under progress.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			

9	TDS amount is credited to their	141	Cash	Cases where the amount of tax	Issue is fixed
	Cash Ledger by filing the TDS &		Ledger	deducted and reported in GSTR-7	in production
	TCS Credit received form twice			differs from the amount credited to	via RQM:
	for same tax period.			cash ledger of deductee through	RET_R7_191
	<b>Financial Implication- YES</b>			TDS/TCS credit received form.	11
	Whether Correct Data Known-				
	YES			Reason:	
				<ul> <li>When user login to the TDS and TCS credit received form, status is displayed from the cache details. As there is a problem with the cache, user was able to see status as 'Not filed'. But, in the Return Filing Status table, the status was existing as filed.</li> <li>In the second scenario, while amending the TDS record in R7, the status of the earlier TDS / TDSA record is verified in R2X related table to check whether it is accepted and filed or not.</li> <li>The amount of Rs 36.27 lakhs (CGST+SGST) was debited in the Cash Ledgers of concerned taxpayers.</li> </ul>	

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
10	Correction in cash ledger balance	03	Cash	The balance could not be updated	CR#21982
	due to credit and debit happened		Ledger	due to credit and debit happening	has been
	simultaneously. The balance			simultaneously. It had happened due	raised for
	could not be updated due to			to defect in the system application.	permanent fix.
	credit and debit happening				This CR is
	simultaneously. It had happened			Reason: The issue had occurred due	aligned with
	due to defect in the system			to debit and credit entry in the cash	REAP team
	application.			ledger happening at the same time,	but yet to be
	Financial Implication- YES			which led to incorrect cash balance in	picked up for
	Whether Correct Data Known-			the cash ledger. The reason for	development.
	YES			occurrence of the issue is due to dirty	
				read where the two transactions	
				happened simultaneously and read	
				the same record.	
1					
				An amount of Rs 689468 (CGST +	
				SGST – Rs 6,87,622, Interest – Rs	

1296, Fee – Rs 550) was corrected in the cash Ledger.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases Impact			
		ed			
11	R4X (GSTR 4 Annual) Few taxpayers are able to file their return without clearing liabilities in case the liability amount is already present in negative liability table. Taxpayers are unable to file their further return period and getting error message as "Liability for previous tax period is yet to be paid. Financial Implication- YES Whether Correct Data Known- YES	24	R4X (GSTR 4 Annual)	Taxpayers are unable to file their further return period and getting error message as "Liability for previous tax period is yet to be paid. If error persists quote error number LG9048 when you contact customer care for quick resolution." <b>Reason:</b> This issue started coming post one recent major CR 21592 implementation. In this CR, 'isNegativeValueAllowed' flag was introduced to check whether credit entry of negative liability should be posted into Return Negative Liability Statement History table or not. But this new flag also stopped posting debit entry to Return Negative Liability Statement History table if tax amount difference between Table 6 and table 5 (either outward supply or inward supply) of GSTR4X (GSTR 4 Annual) is greater than 10% or 1000 (whichever is less) A total amount of Rs 92,050 (CGST 46,025, SGST – 46,025) was posted in the Liability Ledger.	It is fixed in production on 31st Mar 2022 via CR: 21592_A.

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
12	Users are able to file GSTR4	01	GSTR-4	Transaction handling was not proper	Partially fixed
	without clearing liabilities -: Re-			due to mix of Transaction Manager/	on 14th Jun
	computation of liability- RQM:			Non-Transaction Manager in GSTR-	2021 in
	17176 / 20801. GSTR-4: User			4. Due to this, in case of any failure	production on
	has filed GSTR-4 without			rollback was not done completely	14th Jun 2021
	clearing the liability amount.			from all the respective data sources.	via ICR-
	GST CMP-08: As per the issue			In this case, filing status has been	12663.
	reported by user, he is not able to			updated as "Filed" in return filing	Another RCA
	file CMP-08 as getting			status table without updating in	is Known
	'ERROR!! Liability for previous			ledger table besides the rollback of	issue across
	tax period is yet to be paid'.			liability setoff entries in ledger.	the
	<b>Financial Implication- YES</b>				application.
	Whether Correct Data Known-			Reason: User has filed GSTR-4	Analysis is
	YES			without clearing the liabilities and	under
				due to this, user is unable to file	progress.
				statement in Form GST CMP-08 for	
				next quarter.	
				•	
				An amount of Rs 1500 (CGST – Rs	
				750, SGST – Rs 750 ) was posted to	
				the liability ledger.	

S.	Issue reported	No. of	Module	Detail Description	Status
No.		Cases			
		Impact			
		ed			
13	Taxpayer has saved invoices in	01	ITC	ITC03 form: Taxpayer has saved	It is a single
	ITC-03 & submitted the form		Form	invoices in ITC-03 & submitted the	Taxpayer
	with 'NULL' check but unable to			form with 'NULL' check but unable	issue,
	offset the outstanding liabilities.			to offset the outstanding liabilities.	permanent fix
	Financial Implication- YES				not required.
	Whether Correct Data Known-			Reason: Taxpayer forgot to uncheck	
	YES			the NIL checkbox while submitting	Data fix was
				ITC03 form, however invoices were	done via ICR:
				already added in the form. Now	18439
				status is in 'Submitted" state and	executed on
				taxpayer is not in 'Ready to file'	4th Nov 2022.
				status in the form as he is unable to	
				offset the corresponding liabilities.	
				An amount of Rs 3,68,778 (CGST -	
				Rs 1,84,389 SGST - Rs 1, 84,389)	
				will be paid on filing the said form.	

## Agenda for 17<sup>th</sup> ITGRC (Part II)

## <u>Reversal of Interest Paid on Delayed Filing Of Statement in Form GSTR-8 by E-Commerce</u> <u>Operators Due to Technical Glitches.</u>

## 1. Background

1.1 Section 52 of the GST Act mandates an e-commerce operator to collect tax at the specified rate on the net value of the supplies made through it by other suppliers where consideration has to be collected by the operator. The operator has to file the details of tax so collected in a statement in Form GSTR-8 on monthly basis. On the basis of statement so filed by operators, the tax collected is made available to the concerned suppliers for taking the credit into their cash ledgers.

1.2 The operators are not required to file the aforesaid statement for the month in which no supply has been made by any supplier through his portal. But the details provided in a statement of the month can be amended at the time of filing statement of the subsequent month if supplier has not taken action for taking the credit till such time or supplier had rejected the details uploaded by the operator. Additional amount is paid by the operator in case of upward amendment and he gets credit of the reduced amount in liability if amendment is made downwards.

1.3 There was no late fee payable by operators before October, 2022 on delayed filing of the statement of a month but interest was payable for delayed filing. Interest is computed by system based on the net liability and the period of delay.

1.4 Tax collected and paid in a statement can be adjusted in subsequent statement if goods supplied are returned. It means that liability is paid on net of basis in GSTR-8. Details are provided GSTIN wise for a tax period.

## 2. System glitches

2.1 While filing statement in Form GSTR-8 for the month of February, 2022, three taxpayers registered on the same PAN in different States, could not file the said statement due to system glitches. After receiving the complaints from the ECOs, the system application was rectified on 29<sup>th</sup> July, 2022. Thereafter, the operators had filed the statements for the month of February, 2022 and subsequent months.

2.2 Due date of filing GSTR-8 of a tax period is 10<sup>th</sup> of the following month. Due to the defect, the filing of the said statement was delayed. Though, there was no late fee on delayed filing of GSTR-8 (before October, 2022) but interest becomes payable after the due date and same is computed by system. The operators have filed the statements of tax periods which became due till rectification of the defect with interest.

2.3 All three impacted operators have deposited the liability for the month of February, 2022 by due date. For the month March, 2022, all operators have deposited the liability after due date but before fixing the defect. For April, 2022, only one operator have deposited the liability before fixing the defect but after due date only. Since, there was no glitch in depositing the liability through challan, therefore, interest paid on delayed filing of statement may not be refunded in those cases who have paid the liability while filing the statement or before filing the statement but after fixing of the glitch.

2.4 In earlier cases also, in the 15<sup>th</sup> ITGRC had adopted this approach in its meeting held on 12-08-2021. Based on the decision, Government had issued notification vide Notification No. 08/2022 dated 07-06-2022 for refunding the interest who had deposited the liability before filing the statement.

## 3. Interest paid

Summary of the interest paid by the operators who had deposited the liability by due date or those had deposited after due date but before fixing the defect is given as under:

Type of defect	Tax deposit status	No. of statements	Tax period	Amount o	f interest to	be re-credited
				IGST	CGST	SGST/UTGS T
1	2	3	4	5	6	7
Problem faced in	Deposited by	3	Feb, 2022	0	27335	27335
amendment of records	due date					
	Deposited	3	Mar, 2022	0	12668	12668
	after due					
	date but	1	Apr, 2022	0	2653	2653
	before filing					
	statement					
	and fixing					
	the defect					
TOTAL		7			42656	42656

*Note* – *Liability deposited after fixing the defect but before filing the return have not been included in the above table for reversal on interest.* 

## 4. Proposal for refund of interest paid

4.1 ITGRC may take a view to refund the interest paid by the operators detailed at para 3 on the pattern of proposal approved earlier and notification issued by Government for the same. Amount of interest to be refunded will be credited to cash ledger under respective major/minor head.



Power point presentation presented by GSTN before the 17<sup>th</sup>ITGRC

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S.	Types of Issues	Count
No.		
1	Technical issue with no financial Implications – Correct data known	Slide No. 4 to 12
2	Technical issue affecting locally with financial implications – Correct data known	
3	Technical issue affecting locally with financial implications – Correct data not known with certainty	

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
At the time of submission of GSTR6 return, the portal is showing error as "Error in Submission".	11-02-22	The invoices and credit notes uploaded were processed by the portal while uploading the JSON. At the time of submission of return, the portal is showing error as "Error in Submission" and the error report is showing that the ISD Invoices and ISD credit notes are duplicate but there is no duplication in either ISD invoices or ISD credit notes. Taxpayer is getting error "Error in Submission" while filing the GSTR6 but then after generating Error report it is showing 'Duplicate ISD invoice'. <b>Reason:</b> According to the code flow invoice should be inserted into "UPLOADED_ISD_NOTES", "UPLOADED_ISD_INVOICES", "ISD_INVOICES" tables during save. But for this user data is inserting into "ISD_INVOICE_DTL", "ISD_NOTE_DTL", "GSTR6SUBMIT" table also. When user submitting the form user getting the error as duplicate invoice because invoice is present in below DTL Hbase table. <b>Status:</b> This happens for only one TP and due to that code fix was not taken. Data fix done by ICR. <b>Financial Implication : No</b> <b>Taxpayers Impacted – 1</b>

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Taxpayer was unable to file GSTR6 form in production environment for return period July, 2021 due to the error "Error in Submission".	27-05-22	The invoices and credit notes uploaded were processed by the portal while uploading the JSON. At the time of submission of return, the portal is showing error as "Error in Submission" and the error report is showing that the ISD Invoices and ISD credit notes are duplicate. But there is no duplication in either ISD invoices or ISD credit notes. <b>Reason:</b> Taxpayer were unable to submit the GSTR6 due to the error "Duplicate ISD Invoice" displaying on the portal. <b>Status:</b> This happens only once so code fix was not taken. Data fix was done by Utility on 10 <sup>th</sup> Feb 2022 via ICR:14811 <b>Financial Implication : No</b> <b>Taxpayers Impacted – 01</b>

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
At the time of Filling, GSTR-1 summary not generated by the system and there is no consolidated summary shown while filling GSTR- 1.	08-06-22	<ul> <li>Tax payer is getting error "Latest Summary is not available Please generate summary and try again". Tax payer has already deleted history from the browser and tried different compute also but getting the same error and unable to file the return.</li> <li><b>Reason:</b> There are 2 entry presents in Return Filing Status table for GSTN 24AXLPT8085E1ZZ for return period 042022 hence tax payer is not able to proceed with filing.</li> <li><b>Status:</b> Permanent fix will be deployed in production on Dec 2022.</li> <li><b>Financial Implication : No</b> Taxpayers Impacted – 01</li> </ul>

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
While filing GSTR- 4/GSTR-3B some of user are getting the error "Issue while filing GSTR3B- "Error! Payment amount should not exceed the outstanding ".	25-07-22	<ul> <li>While filing GSTR-4/GSTR-3B some of user are getting the error "Issue while filing GSTR3B- "Error! Payment amount should not exceed the outstanding".</li> <li>Reason: The negative late-fee has been applied to the ledger due to the logic mentioned. Further, as per the logic in GSTR-4 and GSTR-3B any negative liability is carried forward to the next return period using a pair of Credit/Debit entries.</li> <li>Status: Permanent fix needs to be analyzed. Utility is used to fix the data.</li> <li>Financial Implication : No Taxpayers Impacted – 04</li> </ul>

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
System is throwing error in GSTR-1 table 9A and not allowing to submit amended invoice while amending export invoices from "without payment" to "with payment" type.	26-07-22	This is a partial data movement issue before GSTR1 code improvement, where data is present in "INVOICES" table of Hbase. However few columns are missing in "Invoice Detail" table. Permanent fix has been done via code improvement. However for affected users, before code improvement, whose data is not sync for them, data fix is required. <b>Reason:</b> According to the older code flow invoice should be inserted from "INVOCES" to "Invoice Detail" table during submit. However some column are missing hence he is not able to amend the invoice. <b>Status:</b> It is fixed in production on 26 <sup>th</sup> April 2022. <b>Financial Implication : No</b> <b>Taxpayers Impacted – 06</b>

## 6 : GSTR9 Form Status Is Ready To File in Data Base But Status Not Filed On Annual Return Dashboard

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Taxpayer has filed GSTR9 form, but status is still not filed on portal.	26-07-22	User has claimed that he has filed the form, but status is still not filed on portal. It is due the issue that entries got posted to ledger tables and cash is also debited for user's late fee. However, corresponding record is not updated from Ready To File to File in Retum Filing Status table in return database. Therefore, user is still seeing form status as not filed even after filing and paying the late fee. <b>Reason:</b> Transaction handling between different data sources is not properly done. <b>Status:</b> Known issue across the application. Analysis is under progress. GSTR1 has similar issue which is in UAT and will be deployed on production in 29 <sup>th</sup> Nov 2022, other modules may adopt this solution after discussion. <b>Financial Implication : No</b> <b>Taxpayers Impacted – 01</b>

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Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
When Taxpayer tried to amend EXPORT invoices from upper case to lower case, records stuck in "In- Progress" Due to duplicate Amendable column present in "Invoice Detail" Table.	18-08-22	On analysis it is found that Amendable column is present twice in "Invoice Detail" table for the same invoice. Hence while user trying to amend invoice from Upper case to lower case he is getting invoice in "In-Progress". <b>Reason:</b> While analyzing logs we found that at time of submit since invoice column were present with upper case and system validated it as different and inserted Amendable column with lower case. <b>Status:</b> It is fixed in production on 26 <sup>th</sup> April 2022.
		Financial Implication : No Taxpayers Impacted - 83

## 8 : Meta Data Column Missing In Invoice Detail Table Of Hbase

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Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
When Taxpayer is validating the statement in Refund, system is giving error "RF- FCAS1007" and not allowing to file the Refund.	18-08-22	<ul> <li>While analyzing, it is found that Meta Data (MD) column is not present in "Invoice Detail" table. The invoices went to error while adding to GSTR1 form due to which Meta column was not inserted to "Invoice Detail" Table though it is present in "Invoices" table.</li> <li>Reasons: <ul> <li>Since MD column is not present in " Invoice Detail " table hence user will not be able to raise refund for affected invoices, validation will fail at time of initiating refund.</li> <li>It is also noticed that due to connection errors while inserting data to Invoice Detail table, invoices went to error.</li> </ul> </li> <li>Status: It is fixed in production on 26<sup>th</sup> April 2022.</li> </ul>

#### 9 : The User Unable To File GST GMP-08 As Error Is Reflecting "Data For The Internal Transaction Id Already Posted"



Issue Reported	Date Intimated MSP to perform Data Fix	- A second se Second second s Second second seco
The taxpayer is unable to file GST CMP-08 as error is reflecting "Data for the internal Transaction Id Already Posted" while filing.	06-10-22	<ul> <li>Filing status is 'Not Filed' and taxpayer is not allowed to File GST CMP-08 again, as error is reflecting "Data for the internal Transaction Id already Posted" while filing.</li> <li>Reason: For few taxpayers, all ledger tables were updated successfully but request status did not change from RTF to FIL in RTN_FILING_STATUS table.</li> <li>Status: Partially fixed on 14th Jun 2021 in production. Another RCA is known issue across the application. Analysis is under progress.</li> <li>GSTR1 has similar issue which is in UAT and will be deployed on production in 29<sup>th</sup> Nov 2022, other modules may adopt after discussion.</li> <li>Financial Implication : No Taxpayers Impacted – 64</li> </ul>



#### 1. The ISD Invoices Not Reflecting In GSTR2A Form When Uploaded From GSTR6

Issue Reported	Date Intimated MSP to perform Data Fix	
Taxpayers were unable to view ISD invoices in GSTR2A form - a read only form where Supplier can see the invoices added by the recipient.	26-01-22	The ISD invoices are not reflecting in GSTR2A form when uploaded from GSTR6 form. There are Multiple GSTR6 users who have raised ticket against different supplier's GSTIN. <b>Reason:</b> While adding the multiple invoices through offline utility, due to the issue in code, only the last invoice was getting saved in ISD_UNIT_RelationShip Hbase table and that is why user was unable to view all their invoices on the portal. <b>Status:</b> It is fixed in production on 15 <sup>th</sup> Feb 2022 via RQM:22445 <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 88</b>

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#### 2 : System Error While Fetching The Recovery Cases For Case Reference Number.

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
A CARLES AND A C	09-04-22	As the multiple recovery cases were created for single demand id through event detail job. The user was facing a system error, due to the mentioned CRN's does not having the demand details mapped to it. <b>Reason:</b> Due to some technical issues in event Job process, Multiple recovery cases were created without a reference of demand id in case management folder. As a result, the case management folder had unmapped recovery id which does not require any action to be taken. We do not have logs of that time to cross verify what was exact issue.
		Status: Issue was before Migration of Tamil Nadu from Modal 1 to Modal 2. Issue was permanently fixed by executing an utility job on 25 <sup>th</sup> Feb 2022.
		Financial Implication : Yes Taxpayers Impacted – 88

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Suppliers have taken excess TCS credit than due, either by filing GSTR-2X more than once or by accepting the same record across two tax periods.	25-05-22	<ul> <li>Due to change in status from filed to not filed or posting the records across two tax periods, taxpayer was able to get the credit twice.</li> <li>Reason: It is suspected that following scenarios may have caused the defect:</li> <li>Return filing status cache update issue could have caused the issue.</li> <li>Second scenario can be with XA transaction.</li> <li>Status: It is fixed in production.</li> <li>Financial Implication : Yes Taxpayers Impacted – 37</li> </ul>

#### 4: Late Fee And Laterest Reversal For Taxpayer Of Form GSTR5

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Taxpayers were unable to file GSTR5 form in production environment due to the error " Submission had some error ". Now reversal of late fee and Interest in GSTR5 form is requested.	27-05-22	Taxpayers were unable to file GSTR5 form in production environment due to the error "Submission had some error". <b>Reason:</b> Due to the code issue (MYSQL upgrade), there was a delay in providing the correct resolution to the taxpayers, they were unable to file GSTR5 form within due date, late fee and Interest were charged to the taxpayers. Although Taxpayers have filed the form along with their late fee and Interest, requests are received for late fee and interest reversal from Daily ticket tracker for the below mentioned taxpayers. <b>Status:</b> It is fixed in permanent on 16th Nov 2021 via RQM: 22058. <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 02</b>

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#### 5 : Re-credit Of Amount Debited Twice In Cash Ledger Of Composition Taxpayers

Issue Reported	Date Intimated MSP to perform Data Fix	
Due to non-filling details of liability in table 6 of GSTR-4, the amount paid through CMP-08 of the year became excess tax paid and credited to negative liability statement. The negative liability was reduced by debiting the amount from negative liability statement. In some cases, the amount has been debited twice.	25-07-22	Due to non-filling details of liability in table 6 of GSTR-4, the amount paid through CMP-08 of the year became excess tax paid and credited to negative liability statement. <b>Reason:</b> Before recovery utility execution, a select query was executed to extract the impacted records for recovery. In that select query, we were ignoring those records which were already recovered. But in that select query, Return Type='CMP08' was missed while extracting the impacted records, only GSTR-4 (Annual) was considered. <b>Status:</b> It is fixed in production on 31 <sup>st</sup> Mar 2022 via CR:21592_A <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 1028</b>

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#### 6 : Cash Ledger Entries Missed Out Or Omitted After Filing TDS TCS Credit Form (R2X).

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Credit entry is not available in the cash ledger (Table: CASH_LDG) of taxpayers		Taxpayers having GSTIN 18AAACH0351E1Z4 and 19ALIPD4105A1ZS have accepted the TDS credit of return period 02/2022, 03/2022 respectively but the credit entry is not available in CASH_LDG table even though filing is done. <b>Reason:</b> Due to the mismatch of row check value, credit entry was not made to the cash ledger (Table: CASH_LDG). <b>Status:</b> It is fixed in production. <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 02</b>

#### 7 : Issue In Filing CMP-08 For The Subsequent Tax Period.

Issue Reported	Date Intimated MSP to perform Data Fix	
Taxpayers are not able to file GST CMP-08 for the subsequent tax period.	21-07-22	It has been noticed that few composition taxpayers who have attempted to file statement in Form GST CMP-08 between 15 <sup>th</sup> June' 21 to 8 <sup>th</sup> July' 21, got redundant entries in their respective ledger tables and out of these cases, taxpayers who have liability open in any of the previous tax periods are unable to file non-nil statement for subsequent tax period. <b>Reason:</b> Due to removal of transaction manager (XA), data for few taxpayers got impacted as rollback was not happening from ledger tables in case of any issue/exception. <b>Status:</b> Permanent fix is deployed in production on 9 <sup>th</sup> Jul 2022. <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 03</b>

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#### 8 : Re-credit Of Interest Paid On Late Filing Of Statement In GSTR-8 Due To System Glitches

Issue Reported	Date Intimated MSP to perform Data Fix	- A second se Second second s Second second seco
The filing process for GSTR-8 in the previous month could not be completed due to which filing of next month was blocked.		<ul> <li>Since, filing of the statement is not mandatory every month, some operators have not filed the statement. The operators who have deposited the amount due by the due date but paid interest due to late filing of statement, are eligible for reversal of the interest paid.</li> <li>Reason: Upon analysis, it is seen that operator has filed statement and message posted for Kafka queue for post filing process. On processing of post filing process, transaction stuck-up in In Process/ Error. When operator tries to file his next period's statement, application blocked him with the error message "Return filing process is not yet completed for the earlier period".</li> <li>Status: It is fixed on production.</li> <li>Financial Implication : Yes Taxpayers Impacted – 116</li> </ul>

## 9: CMP Summary is Not Updated in GSTR4 Annual Form.

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
While filing GSTR4 Annual form, few iaxpayers are getting ncorrect auto populated amount in Fable 5 where one quarter's data is nissing.	29-08-22	<ul> <li>Taxpayer is getting incorrect amount in table 5 of GSTR4 Annual form due to which taxpayers are not able to file their return as system is asking additional liability to be paid.</li> <li>This is an Adhoc exercise which will take some time and due to that, we have to apply data fixes on urgent basis considering age of tickets.</li> <li><b>Reason:</b> Under analysis.</li> <li><b>Status:</b> Analysis for permanent fix is under progress.</li> <li><b>Financial Implication : Yes</b> Taxpayers Impacted – 12</li> </ul>

# 10 : Recovery Of TDS Amount Credited Twice In Cash Ledger Of Deductee

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
TDS amount is credited to their Cash Ledger by filing the TDS & TCS Credit received form twice for same tax period.	16-09-22	<ul> <li>Cases where the amount of tax deducted and reported in GSTR-7 differs from the amount credited to cash ledger of deductee through TDS/TCS credit received form.</li> <li>Reason: <ul> <li>When user login to the TDS and TCS credit received form, status is displayed from the cache details. As there is a problem with the cache, user was able to see status as 'Not filed'. But, in the Return Filing Status table, the status was existing as filed.</li> <li>In the second scenario, while amending the TDS record in R7, the status of the earlier TDS / TDSA record is verified in R2X related table to check whether it is accepted and filed or not.</li> </ul> </li> <li>Status: Issue is fixed in production via RQM: RET_R7_19111 Financial Implication : Yes Taxpayers Impacted – 141</li></ul>

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#### 11 : Non Updation In Cash Ledgers Balance Due To Credit And Debit Happened Simultaneously

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
The cash ledger balance could not be updated due to credit and debit happening simultaneously. It had happened due to defect in the system application.	27-10-22	The balance could not be updated due to credit and debit happening simultaneously. It had happened due to defect in the system application. <b>Reason:</b> The issue had occurred due to debit and credit entry in the cash ledger happening at the same time, which led to incorrect cash balance in the cash ledger. The reason for occurrence of the issue is due to dirty read where the two transactions happened simultaneously and read the same record. <b>Status:</b> CR#21982 has been raised for permanent fix. This CR is aligned with REAP team but yet to be picked up for development. <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 03</b>

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42	: Issue	In Filing	ØF G	STR4	Annual	Return

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Taxpayers are unable to file their further period returns and getting error message as "Liability for previous tax period is yet to be paid.		Taxpayers are unable to file their further return period and getting error message as "Liability for previous tax period is yet to be paid. If error persists quote error number LG9048 when you contact customer care for quick resolution." <b>Reason:</b> This issue started coming post one recent major CR 21592 implementation. In this CR, 'isNegativeValueAllowed' flag was introduced to check whether credit entry of negative liability should be posted into Return Negative Liability Statement History table or not. But this new flag also stopped posting debit entry to Return Negative Liability Statement History table if tax amount difference between Table 6 and table 5 (either outward supply or inward supply) of GSTR4X is greater than 10% or 1000 (whichever is less) <b>Status:</b> It is fixed in production on 31 <sup>st</sup> Mar 2022 via CR: 21592_A. <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 24</b>

## 13 : GSTR-4|| Users Are Able To File GSTR4 Without Clearing

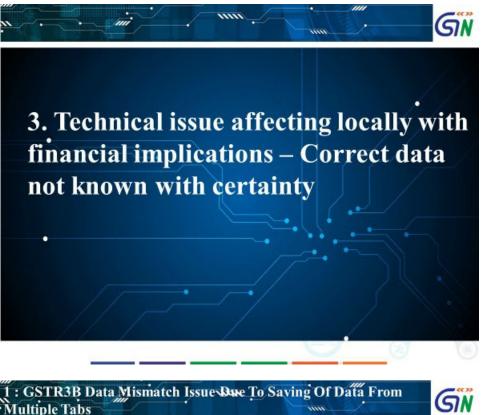
Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
User filed GSTR-4 without clearing the liability amount. GST CMP-08: As per the issue reported by user, he is not able to file CMP-08 as getting 'ERROR!! Liability for previous tax period is yet to be paid'.	28-10-22	Transaction handling was not proper due to mix of Transaction Manager/ Non-Transaction Manager in GSTR-4. Due to this, in case of any failure rollback was not done completely from all the respective data sources. In this case, filing status has been updated as "Filed" in return filing status table without updating in ledger table besides the rollback of liability setoff entries in ledger. <b>Reason:</b> User has filed GSTR-4 without clearing the liabilities and due to this, user is unable to file statement in Form GST CMP-08 for next quarter. <b>Status:</b> Partially fixed on 14 <sup>th</sup> Jun 2021 in production on 14th Jun 2021 via ICR-12663. Another RCA is known issue across the application. Analysis is under progress. <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 01</b>

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#### 14 : Issue In Saving Invoices In IT 603.

Issue Reported	Date Intimated MSP to perform Data Fix	
Taxpayer has saved invoices in ITC-03 & submitted the form with ' NULL' check but unable to offset the outstanding liabilities.		<ul> <li>ITC03 form: Taxpayer has saved invoices in ITC-03 &amp; submitted the form with 'NULL' check but unable to offset the outstanding liabilities.</li> <li>Reason: Taxpayer forgot to uncheck the NIL checkbox while submitting ITC03 form, however invoices were already added in the form. Now status is in 'Submitted'' state and taxpayer is not ready to file the form as he is unable to offset the corresponding liabilities.</li> <li>Status: It is a single Taxpayer issue, permanent fix not required. Data fix was done via ICR:18439 executed on 4<sup>th</sup> Nov 2022.</li> <li>Financial Implication: Yes Taxpayers Impacted – 01</li> </ul>



1 : GSTR3B Data Mismatch Iss	ue Due To Saving Of Data From
Multiple Tabs	ue Due To Saving Of Data From

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Taxpayers raised tickets stating that they filed the GSTR- 3B returns but there is mismatch in the data entered vis-à- vis payment made. Ledgers are updated on the basis of payment table whereas pdf is generated on the basis data entered.		After login to the GSTN portal, taxpayer can open the GSTR- 3B form window on multiple tabs at the same instant. There is no restriction to this behavior at present. Taxpayer have filed the GSTR-3B returns but there is mismatch in the data entered vis-à-vis payment made. <b>Reason:</b> Difference between data that was saved in HBASE and the one that was posted to ledger db in Return Liability Ledger and ITC Ledger tables. <b>Status:</b> Permanent fix is finalized and it is with REAP team. RQM:22721 <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 07</b>

Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Newly registered taxpayers or taxpayers opting out of composition scheme or when exempted goods become taxable, claim credit on closing stock u/s 18(1) of Act through Form GST ITC-01.	18-08-22	<ul> <li>ITC01 form has to be filed within 30 days of becoming eligible to claim credit. Few taxpayers were stuck up in filing the said form between 29th June, 2022 and 5th July, 2022. One taxpayer could not file the form as downtime started from 11:00 pm on 16th June, 2022.</li> <li><b>Reason:</b> Few taxpayers were unable to file declaration in Form GST ITC-01 due to deployment of the change in topology. "System was showing following error – Your submit is in progress. Check after sometime."</li> <li><b>Status:</b> This issue has comes only once. Permanent fix not required. All impacted cases were executed on 25<sup>th</sup> Aug 2022 in production.</li> <li><b>Financial Implication : Yes</b></li> <li><b>Taxpayers Impacted – 23</b></li> </ul>

#### 3 : Data Issue Due To Freezing Of Sostries At Submit Stage.

Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
18-08-22	It may be recalled that initially, there was a four tier system of filing return in Form GSTR-3B, viz. Save, Submit, Offset liability and File. All saved entries used to become non- editable after clicking on 'Submit' button. Liability register and Credit ledger used to be updated at submit stage. In the beginning, lot of complaints used to be received due to freezing of entries before filing (at submit stage) and returns lying at submit stage had to be reset from the backend as lot of complaints were received on account of inadvertent mistakes. <b>Reason:</b> This is an old issue when there used to be a reset button on the portal. <b>Status:</b> Permanent fix is not required because RESET button is removed from system. Old return periods data are being fixed by backend query. <b>Financial Implication : Yes</b>

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#### s4 : GST ITC-03 Filed Without Debit In The Ledgers

Issue Reported	Date Intimated MSP to perform Data Fix	
Taxpayer had filed Form GST ITC-03 successfully but still it reflects as "NIL" Filed, even though invoices are saved by the taxpayer while filing the said form.	22-08-22	After opting into composition scheme, taxpayer had filed Form GST ITC-03 successfully but still it reflects as "NIL." Filed, even though invoices are saved by taxpayer while filing the said form. No ledger transactions had happened for the same. <b>Reason:</b> Due to some technical issues, the details added were not visible in UI. However, the NIL filing details were saved and transmitted at the time of filing. Therefore, due to this defect, the statement was filed as NIL. Invoice details were still saved in the backend. However, it was not present in UI. <b>Status:</b> It is fixed in production on 15 <sup>th</sup> June 2022 via ICR: 16751 <b>Financial Implication : Yes</b> <b>Taxpayers Impacted – 38</b>

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Issue Reported	Date Intimated MSP to perform Data Fix	Issue Description with No. of Cases Impacted
Due to technical problem during the integration of data between CBIC &	25-10-22	27 (21+6) GSTINs involving multiple blocking of ITC credit: were shared for backend correction of the ITC ledgers by GSTN.
GSTN, the CBIC system had thrown exceptions when consuming the ITC		<b>Reason:</b> Due to technical issue CBIC was unable to capture the response after blocking ITC by taxpayer. Officer tried multiple times with same GSTIN to block the ITC.
block/unblock API and the concerned job at the CBIC backend kept retrying the same		Status: Out of 27 GSTINs, 26 GSTIN has been unblocked Rest 1 GSTIN (33AAJFC7464K1Z5) was canceled and now i is in active status so we are in process to unblock this GSTIN as well.
request, which resulted in multiple blocking of the ITC Credit Ledger.		Financial Implication : Yes Taxpayers Impacted – 27

#### Annexure-6

#### Additional agenda on reversal of interest on delayed filling of statement in form GSTR-8 by ecommerce operators due to technical glitches

Issue Reported	Date Intimated MSP to perform Data Fix	
Three ECOs faced problem in filing nonthly statement in Form GSTR-8	June,2022	Three ECOs could not file monthly statement in Form GSTR- 8 for the month of February, 2022 due to technical glitch and examined raised tickets for the same. The defect was examined by technical team fixed the same on 29 <sup>th</sup> July,2022. <b>Impacted tax periods</b> : February to June,2022 (5 tax periods). <b>Interest liability:</b> Interest on delayed filing of the said statement is computed by System and the same is non- editable. Though, defect was in filing the statement but there was no defect in depositing the due tax through challan.
		<b>Refund on interest:</b> In the 15 <sup>th</sup> ITGRC meeting, it was decided that reversal of interest should be done in those cases where tax was paid by due date. Where tax was paid after fixing the defect or at the time of filing the statement may no be eligible for reversal of interest.



#### <u>Agenda Item 16: Report of Committee of Officers (CoO) on GST Audit along with Draft Model</u> <u>All India GST Audit Manual</u>

1. A Committee of Officers (CoO) on GST Audit was constituted in pursuance of discussion and decision in the 1st National GST Conference held on 25.11.2019 to have joint & collaborative efforts for GST Audit; capacity building for audit and to follow uniform practices for GST Audit in Centre and State Tax administration.

2. Initially, the Terms of Reference (ToR) for CoO on GST Audit issued vide OM dated 21.02.2020 (Annexure-VII), was to study, examine and draft an all-India GST Audit Manual but due to different administrative set up in the States no consensus could be reached out for the most of items of the ToR.

3. Subsequently, the Terms of Reference were revised vide OM dated 25.06.2021(Annexure-VIII).

3.1 The revised Terms of Reference (ToR) are as under:

(i) To study audit policy and practices of the Centre and the States which have already implemented certain procedures;

(ii) To develop model Audit Manual, taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by States as per administrative suitability;

(iii) To broadly outline the procedural aspects of joint and thematic audit, if and as and when they are undertaken with the approval of Council;

(iv) Using capability of data analytic developed by DGARM for identification of State Taxpayers for audit;

(v) To suggest measures of capacity building in Services for focused approach on the audit of services sector;

(vi) To build knowledge on financial accounting and focused approach towards interpreting business contract/agreement and understanding of the system-driven business process through SAP, Oracle, Tally, etc.

4. To explore each topic of the ToRs in greater detail, sub-committees were formed for each ToRs. After wide-ranging discussions and after obtaining inputs from many States, each of the six Sub-Committees submitted their report on all the six ToRs. The reports of the sub-committees are integrated into the final report of the committee. ToRs wise reports are as under:

## 4.1 To study audit policy and practices of the Centre and the States which have already implemented certain procedures (ToR 1)

The report of the sub-committee is the compilation of practices followed by the Centre and States in respect of the topics like identification of the risk parameters considered for selection of cases for audit, scope of audit, criteria for authorization of the officers for selection of cases for audit, basis/criteria for allocation of cases for audit etc.

The sub-committee has prepared its report in two parts. Part one of the report is the compilation of topic-wise practice followed by the Centre and States in respect of each of the topics

mentioned above. The second part is the model GST Audit best practices and procedures which are recommendatory in nature. The recommendations were agreed to by the Committee. The detailed report of the sub-committee is attached as **ANNEXURE-I** 

#### 4.2 To develop model Audit Manual, taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by States as per administrative suitability (ToR 2)

The sub-committee was constituted to compile the existing and desirable audit practices and to draft a model GST audit manual. The said sub-committee consisted of ADG, Audit (Headquarters), EVP, GSTN, State Tax officers from West Bengal, Bihar and Gujarat who were assigned the task to catalogue prevalent practices of audit in the Central and State Indirect tax administrations and adopt the best practices for GST Audit across the country.

The aforesaid draft Model All India GST Audit Manual 2022 has been agreed to by the Committee of Officers (CoO) and has been separately submitted for the consideration of GST Council as **Annexure-II**.

## 4.3 To broadly outline the procedural aspects of joint and thematic audit, if and as and when they are undertaken with the approval of the Council (ToR 3)

The sub-committee looked into the procedural aspects of joint and thematic audit, if and as and when they are undertaken with the approval of Council. The sub-committee recommended that for conducting thematic audit, GST Council may form a co-ordination committee at all India level which shall be responsible for selecting themes for conducting theme based audit at all India level in a coordinated manner. The co-ordination committee shall also be responsible for dissemination of the best practices being followed across Audit formations.

It recommended that the co-ordination committee may be constituted with the following as its members:

- DG (Audit) or any Additional Director General (Audit) as nominated by him;
- Joint Secretary, GST Council;
- Pr. Commissioner/ Commissioner (GST), GST Policy Wing;
- CEO, GSTN;
- Three Commissioners of SGST, as nominated by the GST Council;
- One CGST (Audit) Commissioner as nominated by the GST Council.

The recommendations were agreed to by the Committee. The detailed report of the subcommittee is attached as **Annexure-III** 

## 4.4 Using capability of data analytic developed by DGARM for identification of State Taxpayers for audit (ToR 4)

The sub-committee examined the capability of using data analytics developed by DGARM for identification of State taxpayers for audit and made the following recommendations:

a. There is capability and expertise with DGARM to identify the risky taxpayers for Audit falling in states' jurisdiction using approved risk parameters. If any State wants DGARM to select the risky taxpayers list for them, the State should make a specific request to DGARM.

DGARM will identify risky taxpayers based on approved parameters for them and share the list with the State along with risk scores and risk parameters.

b. For the States who opt, DGARM may evolve and establish permanent mechanism to identify risky tax payers falling under their jurisdiction.

c. If any State only wants risk parameters to be shared with them and they do not want DGARM to identify risky taxpayers for them, DGARM may share approved risk parameters with them.

d. Risk parameters keep evolving over a period of time with feedback and detection of newer modus operandi. Further there may be some local risk factors relevant in their jurisdiction. Thus, the States must have the authority to select its own additional risk parameters developed from their expertise, experience and knowledge from time to time. However, if any State wants to select the taxpayers list for audit by using expertise of DGARM, they have no objection in such matter.

The recommendations were agreed to by the Committee. The detailed report of the subcommittee is at **ANNEXURE-IV** 

## 4.5 To suggest measures of capacity building in Services for focused approach on the audit of services sector (ToR 5)

The sub-committee on examined the measures for capacity building in Services for focused approach on the audit of services sector and the recommendations are as below:

a. The officers of State GST needs to be trained specifically in service sectors which needs to be identified by the States and NACIN will draw a program to train the Master Trainers for each state based on the requirements of those states.

b. Suggested that there are multiple services being offered by the business entities therefore there is a need to understand the various concepts like time of supply, place of supply, mixed vs. Composite supply, taxable and exempted supply etc. so that the model of the sector along with the taxability is clear to the officers.

c. For identification of the specific sectors it is recommended that a Committee at the zonal level shall be formed with the following officers as its Members

- ADG NACIN ZTI
- Commissioners of State GST or his representative.

This Committee shall decide the sectors that need to be focused upon.

d. Further the committee shall meet every quarter to review the specific sector areas. It is also recommended that the industry experts along with the officers may be involved in the training program to understand the specific sector model.

e. An institutional mechanism containing selected officers from States and Centre may be created by NACIN to identify training needs of all the audit officers, identification and maintain record of resource persons including website resources and developing periodic training calendar.

The aforesaid recommendations were agreed to by the Committee. The detailed report of the sub-committee is at **ANNEXURE-V**.

#### 4.6 To build knowledge on financial accounting and focused approach towards interpreting business contract/agreement and understanding of the system-driven business process through SAP, Oracle, Tally, etc. (ToR 6)

The sub-committee observed that GST has facilitated coordinated functioning of Central and State tax administrations and that it is an opportunity as well as a challenge. The cumulative experience of the state and the central administration can either create a vast knowledge base or it may accentuate differences in practices and overlap in audit functions. The committee concluded that:

a. To overcome differences in practices and overlap in audit functions better coordination and sharing of information between the Centre and the States is required.

b. Standardization is the key. Appropriate Standard Operating Procedures need to be put in place for cross-jurisdictional issues. Frequency of audit, selection of taxpayers and number of taxpayers to be audited needs to be decided based on risk parameters.

c. As the actual audit needs to be done by the field staff, the officers and staff need to be prepared well with the help of proper training and development. Training of auditors in financial accounting, reading of contracts, use of accounting software etc. is imperative.

d. Finally, specialized software could be developed to cull out the relevant data from various business accounting systems so that the process of audit is made more system oriented.

The recommendations and conclusion were agreed to by the Committee. The detailed report of the sub-committee is at ANNEXURE-VI

5. The Committee of Officers (CoO) on GST Audit after extensive meetings, discussions and deliberations on the Terms of Reference (ToR) and reports submitted by each sub-committee on ToRs submitted its Report on GST Audit (Annexure-A). A Draft Model All India GST Audit Manual (Annexure-II) has also been a submitted by The Committee of Officers (CoO) separately.

6. Accordingly, the report of the Committee of Officers (CoO) on GST Audit along with the Draft Model All India GST Audit Manual is tabled before the GST Council for deliberation and approval.

## REPORT

## of the

## **Committee of Officers (CoO)**

### on

# **GST** Audit

# 2022

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#### PREFACE

The GST Council Secretariat constituted a Committee of Officers (CoO) on GST audits after discussions in the 1st National GST Conference held on 25.11.2019. Broadly the purpose of the CoO was joint and collaborative efforts for GST Audit, Capacity Building for audit and to follow uniform practices for GST Audit in Centre and State Tax administrations. An O.M. F. No. 350/Future Initiative/GSTC/2019 / 2050 dated 21.02.2020 was issued by the Council constituted a CoO with officers from Central and State GSTs, GSTN, and GST Council as Members. ADG, Audit, was the Convenor from Central GST and Shri Srikar M. S., Commissioner, Commercial Tax, Karnataka was the Convenor from the State. The CoO was required to study, examine and make suggestions in respect of six Terms of Reference.

However the State GST officers did not agree to the proposal of an all India GST Audit Manual and Joint & Collective audits by Centre and State in respect of taxpayers in selected Service Sectors. No consensus could be reached for the most important first three items of the ToR. Based on the discussions held and the reports of the sub-committee a Final Report of the CoO was prepared and submitted to the GST Council in June 2020. The said report interalia mentioned that the State GST officers did not agree to the proposal of an all India GST Audit Manual and Joint & Collective audits by Centre and State in respect of taxpayers in selected Service Sectors. The States pointed out several constraints in proceedings with the idea of an All-India Audit Manual. They were of the opinion that each

State had its own organizational and administrative structure that was different from the Centre. Tax administration in different states is a successor of respective VAT administrations, with different legacies, constraints, processes and procedures. Moreover, the GST Audit Manual prepared by the CBIC was already available with the States and each State could adapt and modify any procedure therein that was suited to their needs. It was decided that the matter may be discussed in the All India GST Council meeting or in such higher forum.

Thereafter, the GST Council Secretariat vide its OM dated 27.07.2021 reconstituted the Committee of Officers (CoO) on GST Audit again containing officers from Centre, States, GSTN and GST Council. Which was further reconstituted vide OM dated 26.05.2022.

The Terms of Reference (ToR) were also amended and notified vide their OM dated 25.06.2021.

The CoO held extensive discussions and took inputs from other States also who were not members of this Committee and arrived at a consensus on all the items of the ToR. It is with great satisfaction to record that the CoO has been able to achieve all the desired purpose for which it was created.

The Committee expresses its gratitude to Shri Yogendra Garg, Pr. ADG, NACIN, Shri Sanjay Mangal, Pr. Commissioner, GST Policy Wing, CBIC, Shri Gurusharan Singh, ADG, DGARM and Shri Nitish K. Sinha, ADG, DGGI, for providing reports of their respective sub-committees. Contribution of the officers States and all Members of the Committee is equally important and acknowledged.

It is also very heartening to note that the CoO has made substantive progress in studying audit policy and practices of the Centre and the States which have already

implemented certain procedures, in preparing the model GST Audit Manual and developing a paper on Joint and Thematic Audits. The officers of the States have played a pioneering role in preparing this document, particularly from Karnataka and West Bengal. It is expected that the Model GST Audit Manual, 2022 is an extensive and comprehensive document with a holistic approach of GST Audit and facilitate the Audit Officers of States and Centre.Such document will not only facilitate the audit officers but will also help in maintaining uniformity of audit in all levels

#### **CONVENOR** (Centre)

Dr. Amandeep Singh Additional Director General Directorate General of Audit (Hqrs.) CBIC, New Delhi

#### Co - CONVENOR (State)

Dr. Ravi Kumar Surpur Chief Commissioner, Commercial Tax Rajasthan

#### **EXECUTIVE SUMMARY**

The GST Council Secretariat constituted a Committee of Officers (CoO) on GST audits after discussions in the 1st National GST Conference held on 25.11.2019 for the purpose of joint and collaborative efforts for GST Audit, Capacity Building for audit and to follow uniform practices for GST Audit in Centre and State Tax administrations. An O.M. F. No. 350/Future Initiative/GSTC/2019 / 2050 dated 21.02.2020 (Annexure 1) was issued by the Council constituted a CoO with officers from Central and State GSTs, GSTN, and GST Council as Members. ADG, Audit, was the Convenor from Central GST and Shri Srikar M. S., Commissioner, Commercial Tax, Karnataka was the Convenor from the State. The CoO was required to study, examine and make suggestions in respect of below mentioned six Terms of Reference.

- i. To prepare a comprehensive All India GST Manual taking into account procedures & practices in vogue in different States and Centre;
- To explore having joint and collective GST Audit by Centre & State for the taxpayers in many sectors that have all India presence like Telecom, Airlines, Banking, Railway etc.;
- iii. To explore conducting thematic audit by both tax administration;
- iv. Using capability of data analytics developed by DGARM for identification of State taxpayers for audit;
- v. To suggest measures of capacity building in Services for focused approach on audit of Services sector; and

vi. To build knowledge on financial accounting and focused approach towards interpreting business contract/agreement and understanding of system driven business process through SAP, Oracle, Tally etc.;

The said Committee held extensive deliberations and decided that in order to facilitate in-depth examination and to expedite the report sub-committees should be formed for each reference item. Regarding Reference Point numbers 1 to 3, however there was no consensus on the formation of sub-committees. The State GST officers did not agree to the proposal of an all India GST Audit Manual and Joint & Collective audits by Centre and State in respect of taxpayers in selected Service Sectors. No sub-committees on these issues were formed. The subcommittees on the remaining three reference points were duly constituted and they submitted their reports. Based on the discussions held and the reports of the subcommittee a Final Report of the CoO was prepared and submitted to the GST Council in June 2020 (Annexure 2). The said report interalia mentioned that the State GST officers did not agree to the proposal of an all India GST Audit Manual and Joint & Collective audits by Centre and State in respect of taxpayers in selected Service Sectors. The States pointed out several constraints in proceedings with the idea of an All-India Audit Manual. They were of the opinion that each State had its own organizational and administrative structure that was different from the Centre. Tax administration in different states is a successor of respective VAT administrations, with different legacies, constraints, processes and procedures. Moreover, the GST Audit Manual prepared by the CBIC was already available with the States and each State could adapt and modify any procedure therein that was suited to their needs.

It was decided that the matter may be discussed in the All India GST Council meeting or in such higher forum.

Thereafter, the GST Council Secretariat, vide its OM dated 27.07.2021 (Annexure – 3), reconstituted the Committee of Officers (CoO) on GST Audit again containing officers from Centre, States, GSTN and GST Council with the following members:-

Centre		State	GSTN	GST Council
i.	Addl. DG, DG	i. Commissioner of	EVP, GSTN	i. Joint Secretary
	Audit Headquarters,	Commercial Taxes,		
	CBIC - [Convenor]	Rajasthan (Shri Ravi Jain)		ii. Director
ii.	Pr. Commissioner/	– [Co-Convenor]		
	Commissioner, GST	ii. Commissioner of		iii. Deputy Director
	Policy Wing, CBIC	Commercial Taxes,		
iii.	Pr. Commissioner,	Karnataka (Smt. Shikha C.)		
	Meerut	iii. Special Commissioner,		
iv.	Principal	State Tax, Gujarat (Shri		
	ADG/ADG, DGGI	Samir Vakil)		
	Headquarters, CBIC	iv. Special Commissioner of		
v.	Pr. ADG/ADG, DG	State Tax, NCT of Delhi		
	Analytics & Risk	(Shri Anil Banka)		
	Management	v. Additional Commissioner,		
vi.	Pr. ADG/ADG,	State Tax, Uttarakhand		
	NACIN, Faridabad	(Shri Amit Gupta)		
		vi. Additional Commissioner		
		of Commercial Taxes,		
		Karnataka (Shri Ravi		
		Jesuraj S.)		
		vii. Special Secretary, State		
		Tax, Bihar (Shri Arun		
		Kumar Mishra)		
		viii. Joint Commissioner,		
		State Tax, Maharashtra		
		(Shri Prasad Joshi)		

ix. Joint Commissioner, State	
Tax, Tamil Nadu (Shri C.	
Palani)	
x. Joint Commissioner, State	
Tax, West Bengal (Shri	
Narayan Chandra Guriya)	
xi. Joint Commissioner, State	
Tax, Uttar Pradesh (Shri	
Vivek Singh)	
xii. Deputy Commissioner	
(ST), Puducherry (Shri K.	
Sridhar)	
,	

The said CoO was reconstituted vide OM dated 26.05.2022 and Shri Ravi Kumar Jain, the Co-Convenor was replaced with Dr. Ravi Kumar Surpur, Chief Commissioner, Commercial Tax, Rajasthan.

The Terms of Reference (ToR) were also amended and notified vide their OM dated 25.06.2021 (Annexure-4) and the same are asunder:-

- i. To study audit policy and practices of the Centre and the States which have already implemented certain procedures;
- ii. To develop model Audit Manual, taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by States as per administrative suitability;
- iii. To broadly outline the procedural aspects of joint and thematic audit, if and as and when they are undertaken with the approval of Council;
- iv. Using capability of data analytic developed by DGARM for identification of State Taxpayers for audit
- v. To suggest measures of capacity building in Services for focussed approach on the audit of services sector; and
- vi. To build knowledge on financial accounting and focussed approach towards interpreting business contract/agreement and understanding of the systemdriven business process through SAP, Oracle, Tally, etc.

(i) Reference No. 1 – "*To study audit policy and practices of the Centre and the States which have already implemented certain procedures*". A sub-committee was constituted to examine the topic. The task of studying and compiling the best audit policy and practices of Centre and States was entrusted to the officers of Karnataka State. The sub-committee identified certain points/topics that can be dealt with in studying the audit policies and practices of the Centre and States that have already implemented certain procedures and to design the Model GST Audit Policy. These topics are as under:-

- Identification of the risk parameters considered for selection of cases for audit / Basis for selection of cases for audit (Including any process of random selection of cases that may not be strictly covered by risk parameters)
- ii. Scope of audit whether restricted to only the flagged risk parameters or all business transactions of the auditee.
- iii. Need for audit of all or some of the other related registered persons in the value chain based on audit findings in selected primary cases. Norms for such action i.e., whether to have the same audit officer for all cases, approach for coordination among different audit officers, oversight etc.
- iv. Need for audit of other years of the same auditee based on audit findings in selected cases.
- v. Criteria for Authorization of the officers for selection of cases for audit and the process for final approval of a case for audit i.e., administrative system of audit in a State including the assignment issuing authority.
- vi. Basis/criteria for allocation of cases for audit cadre, turnover.
- vii. Need for fixing numerical targets, both upper and lower limits, on the number of cases that are to be audited in a year by the State?
- viii. Any time limit to be set for completion of audit of various sectors: large, medium, small etc., (lesser than that mandated by the Act).
- ix. Feedback mechanism and its functioning in selection of cases for audit, in the process and conduct of audit and in the acceptance of final audit report.

- x. Post-audit process Any Committee for review of the audit report and recommendation for adjudication, who is the adjudicating authority.
- Any oversight of post-adjudication proceedings and its mechanism follow-up of additional demand created, ascertaining the correctness of the order for its sustainability, putting up proper defense in appeal, etc.
- xii. Any central repository of audit outcomes
- xiii. Co-ordination between State and Central audit officers in similar cases, similar businesses, exchange of approaches, findings, outcome in appeals etc.
- xiv. Role of technology in automating audit process Connecting electronically every audit procedure seamlessly - the E-audit modules developed by States, or those in the pipeline, to introduce technology in the audit process and its interface with the audit officer and the auditee.

The Sub-committee decided to prepare its report in two parts. Part one of the report is the compilation of topic-wise practice followed by the Centre and States in respect of each of the topics mentioned above. Thirteen States sent in their feedback/suggestions and the inputs from CBIC were also examined and compiled. The States who provided inputs were :- Bihar, Himachal Pradesh, Kerala, Maharashtra, Nagaland, New Delhi, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal, and Karnataka.

The issues that are covered in the report may be termed as determinants of Model GST Audit Policy and Practices.

The report broadly covers the common Audit policy and practices adopted by the Audit jurisdictions across the country. The systemic approach to GST Audit

followed by the State GST administrations, prima-facie, differ in varying degrees due to the administrative architecture that was designed for erstwhile tax administration. Notwithstanding such variations, the commonalities inherent in their Audit policies and practices are inferred in the overall context of the GST Act and the Rules and this report is precisely premised on such 'inferred commonalities'. The report contains two parts, the first part is a documentation of the GST Audit practices and the policies of the Centre and the States that have implemented certain procedures and adopted certain practices. The second part is the model GST Audit best practices and procedures which are recommendatory in nature.

(ii) Reference No. 2 – "To develop Model Audit Manual taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by States as per administrative suitability" – For this purpose, a sub-committee of officers was constituted to compile existing and desirable audit practices and to draft a model GST audit manual. The said sub-committee consisted of ADG, Audit (Headquarters), EVP, GSTN, State Tax officers from West Bengal, Bihar and Gujarat which was assigned the task to catalogue prevalent practices of audit in the Central and State Indirect tax administrations and adopt the best practices for GST Audit across the country. Further, the activity of compiling the Model GST Audit Manual was allotted to West Bengal Member of the Committee based on thoroughly studying the Audit manual prepared by Central Government, GST Audit Manuals and Standard Operating Procedures prepared by various states like West Bengal, Punjab,

Maharashtra, Karnataka, Bihar, and Uttar Pradesh as well as the module developed by the GSTN and available to Model 2 states. The draft Model GST Audit Manual has been prepared after extensive discussions and taking inputs from all the Members of the CoO. This Model Audit Manual aims to be an extensive and comprehensive document with a holistic approach towards GST audit which will not only facilitate the Audit Officers of the Centre and the States/UTs but will also create an impact in facilitating the auditees during the exercise of audit. The objective of this manual is to provide insights into the principles and procedures of audit and to give a holistic view of the entire process to the users of this Manual. It has been designed to cater to a systematic workflow of audit, ranging from brief criteria of selection to the completion of the process. The final Draft Model GST Audit Manual has been submitted for the consideration of the GST Council separately.

(iii) Reference No. 3 - "To broadly outline the procedural aspects of joint and thematic audit, if and as and when they are undertaken with the approval of *Council*"; - The recommendations of the sub-committee are as follows:-

For conducting thematic audit, GST Council may form a **co-ordination committee** at all India level which shall choose **themes** for conducting audit, establishing **Committee of Officers** for selecting Tax payers in a state for thematic audit, co-ordination among various Audit Authorities for evolving a common minimum audit plans for a given theme and, thereafter monitoring of actual audit by the field formations so as to ensure uniformity. The co-ordination committee shall also be

responsible for dissemination of the best practices being followed across Audit formations.

It is recommended that the **co-ordination committee** may be constituted with the following as its members:

- DG (Audit) or any Additional Director General (Audit) as nominated by him;
- Joint Secretary, GST Council;
- Pr. Commissioner/ Commissioner (GST), GST Policy Wing;
- CEO, GSTN;
- Three Commissioners of SGST, as nominated by the GST Council;
- One CGST (Audit) Commissioner as nominated by the GST Council.

The co-ordination committee shall be responsible for selecting themes for conducting theme based audit at all India level in a coordinated manner. For selecting the Audit themes, the Committee may consider using the following parameters/ data sources:

- Parameters which emerge from the systematic and methodical risk analysis conducted by GSTN, DGARM, ADVAIT and the state revenue intelligence units/economic intelligence units.
- Economic indicators;
- Third party information from Tax authorities and other Regulatory authorities;
- Sensitive nature of the commodity and / or service;

- Risky sectors in news for frauds for e.g., E-commerce, online gaming, jewelers etc;
- Sectors directly involved in providing services to a large consumer base, such as banking, insurance, air and land travel, utilities etc.

The said report also provides for determining local themes based on identified Risk Parameters. Further for coordination of actual audits it is suggested that the Coordination Committee may constitute a Committee of Officers for each State/UT. Furthermore, the Report prescribes role of Audit Field Formations for conducting such audits and a Standard Operating Procedure has also being laid down for conducting Theme Based Audit. The Report contains similar suggestions for conducting Joint Audits by Centre and States.

(iv) Reference No. 4 - 'Using capability of data analytic developed by DGARM for identification of State Taxpayers for audit'. The recommendations of the sub-committee are as follows:

- a) If any State wants DGARM to select the risky taxpayers list for them, the State should make a specific request to DGARM. DGARM will identify risky taxpayers based on parameters approved for them and share the list with the State along with risk scores and risk parameters.
- b) DGARM may evolve and establish a permanent mechanism to identify risky taxpayers falling under the jurisdiction of State GSTs, just as they do for risky taxpayers under the jurisdiction of Central GST.

- c) If any state only wants risk parameters to be shared with them and they do not want DGARM to identify risky taxpayers for them, DGARM may share approved risk parameters with them.
- If any State wants to select the taxpayers list for audit by using expertise of DGARM, necessary expertise would be provided.

(iii) Reference Point No. 5 - 'Suggest measures of Capacity Building in services for focused approach on audit of Services sector'. The recommendations of the sub-committee are as follows:

The officers of State GST needs to be trained specifically in service sectors which needs to be identified by the states and NACIN will draw a program to train the Master Trainers for each state based on the requirements of those states. NACIN through its Zonal Campus are already conducting bi-monthly training course on GST Audit & Accounting.

This training program will identify

- The frequency with which the training program needs to be conducted by NACIN for the master trainers as well as for the other officers.
- Nomination of Nodal officers from States for identification of Training needs
- Training on specific service sector which has been identified by the respective State GST (around top 5 services)
- Identification of officers to create proper training modules for identified specific service sectors.

NACIN in coordination with the State GST will identify the specific service sectors where there is a need to train the officers for capacity building. It is also suggested that since there are multiple services being offered by the business entities therefore there is a need to understand the supply in accordance with the GST law and procedures. In this regard supply of services needs to understand properly and various concepts like time of supply, place of supply, mixed vs. Composite supply, taxable and exempted supply etc. needs to be focused upon so that the model of the sector along with the taxability is clear to the officers.

For identification of the specific sectors it is recommended that a Committee at the zonal level shall be formed with the following as its Members

- ADG NACIN ZTI
- Commissioners of State GST or his representative

This Committee shall decide the sectors that need to be focused upon. Further the committee shall meet every quarter to review the specific sector areas.

It is also recommended that the industry experts along with the officers may be involved in the training program to understand the specific sector model. An institutional mechanism containing selected officers from States and Centre may be created by NACIN to identify training needs of all the audit officers, identification and maintain record of resource persons including website resources and developing periodic training calendar.

(iv) Reference No. 6 – "Build knowledge on financial accounting and focused approach towards interpreting business contract / agreement and understanding of systems driven business process through SAP, Oracle, Tally etc." The recommendations of the sub-Committees are as follows:

- For the first time, GST has brought the Central and State Tax administration to work in tandem with each other. This is an opportunity as well as a challenge. On the one hand, the cumulative experience of the state and the central administration can create a vast knowledge base. On the other hand, it may accentuate difference of practices and overlapping in audit functions.
- To overcome this issue, a better coordination and sharing of information between the Centre and the States is required.
- Standardization is the key. Appropriate Standard Operating Procedures need to be put in place for cross-jurisdictional issues. Frequency of audit, selection of taxpayers and number of taxpayers to be audited needs to be decided based on risk parameters.
- As the actual audit needs to be done by the field staff, the officers and staff need to be prepared well with the help of proper training and development. Training of auditors in financial accounting, reading of contracts, use of accounting software etc. is imperative.
- Finally, specialized software could be developed to cull out the relevant data from various business accounting systems so that the process of audit is made more system oriented.

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#### REPORT

The GST Council Secretariat vide its OM dated 27.07.2021 reconstituted the Committee of Officers (CoO) on GST Audit containing officers from Centre, States, GSTN and GST Council. The CoO was reconstituted vide The CoO was again reconstituted vide OM dated 26.05.2022. The following are the members of the reconstituted Committee:-

Centre	State	GSTN	GST
			Council
i. Addl. DG, DG	i. Chief Commissioner of Commercial	EVP,	i. Joint
Audit Headquarters,	Taxes, Rajasthan (Dr. Ravi Kumar Surpur	GSTN	Secretary
CBIC - [Convenor]	Jain) – <b>[Co-Convenor]</b>		
ii. Pr. Commissioner/	ii. Commissioner of Commercial Taxes,		ii. Director
Commissioner, GST	Karnataka (Smt. Shikha C.)		
Policy Wing, CBIC	iii. Special Commissioner, State Tax, Gujarat		iii. Deputy
iii. Pr. Commissioner,	(Shri Samir Vakil)		Director
Meerut	iv. Special Commissioner of State Tax, NCT		
iv. Principal	of Delhi (Shri Anil Banka)		
ADG/ADG, DGGI	v. Additional Commissioner, State Tax,		
Headquarters, CBIC	Uttarakhand (Shri Amit Gupta)		
v. Pr. ADG/ADG, DG	vi. Additional Commissioner of Commercial		
Analytics & Risk	Taxes, Karnataka (Shri Ravi Jesuraj S.)		
Management	vii. Special Secretary, State Tax, Bihar (Shri		
vi. Pr. ADG/ADG,	Arun Kumar Mishra)		
NACIN, Faridabad	viii. Joint Commissioner, State Tax,		
	Maharashtra (Shri Prasad Joshi)		
	ix. Joint Commissioner, State Tax, Tamil		
	Nadu (Shri C. Palani)		
	x. Joint Commissioner, State Tax, West		
	Bengal (Shri Narayan Chandra Guriya)		
	xi. Joint Commissioner, State Tax, Uttar		
	Pradesh (Shri Vivek Singh)		
	xii. Deputy Commissioner (ST), Puducherry		
	(Shri K. Sridhar)		

The Terms of Reference (ToR) were also amended and notified vide their OM dated 25.06.2021 and the same are asunder:-

- i. To study audit policy and practices of the Centre and the States which have already implemented certain procedures;
- ii. To develop model Audit Manual, taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by States as per administrative suitability;
- iii. To broadly outline the procedural aspects of joint and thematic audit, if and as and when they are undertaken with the approval of Council;
- iv. Using capability of data analytic developed by DGARM for identification of State Taxpayers for audit
- v. To suggest measures of capacity building in Services for focussed approach on the audit of services sector; and
- vi. To build knowledge on financial accounting and focussed approach towards interpreting business contract/agreement and understanding of the systemdriven business process through SAP, Oracle, Tally, etc.

Due to COVID 19 Pandemic conditions, physical meetings of the Committee could not be held. It was decided to hold the meetings of the Committee and its subcommittees through video-conferencing. One meeting to discuss and finalise the Draft Model GST Audit Manual was held physically as well as online.

7. The first meeting of the Committee was held through video-conference on CISCO WEBEX Tool on 27/08/2021. The agenda for the said meeting was as under:-

S. No.	Item	SPEAKER
1.	Introduction and welcome address	Dr. Amandeep Singh, ADG, DG Audit
		- Convenor, (Centre) & by Shri Ravi
		Jain, Commissioner of Commercial
		Tax, Rajasthan – Co-Convenor
2.	Introduction of the Members – from Centre and	Joint Secretary, GST Council
	States and giving details of the Modified Terms	Secretariat
	of Reference	
3.	Feedback giving salient points of the report of	ADG Audit
	the earlier CoOs on GST Audit formed on	
	21.02.2020	
4.	Best Practices of GST Audit in States	States*
5.	Best Practices / Principles of GST Audit in	ADG Audit
	Centre	
6.	GSTN related issues of GST Audit	EVP, GSTN
7.	Law and Policy related issues of GST Audit	PrCommr GST Policy
8.	Using capability of data analytic developed by	ADG DGARM
	DGARM for identification of State Taxpayers	
	for audit	
9.	Suggest measures of capacity building in	Pr. ADG NACIN
	services for a focused approach on the audit of	
	the Services sector	
10.	To build knowledge on financial accounting and	Pr. ADG DGI
	focused approach towards interpreting business	
	contract/agreement and understanding of	
	systems driven business process through SAP,	
	Oracle, Tally, etc.	
11.	Formation of sub-committees with the	ADG Audit
	distribution of tasks	
12.	Closing Remarks	Director GSTC Sect

\*As below.

	<b>Presentation by the States</b> (Sl. No, 4 of the agenda)	State	Document
1	Karnataka (presentation on e-audit system)	Karnataka	
2	Rajasthan	Rajasthan	
3	Bihar (presentation)	Bihar	
4.	Gujarat	Gujarat	
5.	Maharashtra	Maharashtra	
6.	Uttar Pradesh	Uttar Pradesh	
7.	West Bengal	West Bengal	
8.	Uttarakhand (presentation of a study)	Uttrakhand	

9.	Puducherry	Pondicherry	
10.	NCT of Delhi	Delhi	
11.	Tamil Nadu	Tamil Nadu	

8. During the discussions in the meeting it was decided that to explore each topic of the ToRs in greater detail, sub-committees should be formed for each ToR. The reports of the sub-committees will be integrated into the final report of the committee

S.	Task	Centre	State	Issues to be
No.				covered
1.	(a) To study audit policy and practices of the Centre and the States which have already implemented certain	ADG, Audit, Pr. Commr. GST Policy Wing. Pr. Commr, Meerut	i. Rajasthan ii. Gujarat iii. Karnataka iv. Bihar	- A team of officers to study the audit policy and practices of
	<ul> <li>procedure</li> <li>(b) To develop model Audit Manual taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by the State administrative suitability.</li> <li>(c) To broadly outline the procedural aspects of joint and thematic audit, if and as and when they are undertaken with approval of the Council.</li> </ul>	Meerut EVP, GSTN	v. Maharashtra vi. West Bengal vii. Uttar Pradesh	the Centre and States that have already implemented certain procedures. - A team of officers to develop a model Audit Manual documenting audit policy and procedures adopted by Centre and States. - Mechanis m to be created to
				develop a policy

9. Accordingly, the following sub-Committees were formed. (Annexure 5)

				and procedure to identify themes for joint and thematic audits, including the mechanism for its supervision.
2.	Using capability of data analytic developed by DGARM for identification of State Taxpayers for audit	Pr. ADG DGARM JS, GSTN (Representative)	i. NCT Delhi. ii. West Bengal. iii. Karnataka	<ul> <li>DGARM</li> <li>to evolve and</li> <li>establish a</li> <li>permanent</li> <li>mechanism to</li> <li>identify risky task</li> <li>payers.</li> <li>Mechanis</li> <li>m should allow</li> <li>the States to add</li> <li>risk parameters as</li> <li>per their</li> <li>knowledge and</li> <li>experience.</li> <li>Feedback</li> <li>format to be</li> <li>developed and</li> <li>frequency to be</li> <li>provided.</li> </ul>
3.	Suggest measures of capacity building in services for focused approach on audit of Services sector	ADG NACIN	i. Tamil Nadu ii. Uttrakhand,	<ul> <li>Training</li> <li>Capacity and</li> <li>frequency of</li> <li>training to be</li> <li>identified.</li> <li>Nodal</li> <li>officers from</li> <li>States and ZTIs of</li> <li>NACIN to be</li> <li>identified for the</li> </ul>

				training needs.
				– Specific
				service sectors to
				be identified and
				its training needs
				and resources to
				be finalised.
				- A
				Committee of
				officers to be
				created to prepare
				training modules
				for specific
				identified sectors
				in consultation
				with the states.
				- Access to
				relevant training
				modules in iGOT
				to be provided to
				the States.
				- Faculty for
				imparting training needs to be
				identified.
4	To build knowledge on financial	Pr. ADG DGI	i. Puducherry	– Training
	accounting and focused approach			Capacity and
	towards interpreting business contract / agreement and			frequency of
	understanding of systems driven			training to be
	business process through SAP,			identified.
	Oracle, Tally etc.			- Nodal
				officers from
				States and ZTIs of
				NACIN to be
				identified for the
				training needs.

		- Specific
		service sectors to
		be identified and
		its training needs
		and resources to
		be finalised.
		- A
		Committee of
		officers to be
		created to prepare
		training modules
		for specific
		identified sectors
		in consultation
		with the states.
		- Access to
		relevant training
		modules in iGOT
		to be provided to
		the States.
		- Faculty for
		imparting training
		needs to be
		identified.

## 10. The sub-committee of the above item Nos. 1 to 3 of the ToRs was further divided into three sub-committees (Annexure -6) as under:-

S.	Task	Centre	State	Issues to be covered
No.				
(a)	To study audit policy and practices	Pr. Commr,	Rajasthan	Study the audit policy
	of the Centre and the States which	Meerut	Karnataka	and practices of the
	have already implemented certain			Centre and States that
	procedure			have already
				implemented certain
				procedures and to

				provide a report on the study.
(b)	To develop model Audit Manual taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by the State administrative suitability.	ADG, Audit EVP, GSTN	Gujarat West Bengal Bihar	To provide an outline of developing a model Audit Manual documenting audit policy and procedures adopted by Centre and States.
(c)	To broadly outline the procedural aspects of joint and thematic audit, if and as and when they are undertaken with approval of the Council.		Maharashtra Uttar Pradesh	Provide a document containing mechanism to be created to develop a policy and procedure to identify themes for joint and thematic audits, including the mechanism for its supervision.

11. The sub-committees were requested to meet amongst themselves to discuss the tasks and provide their draft reports for circulation to all the members.

12. The Record of Discussions (RoD) of the meeting held on 27/08/2021 was circulated to all the members. (Annexure 7)

Thereafter, the meetings of Committee and the Sub-Committees were held on 13/09/2021, 06.10.2021, 27/10/2021, 16/11/2021, 11/01/2022, 18/01/2022 and 12.05.2022 to discuss ToR-wise progress made and the status of draft reports of the respective sub-committees. The Record of Discussions of each meeting was circulated amongst the Members ((Annexure – 8 to Annexure – 14 respectively).

13. A meeting of the CoO on GST Audit was held on 27/05/2022 in offline as well as online mode, to discuss the draft Model All India GST Audit Manual. The meeting was facilitated by the GST Council Secretariat vide their OM dated 24.05.2022 and held in the Meeting Hall of GST Council Secretariat, New Delhi.

The RoD of the said meeting were circulated amongst the Members (Annexure 15) After wide-ranging discussions and after obtaining inputs from many States, each of the six Sub-Committees submitted their report on all the six ToRs. The reports of the respective five sub-committees are annexed hereto. (Annexure 16 to

#### **20** respectively)

#### **Recommendations:-**

(i) The sub-committee on Reference No. 1 – "To study audit policy and practices of the Centre and the States which have already implemented certain procedures" submitted their report with salient features as below:-

The report of the sub-committee is the compilation of topic-wise practice followed by the Centre and States in respect of each of the topics mentioned below. The States are Bihar, Himachal Pradesh, Kerala, Maharashtra, Nagaland, New Delhi, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal, and Karnataka.

These topics are as under:-

- Identification of the risk parameters considered for selection of cases for audit / Basis for selection of cases for audit (Including any process of random selection of cases that may not be strictly covered by risk parameters)
- ii. Scope of audit whether restricted to only the flagged risk parameters or all business transactions of the auditee.
- iii. Need for audit of all or some of the other related registered persons in the value chain based on audit findings in selected primary cases. Norms for such action i.e., whether to have the same audit officer for all cases, approach for coordination among different audit officers, oversight etc.
- iv. Need for audit of other years of the same auditee based on audit findings in selected cases.
- v. Criteria for Authorization of the officers for selection of cases for audit and the process for final approval of a case for audit i.e., administrative system of audit in a State including the assignment issuing authority.
- vi. Basis/criteria for allocation of cases for audit cadre, turnover.
- vii. Need for fixing numerical targets, both upper and lower limits, on the number of cases that are to be audited in a year by the State?
- viii. Any time limit to be set for completion of audit of various sectors: large, medium, small etc., (lesser than that mandated by the Act).
- ix. Feedback mechanism and its functioning in selection of cases for audit, in the process and conduct of audit and in the acceptance of final audit report.

- x. Post-audit process Any Committee for review of the audit report and recommendation for adjudication, who is the adjudicating authority.
- Any oversight of post-adjudication proceedings and its mechanism follow-up of additional demand created, ascertaining the correctness of the order for its sustainability, putting up proper defense in appeal, etc.
- xii. Any central repository of audit outcomes
- xiii. Coordination between State and Central audit officers in similar cases, similar businesses, exchange of approaches, findings, outcome in appeals etc.
- xiv. Role of technology in automating audit process Connecting electronically every audit procedure seamlessly - the E-audit modules developed by States, or those in the pipeline, to introduce technology in the audit process and its interface with the audit officer and the auditee.

The Sub-committee decided to prepare its report in two parts. Part one of the report is the compilation of topic-wise practice followed by the Centre and States in respect of each of the topics mentioned above. Thirteen States sent in their feedback/suggestions and the inputs from CBIC were also examined and compiled. The States who provided inputs were :- Bihar, Himachal Pradesh, Kerala, Maharashtra, Nagaland, New Delhi, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, West Bengal, and Karnataka.

The issues that are covered in the report may be termed as determinants of Model GST Audit Policy and Practices. The report broadly covers the common Audit policy and practices adopted by the Audit jurisdictions across the country. The systemic approach to GST Audit followed by the State GST administrations,

prima-facie, differ in varying degrees due to the administrative architecture that was designed for erstwhile tax administration. Notwithstanding such variations, the commonalities inherent in their Audit policies and practices are inferred in the overall context of the GST Act and the Rules and this report is precisely premised on such 'inferred commonalities'. The report contains two parts, the first part is a documentation of the GST Audit practices and the policies of the Centre and the States that have implemented certain procedures and adopted certain practices. The second part is the model GST Audit best practices and procedures which are recommendatory in nature.

The aforesaid recommendations were agreed to by the Committee. The report of the sub-committee is attached as **ANNEXURE 15**.

(ii) The sub-committee for item No. 2 was "To develop model Audit Manual, taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by States as per administrative suitability" For this purpose, a sub-committee of officers was constituted to compile existing and desirable audit practices and to draft a model GST audit manual. The said sub-committee consisted of ADG, Audit (Headquarters), EVP, GSTN, State Tax officers from West Bengal, Bihar and Gujarat which was assigned the task to catalogue prevalent practices of audit in the Central and State Indirect tax administrations and adopt the best practices for GST Audit across the country. Further, the activity of compiling the Model GST Audit Manual was allotted to West Bengal Member of the Committee based on thoroughly studying the Audit manual prepared by Central Government, GST

Audit Manuals and Standard Operating Procedures prepared by various states like West Bengal, Punjab, Maharashtra, Karnataka, Bihar, and Uttar Pradesh as well as the module developed by the GSTN and available to Model 2 states. Extensive meetings, in which members from the Centre, States, GSTN and GST Council Secretariat participated were held for detailed discussions and deliberations.

A draft copy of the Model GST Audit Manual was circulated to all the members inviting their inputs and the draft Model Audit was modified accordingly. Thereafter, the modified draft of the Model GST Audit Manual was shared once again for final reading and deliberations with all the Members. After incorporating the suggestions, the final draft of the Model GST Audit Manual has been prepared and approved by the CoO. The Manual tries to take into account the differential structure of GST revenue administration prevailing in different States and the Centre.

Chapters on Thematic audit, Financial Accounting - Building Knowledge on Financial Accounting and Recommendations for Model GST Audit Practices & Procedures have been added to the draft Manual.

The aforesaid **draft Model GST Audit Manual 2022** has been agreed to by the Committee and has been separately submitted for the consideration of GST Council.

(iii) The sub-committee for item No. 3 was "To broadly outline the procedural aspects of joint and thematic audit, if and as and when they are undertaken with the approval of Council: and it has recommended as under:-

For conducting thematic audit, GST Council may form a **co-ordination committee** at all India level which shall choose **themes** for conducting audit, establishing **Committee of Officers** for selecting Tax payers in a state for thematic audit, coordination among various Audit Authorities for evolving a common minimum audit plans for a given theme and, thereafter monitoring of actual audit by the field formations so as to ensure uniformity. The co-ordination committee shall also be responsible for dissemination of the best practices being followed across Audit formations.

It is recommended that the **co-ordination committee** may be constituted with the following as its members:

- DG (Audit) or any Additional Director General (Audit) as nominated by him;
- Joint Secretary, GST Council;
- Pr. Commissioner/ Commissioner (GST), GST Policy Wing;
- CEO, GSTN;
- Three Commissioners of SGST, as nominated by the GST Council;
- One CGST (Audit) Commissioner as nominated by the GST Council.

The co-ordination committee shall be responsible for selecting themes for conducting theme based audit at all India level in a coordinated manner. For

selecting the Audit themes, the Committee may consider using the following parameters/ data sources:

- Parameters which emerge from the systematic and methodical risk analysis conducted by GSTN, DGARM, ADVAIT and the state revenue intelligence units/economic intelligence units.
- Economic indicators;
- Third party information from Tax authorities and other Regulatory authorities;
- Sensitive nature of the commodity and / or service;
- Risky sectors in news for frauds for e.g., E-commerce, online gaming, jewelers etc;
- Sectors directly involved in providing services to a large consumer base, such as banking, insurance, air and land travel, utilities etc.

The said report also provides for determining local themes based on identified Risk Parameters. Further for coordination of actual audits it is suggested that the Coordination Committee may constitute a Committee of Officers for each State/UT. Furthermore, the Report prescribes role of Audit Field Formations for conducting such audits and a Standard Operating Procedure has also being laid down for conducting Theme Based Audit. The Report contains similar suggestions for conducting Joint Audits by Centre and States.

The aforesaid recommendations were agreed to by the Committee.

The Report of the sub-committee is at ANNEXURE 16

(iv) The sub-committee for item No. 4 was 'Using capability of data analytics developed by DGARM for identification of State taxpayers for audit' recommended as follows:

- a) There is capability and expertise with them to identify the risky taxpayers for Audit falling in states' jurisdiction using approved risk parameters. If any State wants DGARM to select the risky taxpayers list for them, the State should make a specific request to DGARM. DGARM will identify risky taxpayers based on approved parameters for them and share the list with the State along with risk scores and risk parameters.
- b) For the States who opt, DGARM may evolve and establish permanent mechanism to identify risky tax payers falling under their jurisdiction.
- c) If any State only wants risk parameters to be shared with them and they do not want DGARM to identify risky taxpayers for them, DGARM may share approved risk parameters with them.
- d) Risk parameters keep evolving over a period of time with feedback and detection of newer modus operandi. Further there may be some local risk factors relevant in their jurisdiction. Thus the States must have the authority to select its own additional risk parameters developed from their expertise, experience and knowledge from time to time. However, if any State wants to select the taxpayers list for audit by using expertise of DGARM, they have no objection in such matter.

The aforesaid recommendations were agreed to by the Committee. The report of the sub-committee is at **ANNEXURE 17** 

(v) The sub-committee on Reference Point No. 5 - 'To suggest measures of capacity building in Services for focussed approach on the audit of services sector' recommended as follows:

The officers of State GST needs to be trained specifically in service sectors which needs to be identified by the states and NACIN will draw a program to train the Master Trainers for each state based on the requirements of those states. NACIN through its Zonal Campus are already conducting bi-monthly training course on GST Audit & Accounting.

This training program will identify

- The frequency with which the training program needs to be conducted by NACIN for the master trainers as well as for the other officers.
- Nomination of Nodal officers from States for identification of Training needs
- Training on specific service sector which has been identified by the respective State GST (around top 5 services)
- Identification of officers to create proper training modules for identified specific service sectors.

NACIN in coordination with the State GST will identify the specific service sectors where there is a need to train the officers for capacity building. It is also suggested that since there are multiple services being offered by the business entities therefore there is a need to understand the supply in accordance with the GST law and procedures. In this regard supply of services needs to understand properly and various concepts like time of supply, place of supply, mixed vs. Composite supply,

taxable and exempted supply etc. needs to be focused upon so that the model of the sector along with the taxability is clear to the officers.

For identification of the specific sectors it is recommended that a Committee at the zonal level shall be formed with the following as its Members

- ADG NACIN ZTI
- Commissioners of State GST or his representative

This Committee shall decide the sectors that need to be focused upon. Further the committee shall meet every quarter to review the specific sector areas.

It is also recommended that the industry experts along with the officers may be involved in the training program to understand the specific sector model. An institutional mechanism containing selected officers from States and Centre may be created by NACIN to identify training needs of all the audit officers, identification and maintain record of resource persons including website resources and developing periodic training calendar.

The aforesaid recommendations were agreed to by the Committee. The report of the sub-committee is at **ANNEXURE 18**.

(vi) The sub-committee on Term of Reference No. 6 - 'To build knowledge on financial accounting and focused approach towards interpreting business contract/agreement and understanding of the system-driven business process through SAP, Oracle, Tally, etc.' recommended as follows:

a) For the first time, GST has facilitated coordinated functioning of Central and State tax administrations. This is an opportunity as well as a challenge. On

the one hand, the cumulative experience of the state and the central administration can create a vast knowledge base. On the other hand, it may accentuate differences in practices and overlap in audit functions.

- b) To overcome this issue, better coordination and sharing of information between the Centre and the States is required.
- c) Standardization is the key. Appropriate Standard Operating Procedures need to be put in place for cross-jurisdictional issues. Frequency of audit, selection of taxpayers and number of taxpayers to be audited needs to be decided based on risk parameters.
- d) As the actual audit needs to be done by the field staff, the officers and staff need to be prepared well with the help of proper training and development. Training of auditors in financial accounting, reading of contracts, use of accounting software etc. is imperative.
- e) Finally, specialized software could be developed to cull out the relevant data from various business accounting systems so that the process of audit is made more system oriented.

The aforesaid recommendations were agreed to by the Committee.

The report of the sub-committee is at ANNEXURE 19.

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Annexure-I

## DRAFT REPORT OF THE SUB-COMMITTEE (CoO)

### on

"GST AUDIT POLICY AND PRACTICES OF THE CENTRE AND THE STATES THAT HAVE ALREADY IMPLEMENTED CERTAIN PROCEDURES"

Prepared by The Department of Commercial Taxes, Government of Karnataka



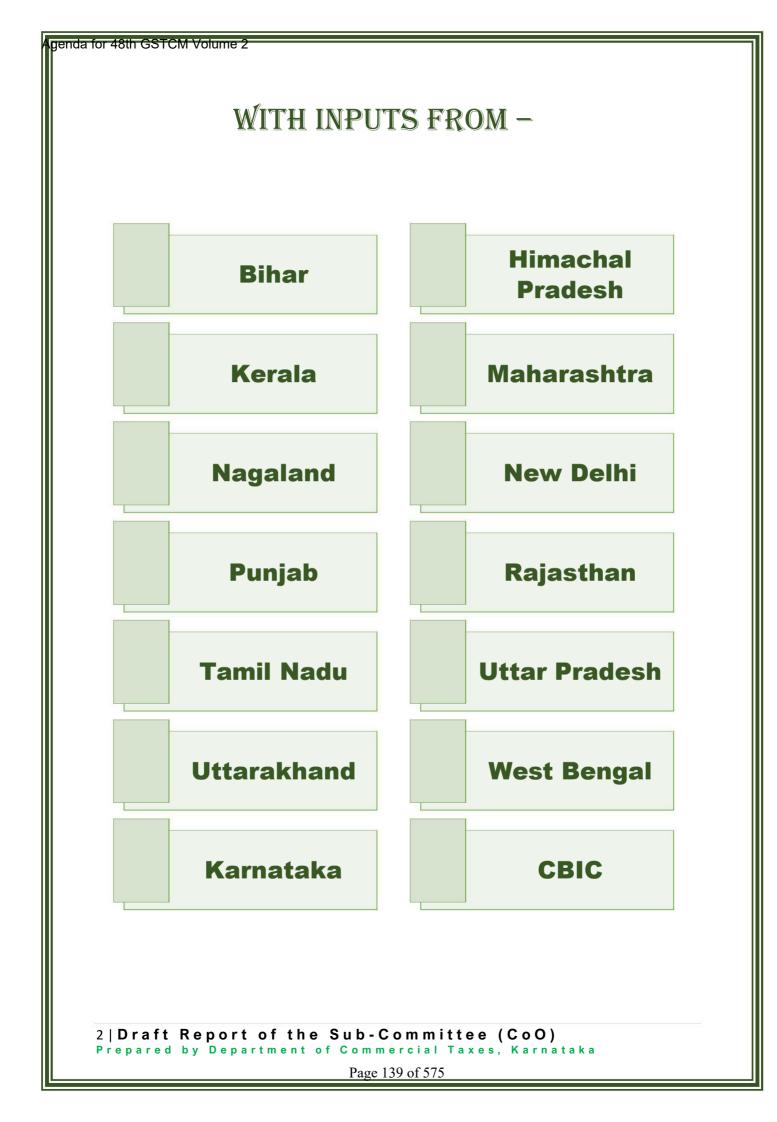
Under the guidance of

## **Smt. SHIKHA.C, IAS**

Commissioner of Commercial Taxes (Karnataka)

### 19-03-2022

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# FOREWORD

Prior to the introduction of GST from 1st July, 2017, even with the VAT regime prevalent in the States, there were considerable variations in the laws and rules providing for taxation on sale of goods and a few services (entertainment etc.). The thresholds for registration and tax liability, rates of tax, point of levy, formats of returns and the periodicity of their filing, etc. varied. While a few States provided for self-assessment with a provision for audit and reassessment in selected cases, others provided for mandatory assessment by the Departmental officers. The process and procedures of assessment and reassessment of taxpayers varied widely to suit the local laws and regulations as well as the local trade practices which moulded such law and regulations. Similarly, while in a few States the entire process of registration, return filing, tax payment, processing of returns filed etc. was digital and automated, in others it was predominantly paper based and manual. Neither were there any commonalities in the process and procedures adopted by the different State tax administrations for assessment or reassessment of taxpavers nor was there any necessity. Consequently, the need and enabling ecosystem did not exist for a structured exchange of experience and knowledge gained by the different States tax administrators in assessment and reassessment or other areas.

One of the main objectives of GST introduction was to create one common market in the country by totally removing the wide disparities and compliance complexities among the States in taxation of goods and services that had led to not only tax inefficiency but also interfered in investment decisions. GST has provided a uniform structure in taxation of goods and services throughout the country. There is total uniformity in taxable event, tax rates, point of levy, provisions for registration, return filing, tax payment, refunds, audit, adjudication, appeals etc. GSTN has created the necessary digital backbone to ensure seamless uniformity in the process and procedures relating to registration of taxpayers, return filing, tax payment, refunds etc.

Self-assessment/self-compliance is the edifice upon which GST eco-system is built. Though it provides for audit of taxpayers, it does not make it mandatory in all the cases. It is well accepted that Audit is a suboptimal solution to

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enforce tax compliance. Unless the processes and procedures of selection of cases for audit and the consequent proceedings are grounded on sound principles of neutrality, transparency, accountability and sustainability, and outcome of audit is analyzed and appreciated, the purpose of audit would not be served and it would amount to wasteful deployment of limited human resources. It is imperative that audit should be transformed into an effective tool to mould corrective policy decisions to create a positive environment for total compliance. With implementation of GST the States have readily accepted that uniform taxation policies will create an enabling conducive environment for trade and industry to flourish with equal opportunities. Uniform adoption of the tried and tested best practices of audit procedures and processes by all the States as well as the Centre would enable consolidation of the outcomes of the individual States and the Central Authorities and their analysis for any consequential policy decisions, thereby sub-serve the primary objective of GST and ensure stable revenues to the States. The sharing of experience and knowledge gained can be efficiently and gainfully shared among the States and replicated, if the procedures and processes adopted are uniform. There can be an efficient deployment of limited human resources by the States in focused and productive activities.

It is precisely for these reasons that the Department of Commercial Taxes, Government of Karnataka brought out a comprehensive KGST Audit Manual Version-1 on 01-01-2021. The purpose was to delineate the principles and policies of audit conducted under the KGST Act, 2017 and the rules made there under. The guidelines provided in the manual are intended to enable audit officers to carry out effective audit in a uniform, efficient and comprehensive manner adopting the best international practices. The Audit Processes envisaged under the GST regime are ably assisted by technological tool named "e-Shodhane Audit Module" which complements and enhances the domain knowledge of the Audit officers. The name E-**Shodhane** is comprehensive in its expression conveying the meaning of verification, examination, investigation, scrutiny and the like. As a fillip to our efforts to have a robust GST Audit Mechanism and to contribute the experience that we have gained in the GST regime, constitution of Committee of Officers (CoO) on GST Audit by the GST Council and inclusion of Karnataka in the CoO as a member came at an opportune time and was a significant development in the overall context of GST.

On behalf of Karnataka, I wish to place on record my sincere gratitude to the GST council for giving the State an opportunity to be part of the Committee and Sub-committee of Officers constituted "To study audit policy and practices

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of the Centre and the States which have already implemented certain procedures". The sub-committee was an offshoot of the Committee of Officers on Audit constituted by the GST Council on 27.07.2021, which was done after recognizing the importance of Audit in the GST system. It was found imperative that an effective audit mechanism comprising of the best practices and procedures tried and tested by the various indirect tax authorities in the country needs to be adopted to deter any misuse of the self-assessment feature and promote total compliance.

My compliments to **Shri. Ravi Jesuraj S, Additional Commissioner of Commercial Taxes, (Audit, Intelligence and Co-ordination) (K)** and his team of officers of this Department for their earnest efforts in preparing this report. My special thanks to Dr. Amandeep Singh, Additional Director General, DG Audit Headquarters, CBIC, convener of CoO, who facilitated online Webex Meetings and for giving his valuable inputs. I hope the best practices and procedures in GST Audit documented in **Part-I** and proposed by way of recommendation in **Part-II** will determine the GST Audit policy across GST Audit Jurisdictions in the country.

#### Ms. Shikha. C IAS.,

Commissioner of Commercial Taxes, Department of Commercial Taxes, Government of Karnataka, Bangalore.



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## EXECUTIVE SUMMARY

GST, as universally understood, is a trust-based taxation system anchored strongly on self-compliance/self-assessment by the tax payers. In order to validate such self- assessments and to correct any non-compliance of/non-adherence to the GST law and rules that adversely impact revenue legitimately due, whether unintentional or otherwise, an effective audit mechanism comprising of the best practices and procedures tried and tested by the various indirect tax authorities in the country needs to be adopted. Such a mechanism should be moulded on a structured audit process. Needless to emphasize that GST Audit in principle should be systematic, coherent and comprehensive primarily premised on identified risk areas, unexplored compliance verification parameters and eventually educating and empowering the Tax Payers in voluntary compliance while making the tax authorities more effective and efficient.

To achieve the above objective, the GST Council re-constituted a Committee of Officers (CoO) vide File No. 350/Future Initiative/GSTC/2019 Dated: 27-07-2021 on GST Audit, which held its first meeting on 27-08-2021 on WebEx platform. It initiated a discussion on the Audit policy and practices adopted by the various States and the Centre and their administrative suitability for uniform adoption across the country. In pursuance of the discussion held thereon, the aforesaid CoO was further split into sub- committees vide Order Dated: 31-08-2021 and the task of this sub-committee was "*To study audit policy and practices of the Centre and the States which have already implemented certain procedures*".

The Sub-committee comprised of members from the State of Karnataka and the Officers from the Central GST and was required to study the audit policy and practices of the Centre and States that have already implemented certain procedures adopted certain practices and to provide a report on the study.

In consequence thereof, a meeting of the aforesaid sub-committee was convened by Dr. Amandeep Singh, Additional Director General, DG Audit Headquarters, CBIC. In the online meeting held, the officers from Karnataka had identified certain points/topics that can be dealt with in studying the audit

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policies and practices of the Centre and States that have already implemented certain procedures and to design the Model GST Audit Policy.

#### These topics are as under: -

**i.** Identification of the risk parameters considered for selection of cases for audit / Basis for selection of cases for audit (including any process of random selection of cases that may not be strictly covered by identified risk parameters)

**ii.** Scope of audit - whether restricted to only the flagged risk parameters or all business transactions of the auditee.

**iii.** Need for audit of all or some of the other related registered persons in the value chain based on audit findings in selected primary cases. Norms for such action i.e., whether to have the same audit officer for all cases, approach for co-ordination among different audit officers, oversight etc.

**iv.** Need for audit of other years of the same auditee based on audit findings in selected cases.

**v.** Criteria for authorization of the officers for selection of cases for audit and the process for final approval of a case for audit i.e., administrative system of audit in a State including the assignment issuing authority.

vi. Basis/criteria for allocation of cases for audit - cadre, turnover.

**vii.** Need for fixing numerical targets, both upper and lower limits, on the number of cases that are to be audited in a year by the State

**viii.** Any time limit to be set for completion of audit of various sectors: large, medium, small etc., (lesser than that mandated by the Act).

**ix.** Feedback mechanism and its functioning – in selection of cases for audit, in the process and conduct of audit and in the acceptance of final audit report.

**x.** Post-audit process - Any Committee for review of the audit report and recommendation for adjudication and who is the adjudicating authority.

**xi.** Any oversight of post-adjudication proceedings and its mechanism follow-up of additional demand created, ascertaining the correctness of the adjudication order for its sustainability, putting up proper defense in appeal, etc.

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xii. Any central repository of audit outcomes.

**xiii.** Co-ordination between State and Central audit officers - in similar cases, similar businesses, exchange of approaches, findings, outcome in appeals etc.

**xiv.** Role of technology in automating audit process – Connecting electronically every audit procedure seamlessly - the E-audit modules developed by the States, or those in the pipeline, to introduce technology in the audit process and its interface with the audit officer and the auditee.

The Sub-committee held several intensive discussions, moderated by Dr. Amandeep Singh, Additional Director General, DG Audit Headquarters, CBIC, on the above topics to identify the best practices and procedures of the States and the Centre that would probably determine model audit policy and practices and there was a broad agreement on the issues covered. However, inclusion of point no. 14 namely the Role of technology in automating audit process was suggested by the Additional Director General, DG Audit, Headquarters CBIC. The sub-committee concurred with the suggestion of the learned ADG and it was taken as an additional topic for consideration in this report.

Further, it was decided unanimously by the members of the subcommittee that feedback/suggestions from all the State Departments on the aforesaid topics could be sought so as to understand their audit policy and practices. Accordingly, a letter dated 12- 10-2021 was emailed to the Commissioners of all the States and Central GST. Some States have sent in their feedback/suggestions which are documented in this report.

This document broadly covers the common Audit policy and practices adopted by the Audit jurisdictions across the country. The systemic approach to GST Audit followed by the State GST administrations, prima-facie, differ in varying degrees due to the administrative architecture that was designed for erstwhile tax administration. Notwithstanding such variations, the commonalities inherent in their Audit policies and practices are inferred in the overall context of the GST Act and the Rules and this report is precisely premised on such 'inferred commonalities'. The issues that are covered in this report may be termed as determinants of Model GST Audit Policy and Practices.

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The report contains two parts, the first part is a documentation of the GST Audit practices and the policies of the Centre and the States that have implemented certain procedures and adopted certain practices. The second part is the model GST Audit best practices and procedures which are recommendatory in nature.

I wish to express my grateful thanks to the Learned Commissioner of Commercial Taxes (K) for her kind guidance and unstinted support. I am indebted to Dr. Avinash Rajendran Menon IAS Additional Commissioner of Commercial Taxes (Services Analysis Wing) (Former) for his invaluable inputs and guidance. I also wish to express my sincere appreciation to my supportive colleagues Shri. Rajeev S E, Deputy Commissioner of Commercial Taxes, Smt. Shruthi Chethan, Deputy Commissioner of Commercial Taxes and Dr. Deepthi Suresh, Commercial Tax Officer (Probationary Officer).

#### Ravi Jesuraj. S

Additional Commissioner of Commercial Taxes, (Audit, Intelligence & Co-ordination), Government of Karnataka, Bangalore.



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## COMMITTEE OF OFFICERS (CoO) ON GST AUDIT

#### **INITIAL CONSTITUTION:**

Committee of Offices (CoO) on GST Audit has been constituted in pursuance of discussion and decision in the First National GST Conference held on 25.11.2019 to have joint & collaborative efforts for GST Audit; capacity building for audit and to follow uniform practices for GST Audit in Centre and State Tax administration

Centre	State/UT	GSTN	GST Council Sectt.
<ol> <li>Addl. DG, DG Audit Headquarters, CBIC - [Convenor]</li> <li>Pr. Commissioner, GST Policy Wing, CBIC</li> <li>Pr. Commissioner, Meerut (Shri S.V. Singh)</li> <li>Principal ADG/ADG, DGGI Headquarters, CBIC</li> <li>Pr. ADG/ADG, DG Analytics &amp; Risk Management</li> <li>Pr. ADG/ADG, NACIN, Faridabad</li> </ol>	Commissioner of Commercial Taxes, Karnataka (Shri Srikar M. S.)-[Convenor] Special Commissioner of State Tax, NCT of Delhi (Shri Udit Prakash Rai) Special Commissioner, State Tax, Gujarat (Shri Samir Vakil) Additional Secretary, State Tax, Bihar (Shri Arun Kumar Mishra) Joint Commissioner, State Tax, Maharashtra (Shri Prasad Joshi) Joint Commissioner, State Tax, Assam (Shri Gautam Dasgupta) Joint Commissioner, State Tax, West Bengal (Shri Narayan Chandra Guriya) Joint Commissioner (TRU), Commercial Tax HQ, Lucknow, Uttar Pradesh (Shri Sanjay Kumar Pathak) Deputy Commissioner, State Tax, Uttarakhand (Shri Praveen Gupta) Deputy Commissioner (ST), Puducherry (Shri K. Sridhar)	EVP, GSTN	Joint Secretary (Shri Dheeraj Rastogi) Director (Ms. Ujjaini Datta) Under Secretary (Shri Rakesh Agarwal)

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## INITIAL TERMS OF REFERENCE (TOR):

To prepare a comprehensive All India GST Manual taking into account procedures & practices in vogue in different States and Centre;

To explore having joint and collective GST Audit by Centre & State for the taxpayers in many sectors that have all India presence like Telecom, Airlines, Banking, Railway etc.;

To explore conducting thematic audit by both tax administration;

Using capability of data analytics developed by DGARM for identification of State taxpayers for audit;

To suggest measures of capacity building in Services for focused approach on audit of Services sector; and

To build knowledge on financial accounting and focused approach towards interpreting business contract/agreement and understanding of system driven business process through SAP, Oracle, Tally etc.;

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## **RE-CONSTITUTION:**

Centre	State/UT	GSTN	GST Council Sectt.
<ol> <li>Addl. DG, DG Audit Headquarters, CBIC - [Convenor]</li> </ol>	<ol> <li>Commissioner of Commercial Taxes, Karnataka (Shri Srikar M. S.)-[Convenor]</li> </ol>	EVP, GSTN	Joint Secretary (Shri Dheeraj Rastogi)
2. Pr. Commissioner/ Commissioner, GST Policy Wing, CBIC	2. Commissioner of Commercial Taxes, Rajasthan (Dr Preetam B. Yashvant)		Director (Ms. Ujjaini Datta)
3. Pr. Commissioner, Meerut (Shri S.V. Singh)	<ul> <li>Addl Commissioner of Commercial Taxes, Karnataka (Shri. Ravi Jesuraj S)</li> </ul>		Under Secretary (Shri Rakesh Agarwal)
4. Principal ADG/ADG, DGGI Headquarters, CBIC	4. Special Commissioner of State Tax, NCT of Delhi (Shri Udit Prakash Rai)		ngui mai)
Analytics & Risk	5. Special Commissioner, State Tax, Gujarat (Shri Samir Vakil)		
Management 6. Pr. ADG/ADG,	6. Additional Secretary, State Tax, Bihar (Shri Arun Kumar Mishra)		
NACIN, Faridabad	7. Joint Commissioner, State Tax, Maharashtra (Shri Prasad Joshi)		
	8. Joint Commissioner, State Tax, Tamil Nadu (Shri C. Palani)		
	9. Joint Commissioner, State Tax, West Bengal (Shri Narayan Chandra Guriya)		
	10. Joint Commissioner (TRU), Commercial Tax HQ, Lucknow, Uttar Pradesh (Shri Sanjay Kumar Pathak)		
	11. Deputy Commissioner, State Tax, Uttarakhand (Shri Praveen Gupta)		
	12. Deputy Commissioner (ST), Puducherry (Shri K. Sridhar)		

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### MODIFIED TERMS OF REFERENCE (TOR)

To study audit policy and practices of the centre and the States which have already implemented certain procedures

To develop model Audit Manual, taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by States as per administrative suitability.

To broadly outline the procedural aspects of joint and thematic Audit, if and as and when they undertaken with approval of Council.

Using capability of data analytics developed by DGARM for identification of State tax payers for Audit.

To suggest messures of capacity building in services for focussed approach on Audit of services sector.

To build knowledge on financial accounting and focussed approach towards interpreting business contract/agreement and understanding of system driven business process through SAP, Oracle, Tally etc.

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## **FURTHER RE-CONSTITUTION:**

Centre	State/UT	GST N	GST Council Sectt.
1. Addl. DG, DG Audit Headquarters, CBIC - [Convenor]	<ol> <li>Commissioner of Commercial Taxes, Rajasthan (Shri Ravi Jain) – [Co- Convenor]</li> </ol>	EVP, GSTN	Joint Secretary
2. Pr. Commissioner/ Commissioner, GST Policy Wing,	2. Commissioner of Commercial Taxes, Karnataka (Smt. Shikha C.)		Director
CBIC 3. Pr. Commissioner, Meerut 4. Principal ADG/ADG, DGGI Headquarters, CBIC 5. Pr. ADG/ADG, DG Analytics & Risk Management	3. Special Commissioner, State Tax, Gujarat (Shri Samir Vakil)		Under Secretary
	<ol> <li>Special Commissioner of State Tax, NCT of Delhi (Shri Anil Banka)</li> </ol>		
	5. Additional Commissioner, State Tax, Uttarakhand (Shri Amit Gupta)		
	6. Additional Commissioner of Commercial Taxes, Karnataka (Shri Ravi Jesuraj S.)		
	7. Special Secretary, State Tax, Bihar (Shri Arun Kumar Mishra)		
6. Pr. ADG/ADG, NACIN, Faridabad	<ol> <li>8. Joint Commissioner, State Tax, Maharashtra (Shri Prasad Joshi)</li> <li>9. Joint Commissioner, State Tax, Tamil Nadu (Shri C. Palani)</li> </ol>		
	10. Joint Commissioner, State Tax, West Bengal (Shri Narayan Chandra Guriya)		
	11. Joint Commissioner, State Tax, Uttar Pradesh (Shri Vivek Singh)		
	12. Deputy Commissioner (ST), Puducherry (Shri K. Sridhar)		

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## **MEMBERS (STATE):**

SL No.	Name of the Members	Designation
1	Shri. Ravi Jain	Commissioner of Commercial Taxes, Rajasthan
2	Smt. Shikha C	Commissioner of Commercial Taxes, Karnataka
3	Shri. Samir Vakil	Special Commissioner, State Tax, Gujarat.
4	Shri. Anil Banka	Special Commissioner, State Tax, NCT of Delhi.
5	Shri. Amit Gupta	Additional Commissioner, State Tax, Uttarakhand.
6	Shri. Ravi Jesuraj S	Additional Commissioner of Commercial Taxes, Karnataka
7	Shri. Arun Kumar Mishra	Special Secretary State tax, Bihar.
8	Shri. Prasad Joshi	Joint Commissioner, State tax, Maharashtra
9	Shri. C Palani	Joint Commissioner, State tax, Tamilnadu
10	Shri. Narayan Chandra Guriya	Joint Commissioner, State tax, West Bengal.
11	Shri. Vivek Singh	Joint Commissioner, State tax, Uttar Pradesh.
12	Shri. K Shridhar	Deputy Commissioner (ST), Puducherry

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## **MEMBERS (CENTRE/GSTC):**

SL No.	Name of the Members	Designation
1	Dr. Amandeep Singh-Convener	ADG, DG Audit Headquarters, CBIC.
2	Sh. Sanjay Mangal	Pr. Commissioner, GST Policy Wing CBIC.
3	Sh. Rajiv Jain	Pr. Commissioner, Meerut.
4	Sh. Sunil Tated	Principal ADG/DGGI Headquarters, CBIC.
5	Sh. Gurusharan Singh	ADG/DG analytics and Risk Management
6	Sh. Ashutosh Banwal	Pr.ADG, NACIN, Faridabad
7	Sh. Dheeraj Rasdogi	EVP, GSTN
8	Smt. Ashima Bansal	Joint Secretary, GST Council
9	Sh.Kshitendra Verma	Director GST Council
10	Sh. Karan Choudhary	Under Secretary, GST Council

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## FORMATION OF SUB-COMMITTEE:

In pursuance to the formation of Sub-committee is formed vide Order dated:31-08-2021 and to further facilitate and accelerate the reports, the following further sub-committee are formed for items numbers 1, 2 and 3 of the modified Terms of Reference.

Sl No.	Task	Centre	State	Issues to be covered
(a)	To study Audit policy and practices of the Centre and States which have already implemented certain procedures.	ADG Audit, Pr.Commr, Meerut(S,h.Sunil Jain, Commissioner of Customs, Mumbai-Co-opted).	Karnataka	Study Audit policy and practices of the Centre and States which have already implemented certain procedures and to provide a report on the study.
(b)	To develop Model Audit Manual taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by the State Administrative suitability.	ADG, Audit EVP,GSTN, (Sh.Ravneet Singh Khurana, Spl.Secretary, Government of Punjab - Co-opted).	Gujarat West Bengal Bihar	To propose a model Audit manual documenting Audit policy and procedures adopted by Centre and State.
(c)	To broadly outline the procedural aspects of joint and thematic audit, if and as when they are taken with approval of the Council	(O.P.Patel, Jt.Commissioner, GST Policy Wing-Co- opted).	Maharashtra Uttar Pradesh	Propose a document containing mechanism to be created to develop a policy and procedure to identify themes for joint and thematic audits, including the mechanism for its supervision.

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Compilation of GST Audit best practices and policies of the Centre and the States that have already implemented certain procedures.



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## Identification of the risk parameters considered for selection of cases for Audit/Basis for selection of cases for Audit

(Including any process of random selection of cases that may not be strictly covered by risk parameters

### 1. Tamil Nadu

A set of risk parameters like registration, nature of commodity, return filing, e way bill, refund, ITC, payment pattern, external data are considered to identify the tax payers for the purpose of audit. The data is further classified as follows:

- a) High Risk
- b) Medium Risk
- c) Low Risk

In addition to the above, a random selection of 5% cases which are not part of any of the above risk categories and 1% of the case from those which are already audited are also considered.

## 2. Rajasthan

The following are the main risk parameters which are predominantly considered by the State for identification of cases for audit-

- A. Taxpayers claiming itc of more than an amount from eligible itc.
- **B.** Taxpayers who have filed all returns and tax adjusted from cash ledger is less than an amount.
- **C.** Taxpayers who have filed all returns and difference in tax liability in gstr-1 > gstr-3b by an amount.
- **D.** Composition taxpayers having turnover of more than 1.25 crore.
- E. Newly registered taxpayers with high turnover of more than an amount.
- **F.** Taxpayers with (a) multiple use of pan (b) multiple use of email ids (c) multiple use of mobile nos.
- G. Refund amount is greater than an amount.

H.Taxpayer having purchases from registration cancelled taxpayers. 19 | Draft Report of the Sub-Committee (CoO) Prepared by Department of Commercial Taxes, Karnataka

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- **I.** Shipping bill/export proof submitted by taxable person not verified from Icegate.
- **J.** The taxpayers whose tcs/tds is deducted and are defaulters in filing their gstr 1 and gstr 3b.
- **K.** Turnover declared in gstr 3b must be comparable with tds/tcs deducted (it should be more than 100 times than tcs deducted and more than 50 times than tds deducted).
- L. Taxable persons dealing in evasion prone commodities/services as per HSN/SAC code.
- **M.**Taxpayer having tax liabilities of an amount and discharging it 100 percent by using ITC.
- **N.** High spike by n amount in e-way bill value in n months.
- **O.** Ratio of Output Tax paid in cash to the total turnover in the current year is n percentage point higher to the ratio of the same in the previous year.
- **P.** Ratio of Output Tax paid to Net Profit in the current year is n percentage point higher to the ratio of the same in the previous year.
- **Q.** Taxpayers whose loss is greater than n amount.
- **R.** Taxable Persons whose turnover is less than n percentage point turnover from the previous year.
- **S.** Ratio of expenses to turnover in current year is greater than the ratio of by n than same in the previous year.
- **T.** Audit not done in last n years.
- **U.** The ratio of exempted supply of services or goods to total turnover in the current year is n percentage point higher when compared to the ratio of the same in the previous year.
- **V.** Taxpayers filing return late by n months.

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- W. Taxpayers against whom the orders u/s 74, 129 & 130 have been passed in the previous/current year.
- **X.** Taxable persons who have not filed all returns during the year and whose turnover in the previous year is greater than by an amount.

## 3. Delhi

A list of risky Tax payers falling within the jurisdiction of Delhi State are being provided by the Directorate General of Analytics and Risk Management (DGARM)/BIFA for the audit purpose. Risk score is assigned to the taxpayers by (DGARM)/BIFA based on certain parameters, such as sales turnover is less than the purchase turnover, high ratio of zero rated turnover to total turnover, very high ratio of tax paid through ITC to total tax payable as per GSTR-3B, decline in average monthly taxable turnover as per GSTR-3B, positive difference between ITC shown in GSTR-3B and ITC as per GSTR-2A, etc., Active taxpayers are being selected from such list for conducting Audit based on the category within which such taxpayers fall(i.e. large/medium/small) as well as their risk score.

## 4. Uttar Pradesh

The following risk parameters are considered for audit:

- a. Inward supply from bogus dealers.
- b. Zero cash set-off against tax liability.
- c. Inward supply received but no outward supply.
- d. Difference between GSTR-1 and GSTR-3B.
- e. GSTR-1 submitted but GSTR-3B not submitted.
- f. Manufactures whose cash set-off is less than 5 percent.
- g. GSTR-9 not filed.
- h. ITC difference between GSTR-2A and GSTR-3B.
- i. Three or more cases booked by mobile squad.
- j. Cancelation of E-way bill is more than 2 percent.

Note :- Other than above risk parameters, some dealers of services and manufactures of sensitive goods are also included by the State.

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## 5. Kerala

The Risk-based taxpayer's selection for conducting the audit is done at the Commissionerate level. The target followed by the State for audit is 30% each for Large tax payers, Medium Taxpayers and the Small Taxpayers. The balance will be reckoned from the suggestions or recommendations made by other wings of the Department. It is the responsibility of the Audit Commissionerate to prepare an audit schedule for a whole year and review the audit progress in participation with the taxpayer's services unit and the audit wing. The audit plan so designed shall be implemented from April 1st of each year.

## 6. Nagaland

The State follows certain identified risk parameters for selection of cases for audit.

## 7. Himachal Pradesh

The State analyzes normal taxpayers based on return data for 9 months i.e., July 2017 to March 2018. Total 4.06 lakhs GSTR 3B returns and unique 63842 normal taxpayers are covered for analyses. It also considers taxpayers other than normal taxpayer, (Source of data SFTP Server, GST Pro/Prime, BO web portal and BIFA/GSTINs.). Top 500 out of above normal taxpayers were shortlisted on different parameters for audit. These parameters are:

A. Segregation of normal taxpayer under State jurisdiction on different parameters like –

- i. Taxpayer's nature of business (manufacturer, wholesaler, retailer, and service sectors etc.),
- ii. registration status (active/cancel),
- iii. registration type (new/migrated),
- iv. jurisdiction-wise, zone/district-wise,
- v. -revenue to State-wise (contributor / dragger / neutral).

B .Turnover

C. Net contributions

D. BIFA/GSTIN indications

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E. Ratio(s)

F. Refund reports

G. Annual return GSTR9 & 9C

(For details please refer HP GSTAM-2019)

#### 8. Uttarakhand

The selection of tax payers is being done by the State, on the following parameters-

Evasion-prone Goods and Services – Iron and Steel, Pan Masala, tobacco, Plywood, Works Contractor etc

Higher rate of Tax

Output Liability Vs Cash Set Off Ratio

DGARM Data

In addition to the above, Human Intelligence, previous track record of the tax payers in the VAT regime/Central Excise and Service Tax are also considered.

#### 9. Punjab

For the year 2017-18 parameters as deployed by CBIC as well as that of the internal SAS tool and GSTN risk score were employed for identification of cases for audit. For the year 2018-19, the risk parameters as detailed in BIFA have been proposed to be utilized for the selection of cases for audit. The outcome of 2017-18 audit cases will also be used as input for selection of cases for 2018-19.

#### 10. West Bengal

The Commissioner by a general or specific order may select any registered person for audit of his books of accounts for a specific period. The Commissioner may fix the criteria of selection based on certain parameters as he may deem fit.

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Selection based on Return related Risk Parameters: The list of potential highrisk taxpayers may be prepared by selecting one or multiple criteria under different major risk heads from the available options, viz.: Specific benchmarks may be fixed against the risk criteria for each of the above major heads such as:

Only the normal taxpayers under the State/Central jurisdiction, i.e., the taxpayers who are required to file Form GSTR- 3B and Form GSTR-1, may be selected by the Commissioner.

Those tax-payers who have filed at least 06 (selection criteria for 2017-18) & 09 (selection criteria for each subsequent year) Form GSTR-3B in the financial year may be selected.

The taxpayers' pool may be divided into 3 segments namely Large, Medium & Small based on turnover in the State, where Large taxpayers will be those having Turnover in the State > Rs. 100 crores, Medium tax payers will be those having aggregate Turnover in the State ranging from Rs. 10 crores to Rs. 100 crores and Small taxpayers will be those having Turnover in the State < Rs. 10 crores. This turnover limit while fixing the selection criteria may vary from State to State, in different Zonal levels of a particular State and also for service sector when compared to that for goods.

All risk parameters are required to be identified and all probable aspects need to be considered to identify non-compliance and non-payment / short payment of tax, interest, late fee, penalty etc and evasion of tax.

To select the tax payers for audit in an effective manner, secondary data source (such as VAT/Service Tax/Central Excise/Custom data, Income Tax data etc.) may be considered along with the primary data source (i.e. GST data).

The weightage of each parameter may vary depending upon its importance in selection of taxpayers for audit.

Based on the average weight considering all the parameters, a final score may be calculated on the basis of which the final selection may be done.

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The final selection of taxpayers to be audited may be done based on the descending order of the final score thus calculated. In case, more than one Registered Taxable Persons has the same final score, the parameter of declared liability will then be considered and a taxpayer with more declared liability will be selected first.

A Selection Committee is constituted to identify various risk parameters for selection for audit considering all the aspects where there are chances of lack of compliance of the Act resulting in short payment of tax etc.

i. This final score is calculated based on the data for each financial year and the parameters as well as the weightage adopted will undergo necessary modifications, if required.

j. In case the Registered Taxable Persons selected for audit have multiple registrations under the same PAN / TAN in the State, it is suggested that all such registration numbers may be selected for audit.

k. 10% of the selection of the tax payer is done on random basis.

#### 11. Karnataka

The selection of cases for audit is done on the basis of compliance risks and risk evaluation method using a specially developed tool named as E-Shodane online Audit module (electronic Scrutiny of High-risk cases, Audit Observations & DRC under Assessment module). Cases with at least 2 or more risk factors are selected for scrutiny. Top 60,000 involved in the business of evasion-prone commodities with primary risk factors are included under secondary risks.

Certain representative selection criteria considered for risk assessment are given below:

R3B <r1< th=""><th colspan="2">Total Output tax declared in GSTR-1 is more than</th></r1<>	Total Output tax declared in GSTR-1 is more than	
	5% of that declared in GSTR-3B.	
R3B>R2A	Total ITC claimed in GSTR-3B is more than 10% of	
	that declared in GSTR-2A.	

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Service Sector	Service Sector cases having more than Rs.10 crore			
	aggregate turnover per year			
TRAN-1	Transitional input credit carried forward from			
	earlier tax regime			
Delayed ITC	If ITC availed in Form GSTR-3B filed after			
	23/04/2019 for the FY 2017-18			
Evasion	Top 60,000 Taxpayers dealing in evasion-prone			
Prone Comm.	commodities			
ITC Block	Input Tax Credit blocked cases			
Old Refund	Refund sanctioned by the LGSTOS/SGSTOs under			
	Manual Refund process (up to 25/09/2019)			
New Refund	Refund sanctioned by the LGSTO/SGSTOs under			
	Online Refund process (After 26/09/2019)			
Inspection	Cases having inspection/investigation reports.			
Reports				

In addition to system identified cases, there is a provision for the field level officers to identify cases for audit based on local intelligence network, which also carry risk of revenue leakage.

#### 12. Bihar

The selection of taxpayers for audit is done centrally on the basis of risk parameters devised centrally by the CCT and other officers

Some parameters include: -

Total tax/turnover,

- Throughput of tax,
- Percentage discharge by credit,
- Credit claim at odds with system generated reports,
- Inspection report or adverse information,
- Disproportionate use of e-way bills,
- Discrepancies in statutory forms,
- Evasion prone commodities

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The parameters are customizable for larger and smaller circles VAT Audit in the State. The selection is generally, 2-3% of taxpaying dealers are selected for audit (ceiling 10%) by 31st March of following year. Criteria for selection is notified by the Commissioner and list of dealers is posted on official website of Department within 15 days of selection along with criteria. Taxpayer objecting to selection may file objections to Commissioner by the end of May of the following year. The objections to be dealt with by the Commissioner within one month. After hearing the taxpayer any consequent changes to the list of dealers to be made and final list to be posted on website within 15 days of the order.

#### 13. Maharashtra

The audit parameters are a mix of mismatch thrown by information available with the Department like GSTR-1, GSTR 3B and GSTR -9/9C and also with a view to learn new sectors with emphasis on the size of revenue.

#### 14. Centre

Given the large number of registered persons under GST, it is impossible to subject every registered person to audit each year with the available resources. Selection of units for audit in a scientific manner is extremely important as it permits efficient use of audit resources viz. manpower and skills for achieving effective audit results. The registered persons are selected on the basis of assessment of the risk to revenue. This process, which is an essential feature of audit selection, is known as 'Risk Assessment'. It involves ranking of the registered persons according to a quantitative indicator of risk known as a 'risk parameter'. Risk Assessment Programme jointly run by DG (Audit) & DGARM. Lists of category- wise taxpayers provided by DGARM. Allocation of units as per Large, Medium and Small amongst the audit teams. Allot to the Audit teams 7/8 number of taxpayers out of the 80% list of Taxpayers provided by DGARM. Allots 10 % Random list of Taxpayers amongst the Audit Teams. The remaining 20% of the taxpayers to be audited should be selected by the Audit Commissionerate based on local risk factors, after obtaining approval from the jurisdictional Chief Commissioner.

A scientific and well deliberated Risk Assessment programme has been developed in coordination with the Directorate General of Analytics and Risk

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management to identify risky taxpayer. List of most risky taxpayers have been shared with the Audit Commissionerate to facilitate selection for audit.

Presently 34 risk parameters are being used. The broad heads for calculating the risk scores are as under: -

1. IGST payment at the time of import is more than the ITC availed

**2.** Ratio of nil/exempt to total turnover (minus non-GST supplies)

3. Zero rated to total turnover (minus non-GST supplies)

**4.** Very High Ratio of Tax paid through ITC to total Tax payable

5. Ratio of Non-GST supplies to total turnover

6. Ratio of inward supplies (liable to reverse charge) to total turnover

7. Late filing of returns

8. Stop filers

**9.** Positive Difference between ITC shown in Table 4A (5) of GSTR-3B and ITC as per GSTR 2A.

Probable Local Risk Parameters Few examples of local risk parameters that may be considered during selection of units for audit. The planning section, Head-quarters of Audit Commissionerate may consider all or some of the below criteria, depending on available data and resources, and may also use additional criteria not listed below. The Taxpayer who did not provide or delayed in providing documents sought by the Audit Team. The Taxpayer was not previously audited; Length of time since last audit; The size of the Taxpayer's turnover / net profit; The size of the Taxpayer's loss, if any; The size of the Taxpayer's refund, if any; The size of change in the Taxpayer's turnover/net profit from the previous year; The size of the impact detected mistakes had on the Taxpayer's turnover/ net profit; Taxpayer dealing with sensitive commodities/supplies.

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## Π

## Scope of Audit - whether restricted to only the flagged risk parameters or all business transactions of the auditee.

## 1. Tamil Nadu

In general, the audit covers all business transactions of auditees but a plan to introduce desk audit only for flagged risk parameter is also in the pipeline.

## 2. Rajasthan

The scope of the audit is not limited to red flagged risk parameters, it encompasses all major points which are whether covered under red flagged risk parameters or not. As the taxpayer might have the possibility of evading the tax at multifarious levels, so all points related to business sector must be considered and looked into in depth. Sometimes, the sensitive points become noticeable after the detailed examination of the books of accounts and record pertaining to the business unit and hence, it becomes vital to perceive the things in detail.

## 3. Delhi

When the audit of any taxpayers has been taken up, which has been selected on the basis of parameter as stated at point No. 1 above, then all business transactions of such taxpayers for the particular financial year for which audit is being conducted are covered in such audit.

## 4. Uttar Pradesh

It includes all business transactions of the auditee.

## 5. Kerala

The audit may not be restricted only to the extent of flagged risk parameters. An efficient and effective audit system in all aspects based on a checklist will

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increase voluntary compliance and facilitate the tax administrations aim of getting the right tax at the right time.

#### 6. Nagaland

The State is of the opinion that the scope of audit may not be restricted only to flagged issues.

### 7. Himachal Pradesh

All business transactions of the auditee are covered under GST audit.

#### 8. Uttarakhand

When once the firm is selected for audit then complete audit as per the definition given in Section 2 is done rather than on flagged risk parameters.

### 9. Punjab

The scope of Audit is defined by the definition of 'Audit' u/s 2 of the GST Act, and is primarily focused on verification of the correctness of turnover declared, tax paid, refund claimed and input tax credit availed and to access the compliances of the tax payer with the provisions of these Acts or the rules made there under.

#### 10. West Bengal

As per the audit manual, audit team is required to study various areas to examine the compliance of the selected auditee apart from the criteria of selection. Audit is defined in sub-sec 13 of sec 2 of the CGST/WBGST Act, 2017 as "detailed examination of records, returns and other documents maintained or furnished by the taxable person under this Act or Rules made thereunder or under any other law for the time being in force to verify, inter alia, the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or rules made thereunder".

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#### 11. Karnataka

When, once a case is selected for audit, its scope is not restricted only to the flagged risk parameters, but will cover all the transactions of the auditee.

#### 12. Maharashtra

Based on the risk methodology, a list of cases will be communicated to the Nodal /Local Tax Unit audit Officer (i.e. L.T.U), for the purpose of conducting audit for the audit year. The list will contain the names of the registered persons and the risk indicator along with the action points for decision support so that the Audit officer is aware of the area to focus while conducting audit. Nodal / LARGE TAXPAYER'S UNIT officer with the recommendation of concerned Joint Commissioner may propose cases to be audited based on local risk parameter and the cases be conveyed to the Committee comprising Addl. CSTs headed by the Special CST and it is ensured by them that 20% of the taxpayers to be audited are selected based on local risk.

#### 13. Bihar

Selection of taxpayers for audit is done centrally on the basis of risk parameters devised centrally by the CCT and other officers. The parameters are customizable for larger and smaller circles.

#### 14. Centre

The scope of audit is determined in the Desk Review conducted by each audit officer and it includes the flagged risk parameters and all business transactions of the auditee. In the Desk review - emphasis is on gathering data about the registered person, his operations, business practices and an understanding of the potential audit issues, understanding his financial and accounting system, studying the flow of materials, cash and documentation and run tests to evaluate the vulnerable areas. The idea is to gather as much relevant information about the registered person and its operations, as is possible, before visiting the unit. It culminates in development of a logical audit plan and focus on potential issues.

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#### genda for 48th GSTCM Volume 2

## III

Need for audit of all or some of the other related registered persons in the value chain based on audit findings in selected primary cases. Norms for such action i.e., whether to have the same audit officer for all cases, approach for coordination among different audit officers, oversight etc.

#### 1. Tamil Nadu

Considering the man-power constraint, the State is of the opinion that, it is not feasible to take up all the taxpayers in the chain for Audit. However, some of the cases may be considered based on the inputs from the audit team. It is also not mandatory to have the same audit officer.

At present, no specific procedures are being followed for the approach of coordination among different audit officers, oversight etc.

#### 2. Rajasthan

The other registered persons in the value chain may also be taken for audit. Further, if there are one or two officers posted in the same zone, then audit is conducted by the same officer but if cases are of different zones & regions, then obviously it is conducted by other officers. The Additional Commissioner or Deputy Commissioner of Audit of respective Zone are required to coordinate with each other.

#### 3. Delhi

At present, the audit is being conducted for the selected taxpayers. Based on the audit report/findings, audit of other registered persons in the value chain, is taken only if it is required.

#### 4. Uttar Pradesh

No other registered person in the value chain is taken up for audit.

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#### 5. Kerala

If the audit teams find that the other registered persons in the value chain also need to be taken up for an audit, the team may take up the cases under its jurisdiction with the concurrence of the Audit Commissionerate. Where such other registered person is not falling under the jurisdiction of the audit team it may be reported to the Audit Commissioner to take up the issue with the concerned audit team who have jurisdiction over the area.

### 6. Nagaland

Some of such Registered Taxable Persons in the value chain are taken up for audit. Norms for such action (whether to have the some audit officer for all cases, approach of coordination among different audit officers, oversight etc.,) has not been put in a place yet.

## 7. Himachal Pradesh

Commissioner or any officer authorized by him, may undertake audit of such registered person for such period, at such frequency and in such manner as may be prescribed.

## 8. Uttarakhand

Not all but some registered persons are definitely taken up for audit, if there are serious flaws in the returns and normally the same audit officer is assigned for the audit of that firm/registered person.

## 9. Punjab

The extant audit manual as well as instructions empower the Commissioner of the State Tax to take up any registered person for audit other than those selected on the basis of the defined risk parameters.

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#### 10. West Bengal

There is no such suggestion so far in the audit selection committee to select all the taxpayers in the value chain for audit. Rather, it is suggested that audit team may refer a case to any investigation agency, if more numbers of taxpayers are associated in a value chain where any less payment/nonpayment of taxes is identified.

#### 11. Karnataka

Currently, there is no fixed policy on this issue and decision is taken on case to case to basis.

#### 12. Maharashtra

The modalities are yet to be designed.

#### 13. Bihar

The modalities are yet to be designed.

#### 14. Centre

Audit of taxpayers selected on risk basis is conducted within the jurisdiction of the Audit Commissionerate. In case any other taxpayer of the same chain is noticed, then information is shared with the respective jurisdictional Audit Commissionerate. At present there is no system of coordinated audit of all taxpayers in the value chain.

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## IV

#### Need for audit of other years of the same auditee based on audit findings in selected cases.

## 1. Tamil Nadu

If any inspection of the selected Registered Taxable Persons is conducted for the periods covered in the limitation period, audit shall be excluded for the entire period of inspection. Audit will be generally taken for whole of completed financial year unless, it is specially mentioned to cover part of any financial period. In certain desk audit cases, where audit will be taken only for one financial year and if any defect is detected then it will be proceeded for further previous year.

#### 2. Rajasthan

Based on the audit findings, the Audit of other years of the same auditee can be taken up for audit. In case of the rate of tax disputes, other legal issues or large amount of revenue is involved, then audit is taken for the audit of the same auditee for the different financial years also.

## 3. Delhi

Currently, the audit of the selected taxpayers for the particular financial year/s are being conducted. Based on the audit reports / findings, audit for other financial years is also undertaken if required.

## 4. Uttar Pradesh

On the finding of audit, audit of other years of the same auditee can be taken up with the permission of Commissioner.

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## 5. Kerala

The Audit need not be restricted to a particular financial year. If a tax payer is selected for audit, a complete audit by clubbing more than 1 financial year is to be done. The Audit Commissionerate shall prepare the target parameters per year. The time limit to complete each audit shall be in line with the audit duration as specified in para 2.6.1 of the GST Audit Manual prepared by the CBIC.

## 6. Nagaland

Depending on the audit findings, audit of other years of the same auditee may be considered for audit.

## 7. Himachal Pradesh

The period to be covered under audit is prescribed in Rule 101 (1) of the HP Goods and Service Tax Rules, 2017 as a financial year, or part thereof or multiples thereof to cover the retrospective period up to the previous audit or the limitation period specified in the Act.

## 8. Uttarakhand

If the findings are found to be risk for the revenue, the audit proceedings are initiated for the other financial years also.

## 9. Punjab

The final approval for the selection of the case for audit is given by the Commissioner of State Tax. As far as the audit objections raised, the final authority is the Deputy Commissioner of the State Tax of Division to which the auditee pertains. Further, any un-reconciled objection that could not be finalized during MCM on account of any reason is to be taken up with higher authority.

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#### 10. West Bengal

If an officer comes across any specific information relating to a Registered Taxable Persons and has specific reasons to believe that Audit of the said Registered Taxable Persons books of accounts is required to be done for one or more financial years, or, if any audit officer in the course of audit has specific reasons to believe that an observation made upon audit will have revenue impacts in other periods also, he may send a proposal in this regard to the Commissioner. Similarly, an audit officer or his/her higher authority can propose for any taxpayer to be selected by the Commissioner for audit upon mentioning adequate reasons. The Commissioner upon consideration of all such proposals may select some/all of such Registered Taxable Persons for audit. GSTN has developed a module to facilitate such proposals for suo-motto selection of any taxpayer for audit from the  $L_3/L_2/L_1$  level.

#### 11. Karnataka

Currently, audit is restricted only to the financial years 2017-18 and 2018-19.

### 12. Maharashtra

The modalities are yet to be designed.

#### 13. Bihar

The modalities are yet to be designed.

#### 14. Centre

The period to be covered under audit is prescribed in Rule 101 (1) of The Central Goods and Service Tax Rules, 2017 as financial year, or part thereof or multiples thereof to cover the retrospective period up to the previous audit or the limitation period specified in Section 73 or 74 of the CGST Act, 2017.

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Criteria for Authorization of the officers for selection of cases for audit and the process for final approval of a case for audit i.e., administrative system of audit in a State including the assignment issuing authority.

### 1. Tamil Nadu

Inputs may be received through various sources; however, final selection of list and its approval is done only by the Commissioner of Commercial Taxes. Team of officers headed by the Additional Commissioner (Int) takes care of the process before final approval by the Commissioner of Commercial Taxes.

#### 2. Rajasthan

The major part of selection of the cases should be based on risk parameters decided and it must be on online basis. It must be done through the module developed so that transparency is ensured in selection process of audit cases. There may be a provision to include some cases through the feedback of the field officers. It must also be seen that selection of the cases is based on sectorwise basis depending upon the market trend of that particular commodity/sector. Online selection should be based on maximum risk parameters given. In the process, we can have turnover-wise slab system so that all type of taxpayers from smallest to largest turnover could be examined and the basic motto of audit to ensure timely compliance of the law and procedure is fulfilled and no one is left behind from the ambit of audit.

#### 3. Delhi

Audit cases are being currently selected based on the reports/lists provided by DGARM/BIFA, based on their scale of business and their risk score and the same are allocated to the officers of the Department with the approval of the Commissioner, State taxes in terms of the provisions of the Sec-65 of the DGST Act, 2017/ CGST Act, 2017.

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## 4. Uttar Pradesh

Commissioner is authorized to select cases for audit. On the basis of selected parameters, a committee headed by Additional Commissioner (Law) at the headquarters, selects the dealers for tax Audit and finally approved by the Commissioner. The Joint commissioner (Tax Audit) at zonal level will create a local committee headed by himself and zonal committee headed by the Zonal Additional Commissioner of respective zone.

## 5. Kerala

The Audit Head Quarters will have a Joint Commissioner (Audit) who prepares the audit calendar and convene the Audit Monitoring Committee meetings wherein, the Additional Commissioner (Audit) will chair. The Committee resolves problems in the implementation of the audit system. The Audit Monitoring Committee reviews the audit reports, finalizes the report and recommend it to the adjudicating authority.

### 6. Nagaland

The State is considering to authorize officers as per back office module developed for model 2 State for selection, approval and assignment of cases for audit.

## 7. Himachal Pradesh

The Commissioner or any officer authorized by him, may undertake audit of such registered person for such period, at such frequency and in such manner as may be prescribed.

## 8. Uttarakhand

Selection is done by Audit wing which is headed by the Additional Commissioner (Audit) and final approval is done by the Commissioner.

## 9. Punjab

For the year 2017-18, looking at the administrative structure and the allocated manpower, taxpayers with turnover less than Rs. 50 crores have been assigned to the State Tax Officer as audit team leader and those with turnover greater than Rs. 50 crores have been assigned to the Assistant Commissioner of State Tax as audit team leader.

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#### 10. West Bengal

A committee is formed for deciding the criteria of selection of registered taxpayers for audit for the period from 1.7.2017 to 31.3.2018 and 1.4.2018 to 31.3.2019 with prior approval of the CCT/WB. The committee is formed comprising of following officers:

- a. The Special Commissioner -1,
- b. Special Commissioner (Audit Vertical),
- c. Additional Commissioner ((Audit Vertical),
- d. Additional Commissioners from Circles,
- e. Additional and Senior Joint and Joint Commissioner of Information System Division,
- f. Senior Joint Commissioners of Charges,
- g. Joint Commissioner of GST Policy Planning Unit.

Allotment of selected Registered Taxable Persons – As per provisions of sec 65(1) read with rule 101(1), any officer who is authorized by the Commissioner has the power to audit. If the HQ feels that audit for a particular taxpayer need not to be carried out, the case can be dropped. In order to drop an audit case, proper and adequate reasons are required to be given along with uploading of any document in support of such reasons for dropping the same. Dropping of an audit case cannot be done after the commencement of Audit. After the audit selection, the list of selected Registered Taxable Persons may be made available before the jurisdictional proper officers through the functional hierarchy. GSTN has developed the module for assignment of auditees to Audit Officers.

Allocation of Taxpayer of Zonal Audit Head - The selected cases are required to be allocated to the Zonal level audit head (L2). The system provides facility to the Commissioner i.e. the HQ level (L1) to allocate Taxpayers of a particular Zone to that Zonal level Head (L2). The Commissioner is empowered as the head of the ISD to function as L1 in the system.

In case of already allocated Taxpayer(s), if the HQ officer wants to modify the Zonal officer, he/she may do so after recording reasons for such change. Assignment & Team formation for audit:

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#### 11. Karnataka

On scrutiny of selected cases allotted to them electronically by the Audit Module, the Audit Officers are required to seek further authorization for audit from the Commissioner routing their request through their Divisional Joint Commissioner and the Additional Commissioner (Audit).

#### 12. Maharashtra

Draft parameters are drawn up by the Audit Parameters Selection Committee and presented to the Committee of ACSTs headed by the Special CST for finalizing the identified tax-payers for GST Audit with the final approval of CST. The cases will be distributed by EIU with reference to the risk parameters. Allotment of selected cases to the Jurisdictional Nodal / Large taxpayers unit Audit officer (i.e., Audit officer).

#### 13. Bihar

The Criteria for selection is notified by the Commissioner.

#### 14. Centre

There are 48 Audit Commissionerate's - Each Audit Commissionerate is headed by Principal Commissioner / Commissioner – two Additional / Joint Commissioners, 20 AC/DCs, 80 Superintendents and 100 Inspectors. Administrative Structure – Headquarters – Planning and coordination section, Risk management and quality assurance section, Personnel, Administration and Vigilance section and Technical / Legal and follow up section. Audit Circles – Geographically attached to each Executive Commissionerate. The authorization for conducting an audit is given by the Pr. Commissioner / Commissioner.

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# VI

Basis/criteria for allocation of cases for Audit - cadre, turnover.

## 1. Tamil Nadu

No specific procedure followed.

#### 2. Rajasthan

The allocation of cases is predominantly based on the administrative system where each officer in the State is authorized to assess for a particular pecuniary limit of a case based on the turnover of the tax payer. The same is applied to Audit allocation system and accordingly, the cases are allotted to the officer in the field. Start Risk Assessment of tax payers and calculation of risk Score engine Selects the units for audit (selection criteria based on risk parameters of that year). Allocate Audit task lists to Commissionerate based on CDR Mapping, Allocate Audit task lists to Circles based on CDR Mapping, Allocate Audit task lists to Groups based on CDR mapping Select a unit from list for audit (Audit case created in system Send intimation to unit (GST ADT-01), Start Audit Activity (i) Prepare working Papers (ii) Desk Review (iii) Calculation of financial ratio Send intimation to unit on audit findings GST ADT-01A, Update units reply/consent/objection to findings (GST ADT -1B), Update draft audit report in form of paras created for each finding objection record status of each Para(On spot accepted/not accepted), Update final audit report after MCM Record status of each para with remarks comments Para close Case referred for issuance of Show Cause Notice.

The selection and allocation of cases must carry a message that no one is out of ambit of audit and anyone can be audited at any point of time along with it must be focused that everyone comply the procedure defined in Act.

In Rajasthan State, we have prescribed pecuniary power to the officer which is based on turnover of the tax payer.

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## 3. Delhi

Audit cases are being currently selected based on the reports/lists provided by DGARM/BIFA, based on their scale of business and their risk score and the same are allocated to the officers of the Department with the approval of the Commissioner, State taxes in terms of the provisions of the Sec-65 of the DGST Act, 2017/ CGST Act, 2017.

## 4. Uttar Pradesh

The allocation of cases for audit is based on turnover. 1200 Dealers for 2017-18 and 1200 Dealers for 2018-19 selected for whole of the State. Each Zone is assigned 60 dealers for each financial year.

## 5. Kerala

The Audit Head Quarters will have a Joint Commissioner (Audit) who will prepare the audit calendar and convene the audit monitoring committee meetings, wherein, the Additional Commissioner (Audit) will chair. The committee resolves problems in the implementation of the audit system. The Audit Monitoring Committee in its meetings reviews the audit reports, finalize the report and recommends it to the adjudicating authority.

## 6. Nagaland

The State is yet to work out the details. However, the cases are allotted to the officers on the basis of the turnover.

## 7. Himachal Pradesh

No specific procedure followed for the same.

## 8. Uttarakhand

Since there are twelve teams of Audit in Uttarakhand and each team is headed by Deputy Commissioner. Therefore, there is no basis for allocation of cases Officer-wise.

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## 9. Punjab

Although no target has been fixed for the year 2017-18. It is understood that all the assigned cases (450) for the said year are to be completed by 31st March 2022.

#### 10. West Bengal

No such procedure is followed in regard to allotment of Registered Taxable Persons for Audit on the basis of turnover. Similarly, cases for Audit are also not allotted based on the designation.

#### 11. Karnataka

Selected cases for audit are allotted to the officers based on the turnover, risk score and cadre. Cases involving high risk score with higher turnovers are allotted to the Deputy Commissioners and other cases are allotted to the Assistant Commissioners and Commercial Tax Officers.

#### 12. Maharashtra

The audit parameter selection committee will draw up draft parameters and present it to the Committee of Additional Commissioners of Sales Tax (ACSTs) headed by the Special Commissioner of Sales Tax (CST) for finalizing the identified tax-payers for GST Audit with the final approval of CST.

#### 13. Bihar

No specific criteria is devised. However, the Commissioner will notify the criteria.

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#### 14. Centre

The taxpayers are classified into three segments, Large/Medium/Small based on the total turnover. The Audit Commissionerates are also divided into three Categories, I II and III based on the taxpayer's spread across various segments. By and large, the categorization is uniform across the Audit Commissionerates subject to the availability of more risky taxpayers in a particular category which is as under-

i) **Large** - taxpayers with turnover more than Rs. 40 Crore for category 1 Commissionerates, Rs. 30 Crores for category 2 Commissionerates and Rs. 20 crores for category 3 Commissionerates.

ii) **Medium** – taxpayers with turnover Rs.10 Crores to 40 Crores for category 1 Commissionerates, Rs. 7.5 Crores to Rs. 30 Crores for category 2 Commissionerates and Rs. 5 Crores to Rs.20 crores for category 3 Commissionerates.

iii) **Small** – taxpayers with turnover below Rs. 10 Crores for category 1 Commissionerates, below Rs. 7.5 Crores for category 2 Commissionerates and below Rs. 5 Crores for category 3 Commissionerates.

The turnover includes total taxable, exempt and zero rated clearances of goods and services but excludes non-GST supplies during a financial year. The said list contains only those taxpayers who are under Centre's administration.

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# VII

Need for fixing numerical targets, both upper and lower limits, on the number of cases that are to be audited in a year by the State.

## 1. Tamil Nadu

There is a plan to fix the same in future.

#### 2. Rajasthan

No such practice is in place. However, there is a proposal to bring in some sort of mechanism to have a fixed number of disposals for the officers.

#### 3. Delhi

No such target is being fixed currently and audit of the most risky taxpayers with significant business volume are being undertaken.

#### 4. Uttar Pradesh

The allocation of cases for audit is based on turnover. 1200 tax payers for 2017-18 and 1200 tax payers for 2018-19 are selected for audit and accordingly each Zone is assigned 60 tax payers for each of the aforesaid financial years.

#### 5. Kerala

No such practice is being followed.

#### 6. Nagaland

Fixing numerical targets for audit in a year are being considered.

## 7. Himachal Pradesh

No such target is being fixed currently and audit of the most risky taxpayers are being undertaken.

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#### 8. Uttarakhand

Since the audit assignment has been taken up recently, no such numerical targets are fixed. However, an audit team generally conducts about three to four audits in a period of two months.

#### 9. Punjab

No such practice is being followed.

#### 10. West Bengal

No such target has been fixed. In the first phase the Commissioner has selected 759 numbers of Registered Taxable Persons fixing numbers of files 2 to 4 per officer which will be completed within 3 months. From the experience of this first phase, the next lot will be selected for this period from 1st July, 2017 to 31.3.2018.

#### 11. Karnataka

Currently, there is no strict numerical targets for fixed cases to be audited in a financial year. However, Audit Officers, on an average are required to conduct audit in 45 to 50 cases in a year.

#### 12. Maharashtra

No such target is being fixed currently in the State

#### 13. Bihar

No such target is being fixed currently in the State.

#### 14. Centre

The total number of taxpayers to be audited by each Audit Commissionerate is worked out in advance based on their capacity to audit. It is worked out on the basis of the Working Strength of each Audit Commissionerate and on the basis that it takes 07, 05 and 03 days working days to audit a Large, Medium and Small taxpayer respectively.

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# VIII

## Any time limit to be set for completion of audit of various sectors:

large, medium, small etc., (lesser than that mandated by the Act).

#### 1. Tamil Nadu

The indicative duration for conduct of Audit is inclusive of Preparation of audit plan based on the reports/data/records available in the Department, verification of records which are submitted by the tax payer against GST ADT-01 and discussion with the tax payer for finalizing audit Para, wherever necessary, for each category would be as under:

Large taxpayers – 10 to 15 working days

Medium taxpayers – 8 to 12 working days

Small taxpayers – 5 to 10 working days.

#### 2. Rajasthan

The State Department follows the mandate contained in Sec 65(4) of the RGST Act 2017, in regard to the time line for completion of audit.

#### 3. Delhi

Audit is mandated to be conducted in terms of the provisions of Sec-65 of the DGST Act, 2017/CGST Act, 2017.

#### 4. Uttar Pradesh

Time line has been prescribed for audit as per the provisions of the Act.

#### 5. Kerala

No time limit is fixed for completion of the audit. However, the time limit mandated by the Act is being followed.

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## 6. Nagaland

No such time limit is fixed.

### 7. Himachal Pradesh

The HP GST Audit Manual contains the details pertaining to duration of audit. It is mentioned that efforts should be made to complete each audit within the following general time limits: -

The indicative duration for conduct of Audit that is inclusive of desk review, preparation and approval of audit plan, actual audit and preparation of audit report wherever necessary, for each category would be as under:

- i. Large taxpayers 6 to 8 working days
- ii. Medium taxpayers 4 to 6 working days.
- iii. Small taxpayers 2 to 4 working days

The above mentioned working days are indicative and applicable for conduct of audit covering one year period. In case the audit coverage is for five years, the number of days may be increased to maximum of 16/12/8 days for Large, Medium and Small taxpayers respectively. In other words the number of days for conduct of audit may be increased proportionately, with an increase of 25% of working days for every additional year of coverage.

The duration, as above, covers the effective number of working days spent by the audit group for the audit of a particular registered person from desk review to preparation of audit report (i.e. days spent in office as well as at the premises of the registered person). In exceptional cases, the aforesaid period may be extended with the approval of Audit Commissioner. Further, in accordance with the requirements of the audit of a particular registered person such duration can suitably be reduced with the express, prior concurrence of the Additional/Joint Commissioner, provided the verification as per the audit plan has been completed in the prescribed manner.

## 8. Uttarakhand

It is prescribed in the Manual but it is not given effect to in practice.

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#### 9. Punjab

In addition to the timelines mandated by the Act, timeline of 55 days has been delineated through the administrative instructions for conclusion of audit. The said timeline defines the stage-wise time allocation.

#### 10. West Bengal

No time line is prescribed but the time limit mandated under the Act is followed.

#### 11. Karnataka

Under the Team Audit concept, time limit for completion of Audit is 7 to 8 working days in Large turnover cases, 3 to 4 working days in Medium turnover cases and 2 to 3 working days in Low turnover cases is prescribed. However, Divisional Joint Commissioners are empowered to fix time limit for completion of Audit depending upon the nature and complexity of the case and availability of Human Resources.

#### 12. Maharashtra

The indicative duration for conduct of Audit that is inclusive of desk review, preparation and approval of audit plan, actual audit and preparation of audit report wherever necessary, for each category would be as under:

- I. Large taxpayers 15 working days
- II. Medium taxpayers 8 working days.
- III. Small taxpayers 5 working days

The above mentioned working days are indicative and applicable for conduct of GST audit covering a period of one year. The duration, as above, covers the effective number of working days spent by the audit group for the audit of a particular registered person from desk review to preparation of audit report (i.e. days spent in office as well as at the premises of the registered person). In exceptional cases, the aforesaid period may be extended with the approval of immediate Supervisory Authority.

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#### 13. Bihar

The timeline mandated under the Act is being followed.

## 14.Centre

The GST Audit Manual contains the details pertaining to duration of audit. It is mentioned that efforts should be made to complete each audit within the following general time limits:-

The indicative duration for conduct of Audit that is inclusive of desk review, preparation and approval of audit plan, actual audit and preparation of audit report wherever necessary, for each category would be as under:

- 1. Large taxpayers 6 to 8 working days.
- 2. Medium taxpayers 4 to 6 working days.
- 3. Small taxpayers 2 to 4 working days (including audit of the Deductors, who fall under the provisions of Section 51 of CGST Act, 2017 {who pay TDS} and operators who collect tax at source as per provisions of Section 52 of CGST Act, 2017).

The above-mentioned working days are indicative and applicable for conduct of GST audit covering one year period. In case the audit coverage is for five years, the number of days may be increased to maximum of 16/12/8 days for Large, Medium and Small taxpayers respectively. In other words the number of days for conduct of audit may be increased proportionately, with an increase of 25% of working days for every additional year of coverage.

The duration, as above, covers the effective number of working days spent by the audit group for the audit of a particular registered person from desk review to preparation of audit report (i.e., days spent in office as well as at the premises of the registered person). In exceptional cases, the aforesaid period may be extended with the approval of the Deputy/Assistant Commissioner of the Circle. Further, in accordance with the requirements of the audit of a particular registered person such duration can suitably be reduced with the express, prior concurrence of the Additional/Joint Commissioner, provided the verification as per the audit plan has been completed in the prescribed manner.

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Feedback mechanism and its functioning – in selection of cases for audit, in the process and conduct of audit and in the acceptance of final audit report.

## 1. Tamil Nadu

It is in the pipeline.

## 2. Rajasthan

It is always essential for the successful & smooth functioning of a system, that it is based on feedback. Similarly, here, periodic meetings of the field officers in various zones are essential to express their hurdles and impediments and experiences. Head quarter will receive the feedback and after deliberating over the issues expressed by the office of various Zones, will circulate and transmit it to all zones so that a broader outlook is developed and everyone is benefitted.

## 3. Delhi

As already stated above, DGARM provides lists of risky taxpayers based on certain risk parameters through online portal. There is also a feedback mechanism available on the DGARM online loop through which demand created consequent upon such audit is to be intimated to DGARM.

## 4. Uttar Pradesh

The State is in the process of devising a feedback mechanism

## 5. Kerala

No such practice is in existence.

## 6. Nagaland

The State would prefer to have a feedback mechanism on entire functioning and processes of the Audit system for addressing any deficiencies and taking timely reminder measures and actions.

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## 7. Himachal Pradesh

No such mechanism is prescribed.

## 8. Uttarakhand

The audit findings are placed in the monthly Monitoring Committee Meeting (MCM) which is headed by the Commissioner and the final approval is given by the Committee.

## 9. Punjab

The audit objections are shared with the auditee through FAR and those which are not accepted by the auditee are then taken up for the purpose of issuance of SCN and adjudication. The same is carried out by the concerned audit team.

### 10. West Bengal

Feedback mechanism is system based developed by GSTN.

## 11. Karnataka

The Divisional Joint Commissioners conducts meetings on a regular basis to discuss the Audit findings and their legal sustainability.

## 12. Maharashtra

Feedback mechanism is yet to be developed.

## 13. Bihar

Feedback mechanism is yet to be devised.

## 14. Centre

As mentioned earlier DGARM shares the lists of risky taxpayers based on certain risk parameters through online portal. There is also a feedback mechanism available on the DGARM online portal and currently the Audit Commissionerates are being sensitized to provide the feedback.

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Post-audit process - Any Committee for review of the audit report and recommendation for adjudication and who is the adjudicating authority.



## 1. Tamil Nadu

The territorial proper officer of the concerned auditee is the adjudicating authority.

## 2. Rajasthan

After completion of audit, the final audit report is placed before the monitoring committee. The committee will have the final verdict on each para made by the auditor. After that, the report with approved paras will be recommended for adjudication. The adjudicating officer can be the audit officer or report may be sent to regular assessing authority for adjudication.

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## 3. Delhi

Audit reports and demand in Form ADT-02 are sent to the jurisdictional proper officer for adjudication and for taking further necessary action in the matter,

including for defending the matter in appeal etc., in case the tax payer does not pay the demand created as a result of such audit/contents the demand.

## 4. Uttar Pradesh

There are two audit committees-

(a) Zonal Audit committee headed by Additional Commissioner (Grade-1) of respective Zone.

(b) Local Audit committee headed by Joint commissioner (Tax Audit) of respective zone.

On the basis of final audit report, the adjudication proceedings will be conducted by the officer posted in the concerned Sector or in the corporate circle.

## 5. Kerala

If the audit verticals perform the adjudication function based on the audit reports prepared by them, the focus of the audit system will be shifted from their core audit function to adjudication function and connected appellate proceedings, court proceedings and arrears recovery. This will affect the professionalism of the audit systems. Hence the adjudication and postadjudication proceedings are to be done by the tax payer service verticals.

## 6. Nagaland

The State will prefer to have a committee at the Head Quarter to review the audit report and assign officers for adjudication.

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## 7. Himachal Pradesh

No such mechanism exists. The Audit Reports are finalized by the Monitoring Committee Meeting headed by the Additional Commissioner (Audit).

## 8. Uttarakhand

The adjudication is being taken up the jurisdictional officer. The show cause notice is issued by the audit officer and it is answerable to sector officer who is the adjudicating authority.

## 9. Punjab

Once the demand for tax has been adjudicated by the concerned audit team, the file is transferred to the jurisdictional tax authority for recovery of the same.

## 10. West Bengal

The audit officer shall clearly mention in his working paper, the reply of the auditee in respect of the findings drawn and communicated to the auditee. After careful consideration of the reply a Draft Audit Report (DAR) should be prepared by the audit officer for internal administrative purpose and not for the auditee.

The DAR shall be placed before the audit plan sanctioning authority for perusal. If, the total amount of tax due exceeds 200% of the disclosed output tax and total dues of tax over Rs.1 Crore the DAR should be placed before the office of the Special Commissioner in charge of Audit with a short narration of such dues for perusal and approval. This condition may vary State to State. This condition is purely administrative purposes to ensure that the demand is genuine. The aforesaid narration for such high dues should be concise, to the point and self-contained.

Where any finding is based on any circulars or clarifications or notifications issued by the State Government or the Central Government or by the Commissioner or the Board, such finding must be mentioned clearly in the

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DAR. Similarly, where findings are based on discussion, merit of any decision of any Hon'ble Court, decisions of Advance Ruling Authority, decisions of Appellate Authorities, such should be clearly cited.

Final Audit Report: The audit officer shall finalize the findings of the audit and draw Final Audit Report in GST Form ADT-02 (herein after referred to as 'FAR') after due consideration of the reply furnished [Rule 101(4)]. After approval of the DAR by the appropriate authority, the FAR shall be issued to the auditee preferably through system / electronically to the auditee within 7 (seven) working days of approval. Even in case of 'NIL' dues also FAR needs to be issued.

Audit Consequences: After receipt of the FAR, the auditee may agree to the audit observations in full, or he may disagree in full or he may even agree to a part of the observations made. In case of full or partial agreement, the audit officer should encourage the auditee to make voluntary payment of the dues in Form GST DRC – 03 as detected in the course of audit. Where the Registered Taxable Persons agrees with the short levy as per the show cause notice, the auditor should explain the benefits available u/s 73(6) / 74(6) of the SGST/CGST Act, as the case may be. Now, the observations made in the FAR may be of 2 types:

Those of technical nature and not having any real revenue impact.

Those having revenue impact, i.e. short payment of tax, interest etc., by the auditee.

#### 11. Karnataka

Currently, adjudication in audited cases may be assigned to the same officer who has audited or to any other Proper Officer at the discretion of the Commissioner. Further, it is proposed to have an Audit Monitoring Committee (AMC) for deliberation and discussion for final approval of the Audit reports in the Divisional GST office.

An online platform has been created for inter divisional exchange of Audit insights titled "IDEA-i" meet once in fortnight. The idea behind this concept is

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to facilitate exchange of interesting and unusual audit findings among the audit officers of the Department. One audit division makes a power point presentation of its interesting audit findings which can be followed by all the audit officers of the State.

#### 12. Maharashtra

The officer who has audited the taxpayer is the adjudicating authority as well.

## 13. Bihar

After conduct of Audit, Team to draw up a draft report, to be submitted to Head of the Audit Division

• The Head of the Audit Division to scrutinize and review the draft report

• Final report to be prepared in consultation of the Audit Team within 2 months of the draft report

## 14. Centre

All the audit findings are finalized in the meetings of Monitoring Committee headed by the Pr. Commissioner / Commissioner of Audit Commissionerates. Monitoring Committee Meeting (MCM) is convened by the Audit Commissionerate at least once a month, to which the Executive Commissioner are invited to attend. Each or his representative of the audit objections/observations is examined for its sustainability. MCM also decides as to whether the extended period of limitation can be invoked or not and also on the applicability of the provisions relating to waiver of show cause notice in respect of each para. The objections rejected by the meeting are treated as closed. The decision taken by the Audit Commissioner, with regard to settlement of audit objections after recovery of all dues or dropping of the unsustainable audit objections, are final. The show cause notices issued by the Audit Commissionerates for recovery of tax consequent to audit objections are adjudicated by the Executive Commissionerates and there is a separate review mechanism for the said adjudications.

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# XI

Any oversight of post-adjudication proceedings and its mechanism - follow-up of additional demand created, ascertaining the correctness of the order for its sustainability, putting up proper defense in appeal, etc.

## 1. Tamil Nadu

The reviewing authority monitors the post adjudication process.

## 2. Rajasthan

The State Department desires to have a review committee and a separate legal wing to monitor the post adjudication proceedings at the H.O level.

## 3. Delhi

Audit reports and demand in Form ADT-02 are sent to the jurisdictional proper officer for adjudication and for taking further necessary action in the matter, including for defending the matter in appeal etc., in case the tax payer does not pay the demand created as a result of such audit/contents the demand.

## 4. Uttar Pradesh

The State is in the process of developing oversight mechanism of postadjudication review.

## 5. Kerala

No such mechanism exists.

## 6. Nagaland

The Department proceeds as per the provisions of the Act and Rules for curing any deficiencies noticed post-adjudication.

## 7. Himachal Pradesh

Separate system of Review is prescribed in the State.

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## 8. Uttarakhand

There is internal review section in the Uttarakhand State GST which reviews all the orders passed by the adjudicating authority. It reviews the adjudication orders for their legality and if the need arises appeals are filed before the appropriate forum.

## 9. Punjab

The mechanism is being maintained at the head quarter level.

## 10. West Bengal

Technical lapses by the Registered Taxable Persons which do not have any revenue implication, and have occurred out of oversight or ignorance, should be allowed for correction (if required). After issuing the FAR, the Audit Case will have to be closed. Such closure of case can be done in the following scenarios:

a) The technical lapses (if any) are corrected and the entire dues as per the FAR are paid by the Taxpayer within 30 days in Form GST DRC-03;

b) FAR is issued with Nil Revenue implication;

c) The tax, interest, penalty or any other amount payable by the Registered Taxable Persons as have been ascertained as short paid or not paid is not deposited by the taxpayer within 30 days after the issuance of the FAR, and in such situation the case is required to refer to the respective jurisdiction (Charge or Large Taxpayer's Unit as the case may be) for initiation of demand and recovery proceedings.

d) Demand & Recovery proceedings.

e) If the tax, interest, penalty or any other amount payable by the Registered Taxable Persons as have been ascertained as short paid or not paid is not deposited by the taxpayer within 30 days after the issuance of the FAR, the case is required to be referred to the respective jurisdiction as per the provisions of Section 65(7) of the WBGST/CGST Act for initiation of demand and recovery proceedings. The proper officer having the assigned role of 'Demand & Recovery' shall initiate action under Section 73 or 74 of the said Acts, as the case may be, through the 'Assessment & Adjudication' module in back office of GST. In our State of West Bengal the same audit officer or a different officer may initiate 'Demand & Recovery' proceedings. The concerned jurisdictional head will decide the same. It is desirable that the adjudicating officer carefully considers the findings as noted in the Final Audit 60 | Draft Report of the Sub-Committee (CoO)

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Report and initiate actions independently. However, repetition of points of examination (including documents thereof) should be avoided unless it is absolutely necessary. In case, the adjudicating officer comes upon any additional information (both from the documents /evidences/ submissions produced by the auditee at the time of audit as well as from any other source including Enforcement units), he shall consider such points of examination independently and conclude the proceedings upon incorporating all the findings made in this case.

#### 11. Karnataka

The adjudicating officer is responsible for overseeing the post- adjudication proceedings in consultation with the Divisional Joint Commissioner and the reviewing authority namely, the Additional Commissioner (Zonal). The proposal for constitution of an Audit Monitoring Committee, to oversee the post adjudication process in each audit division is being considered.

#### 12. Maharashtra

No oversight mechanism for post-adjudication proceedings. However, certain specific instructions are given to the adjudicating officers for follow- up of the post adjudication process.

#### 13. Bihar

Concerned Circle In-charge to assign disposal of reports so received to any officer posted in the Circle.

• This is done to avoid any duplication of levy, in the absence of an integrated IT platform

• If the officer to whom the report is assigned is of the opinion that- – tax liability not disclosed correctly, or – there is concealment or omission of any fact or – presentation of facts in such manner which has led to reduction in tax payable- then proceeding for re-assessment and recovery to initiated.

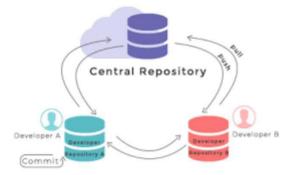
#### 14. Centre

There is an established review mechanism in place for all adjudication orders issued by adjudicating authorities.

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## 1. Tamil Nadu

No such central repository is maintained.

## 2. Rajasthan

No such central repository is maintained.

## 3. Delhi

No such central repository is maintained.

## 4. Uttar Pradesh

No such central repository is maintained.

## 5. Kerala

No such central repository is maintained.

## 6. Nagaland

No such central repository is maintained.

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#### 7. Himachal Pradesh

No such central repository is maintained.

#### 8. Uttarakhand

No such central repository is maintained.

#### 9. Punjab

No such central repository is maintained.

#### 10. West Bengal

No such central repository is maintained.

#### 11. Karnataka

A centralized repository of audit outcomes is maintained in the Commissioner's Office. It is proposed to make all the DGSTOs to prepare a booklet containing important Audit findings and also to make an Online Presentation of the audit outcomes every fortnight, with all the audit officers participating in it. A repository of such outcomes will be maintained and circulated to all the Audit Officers by the office of the Additional Commissioner (Audit, Intelligence & Co-ordination).

#### 12. Maharashtra

No such central repository is maintained.

#### 13. Bihar

No such central repository is maintained.

#### 14. Centre

Presently, Monthly Audit Bulletins are issued by the Directorate General of Audit. These bulletins contain important Audit Objections noticed by the Audit Commissionerates. After the GST Audit Module becomes operational all the audit reports will be available to all the field formations.

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# XIII

Coordination between State and Central audit officers - in similar cases, similar businesses, exchange of approaches, findings, outcome in appeals etc.

## 1. Tamil Nadu

No such coordination is in place.

## 2. Rajasthan

The State Department desires to have co-ordination between the Centre for sharing of knowledge and experience for mutual benefit.

## 3. Delhi

No such coordination is in place.

## 4. Uttar Pradesh

No such coordination is in place.

## 5. Kerala

The co-ordination between State and Central audit officers, including sharing the audit statistics and connected information, is key to preventing overlapping work. The CBIC has ensured the support for training and capacity building. The training of the State audit officers will be done by the National Academy of Customs, Excise and Narcotics (NACEN). The initial and the finalized audit reports will be shared in a similar manner as it is done in the case of the incidence reports.

## 6. Nagaland

The Department desires to have an active coordination between State and Central audit officers for effective and efficient implementation of the audit provisions as it affects the revenue of both the Central and the States.

## 7. Himachal Pradesh

No such co-ordination is in place.

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## 8. Uttarakhand

No such formal process of coordination exists as of now. However, discussions between the center and State officers takes place once in a while in an informal way.

## 9. Punjab

As audit is a new exercise for the Department, visits to the Central Tax authorities for sharing of knowledge and understanding the audit process were carried out. However, there is no formal mechanism for the sharing of audit practices or the objections as a result of such exercise. It is suggested that there should be defined mechanism for such knowledge sharing between the State and Central audit officers.

### 10. West Bengal

No such coordination is in place.

## 11. Karnataka

A co-ordination between the State and Central GST takes place at regular intervals either online or offline. Some of the senior officers of the Audit Commissionerates interact with the Divisional Audit Wings and exchange Audit findings, insights, methodologies and strategies etc. However, there is no formal co-ordination committee as such being established.

#### 12. Maharashtra

No such mechanism currently in place.

## 13. Bihar

No such mechanism currently in place.

## 14. Centre

Directorate General of Audit has prepared a draft proposal for conduct of audit of multi-location Taxpayers by a system of coordination between Centre and States. This proposal is pending approval.

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# XIV

## Role of technology in automating audit process –

Connecting electronically every audit procedure seamlessly - the E-audit modules developed by States, or those in the pipeline, to introduce technology in the audit process and its interface with the audit officer and the auditee.



#### 1. Tamil Nadu

E-audit module is under development for seamless connect of the audit process electronically.

#### 2. Rajasthan

The State Department desires to have an automated audit module which can capture the entire audit processes electronically and to eventually make the audit faceless.

## 3. Delhi

No such mechanism is in place.

## 4. Uttar Pradesh

There is an automated audit module wherein, each and every audit procedure is seamlessly connected electronically.

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## 5. Kerala

The State is preparing software requirement specifications for the Audit backend based on the workflow for audit and following the audit manual. The functionality will be designed so that the quality and quantity of work turned out by the audit units are electronically captured. It will also ensure that the audit officers duly verify the audit parameters while doing the audit as per the manual. The recording of each task of verification and the results thereon will enhance the performance of the audit team and create an environment of competition for professionally replicating in the success.

## 6. Nagaland

The Department desires to implement E-audit Module developed for the Model-2 States by GSTN.

## 7. Himachal Pradesh

There is an e-module on Boweb portal for conducting online GST Audit.

## 8. Uttarakhand

The Audit module developed by GSTN is being followed.

## 9. Punjab

The audit module developed by GSTN is proposed to be followed for the audit for the financial year 2018-19.

#### 10. West Bengal

Audit process in West Bengal is developed by GSTN for the Model 2 States. The pre-selection procedures, and feedback mechanism is through e-office and module developed by ISD. Every unit (Circle level/Charge Level/ Large Taxpayers Unit) should represent the status of audit once in every month in a pre-scheduled date in a format before the Monitoring Committee in the Monitoring Committee Meeting (MCM) under the chairmanship of the Commissioner/ Special Commissioner (Head of Audit functionality). This Committee, besides monitoring the status of audit of every Circle/Charge Level, will also try to identify the important observations made upon audit by different Circles/ Charges for better coherence among all the existing audit

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teams. At the same time, the Committee will also try to identify the areas of audit related to the Circles or Charge that need special attention and make suggestions accordingly. The Monitoring Committee shall invite the Audit head of all the Circles, Officers under the Special Commissioner (Audit), Nodal Officer (Audit) of Information System Division and representatives from GST-PPU of the State to offer their views to maintain the progress and ensure uniformity in audit and subsequent demand and recovery proceedings. The Committee may invite any Audit Team or Audit Officer or Charge officer or Circle Officer or Officer of Large Taxpayers Unit if deemed fit.

#### 11. Maharashtra

No such mechanism is in currently in place.

#### 12. Bihar

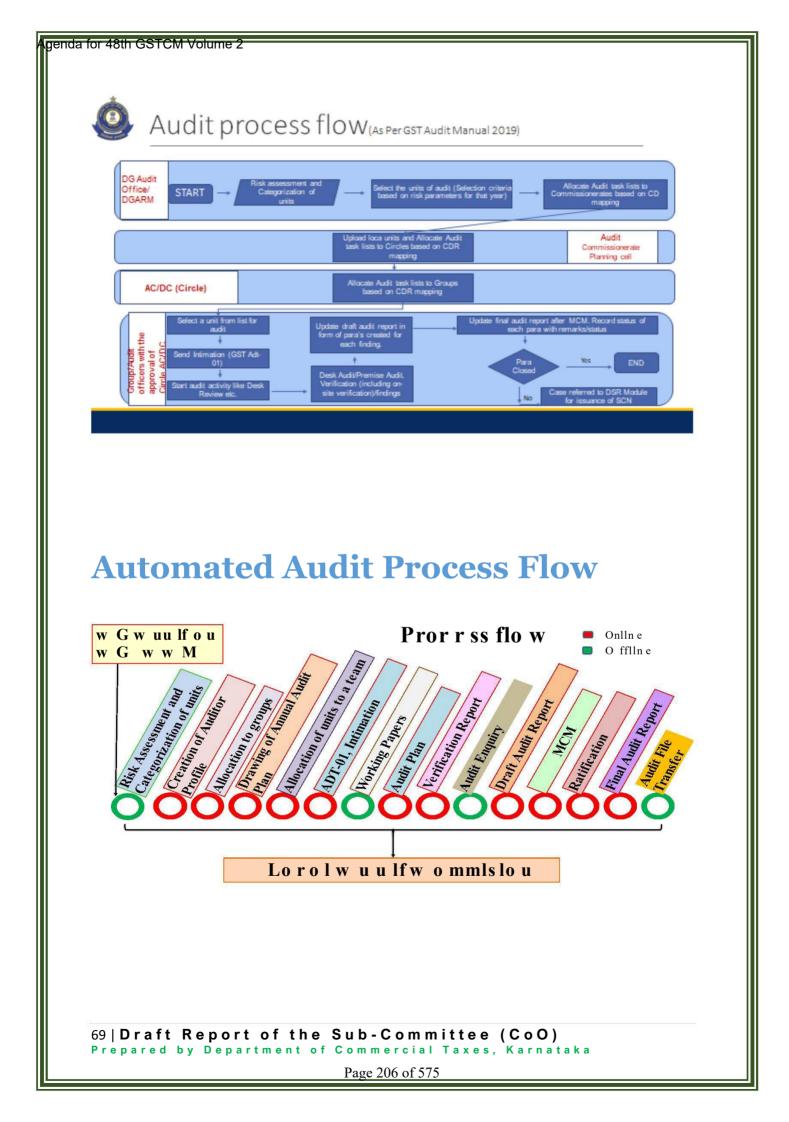
No such mechanism is in currently in place.

#### 13. Centre

GST Audit Module is being developed in CBIC – GST System by Directorate General of Systems in collaboration with the Directorate General of Audit. It proposes to automate most of the activities of Audit Process.

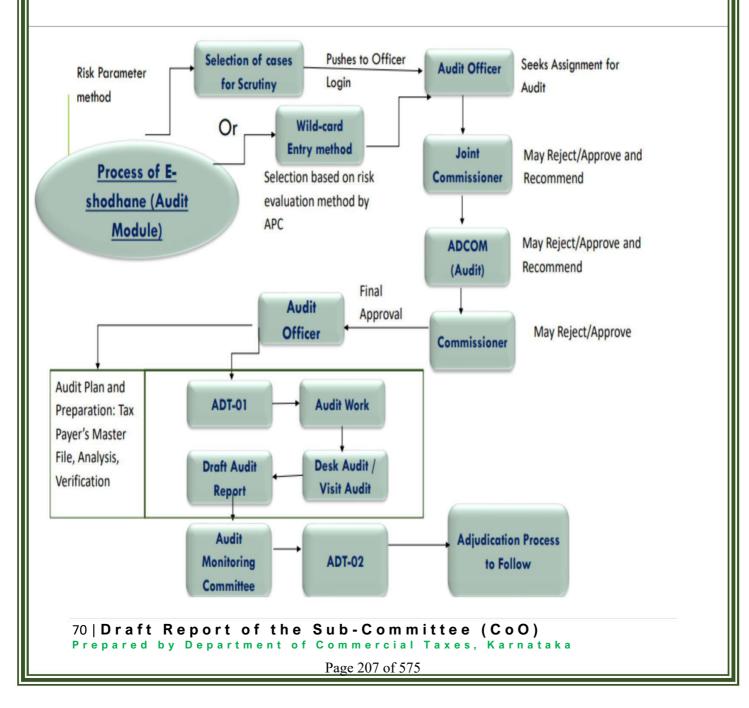
- a. Automatic creation of Audit Groups
- b. List of risky taxpayers made available
- c. Facilitate conducting of Desk Review by providing all information in Taxpayer at a Glance (TAG)
- d. Creation of effective Audit Plan
- e. Recording the findings of audit
- f. Enabling conduct of Monthly Monitoring Committee (MCM)
- g. Creation of Final Audit Report
- h. Interacting with the taxpayer on audit matters and
- I. Enabling effective audit monitoring by different supervisory authorities.

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## 14. Karnataka

Karnataka has developed an automated online Audit module called E-Shodhane in collaboration with NIC, Bengaluru, using which, registered persons are selected for scrutiny based on risk evaluation method and the audit officers seek assignment for audit electronically. It is an end-to-end digital back office application which covers the entire audit process starting from the selection of cases to the finalization of audit report and adjudication process. Results of certain audit processes carried out by the audit officers physically are also to be uploaded on to the system.



## E-Shodhane Audit process flow chart:-

genda for 48th GSTCM Volume 2 SCREENSHOT OF DASHBOARD OF ANALYTIC REPORTS ಕರ್ನಾಟಕ ಸರ್ಕಾರ GST Prime 2 ಕರ್ನಾಟಕ ಸರ್ಕಾರ ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆ NIC-GST Analytical System A ANALYTIC REPORTS A1 FILINGS A2 NON-FILINGS A3 MATCHING A4 SUPPLY CHAIN A3.1 ITC claimed in R3B is more than R2A A4.1 ITC-SGST Chain A1.1 R3B Comparison With Average A2.1 R3B Non-Filers: SGST ΙE Statement A1.2 R3B Comparison Month on Month A2.2 R3B Non-Filers: Total GST A4.2 ITC-IGST Chain [.h] A3.2 ITC claimed in R3B, but NO R2A statement A1.3 R3B Comparison Year on Year A2.3 R3B Non-Filers: Risk Based M.3 INVOICE-ITC Verification A3.3 ITC claimed by recipients, but NO R3B filed AL4 R3B Nil-Filers A4.4 Circular Trading A2.4 R3B Non-Filers: Continuously by suppliers 6 A1.5 TDS/TCS Filers A2.5 GSTR10 Non Filers: Risk Based A3.4 R1/EWB/R2A is submitted, but NO or NIL Q R3B A2.6 R3B Late Filers New A1.6 R3B from New Taxpayers 1 A3.5 Total Output GST declared in R3B is less A1.7 Top Taxpayers Analysis than R1 Statement . A1.8 Box wise Report A3.6 Full Tax payment through ITC A3.7 Taxable Value submitted in R3B is less than declared by TDS/TCS auth. 0 A3.8 Taxable Value submitted in R3B is less than in E-Way Bill (1) A3.9 Tax in R1 is more than 60% of Tax in R2A but no R3B filing New A5 FORECASTING ANALYSIS

## SCREENSHOT OF SUMMARY ANALYTIC REPORTS ACCESSIBLE TO AUDIT OFFICER

GST-Prime	8	ಗೆ ಇಲಾಖೆ	GSTPro-2.0; GST P				Notic	e-board Office : DCCT(Au
Registration Request	•							
iuo-moto idjudication lefund requests	• •	Registration Statist		<b>jistrations</b> 1g (in Numbers)	C	Returns Submission	C	Tax Collections (in Rs. Lakhs)
e-Shodane (e-Audit)		Section 65	Wild Card Entry	_		Feb-2022		Mar-2022
E-Enforcement	,	Section 73/74	Risk based Scrutiny		GSTR1 GSTR3B	14670 14064	SGST	4658.52 4249.41
Jpdates	•	Log Report	Pending Assignments (u/s 65)	0	GSTR3B GSTR4	0	IGST	4633.85
iearch	•		Print Assignment Note		GSTR7	259	CESS	7.22
Reports	•	-	Commencement Report		GSTR8	63	IGST / SGST Settlement	475.52
dmin	•	·	Audit Report (ADT-02)				oousmon	
Grievances	•		Update Payment Details					As on date: 15/03/2022
Download Mobile APP								
Ready Reference Material	•							

## SCREENSHOT OF SAMPLE CASES IDENTIFIED FOR RISK BASED SCRUTINY

ಕರ್ನಾಟಕ ಸಕ ವಾಣಿಜ್ಯ ತ	ರ್ಗರ ರಿಗೆ ಇಲಾಖೆ GSTPro-2.0; GST welcome : shekharappa	Processing & Analytic s	is System		A-1A1	A+	
∴ List Of Cases Risk Based Scrutiny ∴							
GSTIN	Trade Name	LGSTO	Audit Period	No. Of Risk	Value Involved (Rs. in Lakhs)	View Profile	
29AAACK5531H1ZK	KARNATAKA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED	LGSTO 020 - Bengaluru	2017-18	1		View	
29AAACN7433R1ZR	NAVEEN HOTELS LIMITED	LGSTO 330 - Hubballi	2017-18	1		View	
29AAACP9889R1Z1	CITRIX SYSTEMS INDIA PRIVATE LIMITED	LGSTO 020 - Bengaluru	2017-18	1		View	
29AAACU2509B1ZQ	UNIQ SECURITY SOLUTIONS PRIVATE LIMITED	LGSTO 020 - Bengaluru	2017-18	1		View	
29AAACZ0243R1ZT	ZEE ENTERTAINMENT ENTERPRISES LTD.	LGSTO 020 - Bengaluru	2017-18	2		View	
29AAAPL8974A1ZL	PUNEETH RAJKUMAR	LGSTO 130 - Bengaluru	2017-18	1		View	
29AABCE7443H1ZI	EXPEDIA ONLINE TRAVEL SERVICES INDIA PVT LTD.	LGSTO 020 - Bengaluru	2017-18	2	7963831.00	View	

## SCREENSHOT OF SAMPLE CASES SELECTED BASED ON RISK FACTORS

		WELCOME	: Інекналарра				• •
			Risk Ba	sed Selection	B		
j.				esic Details			
GSTIN	29AAAPL8974A	121.	Trade Nar	me: PUNEETH RA	RAMUNA		
LGSTO	LGSTO 130 - Be	angaluru	No. Risk Involv	red: 1			
Audit Period	2017-18						
Key Risk Indica	fore:				and the second		Are and a second
		Rink N		Description	Value (Rs. in Lakhs)	Description	Value (Rs. in Lakhs)
1	SRVCSCTR	Service Sector ca	ses 1	BRVCSCTR		SRVCBCTR	
		Action:	Request for ass	signment u/s 66	v		
		Document	Choose file No	file chosen			Uproad
		Reason: *	Playson			]	
		Fiermarka; *	Remarks			1	

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## SCREENSHOT OF PENDING AUDIT CASES AVAILABLE IN AUDIT OFFICER'S LOGIN

ಕರ್ನಾಟಕ ಸರ್ಕಾರ ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆ

GSTPro-2.0: GST Processing & Analytics System

Audit Report	(ADT02) Audit Repo	rt(ADT02) History						
SINo	assign_no	GGTIN	Trade Name	Audit Period	Dete	Print	Document	
1	115003430	29AAAJB0221A1Z7	M.D, BANGALORE RURAL DIST.SUPPLY & MKTG CO- OP SOCIETY LTD.,	2017	29/07/2021	Print	View	
2	117006230	29AHJPK7640L1ZR	RISHABH CREATION	2017	30/06/2021	Print	View	
3	125006275	29AADCT3971B1ZC	TANDEM INTERIORS PRIVATE LIMITED	2017	16/07/2021	Print	View	

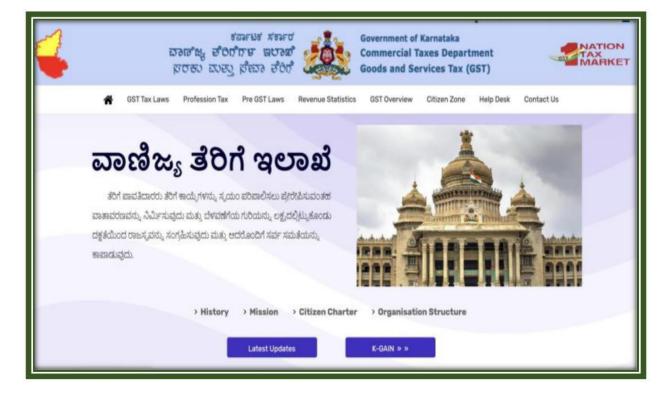
## SCREENSHOT OF TEMPLATE AVAILABLE FOR AUDIT OFFICER TO LOG AUDIT INITIATION

			A Log Ent	ry for Audit 🧠		
		GSTIN	29AHJPK7640	IL129 GO		
	Trade Name:*	RISHABH CREAT	ON			
	Mobile No.:*	9880071119		Email ID:" cotton/itshirts@gmail.com		
	Address*	SHIVA NANDI SAM	KIRANA , NO.26 , SRD	FLOOR, WARD NO.109, PSLANE, 3RDCROS	IS , SANTHUSAPET	
	El No	KGAIN Ns.	Assignment Date	LGETO/BGETO	Audit Period	
	1	117006230	07/01/2021	LOSTO 010 A - Bengaluru	2017-18	
			Select Notice Type."	GST ADT-01 *		
			Select Place of Audit:"	Desk Audit 🗸		
		Dat	te of visit/ Desk Audit."	dd/mm/yyyy		
			Remarks,"			
CIN					EPowered By CT	D, Kamataka and NIC, Beng
				committee (C		

## SCREENSHOT OF SAMPLE ASSIGNMENT NOTE

ಕರ್ನಾಟಕ ಸರ್ಕಾರ ವಾಣ'ಜ್ಯ ತ'ರಿಗೆ ಇಲಾಖ್	GSTPro-2.0; GST Processing & Analytics System	
	WELCOME : SHEKHARAPPA S	A + 0 1.0
	Assignment Note	
KIGAIN No. : 113018167 Assignment Data : 02/0 To, Name : SHEKHARAPPA Designation : DOCT (As	8/2021	
	Audit U/s 65 of KOST Act 2017	
	I to conduct Audit U/s 65 of KGST Act 2017 for the year 2017-18 in case of RAKESH 4th cross, Ramachandrapuram (Nome and Address) GSTIN 20AEZPK7962A12R	
	Signature Smit.Shikha C Commissioner of Commercial Taxes, Kamataka	

## SCREENSHOT OF KARNATAKA GST PORTAL FOR RAISING AUDIT VALIDATION QUERY



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## SCREENSHOT OF TOOL AVAILABLE TO ALL STAKEHOLDERS TO VERIFY AUTHENTICITY AND STATUS OF AUDIT

4	ಕರ್ನಾಟಕ ಸರ್ಕಾರ ವಾಣ್ಜ್ಯ ಪೆರಿರಿರಾಳ್ ಇಲಾಖ್ ಫರಕು ಮತ್ತು ಸೇವಾ ತೆರಿಗೆ	
*		ಕನ್ನಡ
	Karnataka GST Assessment, Inspection Number (KGAIN) Status Getike <sup>®</sup> Zimezekorgezakin <sup>®</sup> Kgaik He. <sup>®</sup> Tisowisz Co	

### SCREENSHOT OF RESULT OF AUDIT ASSIGNMENT NOTE VALIDATION QUERY

	Assignment Note	
Karnataka GST Audit Inspection Number	113018187	
Date	02-08-2021	
Period	2017-18	
GSTIN	29AEZPK7982A1ZR	
Taxpayer Name	RAKESH TRADING CO.	
Address	3rd Main, 4th cross, Ramachandrapuram	
Officer	SHEKHARAPPA S	
Designation	DCCT (Audit)-1.7	
Further Details		Signature Valid. Digitally signed by Commissioner of Commercial Taxes Karnataka on 02- 08-2021

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genda for 48th GSTCM Volume 2 SCREENSHOT OF POST AUDIT PAYMENT STATUS IN **A SAMPLE CASE** (i) Io ф 😩 C ಕರ್ನಾಟಕ ಸರ್ಕಾರ ವಾಣಿಜ್ಯ ತರಿಗೆ ಇಲಾಖೆ GSTPro-2.0: GST Processing & Analytics System NIC . . List of Payment Detail NEW GSTIN: 20AAGCM6071M12N Vada Namer MATHRUBUILDTECH PVTUT KGAIN No.: 139013944 Assian Date: 15/02/2021 Risk based scrutiny 🗸 Tax Period: 2017-18 on: 965 ace Of Visit: Partial pay ent made

## SCREENSHOT OF SAMPLE POST AUDIT PAYMENT STATUS OF ADDITIONAL DEMANDS

			List of	Payment Details				
W PART	IAL COMPLETE	NOPAY						
SINo	KEAN No	GSTIN	Trade Name	LIGETO	Audit Period	Audit Source	Audit Section	Assigned dt
1	139013944	29AAGCM6971M1ZN	MATHRU BUILDTECH PVT.LTD.	LGSTO 070 A - Bengaluru	2017-18	Risk Based Scrutiny	565	15/02/2021
2	158014063	29BCKP05766J1Z0	MILAN ENTERPRISES	LGST0 070 - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
3	153013950	29AA8CT2065N1ZY	THE PRINTERS( MYSORE )PVT LTD	LGSTO 060 - Bengaluru	2017-18	Risk Based Scrutiny	565	15/02/2021
4	112014071	29AADCF0699Q1ZS	FARM PEAK INDIA PRIVATE LIMITED	LGSTO 060 - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
5	195014065	298NRPP1370H1ZI	S N CREATIONS	LGSTO 060 A - Bengaluru	2017-18	Risk Based Scrutiny	565	15/02/2021
6	176013946	29AAJEC5246P1ZS	CHOWDESHWARI STONE CRUSHERS	LGSTO 060 - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
7	141013834	29AAAFI4114P126	INDD GAS	LGSTO 140 - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
8	128014064	298EVPP7742D1ZQ	U.K.SCRAP TRADERS	LGSTO 060 A - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
9	172013778	29AAACB7459F1ZI	BRIGADE ENTERPRISES LTD.	LGST0 140 - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
10	159014008	29ALBPM1674Q1ZG	SHREE CHAITANYA	LGSTO 155 - Ramnagar	2017-18	Risk Based Scrutiny	S65	15/02/2021
11	154013895	29AABC00686Q1ZQ	ORIENTAL QUARRIES AND MINES PRIVATE LIMITED	LGSTO 155 - Ramnagar	2017-18	Risk Based Scrutiny	965	15/02/2021
12	137013957	29AAPFG9577M1Z6	G C SOLAR INDUSTRIES	LGSTO 070 - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
13	106014013	29ANKPR9606E1ZJ	OMKAR ENTERPRISES	LGSTO 070 - Bengaluru	2017-18	Risk Based Scrutiny	565	15/02/2021
14	156013882	29AAGFR4318A1ZG	RAJESHWARI ENGINEERING WORKS	LOSTO 060 A - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021

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## SCREENSHOT OF SAMPLE POST AUDIT PAYMENT STATUS OF ADDITIONAL DEMANDS

GSTIN:	29AACCT4703G1ZF	Trade Name:	TELEINDIA NETWORKS PRIVATE LIMITED
KGAIN No.:	177013801	Assign Date:	15/02/2021
Audit Source:	Risk based scruliny 🗸 🗸	Document:*	•
Tax Period	2017-18	Section	565
Date Of Visit:	dó-mm-yyyy	Place Of Visit:	D:Shandhinagar
Remarks *	,	Payment Status :	Complete payment made
DBC03 No +	A0290620005778W		

## SCREENSHOT OF BREAKUP OF POST AUDIT PAYMENT IN A SAMPLE CASE

	KIST	BOET	CEST	CENS	TOTAL.
Так	0	3372024	3372024	0	6744048
Interest	0	2360415	2360415	0	4720830
Penalty	0	3372024	3372024	0	6744048
Fee	0	0	0	0	0
Others	0	0	0	0	0
Total	0	9104463	9104463	0	18208926
Tax	0	15615	15615	0	31230
interest			3748		7496
	0	3748		0	
Penalty	0	3123	3123	0	6246
Others	0	0	0	D	۵
Trans of the Contract of the C	0	22486	22486	0	44972
Total					

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## SCREENSHOT OF BREAKUP OF POST AUDIT PAYMENT IN A SAMPLE CASE



## SCREENSHOT OF BREAKUP OF POST AUDIT PAYMENT IN A SAMPLE CASE

ARN	GSTIN	Name	Rasson Description	Date of Filing
AD2902190008350	29AA004144M129	JUWI INDIA RENEWABLE ENERGIES PVT/J70.	-	20/02/2019
AD2902190008326	29AACCH144M129	JUWI INDIA RENEWABLE ENERGIES PVT.170.	-	20/02/2019
AD290219001225A	284ADCE6422E1ZT	EVANSSION INFORECH PRIVATE LIMITED	-	26/02/2019
AC2903190011031	29AAACR31788121	RIVA TRAVEL & TOURS INDIA PVT. UMITED	Voluntary Reyment in CGST has been made as we had	14(02/2019
AD290119000415C	29AA0008157H128	CHARNOCK EQUIPMENTS PRIVATE LIMITED,	-	11/01/2019
AD290718001196X	294AW/PP687282ZZ	TAURUS ESTATES	AMOUNT NOT REPORTED IN GETRI-38 AND GETRI-1 DUE TO	25/07/2018
AD2903150009751	2848FPT1808F12L	SHRICREATION	-	27,09/2018
AD290915000974K	29A8FPT1808F121	SHE CREATION	THE DIFFERENCE IN TAX LIABILITY WAS DUE TO THE OV	27/09/2018

## SCREENSHOT OF DETAILS OF POST AUDIT PAYMENT IN A SAMPLE CASE ( DRC-04 )

APR NO.	40290219000	n 1 2 1	STATUS A	LAT IT	ipe. i	Acknewledge(DROO	1		Submitted an: 20/02/2019	
		A	ekative			Log			Action	
	SL No		Field Name			Value			Documents	
	1									
	2	657W/Temporary 8	D		20400444823					
	3	Rane			THATAPARTH MUNIRA					
	4	Cause Of Payment			Volutiony					
	5	Reference No.			P2902190000139					
	6		i Voluntary Payment		73(3) Holuntary					
	7	Financial Near			2018-2019					
	Act t	CE3 Payment Details	Payment Ledger From	Tax / Cess	Interest	Penalty	Others	Total		
	1057	ner cah	replace cargo mais	1	30.6	0	a	3016		
								1.000		

## SCREENSHOT OF LOGIN PAGE FOR ENTERING STATUS OF ADJUDICATION ON AUDIT REPORT

ARN No.: AD2502150000350	STATUS : ADJVP	Type: Acknowledge/DRC041	Submitted on: 20/12/2019
Application		Lag	Actor
	Application Action	DRCD4 ¥	
	Document Upload	Choose File No file chosen	Upfrond
	Annoure Document	Chocas File No File chosen	Uproof
	Resson		Ŭ.
		Submit Exit	

### SCREENSHOT OF APPEAL MODULE



## SCREENSHOT OF AUDIT OFFICERS LOGIN PAGE FOR RECORDING ACTION ON TAXPAYES'S RECTIFICATION REQUEST POST-AUDIT

States (at
Period at stapute
From Date 01/12/0000
10 Date 51/12/00/5
Desired Amount Details Amount Type CST Tax Interest Penalty Fees Others Total
Disputed amount 8037 80 0 100 100 0 0 180
COST 0 0 0 0 0 0
JOST         0         0         0         0         0         0           C2885         0         0         0         0         0         0         0
Initial amount SGST 100 0 100 0 0 200
CONT 0 0 0 0 0
105T 0 0 0 0 0 0
CESS 0 0 0 0 0 0 0
Paid amount SGST 55 0 0 0 0 55
105Y 0 0. 0 0 0 0
CREAK 0 0 0 0 0 0
Payable amount SGST 0 0 0 0 0 0 0
COMT 0 0 0 0 0 0 0



## RECOMMENDATIONS FOR MODEL GST AUDIT PRACTICES AND PROCEDURES



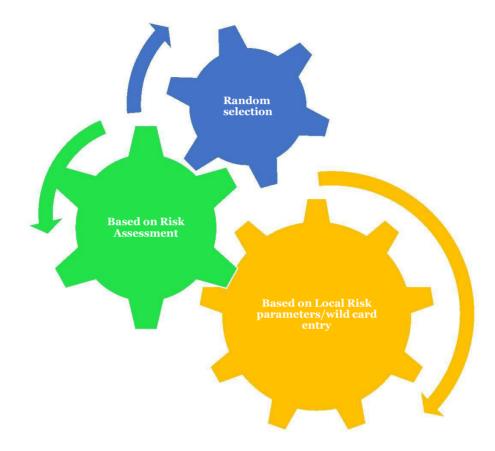
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## **Recommendation - 01**

## **Basis for selection of cases for audit**

Identification of cases for audit is of threefold:



## A. Based on risk assessment:

Selection of cases on the basis of compliance risks is very essential and integral to GST audit. Currently, the returns data of tax payers i.e., GSTR-3Bs are being considered by various States and the Centre. The guiding principle of audit envisages selection of taxpayers for audit based on certain risk parameters. The Commissioner by a general or specific order may select any registered person for audit of his books of accounts for a specific period. The Commissioner may fix the criteria of selection based on certain parameters as he may deem fit.

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This turnover limit while fixing the selection criteria may vary from State to State, in different Zonal levels of a particular State and also for service sector when compared to that for goods. All risk parameters are required to be identified and all probable aspects need to be considered to identify non-compliance and non-payment / short payment of tax, interest, late fee, penalty etc. and evasion of tax. The taxpayers maybe classified into three segments, Large/Medium/Small based on the total turnover. The States can also be divided into three Categories, viz. I II and III based on the taxpayer's spread across various segments. By and large, the categorization may be uniform across the States subject to the availability of more risky taxpayers in a particular category which is as under:

**Large** - taxpayers with turnover more than Rs. 40 Crore for category 1 Commissionerates, Rs. 30 Crores for category 2 Commissionerates and Rs. 20 crores for category 3 Commissionerates.

**Medium** – taxpayers with turnover Rs.10 Crores to Rs.40 Crores for category 1 Commissionerates, Rs. 7.5 Crores to Rs. 30 Crores for category 2 Commissionerates and Rs. 5 Crores to Rs.20 crores for category 3 Commissionerates.

**Small** – taxpayers with turnover below Rs. 10 Crores for category 1 Commissionerates, below Rs. 7.5 Crores for category 2 Commissionerates and below Rs. 5 Crores for category 3 Commissionerates.

The turnover includes total taxable, exempt and zero rated clearances of goods and services but excludes non-GST supplies during a financial year.

To select the tax payers for audit in an effective manner, secondary data source (such as VAT/Service Tax/Central Excise/Custom data, Income Tax data etc.) may be considered along with the primary data source (i.e. GST data).

The weightage of each parameter may vary depending upon its importance in selection of taxpayers for audit. Based on the average weight, considering all the parameters, a final score may be calculated on the basis of which the final selection may be done.

The final selection of taxpayers to be audited may be done based on the descending order of the final score thus calculated. In case, more than one RTP has the same final score, the parameter of declared liability will then be considered and a taxpayer with more declared liability will be selected first.

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A Selection Committee may be constituted to identify various risk parameters for selection for audit considering all the aspects where there are chances of lack of compliance of the Act resulting in short payment of tax etc. such as: Entity level risks (e.g. Turnover, Tax, ITC, Refund, Commodity such as Iron & Steel, Paints & Chemicals, Textiles, Cement, Medicine, Footwear, Branded food grain, Automobiles etc., Service: Works contract, Real Estate, Information Technology, Consultancy service, Manpower service, Hospitality, Travel & Tourism, Leasing etc.).

Risks associated with compliance behavior (e.g. late filer of return, nonsubmission of Form GSTR-1, Form GSTR-3B, Form GSTR-9 & Form GSTR-9C).

## Certain representative selection criteria that are considered for risk assessment are given below.

1	Ratio of Taxable turnover – present year vis-à-vis previous year.
2	Ratio of ITC reversed vis-à-vis Total ITC availed during the year.
3	Ratio of total ITC availed in this year vis-à-vis previous year.
4	Ratio of IGST payment at the time of import vis-à-vis Total ITC availed ({Col.2 of table 4(A) (1) & (2) of GSTR-3B} in corresponding period).
5	Ratio of nil/exempt supplies (Col.2 of Table 3.1(C) of GSTR- 3B) to total turnover (excluding non GST supplies ) (col.2 of Table 3.1(a) + (b) + (c) of GSTR-3B).
6	Ratio of Zero-rated supplies (col.2 of Table 3.1(b) of GSTR- 3B) to total turnover (excluding non-GST supplies) (col.2 of Table 3.1 (a)+(b) + (c) of (GSTR-3B).
7	Ratio of Non-GST supplies to total turnover. $\{(Col.2 \text{ of Table 3.1} (e) / (col.2 \text{ of Table 3.1} (a) + (b) + (c) \text{ of GSTR-3B})\}$ .
8	Ratio of inward supplies (liable to reverse charge) to total turnover [col.2 of Table 3.1(d)}/Col.2 of 3.1 (a)+(b)+(c) of GSTR-3B)].

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9	Ratio of ITC shown in Table 4A(5) of GSTR 3B and ITC as per GSTR-2A.
10	Ratio of tax paid under reverse charge (as per {Col.3+4+5+6 of Table 3.1(d)} to ITC taken on import of services/other reverse charge (other than import of goods) {Col.2+3+4+5 of Table 4A (2+3) of GSTR 3-B}.
11	Ratio of ISD credit {Col.2+3+4+5 of Table 4A (4) of GSTR-3B) to total ITC taken {Col.2+3+4+5 Table 4A of GSTR-3B}.
12	Ratio of ITC reversed {Col.2+3+4+5 of table 4(B) of GSTR 3B} to ITC taken {Col.2+3+4+5 of table 4(A) of GSTR-3B}.
13	Ratio of zero-rated supply to SEZ as per Table 6(B) of GSTR-1 to total GST turnover.
14	Ratio of deemed exports as per Table 6(C) of GSTR-1 to total GST turnover.
15	Turnover declared in Form GSTR-3B vis-à-vis Form GSTR-1.
16	Claim of ITC from cancelled RTPs, aggregate turnover in GST return vis-à-vis Turnover disclosed in Income Tax return.
17	Turnover declared by RTP in Form GSTR-3B compared to turnover on which TDS deducted as reflected in Form GSTR-7 submitted by TDS deductor.
18	Turnover declared by RTP in Form GSTR-3B compared to turnover on which TCS collected as reflected in Form GSTR-8 submitted by TCS collector.
19	Refund claimed against purchase from taxpayer having no auto- population of ITC in Form GSTR-2A.
20	Purchases from non-existent RTPs.

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12	
21	RTPs having adverse reports in VAT/Service Tax/Central Excise who are operative in GST etc.)
22	In case, the RTP selected for audit has multiple registrations under the same PAN / TAN in the State, it is suggested that all such registration numbers may be selected for audit.
23	10% of the selection of the tax payers may be done on random basis.
24	Relating to compliance behaviour-based risk (e.g. late filer of return)– RTPs defaulting in filing GSTR-3B for 3 months will be marked 5, those defaulting for 2 months will be marked 3.33 & those defaulting by 1 month will be marked 1.67.
25	Taxpayers claiming ITC of more than n amount from eligible ITC.
26	Taxpayers who have filed all returns and tax adjusted from cash ledger is less than n amount.
27	Taxpayers who have filed all returns and difference in tax liability in GSTR-1 > GSTR-3b by n amount.
28	Composition tax payers having turnover more than 1.25 crore.
29	Newly registered tax payers with high turnover more than n amount.
30	Taxpayers with (a) multiple use of pan (b) multiple use of email id (c) multiple use of mobile no.
31	Refund amount is greater than n amount.
32	Shipping bill/export proof submitted by taxable person not verified from Ice gate.
33	Turnover declared in GSTR 3b must be compared with TDS/TCS deducted (it should be more than 100 times than TCS deducted and more than 50 times than TDS deducted).

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34	Taxable persons dealing in evasion-prone commodities/services as per HSN/SAC code.
35	High spike by n amount in e-way bill value in n months.
36	Ratio of Output Tax paid in cash to the total turnover in the current year is n percentage higher to the ratio of the same in the previous year.
37	Ratio of Output Tax paid to Net Profit in the current year is n per cent higher to the ratio of the same in the previous year.
38	Taxable Person whose Turnover is less than n percentage turnover from previous year.
39	Ratio of expenses to turnover in current year is greater than by n than the ratio of same in the previous year.
40	Inward supply from bogus dealers.
41	Zero cash set-off against tax liability.
42	Inward supply received but no outward supply.
43	GSTR-1 submitted but GSTR-3B not submitted.
44	Manufactures whose cash set-off is less than 5 per cent.
45	Three or more cases apprehended by mobile squad.
46	Cancelation of E-way bill is more than 2 per cent.
h	

# **B.Based on Local Risk parameters/wild card entry:**

State GST Departments invariably have mobile squads for checking the correctness of the documents carried in support of the goods transported in the state and it is an integral part of their enforcement activity to supplement their efforts to prevent and check tax evasion. It is the experience of the States that tax is evaded by businesses by transporting goods without documents or with fake/ invalid documents or by recycling of old documents that were not

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checked earlier, enabling them not to record and declare the corresponding transactions in their books. Apart from the seller and purchaser, unscrupulous transporters also form part of the network indulging in tax evasion. Based on the inputs gathered from mobile squad vigilance, risk parameters can be identified by the Officers of Anti-evasion/Enforcement wings and the corresponding tax payers may be selected for audit based on the above risk assessment. Percentage of tax payers that may be selected on the basis of the above risk assessment may be left to the decision of the State GST Departments.

## **C.Random selection:**

Tax payers (roughly around 10%) may also be selected randomly on the basis of local intelligence network which otherwise may not be covered strictly by the overall risk parameter selection. The discretion for selecting cases may rest with the appropriate authority of a Zone or a Division.

## **Recommendation – 02**

## Scope of audit

### Whether restricted to only the flagged risk parameters or all business transactions of the auditee.

Risk parameters are meant for determining the total risk score based on which registered persons would be selected for audit. When, once a registered person is selected, the audit should be carried out as per definition of 'Audit' (under Section 2(13) of the CGST Act/ KGST Act). Thus, audit would not be restricted only to the flagged risk parameters and audit should be taken up based on desk review conducted by audit team and audit plan prepared accordingly. An efficient and effective Audit system in all aspects based on a checklist will increase voluntary compliance.

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# Norms for audit and co-ordination among audit officers.

Audit of all or some of the other related registered persons in the value chain based on audit findings in selected primary cases. Norms for such action i.e., whether to have the same audit officer for all cases, approach for coordination among different audit officers, oversight etc.

State audit jurisdictions do not have an annual scheduling of Audit for a financial year. Such elasticity in planning Audit of related registered persons in the value chain based on audit findings in selected primary cases is possible. Whereas, in the CGST audit manual, the annual Schedule for audits for a financial year would be drawn at the beginning of the year and there is a need to adhere to such schedule, taking up the audits of other registered persons in the value chain based on audit findings, may not be possible during the same year. Furthermore, taking up audit of other persons in the value chain may not always yield good results. However, if the risk scores of such registered persons in the value chain are identified to be higher, thesame can be taken up for audit during subsequent audit years. Whether to have the same Audit Officer for all such cases including monitoring the same may be left to the discretion of the divisional heads or any officer authorized by the State Commissioner.

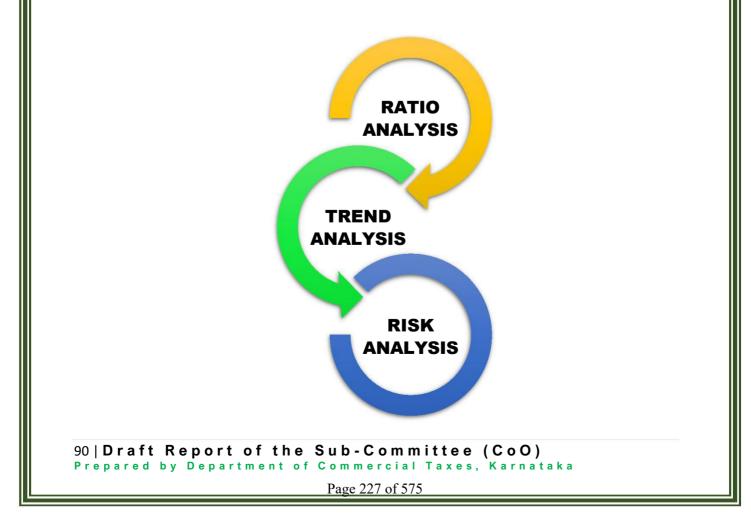
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# **Open ended assignment for Audit.**

#### Audit of other years of the same auditee based on audit findings in selected cases.

In general, when a registered person is selected for audit based on risk scores arrived at for a financial year or multiples thereof, the audit is to be taken up for the entire period for which previous audit (GST audit) is not covered. It need not to be restricted to a particular financial year, a complete audit by clubbing more than one financial year is to be done. In other words, a tax payer may be subject to Audit from the un-audited period till the last return filed up to thedate of visit. The Parameters to analyze data base can be ascertained by adopting the following method as



#### Authorization for Audit.

Authorization of the officers for selection of cases for audit and the process for final approval of a case for audit i.e., administrative system of audit in a State including the assignment issuing authority.

10% may be finalized at random based on local intelligence network Audit Divisional Head may finalize a list of 20% of taxpayers Commisioner / Additional commissioner (Audit) may finalise a list of 70% of tax payers

Commissioner/Additional Commissioners in-charge of Audit work or any other wing entrusted with the task of monitoring audit mechanism in a State may finalize a list of 70% of the tax payers to be taken up for audit by each Joint Commissioner (Divisional Head), based on risk scores arrived at State level. Joint Commissioner (Divisional Head), may be authorized to select 20% of the tax payers for audit based on local risk parameters and 10% of the tax payers at random based on local intelligence network. The issue of overall number of cases that could be taken up for audit is dealt separately.

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# **Criteria for allocation of cases for audit**

Basis/criteria for allocation of cases for auditcadre, turnover.

Taxable turnover-wise allocation of cases or pecuniary jurisdiction for audit may be considered based on the corresponding State's GST department's administrative architecture. Audit officers in many States are in the cadres of Deputy Commissioner, Assistant Commissioner and Commercial/State Tax Officer, while it may not be so in others. In keeping with the hierarchical structure in a State, tax payers for audit may be assigned to the officers. Allocation of cases for audit may be based on the turnover as may be decided by the appropriate authority.

#### **Recommendation – 07**

#### Numerical targets for Audit.

#### Fixing numerical targets, both upper and lower limits, on the number of cases that are to be audited in a year by the State

For conduct of audits in a State, target may be fixed for every year depending upon the number of officers allocated/available for conduct of audits. The calculation of target can be made by taking into account the total working days in a year, the norms for number of days required to complete the audit of different and the working strength of the audit officers.

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# **Time limit for completion of Audit.**

Time limit for completion of audit of various sectors: large, medium, small etc., (lesser than that mandated by the Act).

Section 65 (4) of the CGST Act/ KGST Act specifies that the audit initiated shall be completed within three months from the date of Commencement. The word commencement of audit as explained under the said sub-section is the date on which the records and other documents called for by the authorities are made available by registered person or date of actual institution faudit whichever is earlier. However, it would be reasonable to fix a lesser duration for Audit depending upon the volume and complexity so that the limited human resources are utilized optimally.

#### **Recommendation - 09**

#### Feedback mechanism.

Feedback mechanism and its functioning – in selection of cases for audit, in the process and conduct of audit and in the acceptance of final audit report.



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Feedback mechanism under the GST Audit, is an important component of GST eco-system itself; feedback obtained from the tax payer fraternity in regard to the strength and weakness of the audit system itself will go a long way in not only correcting the rough edges, but also establishing vibrant and robust audit system. Feedback exercise may have to be a regular feature in the GST Administrative calendar in each and every State.

#### **Recommendation – 10**

#### **Audit Monitoring Committee.**

Post-audit process - Committee for review of the audit report and recommendation for adjudication and the adjudicating authority.



Audit is treated to be completed, when once audit report which may contain objections detected during the audit is finalized by the Department. But before finalizing the objections, the initial objections being raised the by audit officer may be taken up for discussion by a Committee of officers in a monthly/

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periodical meeting (may be termed as "Audit Monitoring Committee") with regard to the sustainability/correctness or otherwise in respect of each objection. This system of AMC that may be instituted in each State department will probably reduce unproductive disputes and also standardize practices. The Audit Monitoring Committee may comprise of the Joint Commissioner (Divisional Head), Deputy Commissioner, Assistant Commissioner and GST Officer (Commercial Tax Officer, Sales Tax Officer as the case may be). However, the constitution of such a committee may be decided by the State Commissioner to suit the administrative architecture in a State.

In addition to such a committee, an online exchange of Inter -zonal / Inter-divisional audit insights / findings may also be a useful knowledge sharing platform. Any zone or a division which has come across interesting audit findings may make use of such a platform and share them with the officers of the State once in fifteen days so that , the other zones and audit divisions may follow them or such an inter-divisional exchange may pave way for thematic audit.

#### **Recommendation - 11**

# Post-adjudication proceedings followup.

Mechanism for post-adjudication proceedings and follow-up of additional demand created, ascertaining the correctness of the order for its sustainability, putting up proper defense in appeal, etc.

Section 108 of the CGST Act/ KGST Act empowers a revisional authority to take up review of any decision taken by his sub-ordinate officers. Hence not only for audit cases and even for other investigation cases also, a Revision or Review wing may be created in the Office of the Chief Commissioner (CGST) or State Commissioner (SGST) to take-up review of such adjudication/orders so as to ensure there is no loss of revenue on account of some incorrect interpretations/orders. If an exclusive wing for Revision/Review is not practical to be established in that eventuality, the existing Revisional Authorities in the State Administration may be entrusted with the task of review of any decision taken by the subordinate authorities.

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#### **Central repository of audit outcomes:**

At the Central Government level, the Director General-Audit is preparing a monthly/quarterly audit bulletin containing important audit objections raised during each quarter. The same may be considered for circulation amongst the audit officers of all the States too. The State of Karnataka maintains a compilation of interesting audit paras that are discussed in the **IDEA-i meet** platform **(Inter Divisional Exchange of Audit insights)** held once in a fortnight. Similarly, each State may have its own mechanism of maintaining and circulating Audit outcomes.

#### **Recommendation – 13**

# **Coordination between State and Central audit officers**

Coordination between State and Central audit officers - in similar cases, similar businesses, exchange of approaches, findings, outcome in appeals etc.

A co-ordination cell may be established by the GST Council consisting of senior officers from the Centre and the State in order to have a collaborative and cohesive strategies for audit and also to share various initiatives developed by the Centre and the State and this will certainly usher in regular sharing of best practices.

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# **E-Audit Module.**

Role of technology in automating audit process – Connecting electronically every audit procedure seamlessly - the E-audit modules developed by States, or those in the pipeline, to introduce technology in the audit process and its interface with the audit officer and the auditee.

From the feedback submitted by various States, it is found that some of the States are preparing software requirement specification for Audit backend, based on the workflow system of Audit. The functionalities that may be designed by the States will cover the entire Audit processes such as Selection, Planning, and actual conduct of Audit, Reporting, Payment, Closure and Adjudication. Capturing the data electronically at each stage of audit will probably enhance the performance of the Audit team and create intellectual and professional atmosphere.

The Department of Commercial Taxes, Karnataka has developed an automated online Audit module called <u>*E-Shodhane Online Audit module*</u> in collaboration with NIC, Bengaluru, i.e., www.gst.kar.nic.in/gstprime whereby registered persons are selected for scrutiny based on risk evaluation method and the audit officers seek assignment for audit electronically. It's an end-to-end digital back office application which covers the entire audit process starting from the selection of cases to the finalization of audit report and adjudication process with the exception of on-premises audit physically carried out by designated Audit teams. To be more precise, the Audit module is not 100% seamlessly connected electronically. Certain audit processes are to be carried out by the audit officers physically and results of such audit processes are to be uploaded on to the system.

The GSTN has also developed GST Audit Module which is an end-to-end digital back-office application that helps in carrying out the entire GST audit

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process electronically (with the exception of on-premises audit physically carried out by the designated Audit teams). Right from selection of taxpayers for auditing and assigning the same to various Audit Teams to serving the Final Audit report and/or SCN to the Taxpayer, every Audit proceeding is seamlessly connected electronically.

Some of the Model-II States are found to have adopted GSTN Audit Module. GST Audit Modules developed by GSTN and the State of Karnataka broadly have the same features with minor tweaks as the GST Audit process is partly dictated by the GST Act itself. Therefore, E-audit Modules that may be developed by States may have these common audit tools with a few tweaks that conform to their administrative structure.

#### I. AUDIT MIS APP



MIS APP is a tool which focuses on the need for sound information for decision taking and which aims finding the relationship between audit officer and their audit practice.

MIS and Audit process are targeted at satisfying the information required for appraisal of performance of Audit Divisions on a real time basis.

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MIS is a system that enables the Audit Divisional head and the Head Office or Audit Commissionerate to have access to dependable information for planning and decision making. This information could be either qualitative or quantitative or both depending on the method employed in the process.

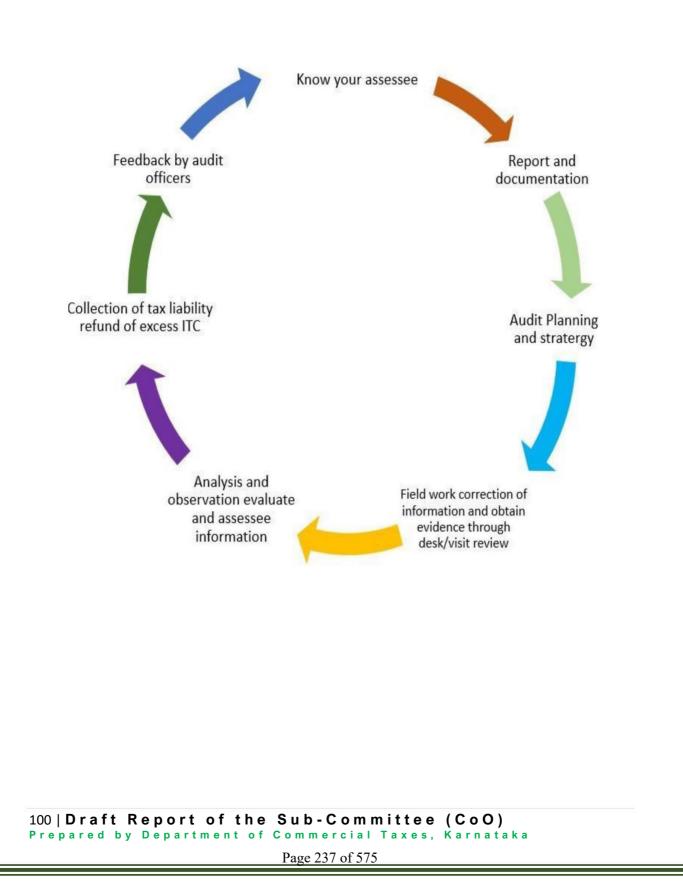
The sub-committee suggest that an MIS APP Tool on the lines mentioned herein may be developed exclusively for audit officers to upload the dayto-day activities with respect to the findings of the Audit, Audit observations made, demand created, collected and the recovery made thereof. Benefits for MIS: -

MIS plays the role of information generation, communication, decision making, management, Administration, and operation of an organization. The benefits accruable from an effective MIS could be reiterated thus:

- **1)** The MIS App fulfils the informational needs of an Individual or a group of individuals.
- 2) MIS satisfies a variety of system such as query system, analysis system, modeling system & decision support system. The MIS helps in strategic planning, management control and operational control.
- 3) MIS helps in target setting like Audit disposals, recovery and Refund.
- 4) The MIS assists the Head Office or Audit Commissionerate in goal setting, strategic planning and evolving audit plans and thus implementation.

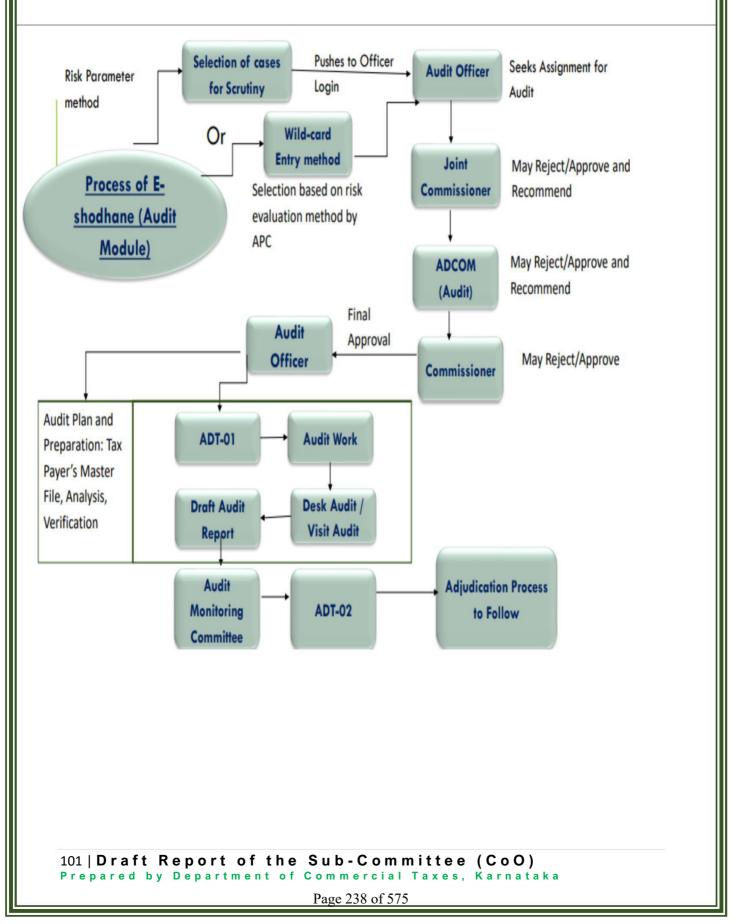




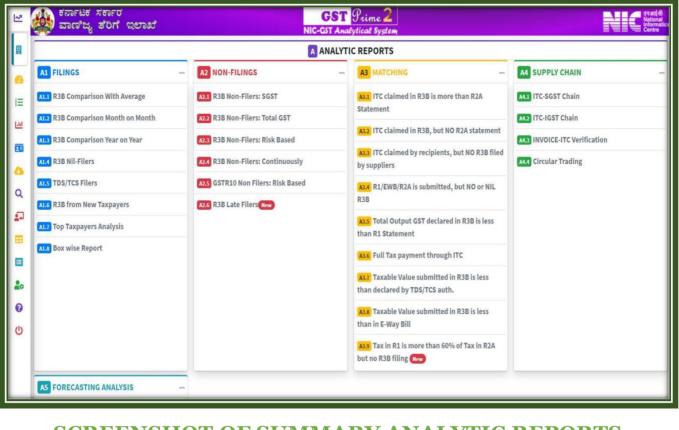








#### SCREENSHOT OF DASHBOARD OF ANALYTIC REPORTS



#### SCREENSHOT OF SUMMARY ANALYTIC REPORTS ACCESSIBLE TO AUDIT OFFICER

ಕರ್ನಾಟಕ ಸ ವಾಣಿಜ್ಯ GST-Prime	ತೆರಿಗೆ ಇಲಾಖೆ	GSTPro-2.0; G	ST Processing & Analy	tics System		Notic	e-board Office : DCCT(Auc
legistration Request uo-moto djudication lefund requests	Registration Stati (in Numbers)		Registrations <sup>2</sup> ending (in Numbers)	C	Returns Submission Feb-2022	ß	Tax Collections (in Rs. Lakhs) Mar-2022
e-Shodane (e-Audit) E-Enforcement	Section 65	Wild Card Entry	10	GSTR1	14670	SGST	4658.52
Jodates	Section 73/74      Log Report	Risk based Scrutiny Pending Assignments (u/s	605	GSTR3B GSTR4	14064	CGST	4249.41 4633.85
iearch	Log Report	Print Assignment Note	0	GSTR4 GSTR7	259	CESS	4033.85
Reports		Commencement Report		GSTR8	63	IGST / SGST	475.52
admin		Audit Report (ADT-02)				Settlement	
Grievances		Update Payment Details					As on date: 15/03/2022
Download Mobile APP		opena aj man o como					
Ready Reference Material							
					e (CoO)		

#### SCREENSHOT OF SAMPLE CASES IDENTIFIED FOR RISK BASED SCRUTINY

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GSTPro-2.0: GST Processing & Analytics System

A- [A | A+

0

						*
	Trade Name	LGSTO	Audit Period	No. Of Risk	Value Involved (Rs. In Lakhs)	View Profile
29AAACK5531H1ZK	KARNATAKA STATE INDUSTRIAL AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED	LGSTO 020 - Bengaluru	2017-18	1		Viaw
29AAACN7433R1ZR	NAVEEN HOTELS LIMITED	LGSTO 330 - Hubballi	2017-18	1		View
29AAACP9889R1Z1	CITRIX SYSTEMS INDIA PRIVATE LIMITED	LGSTO 020 - Bengaluru	2017-18	1		View
29AAACU2509B1ZQ	UNIQ SECURITY SOLUTIONS PRIVATE LIMITED	LGSTO 020 - Bengaluru	2017-18	1		View
29AAACZ0243R1ZT	ZEE ENTERTAINMENT ENTERPRISES LTD.	LGSTO 020 - Bengaluru	2017-18	2		View
29AAAPL8974A1ZL	PUNEETH RAJKUMAR	LGSTO 130 - Bengaluru	2017-18	1		View
29AABCE7443H1ZI	EXPEDIA ONLINE TRAVEL SERVICES INDIA PVT LTD.	LGSTO 020 - Bengaluru	2017-18	2	7963831.00	View

#### SCREENSHOT OF SAMPLE CASES SELECTED BASED ON RISK FACTORS

		WELCOME	: SHEKHAJIAJ	PPA E			* *
			Risk	<b>Based Selection</b>	1.45		
				Basic Details			
GSTIN	29AAAPL8974A1	21.	Trade	Name: PUNEETH RA	RAMLON		
LOSTO	LGSTO 130 - Ber	ngaluru	No. Risk Inv	volved: 1			
Audit Period	1 2017-18						
Key Risk Indica	none:		_			_	
SI.No.		Risk N		Description	Value (Rs. in Lakhs)	Description	Value (Rs. in Lakhs)
1	SRVCSCTR	Service Sector car	ses	SRVCSCTR		SRVCBCTR	
		Action	Request for	assignment u/s 65			
		Document	Choose file	No file chosen			Upoad
		Reason: *	Phenescon			]	
		Femarka: "	Barriatka				

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#### SCREENSHOT OF PENDING AUDIT CASES AVAILABLE IN AUDIT OFFICER'S LOGIN

ಕರ್ನಾಟಕ ಸರ್ಕಾರ ವಾಣಿಜ್ಯ ತೆರಿಗೆ ಇಲಾಖೆ

GSTPro-2.0; GST Processing & Analytics System

Audit Report (	(ADT02) Audit Repo	rt(ADT02) History					
				Audit		10000	
SINO	assign_no		Trade Name	Period	Dete	Print	Document
1	115003430	29AAAJ80221A1Z7	M.D, BANGALORE RURAL DIST.SUPPLY & MKTG CO- OP SOCIETY LTD.,	2017	29/07/2021	Print	View
2	117006230	29AHJPK7640L1ZR	RISHABH CREATION	2017	30/06/2021	Print	View
3	125006275	29AADCT3971B1ZC	TANDEM INTERIORS PRIVATE LIMITED	2017	16/07/2021	Print	View

#### SCREENSHOT OF TEMPLATE AVAILABLE FOR AUDIT OFFICER TO LOG AUDIT INITIATION

		GST	2/5 preservation	ry for Audit		
	Trade Name:*	RISHABH CREA	TION			
	Mobile No.:*	9880071119		Email ID:" cotton/itshirts@gmail.com		
	Address*	SHIVA NANDI S	ANKIRANA , NO.26 , SRD	FLOOR , WARD NO.109, PSLANE, 3RDCRO	SS, SANTHUSAPET	
	El No	KGAIN No.	Assignment Date	LGETO/RGETO	Audit Period	
	1	117006230	07/01/2021	LOSTO 010 A - Bengaluru	2017-18	
				GST ADT-01		
			Select Notice Type:"			
			Select Place of Audit."	Desk Audit v		
		t	late of visit/ Desk Audit."	dd/mm/yyyy		
			Remarks,"			
cia					OPowared By CT	D, Kamataka and NIC, Benga

#### SCREENSHOT OF SAMPLE ASSIGNMENT NOTE

ಕರ್ನಾಟಕ ಸರ್ಕಾರ ವಾರಾ'ಜ್ಯ ತ'ರಿಗ್ ಇಲ್ಲಾಟ್ welcome : shekhanappa s	
Assignment Note	
KGAIN No. : 113018167 Assignment Date : 02/06/2021 To, Name : SHEKHARAPPA S Designation : DOCT (Audit)-1.7	
Audit U/s 65 of XGST Act 2017 You are hereby authorized to conduct Audit U/s 65 of KGST Act 2017 for the year 2017-18 in case of RAKESH TRADING CO., 3rd Main, 4th cross, Ramachandraguram (Name and Actives) GSTIN 204/EZPK7880A12R	
Signature Smit Skikha C Commissioner of Commercial Taxes, Kamateka	

#### SCREENSHOT OF KARNATAKA GST PORTAL FOR RAISING AUDIT VALIDATION QUERY



Prepared by Department of Commercial Taxes, Karnataka

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#### SCREENSHOT OF TOOL AVAILABLE TO ALL STAKEHOLDERS TO VERIFY AUTHENTICITY AND STATUS OF AUDIT

4	ಕರ್ನಾಟಕ ಸರ್ಕಾರ ಕಾಣಿಜ್ಯ ತೆರಿಗೆಗಳ ಇಲಾಖೆ ನರಕು ಮತ್ತು ಸೇವಾ ತೆರಿಗೆ	<u> </u>	Government of Karnataka Commercial Taxes Department Goods and Services Tax (GST)	
*				ಕನ್ನಡ
	Karnataka GST Assessme ostiw <sup>-</sup> zweznyjnejakow	nt, Inspectio	on Number (KGAIN) Status	

#### SCREENSHOT OF RESULT OF AUDIT ASSIGNMENT NOTE VALIDATION QUERY

	Assignment Note	
Karnataka GST Audit Inspection Number	113018187	
Date	02-08-2021	
Period	2017-18	
GSTIN	29AEZPK7982A1ZR	
Taxpayer Name	RAKESH TRADING CO.	
Address	3rd Main, 4th cross, Ramachandrapuram	
Officer	SHEKHARAPPA S	
Designation	DCCT (Audit)-1.7	
Further Details		Signature Valid. Digitally signed by Commissioner of Commercial Taxes Karnataka on 02- 08-2021

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genda for 48th GSTCM Volume 2 SCREENSHOT OF POST AUDIT PAYMENT STATUS IN **A SAMPLE CASE** (i) Io ф 🔔 C ಕರ್ನಾಟಕ ಸರ್ಕಾರ ವಾಣಿಜ್ಯ ತರಿಗೆ ಇಲಾಖೆ GSTPro-2.0: GST Processing & Analytics System NIC . . List of Payment Detail NEW GSTIN: 20AAGCM6071M12N Vada Namer MATHRUBUILDTECH PVTUT KGAIN No.: 139013944 Assian Date: 15/02/2021 Risk based scrutiny 🗸 Tax Period: 2017-18 on: 965 ace Of Visit: Partial pay ent made

#### SCREENSHOT OF SAMPLE POST AUDIT PAYMENT STATUS OF ADDITIONAL DEMANDS

			List of	Payment Details				
EW PART	IAL COMPLETE	NOPAY						
SI No	REAIN No	GSTIN	Trade Name	LGETO	Audit Period	Audit Source	Audit Section	Assigned dt
1	139013944	29AAGCM6971M1ZN	MATHRU BUILDTECH PYTLTD.	LGSTO 070 A - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
2	158014063	29BCKP05766J1Z0	MILAN ENTERPRISES	LGSTO 070 - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
3	153013950	29AA8CT2065N1ZY	THE PRINTERS( MYSORE )PVT LTD	LGSTO 060 - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
4	112014071	29AADCF0699Q1ZS	FARM PEAK INDIA PRIVATE LIMITED	LGSTO 060 - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
5	195014065	298NRPP1370H1ZI	S N CREATIONS	LGSTO 060 A - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
6	176013946	29AAJFC5246P1ZS	CHOWDESHWARI STONE CRUSHERS	LGSTO 060 - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
7	141013834	29AAAFI4114P1Z6	INDO GAS	LGST0 140 - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
8	128014064	29BEVPP7742D1ZQ	U.K.SCRAP TRADERS	LGSTO 060 A - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
9	172013778	29AAAC87459F1ZI	BRIGADE ENTERPRISES LTD.,	LGST0 140 - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
10	159014008	29ALBPM1674Q1ZG	SHREE CHAITANYA	LGSTO 155 - Ramnagar	2017-18	Risk Based Scrutiny	S65	15/02/2021
11	154013895	29AABC00686Q1ZQ	ORIENTAL QUARRIES AND MINES PRIVATE LIMITED	LGSTO 155 - Ramnagar	2017-18	Risk Based Scrutiny	S65	15/02/2021
12	137013957	29AAPF00577M126	G C SOLAR INDUSTRIES	LGSTO 070 - Bengaluru	2017-18	Risk Based Scrutiny	\$65	15/02/2021
13	106014013	29ANKPR9606E1ZJ	OMKAR ENTERPRISES	LGSTO 070 - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021
14	156013882	20AAGFR4318A12G	RAJESHWARI ENGINEERING WORKS	LGSTO 060 A - Bengaluru	2017-18	Risk Based Scrutiny	965	15/02/2021

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#### SCREENSHOT OF SAMPLE POST AUDIT PAYMENT STATUS OF ADDITIONAL DEMANDS

GSTIN:	29AACCT4703G1ZF	Trade Name:	TELEINDIA NETWORKS PRIVATE LIMITED
KGAIN No.:	177013801	Assign Date:	15/02/2021
Audit Source:	Risk based scruliny 🗸 🗸	Document:*	•
Tax Period	2017-18	Section	565
Date Of Visit:	dó-mm-yyyy	Place Of Visit:	D:Shandhinagar
Remarks *	,	Payment Status :	Complete payment made
DBC03 No +	A0290620005778W		

#### SCREENSHOT OF BREAKUP OF POST AUDIT PAYMENT IN A SAMPLE CASE

TYPE Tax	Kast O	908T 3372024	CGST 3372024	0	TOTAL 6744048
Interest	0	2360415	2300415	0	4720830
Penalty	0	3372024	3372024	0	6744048
Fee	0	0	0	0	0
Others	0	0	0	0	0
Total	0	9104453	9104463	0	18208926
Tax	0	15615	15615	0	31230
interest	0	3748	3748	0	7496
Penalty	0	3123	3123	0	6246
Others	0	0	0	٥	0
Total	0	22486	22486	0	44972

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#### SCREENSHOT OF BREAKUP OF POST AUDIT PAYMENT IN A SAMPLE CASE



#### SCREENSHOT OF BREAKUP OF POST AUDIT PAYMENT IN A SAMPLE CASE

ARN	GSTIN	Nare	Reason Description	Date of Filing
AD2902150008350	20AA0CH144M129	JUWI INDIA RENEWABLE ENERGIES PVT.UTD.	~	20/02/2019
AD2902190008326	29AACCH144M129	JUWI INDIA RENEWABLE ENERGIES PVTUTO.	-	20/02/2019
AD290219001225A	234ADCE6422E127	EVANSSION INFORECH PRIVATE LIMITED	-	26/02/2019
AD2903190011033	254AACR31788121	RIVA TRAVEL & TOURS INDIA PVT. UMITED	Voluntary Payment in CGST has been made as we had	14/02/2019
AD290119000415C	29A40008157H12E	CHARNOCK EQUIPMENTS PRIVATE LIMITED,	-	11/01/2019
AD2907180011968	25AAKAIPP68728222	TAURUS ESTATES	AMOUNT NOT REPORTED IN GSTR-38 AND GSTR-1 DUE TO	25/07/2018
AD2903180009751	2848FPT1808F12L	SHRI CREATION	-	27,09/2018
AD290915002974K	28A8FPT1808F121	SHRI CREATION	THE DIFFERENCE IN TAX LIABLITY WAS DUE TO THE OL.	27/09/2018

#### SCREENSHOT OF DETAILS OF POST AUDIT PAYMENT IN A SAMPLE CASE (DRC-04)

ARN No.: J	No: AD292190000250 STATUS : ADAP					Acknewledge(DRC	Submitted an: 20/02/2019					
			Application			Log				Attion		
	SL No		Field Name			Value	e.		Documents			
		657W/Temps	xay ID		284405,44488,28							
	3	Rano			THATAPARTH MUNI	BAJ .						
4		Cause Of Pay	ret	Valutary								
	5	Reference No			P2802198080139							
	6	Section Linde	relich Volutiary Payment	75(5) Khuntary								
	7	Francial Nee		2018-2018								
		CES Payment D		_								
	Actig		Payment Ledger From	Tax / Cess		Penalty	Others	Total				
	1657	cael		1	3816	0	4	3016				

#### SCREENSHOT OF LOGIN PAGE FOR ENTERING STATUS OF ADJUDICATION ON AUDIT REPORT

ARN No.: AD2902190000350 STATUS : ADJVP	Tupe: Acknowledge/DRC04( Subridged or: 2012/2019
Application	Lay Action
Application	Action DECD4 👻
Document U	Upland Choose File No file chosen Upland
Announe Doo	Unrent Choose File No Re chosen Upland
	leason 1
	Suterit Egit

#### SCREENSHOT OF APPEAL MODULE

ADMIT	REACT	ORDER	NOTICE		REPLY OFFICE		REPLY TAXPAYER		SUBMIT RECTIFICAT	ON
ARN			GSTIN			Appeal Status				Date of Filing
402903210000270			254K0/PH0856P121			Gets the data for appeal filed				09-09-2021
ARM No. AD2902218008728			Name E-Co	6	Type APL		Submitted on: 17/02/21/21			1 Horas
		Application				Le	(		Action	
	52. No		Field Name		Yalar		Documents	Status	No.of Queries Raised	
		098	of the Appeal Application	AD39622130	90723					
	08	057	TR of the Tarpayer	254,0075/087	W*127					
	08	Date	of fling	12020021		_				
	Applicator Drder type	DEW	icii							
	Application Order No	200	80022-00900038							
	Application Order Date	100	00001							
	Application Demand id	200	R02-0000500							
	Payment reference Nor	ther 1722	022+3000004							

#### SCREENSHOT OF AUDIT OFFICERS LOGIN PAGE FOR RECORDING ACTION ON TAXPAYES'S RECTIFICATION REQUEST POST-AUDIT

								SUBMIT RECTINGA ···						
					lectifica	tion Request *	Error/omissi	ion arisine from a	acódental mistak	e due te sile of facts				
						_	Seeme	East.						
Period of d	aporte		01/2	2,9699										
To Clate				2.0000										
Dearnet Ame	nt Defails	sr	tax	Intere	-ar	Penalty	Frees	athers	Total					
Disputed an				0		100	0	0	180					
	00			0		0	0	0	0					
	165 CB1			0 0		0	0	0	0					
Enitial error	nt SQ	ST I	100	0		100	0	0	200					
	ca					0			0					
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Paid amoun	50	av 1	55	0		0	0	0	55					
	co			0		0	0	0	0					
	365 CB1			0		0	0	0	0					
Payable am				0		0	0	0	0					
	ca	87 1	D.	0		0	0	0	0					

# Model All India GST Audit Manual 2022

<u>Prepared by:</u> The Committee of Officers on GST Audits

i Model All India GST Audit Manual 2022: Prepared by the CoO on GST Audits

#### PREFACE

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Abbreviation	Definition
CoO	Committee of Officers
GST	Goods and Service Tax
CGST	Central Goods and Service Tax
SGST	State Goods and Service Tax
GSTN	Goods and Service Tax Network
CBIC	Central Board of Indirect Taxes & Customs
DGARM	Directorate General of Analytics & Risk Management
DGA	Directorate General of Audit
RPMF	Registered Person Master File
ISD	Input Service Distributor
ITC	Input Tax Credit
RTP	Registered Taxpayer
DAR	Draft Audit Report
FAR	Final Audit Report
MCM	Monitoring Committee Meeting
TAG	Taxpayer at a Glance
ToR	Term(s) of Reference
SEZ	Special Economic Zone
HSN	Harmonized System of Nomenclature
SAC	Service Accounting Code
POS	Point of Supply
OIDAR	Online Information Database Access and Retrieval

#### List of abbreviations used in the Manual

services

RCM	Reverse Charge Mechanism
GSTAM	GST Audit Manual
AAR	Authority for Advance Ruling
AAAR	Appellate Authority for Advance Ruling

#### FOREWORD

Goods and Services Tax in India has stepped towards the completion of five years. One of the main objectives of introduction of GST was to create one common market in the country by totally removing the wide disparities and compliance complexities of various laws of taxation of the States and Centre. In taxation of goods and services (not as "activities", per se, but as "objects" or "events"), that had led to not only tax inefficiency but had also interfered in investment decisions of businesses. GST has provided a uniform structure in taxation of goods and services throughout the country. There is total uniformity in terms of the taxable event, tax rates, point of levy, provisions for registration, return filing, tax payment, refunds, audit, adjudication, appeals etc. In fact, the CGST and SGST laws are almost mirror images. GSTN, as an enabling organisation, has created the necessary digital backbone to ensure seamless uniformity in the process and procedures relating to registration of taxpayers, return filing, tax payment, refunds etc.

Self-assessment/self-compliance of the taxpayers is the edifice upon which the GST eco-system is built. Though it provides for audit of taxpayers, it does not make it mandatory in all cases. Audit is an important compliance verification tool that complements anti-evasion action and constructive taxpayer engagement to improve tax compliance. Unless the processes and procedures of selection of cases for audit and the consequent proceedings are grounded in sound principles of neutrality, transparency, accountability and sustainability, and proper analysis and appreciation of audit, the purpose of audit would not be served. Uniform adoption of tried and tested best practices of audit procedures and processes by all the States as well as the Centre would enable consolidation of the outcomes of the individual States and Central authorities and their analysis for any consequential policy decisions sub-serves the primary objectives of GST and ensures stable revenues to the States as also to the Centre. Experience and knowledge gained through audit can be efficiently and gainfully shared among the States and replicated only if the procedures and processes adopted converge toward commonly agreed norms. Such convergence can lead to efficient deployment of limited human resources by the States in focused and productive activities.

Audit is also a specialized exercise which requires not only sound knowledge in law but also demands adequate skill. To facilitate all the States and the Centre in respect of audit in GST a task of preparation of a comprehensive All India Model GST Audit Manual was allotted to the Committee of Officers on GST Audit. For this purpose, a sub-committee of officers was constituted to compile existing and desirable audit practices and to draft a model audit manual. Inputs have been taken from both Centre and States from various sources like (i) GST Audit Manual 2019 published by DG Audit, Government of India, (ii) CBIC Quality Assurance Review Manual 2021, (iii) West Bengal State Tax GST AUDIT MANUAL\_2021 (iv) Bihar State Tax Audit SOP, (v) Maharashtra State Tax GST Audit Manual 2020, (vi) Punjab Audit-Manual, Punjab Audit Administrative Instruction, Punjab Audit Checklist Documents - Value of Supply, Punjab Audit Checklist Documents And Returns - Supply, (vii) Karnataka State Tax GST Audit Model, (viii) GSTN Audit Process Flow, (ix) Uttar Pradesh GST Tax Audit, (x) further suggestions from States and Centre during compilation. On the basis of all such valuable inputs, the State of West Bengal has compiled this audit manual which has been accepted by the Committee of Officers.

The guidelines provided in the manual are intended to enable audit officers to carry out effective audits in a uniform, efficient and comprehensive manner adopting the best practices of the States and the Centre, as well as international practices. Audit processes envisaged under the GST regime are ably assisted by a technological tool named "BI Tools" developed by GSTN, tools of "DGARM", concept of "Registered Person Master File (RPMF)" of DG Audit. Various States also developed technological and analytical tools, such as "e-Shodhane Audit Module" of Karnataka, "Tax Payers at a Glance" by West Bengal, Standard Operating Procedure of Bihar focusing areas of concern in Audit which not only complements and enhances the knowledge of the Audit officers also provides data backups and analysis. The technological tool is intended to encompass verification, examination, investigation, scrutiny and the like. Members of the Committee, as well as all the Members of the Sub-Committees and their leadership deserve kudos for forging a consensus consistent with the best audit practices. We congratulate them all. We sincerely hope that the model manual in your hands would lead to implementation of an effective

audit mechanism consisting of best practices and procedures tried and tested by the various indirect tax authorities in the country in the interest of revenue, to improve internal control at work in organisations of taxpayers and reduced burden of compliance upon taxpayers.

While emphasis has been placed in this Manual on developing a wellestablished audit procedure based on sound principles, it is needless to say that there cannot be a uniform approach to the audit of every taxpayer. Occasions may arise when a fact or figure apparent on the documents may need an examination with reference to some other sets of documents or even other sources. Therefore, the scope of audit in GST may vary depending on facts and circumstances of audit. An attempt has been made to address these issues in this document.

#### EXECUTIVE SUMMARY

A Committee of Officers (CoO) on GST Audit was constituted by the GST Council Secretariat, comprising officers from the CBIC, States, GSTN and GST Council secretariat. The details of the said committee, alongwith its timelines and Terms of References (ToR) are discussed in detail in **Annexure 18 (p.272)**. To explore each of the six ToRs in greater detail, sub-committees were formed for each ToR. The proposal contained in each report of the sub-committees has been incorporated in the relevant Chapter of this Manual.

The task of preparation of a comprehensive All India Model GST Audit Manual (hereinafter called the Model GSTAM/ the Manual) for the Centre and the States was allotted to the Committee of Officers on GST Audit. For this purpose, a sub-committee of officers was constituted to compile existing and desirable audit practices and to draft a model audit manual. The subcommittee was requested to catalogue prevalent practices of audit in the Central and State Indirect tax administrations and adopt the best practices for GST Audit across the country. The task of compiling this manual was allotted to West Bengal as a Member of the Committee, studying thoroughly the Audit manual prepared by Central Government, GST Audit Manuals and Standard Operating Procedures prepared by various states like West Bengal, Punjab, Maharashtra, Karnataka, Bihar, and Uttar Pradesh as well as the module developed by the GSTN and available to Model 2 states. After compilation, the draft Model GST Audit Manual was circulated to all the members inviting their inputs and suggestions. The Model GST Audit Manual has been prepared after incorporating many of these suggestions. The Manual tries to take into account the differential structure of GST revenue administration prevailing in different States and the Centre. Furthermore, a sub-committee was constituted to study and compile the best audit policy and practices of

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Centre and States. The sub-committee compiled the best practices and also made recommendations for Model GSTAM. The relevant recommendations have been included in this GSTAM and all the 14 recommendations are in **Annexure 17 (p-257)**.

This Manual aims to be an extensive and comprehensive document with a holistic approach towards GST audit which will not only facilitate the Audit Officers of the Centre and the States/UTs but will also create an impact in facilitating the auditees during the exercise of audit. The objective of this manual is to provide insights into the principles and procedures of audit and to give a holistic view of the entire process to the users of this Manual.

In the pre-GST regime, the audit process of States/UTs often got lengthened due to procurement and production of various statutory forms by the auditees in order to claim statutory deductions in the States/UTs. The GST regime does not require production of any such statutory forms and hence it is expected that substantial time of both the auditor and the auditee would be saved. Furthermore, audit in the GST regime has been designed in such a way as to complete the entire process within a short span of time. This will require the officers to concentrate on the process of examination of the books of accounts of a particular auditee within a short timeframe while at the same time yielding optimum results from the auditing exercise. Eventually, this would help the auditee also, who would be relieved from his engagement in the process of auditing sooner than was the case earlier.

This manual has been designed to cater to a systematic workflow of audit, ranging from brief criteria of selection to the completion of the process. It includes mechanisms for Joint and Thematic audit as and when they are approved by the Council.

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It is hoped that this Model Audit Manual would form an important yet dynamic reference for audit principles, practices, and procedures for GST audit practitioners in the country.

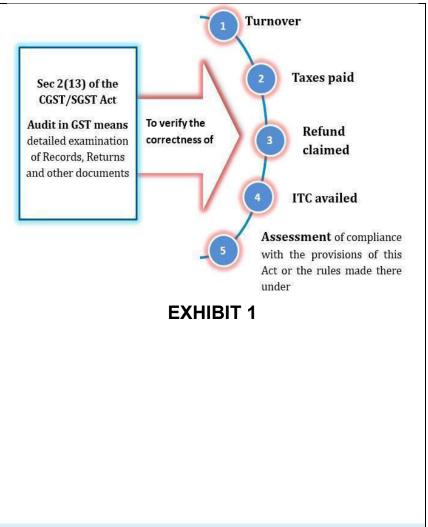
Dr. Amandeep Singh ADG, DG Audit, Hqtrs, CBIC Convenor Dr. Ravi Kumar Surpur Chief Commissioner, CT Rajasthan Co-Convenor

#### **CHAPTER 1**

This chapter covers the definition of audit, types of audit, and salient legal provisions related to audit.

#### 1.1. Definition of audit under CGST/SGST Act, 2017

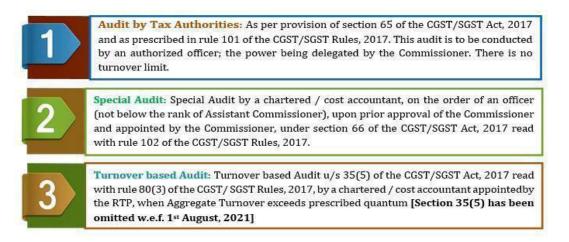
Audit is defined in subsec 13 of sec 2 of the CGST/SGST Act, 2017 "detailed as \_ examination of records. other returns and documents maintained or furnished by the taxable person under this Act or Rules made thereunder or under any other law for the time being in force to verify, inter alia, the correctness of turnover declared. taxes paid. refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act made or rules thereunder".



Hence, GST audit is not restricted to the reconciliation of only the tax liability & payment of tax by a taxable person, but its scope is also extended to assessment with reference to the provisions of GST laws.

#### 1.2 Types of Audit in GST

Three types of Audit are prescribed in GST:



<u>Note</u>: This Model GST Audit Manual is focused on audit by Tax Authorities only. The audited books of accounts and audit report submitted by the taxpayer in prescribed Form(s) are also subject to audit u/s 65.

1.3 Legal Provisions of Audit by Tax Authorities: This section aims to familiarise auditors with salient provisions of GST law.

#### 1.3.1 Section 65 of CGST Act, 2017, and respective SGST Acts, 2017.

Sub - sect ion	Provisions of the Act	
(1)	The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.	
(2)	The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.	
(3)	The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.	

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(4)	The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit: Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months. Explanation. – For the purposes of this sub-section, the expression 'commencement of audit' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.	
(5)	During the course of audit, the authorised officer may require the registered person,— (i) to afford him the necessary facility to verify the books of account or other documents as he may require; (ii) to furnish such information as he may require and render assistance for timely completion of the audit.	
(6)	(6) On conclusion of audit, the proper officer shall, within thirty date inform the registered person, whose records are audited, about findings, his rights and obligations and the reasons for suffindings.	
(7)	Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.	

### 1.3.2 **Rule 101 of CGST / SGST Rules, 2017.**

Sub -	Provisions of the rule	
rule		
(1)	The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or part thereof or multiples thereof.	

(2)	Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.	
(3)	The proper officer authorised to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.	
(4)	The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.	
(5)	On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02	

# 1.3.3 Section 71 of CGST and SGST Acts, 2017 (Access to business premises).

"(1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programmes, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any



EXHIBIT 2

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audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;

(v) the income-tax audit report, if any, under section 44AB of the Income Tax Act, 1961; and

(vi) any other relevant record,

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant."

Such access to business premises includes apart from physical access, online access to the books of accounts/records of the taxpayer.

## 1.3.4 Section 72 of CGST and SGST Acts, 2017 (Officers to assist proper officers).

*"(1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of central tax* 

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and officers of the Union territory tax shall assist the proper officers in the implementation of this Act.

(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

1.3.5 **Section 73 of CGST and SGST Acts, 2017** (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts).

"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall notice serve on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.



#### EXHIBIT 3

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or

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utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under subsection (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or subsection (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded. (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order. Officers to assist proper officers. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful misstatement or suppression of facts.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to

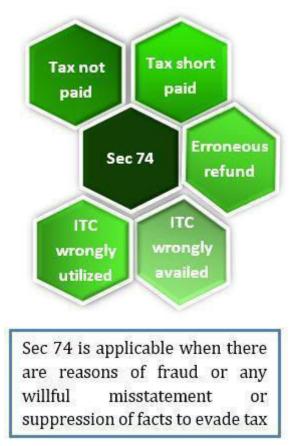
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which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax."

1.3.6 **Section 74 of CGST and SGST Acts, 2017** (Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reasons of fraud or any wilful mis-statement or suppression of facts

"(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.



**EXHIBIT 4** 

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any willful-misstatement or suppression of facts to evade tax, for periods other than those covered under subsection (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under subsection (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous

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refund. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.—For the purposes of section 73 and this section, —

(i) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2. – For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."

## 1.3.7 Section 75 of CGST and SGST Acts, 2017 (General provisions relating to determination of tax).

"(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any willful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

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(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the Appellate Tribunal that of the Supreme Court shall be excluded in computing the period referred

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to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.



**EXHIBIT 5** 

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

1.3.8 Section 76 of CGST and SGST Acts, 2017 (Tax collected but not paid to the Government).

"(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(2) Where any amount is required to be paid to the Government under subsection (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(3) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine

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the amount due from such person and thereupon such person shall pay the amount so determined.

(4) The person referred to in subsection (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.



(5) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(6) The proper officer shall issue an order within one year from the date of issue of the notice.

(7) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(8) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(9) The amount paid to the Government under sub-section (1) or sub-section(3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

(10) Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

1.3.9 Section 77 of CGST and SGST Acts, 2017 (Tax wrongfully collected and paid to the Central Government or State Government).

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A registered person who has paid the central tax and State tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.



(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of State tax payable.

1.3.10 Section 78 of CGST and SGST Acts, 2017 (Initiation of recovery proceedings).

"Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:



#### **EXHIBIT 8**

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him."

## 1.3.11Section 47 of CGST and SGST Acts, 2017 (Levy of late<br/>fee).

*"(1)* Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred

rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State."

1.3.12 Section 50 of CGST and SGST Acts, 2017 (Interest on delayed payment of tax).

"(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger. [Proviso inserted on 01.09.2020 w-e-f 01.07.2017]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid."

(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed."

[Sub-sec (3) has been amended retrospectively as above as per the Finance Act, 2022].

#### 1.3.13 Section 122 of CGST and SGST Acts, 2017.

"Section 122. (1) Where a taxable person who—

(*i*) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;

(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;

(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

(viii) fraudulently obtains refund of tax under this Act;

*(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;* 

(*x*) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;

(xi) is liable to be registered under this Act but fails to obtain registration;

(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;

(xiii) obstructs or prevents any officer in discharge of his duties under this Act; (xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act; (xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who---

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of subsection (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

## 1.3.14 Section 125 of CGST and SGST Acts, 2017 (General penalty).

"Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty five thousand rupees."

1.3.15 In addition to the provisions above, auditors must bear certain other provisions in mind. These are summarized below:-

Sec	Section Heading	Rules	Remarks
7 & 8Supply, Composite and mixed supply12Time of Supply of Goods			Schedule I, II and III
			Advance payment has been delinked from time of supply in case of supply of goods.
13	Time of Supply of Service		Notification no.06/2019 – CT(R) in respect of time of supply of services in respect of any TDR/FSI received by a promoter.
14	Time in case of change in rate of tax.		
15	Value of Taxable Supply	27 to 35	Determination of Value of Supply
16,17,1 8, 19 & 20	Input Tax Credit	36 to 45	Rules related to ITC and ISD
31	Tax Invoice	46 to 55A	Tax Invoice, Credit and Debit Notes
34	Credit & Debit Notes		
<b>35</b> Accounts and other records		56 to 58	Accounts and Records

37 to 39	Statements and Returns	59 & 61	
44	44 Annual Return		Annual return and Reconciliation Statement (GSTR 9, 9A, 9B, 9C)
49	other amounts.88A54Refund of tax89 to 97A & updated Circulars		Payment of Tax
54			Master Circular no. 125/44/2019-GST dt.18.11.2019 & 135/05/2020-GST dt.31.3.2020
71			
73 & 74	Determination of tax not paid or short paid		
76	Tax collected but not paid to the Government	Rule 142	Demand & Recovery

1.4 An Audit Officer should always check the amended provisions of the Act and Rules made there under and apply provisions applicable for the period under audit.

### **CHAPTER 2**

This chapter covers intended audience, purpose of the manual, aims and objectives of audit, principles of audit, dealing with the auditee, rights and obligations of the auditee, and pre-requisites of an audit officer.

#### 2.1 Intended Audience

Every document, especially one such as this, is intended for an audience. The Model GSTAM is intended to benefit GST Audit authorities, supervisory officers, audit team leaders, and individual auditors.

This Manual should be used in conjunction with statutory provisions, other Standard Operating Procedures of respective GST administrations, circulars, notifications, and relevant case law.

#### 2.2 Purpose of this Manual

The All-India Model GST Audit Manual is intended to be a comprehensive document which would be helpful for the audit teams of the Centre and the States/UTs throughout the entire process of selection of taxpayers for audit till the completion of audit in an efficient and effective manner.



**EXHIBIT 9** 

Audit in GST should verify the correctness of the facts and figures declared in the returns vis-a-vis books of accounts and returns filed by the taxpayers. Self- assessed declarations may contain hidden deviations. These deviations may be the result of omission, error, or deliberate action by a taxpayer. The Manual aims to play an important role in detection of non-compliances, if any, in the self-assessed declarations. However, such deviations may also be mere technical in nature without having any real revenue impact. The approach to be adopted in such cases would also be dealt with in this manual. This manual discusses methods,- (i) of looking into the aspects that demand meticulous attention, (ii) for preparation of an effective pre-audit desk review before the audit actually commences and (iii) for conducting a quality audit under GST that would not only monitor compliance of the taxpayers but would also successfully achieve the goal of revenue augmentation. The manual also suggests the need for an appropriate organizational structure so that audit officers can place their findings before an appropriate higher authority. This would help the audit officer in preparing a proper audit plan and conducting audit as per the plan. The Commissioner and other supervisory officers would also be updated with the progress of audits through an institutional arrangement enabling transparency, accountability, and organizational learning.

The approach towards a particular auditee may vary depending upon the study of that Auditee. The main objective here is to identify the areas where non- compliance or wrong interpretation of the law may have occurred resulting in less payment or non-payment of taxes, interest, late fees, etc. Identification of such areas will prevent the auditee from continuing with such deviations which result in erroneous declaration of self-assessed liability.

#### 2.3 Aims and objectives of Audit

Audit in GST should intend to evaluate the credibility of self-assessed tax liability of a taxpayer based on the twin test of accuracy of their declarations and the accounts maintained by the taxpayer. Thus, Audit in GST should have the following objectives:

- Measurement of compliance levels with reference to compliance strategy of the tax administration.
- Detection of non-compliance and revenue realization

- Prevention of non-compliance in the future.
- Discovering areas of non-compliance to prevent taxpayers from continuing with such deviations from expected compliance behaviour that results in erroneous declaration of self-assessed liability.
- Providing inputs for corrections in/amendments to the legal framework which are being exploited by taxpayers to avoid paying taxes.
- Encouraging voluntary compliance.
- Any other goals deemed worth pursuing by the GST administration.

#### 2.4 **Principles of audit**

An important objective of GST audit is to measure the level of compliance of the auditee in the light of the provisions of the GST Act(s) and the rules made thereunder. Audit should be consistent with Notifications / Circulars / Orders issued from time to time.

GST audit should be teamwork where the Audit officer (Team Leader) leads and conducts the audit and prepares the audit report with the assistance of team members. This entire work process would involve a series of activities including pre-audit desk review to identify high-risk areas, preparation of a sound audit plan, approval / sanction of the audit plan by an appropriate higher authority, conducting audit within prescribed time limits and other performance parameters and ensuring consistently high audit standards.

The following principles should guide the audit process:-

1. Adherence to risk factors developed through a targeting strategy with the approval of the Commissioner/other appropriate authority.

2. Consistency with Departmental Circulars and using professional methodology.

3. Chalk out a sound pre-audit plan/audit program and conduct the audit accordingly.

4. Emphasize a systematic, flexible and penetrative audit.

5. Regular review of the audit plan and progress and modification of the audit program whenever necessary.

6. Concentrate on scrutiny of returns and records, the degree of which will depend on the identified risk areas.

7. Identify the veracity of turnover declared, taxes paid, refund claimed and received, input tax credit (ITC)availed, assessment of compliances as per the provisions of the GST Act(s) and the Rules made thereunder with particular focus on the aspects/transactions/activities of the taxpayer which led to his being selected for audit.



**EXHIBIT 10** 

8. Record the proceedings of audit and findings thereof.

9. Provide a fair opportunity to the auditee to be heard and to submit their contention.

10. Carry out audit while adhering to high standards of professional conduct.

11. Implement a feedback mechanism with the objective of measuring the taxpayer's experience of audit and for validation of targeting parameters.

#### 2.5 **Dealing with the auditee**

The main objective of the audit is to quantify shortfall of revenue in а cost effective and transparent manner. The attitude of the officer conducting the audit should reflect this. Audit officers should be aware that they are the main channel of communication between the department and the auditee.



#### **EXHIBIT 11**

The officer conducting audit should maintain a good professional relationship with the auditee. She/ He should recognize the rights of the auditees, such as uniform and transparent application of law and their right to be treated with courtesy and consideration. The audit officer should explain that a tax compliant auditee may reap a number of benefits from an audit, such as: -

1. They will be better equipped to comply with the laws and the relevant procedures.

2. The preparation of prescribed returns and self-assessment of Goods and Services Tax will be better focused, correct and complete.

3. The scrutiny of business accounts and returns submitted to various authorities, made in the course of an audit would help in removing any deficiency in their accounting and internal control systems.

4. Disputes and proceedings against them would be substantially reduced or even eliminated.

#### 2.6 **Rights and Obligations of the auditee**

Tax administrations should consider implementing a Charter of rights and duties of taxpayers with regard to audit and publishing the same through measures of taxpayer engagement. Ideally, these should be aligned with the service delivery standards of the GST Administration.



EXHIBIT 12

During the course of audit, the authorised officer may ask the registered person to provide him/her necessary facility to verify the books of account or other documents as he/she may require, and to furnish such information as he/she may require and render assistance for timely completion of audit. **[Sec 65(5)].** 

#### 2.7 Pre-requisites of an audit officer

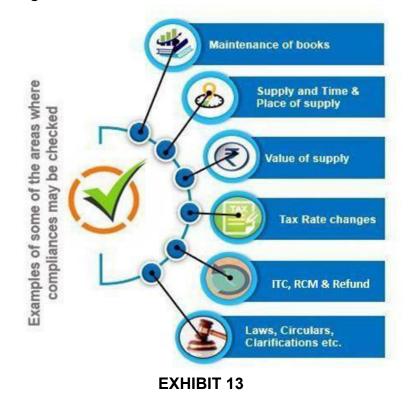
An audit officer, acting in close coordination with other members of his/her team and supervisory officers, is the lynchpin of an effective audit and should be equipped with a number of skills and relevant knowledge. These are summarized below. An audit officer should be able to answer the questions pertinent to a particular area of legal, technical, and interpersonal skill and knowledge. A list of competencies and an illustrative list of questions is given below:-

	Area of Competence (Skill-set/ Knowledge)	Illustrative Questions
--	--	------------------------

1	Have a well-drafted pre- plan for identifying areas of concern.	<ul><li>What to examine?</li><li>How to examine?</li></ul>	
2	Be well aware of the procedural aspects.	<ul> <li>Is the Officer well aware of the online/offline Audit modules?</li> <li>Is the Officer aware of the departmental guidelines?</li> <li>Have all the points noted in the audit plan been covered?</li> <li>Is the officer aware of the workflow and documentation/ recording system followed by the auditee?</li> </ul>	
3	Possess legal knowledgeoflegalprovisions,changesinlaw,notifications,circulars,relevant case law, rates.	<ul> <li>Is the officer well aware of the legal provisions and changes thereto?</li> <li>Is there any specific guideline in any circular?</li> <li>Are there any court judgements that are applicable?</li> </ul>	
4	Possess knowledge of the industry / sector in which the taxpayer is active.	<ul> <li>Does the officer have a primary knowledge about the business pattern of the auditee with respect to the auditee's particular trade &amp; industry?</li> <li>Is the audit officer aware of the existing trade practices, conventions, and market trends?</li> <li>Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 provides that the Final Accounts should comply with the Accounting Standards. Does the audit officer possess the knowledge of the prevalent Indian Accounting Standards?</li> </ul>	
5	Be able to compute dues.	<ul> <li>If the auditee is willing to deposit the dues, what to do?</li> <li>If the auditee is not willing to deposit the dues in accordance with the audit report, what are the next steps?</li> </ul>	
6	Skills for taxpayer engagement	<ul> <li>Is the audit officer unbiased and judicious in the course of audit?</li> <li>Is he/she tactful to gain the goodwill and confidence of the auditee and act as a motivator and a facilitator who ensures voluntary compliance?</li> <li>Does the auditor record technical lapses by the auditee which do not have any revenue implication, and have occurred due to oversight or ignorance, and ignore them on merit? Does the auditor discuss these with the auditee to improve the quality of compliance and make internal controls more robust?</li> <li>Does the auditor apprise the auditee of the provisions of the GST Act, Rules, and relevant notifications, circulars, and court decisions to encourage the taxpayer to make voluntary payment in the course of audit?</li> <li>Is the auditor transparent and discuss any</li> </ul>	

discrepancies found in the course of audit with the auditee?	
• Does the auditor give auditee an opportunity for	
filing his/her explanation in respect of such discrepancies	
as intimated by the auditor and consider all the	
explanations and documents provided by the auditee	
regarding the points of dispute before drawing the Final	
Audit Report?	
• Does the auditor consult his/her immediate	
functional head to resolve any issue in the course of the	
audit?	
• Does the auditor inform his/her immediate	
supervisory officer of any lack of co-operation or deliberate	
failure to provide information and records by the auditee	
and follow it up with a written report?	
• Does the auditor preserve all the important	
documents submitted by the auditee in the course of audit	
which are relevant to findings as office records, preferably	
in electronic format?	
• Does the auditor maintain confidentiality in respect	
of sensitive and confidential information furnished in the	
course of audit?	

Some important areas in which an auditor should check levels of compliance of the auditee are given in Exhibit – 13 below:

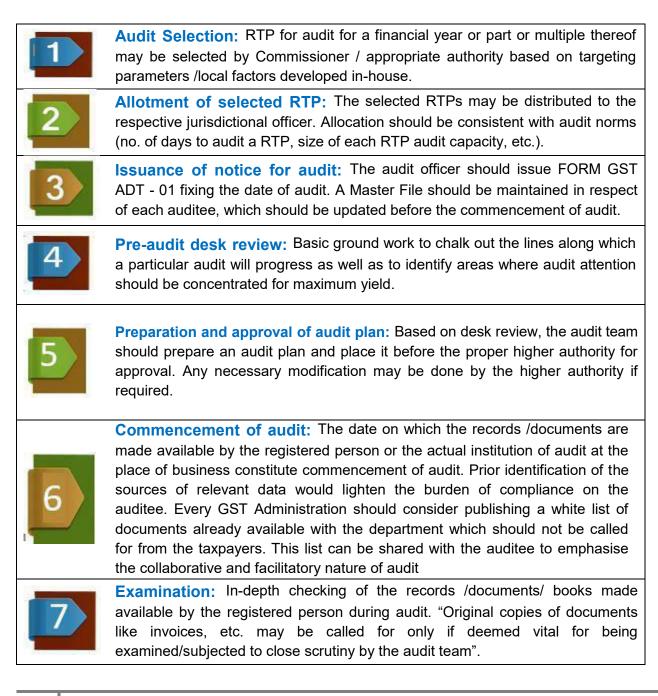


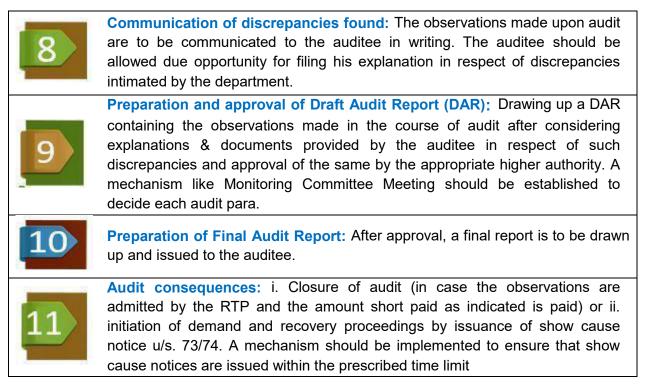
An attempt has been made to address the aforesaid issues in this Manual. While this Manual seeks to propose principles and procedures for audit, GST administrations have to ensure that skilled auditors are trained and deployed in adequate numbers to meet organisational requirements.

### **CHAPTER 3**

This Chapter covers the audit flowchart, different steps of audit, selection of taxpayers for audit, team formation and assignment and allocation audit to audit teams. This chapter also contains the gist of the proposal submitted by the sub-committee "on using the capability of Data Analytic developed by DGARM for identification of State Taxpayers for Audit".

3.1 While GST Audit is a highly skilled exercise, it can also be conceived as a logical workflow of steps. These are summarised in the audit flow-chart below. Each of the steps is elaborated in the subsequent sections.





#### 3.2 Different Steps of audit

#### 3.2.1 Selection for audit

<u>Statutory provisions:</u> As per the provisions of section 65(1) of the Act read with rule 101(1) of the Rules (p.14), the Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for a financial year or part thereof or multiples thereof. The Commissioner by a general or specific order may select any registered person for audit of his books of accounts for a specific period.

Importance of risk-based selection: The principle of risk-based audit envisages selection of taxpayers for audit based on certain risk parameters. Ascertaining the risk profile of the auditees based on a scientific approach is vital for selection of audit. Audit selection is a dynamic process where the experience of audit in each year plays a vital role in modifying the selection criteria. Some aspects of such risk profile assessment are discussed in this section.

<u>Selection criteria for risk-based selection of auditees:</u> are developed in response to a certain compliance environment and aggregate compliance

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behaviour, as well as yield of past selection criteria. Hence, no selection criteria can be set in stone.

However, certain representative selection criteria as well as certain broad areas from which selection criteria can be chosen are briefly discussed below:

**Selection based on Risk Parameters**: The list of potential high risk taxpayers may be prepared by selecting one or multiple criteria under different major risk heads from the available options, viz. :



EXHIBIT-14

Specific benchmarks may be fixed against the risk criteria for each of the major heads. Some major heads are discussed below:-

- Entity level risks (e.g. Turnover, Tax, ITC, Refund, Commodity such as Iron & Steel, Paints & Chemicals, Textiles, Cement, Medicine, Footwear, Branded food grain, Automobiles etc., Service: Works contract, Real Estate, Information Technology, Consultancy service, Manpower service, Hospitality, Travel & Tourism, Leasing etc.).
- Risks associated with compliance behaviour (e.g. late filer of return, non-submission of Form GSTR-1, Form GSTR-3B, Form GSTR-9 & Form GSTR-9C).
- Various ratios, e.g.
  - Taxable turnover: Exempted turnover

- Export/SEZ turnover/ total turnover (except in case of export houses)
- Output tax : Input tax
- Cash payment: Output tax
- Set-of using e-credit ledger : Set-of using e-cash ledger
- Inter-state supply: Intra-state supply etc.

#### • Exceptional Reports e.g.

- ITC claimed in Form GSTR-3B vs. ITC auto-populated in Form GSTR-2A/GSTR-2B
- Turnover declared in Form GSTR-3B vis-à-vis Form GSTR-1
- claim of ITC from cancelled RTPs, aggregate turnover in GST return vis-à-vis Turnover disclosed in Income Tax return
- Turnover declared by RTP in Form GSTR-3B compared to turnover on which TDS deducted as reflected in Form GSTR-7 submitted by TDS deductor
- Turnover declared by RTP in Form GSTR-3B compared to turnover on which TCS collected as reflected in Form GSTR-8 submitted by TCS collector
- Turnover declared by RTP in Form GSTR-3B compared to minimum turnover expected on the basis of e-way bills generated in respect of the said RTP
- Refund-claim against purchase from taxpayer having no autopopulation of ITC in Form GSTR-2A
- purchases from non-existent RTPs
- RTPs having adverse reports in VAT/Service Tax/Central Excise who are operative in GST etc.)

# Some of the steps and broad principles that may be followed for selection are given below:-

A. Taxpayers under the State/Central jurisdiction, i.e. the taxpayers who are required to file Form GSTR- 3B and Form GSTR-1, may be selected by the respective Commissioner.

B. Those tax-payers who have filed at least such a minimum number of returns as the administration would decide, in the financial year or those who have been granted a refund beyond a certain amount may be selected.

C. The taxpayers' pool may be divided into 3 segments namely Large, Medium & Small based on turnover, or on some other logical criterion.

D. All risk parameters are required to be identified and all probable aspects need to be considered to identify non-compliance and non-payment / short payment of tax, interest, late fee, penalty etc. and evasion of tax.

E. To select taxpayers for audit in an effective manner, secondary data sources (such as VAT/Service Tax/Central Excise/Custom data, Income Tax data etc.) may be also considered and referred to along with the primary data sources (i.e. GST data).

F. The weightage of each parameter may vary depending upon its importance in selection of taxpayers for audit as well as effectiveness of risk parameters chosen in the preceding Financial Year (s).

G. Based on the average weight considering all the parameters, a final score may be calculated on the basis of which the final selection may be done.

H. The final selection of taxpayers to be audited may be done based on the descending order of the final score thus calculated. In case, more than one RTP has the same final score, the parameter of declared liability may then be considered and a taxpayer with more declared liability may be selected first.

I. A Selection Committee may be constituted to identify various risk parameters for selection for audit, considering all the aspects where there are chances of lack of compliance with the Act resulting in short payment of tax etc. such as: J. The final score may be calculated based on the data for each financial year and the parameters as well as the weightage adopted may undergo necessary modifications if required.

K. In case the RTP selected for audit has multiple registrations under the same PAN / TAN in the State, it is suggested that all such registration numbers may be selected for audit.

L. A certain percentage of the selection of the taxpayers may be done on a random basis. The percentage may be fixed by an audit administration based on their audit strategy. Random samples can serve as useful controls and uncover latent compliance issues.

M. A certain percentage of taxpayers can also be selected for audit based on local parameters such as intelligence inputs, past compliance behaviour, etc.

N. Suo-motu selection: If an officer comes across any specific information relating to a RTP and has specific reasons to believe that Audit of the said RTP's books of accounts is required to be done for one or more financial years, or, if any audit officer in the course of audit has specific reasons to believe that an observation made upon audit will have revenue impacts in other periods also, he/she may send a proposal in this regard to the Commissioner/appropriate authority. Similarly, an audit officer or his/her higher authority can propose an audit of a taxpayer for adequate reasons which are recorded in writing. The Commissioner/appropriate authority upon consideration of all such proposals may select some/all of such RTPs for audit. GSTN has developed a module to facilitate such proposals for suo motu selection of any taxpayer for audit.

#### 3.2.2 <u>Administrative / procedural arrangements for risk-based selection</u> of auditees:

The practice for risk-based selection varies between the Centre and the States. Any GST Administration which intends to implement risk-based selection of RTPs for audit has multiple options before them.

• In States, the Commissioner may fix the criteria of selection based on certain parameters as the Commissioner deems fit.

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• In CGST, the Central Board of Indirect Taxes and Customs has mentioned in their GST Audit Manual that the selection of registered persons for them would be done based on the risk evaluation method prescribed by the Directorate General of Audit (DGA) in consultation with the Directorate General of Analytics and Risk Management (DGARM). The risk evaluation method as well as RTPs selected for audit is separately communicated to the Audit Commissionerates during the month of January/February of every year. The risk assessment function is jointly handled by the Directorate General of Audit and the Risk Management section of the GST Audit Commissionerates, as the latter are also at liberty to select a certain percentage of RTPs for audit based on local risk parameters.

• Any State GST administration can also request the DGARM for selection of taxpayers for the State for audit u/s.65 by using expertise of the DGARM. A State GST administration can also request the DGARM to share the targeting criteria with them.

• GSTN has also provided a targeting methodology based on assigning risk weight to different taxpayers as per their past compliance behaviour and other thresholds. State GST administrations may also refer to the same if they so wish.

• Certain State GST Administrations, such as Karnataka, have developed methodologies for targeting RTPs for audit. Their expertise is also available to other GST administrations upon request.

#### 3.2.3 Allotment of selected RTP

<u>Statutory provisions</u>: It may be recalled that per provisions of sec 65(1) of the Act read with rule 101(1) of the Rules, any officer who is authorized by the Commissioner has the power to conduct an audit (P.14)

<u>Decision not to audit:</u> If the audit administration feels that an audit of a particular taxpayer need not be carried out, the case can be dropped. In order to drop an audit case, proper and adequate reasons are required to be given along with documents the reasons for dropping the same.

#### Allocation of auditees:

After audit selection, the list of selected RTPs may be made available to the jurisdictional proper officers through the functional hierarchy. The practice varies between state and central GST administrations.

<sup>35</sup> Model All India GST Audit Manual 2022: Prepared by the CoO on GST Audits

**State GST**: In the State GST administrations, selected cases are allocated to the Zonal level audit head. The system provides facility to the Commissioner i.e. the HQ level to allocate Taxpayers of a particular Zone to that Zonal level Head. In the case of already allocated Taxpayer(s), if the HQ officer wants to modify the Zonal officer, he/she may do so after recording reasons for such change.

**Central GST**: In CGST, Audit Commissioners allocate taxpayers selected for audit (by the list developed by DGARM and DG (Audit) and a list based on local risk parameters) to audit circles and circle in-charges further allocate auditees to audit groups. The Audit Module developed by the CBIC allows allocation of auditees across the entire functional hierarchy.

**Audit modules:** The Audit Modules provide a way to leverage IT for better audit planning, conduct of audit and audit monitoring. Audit Modules developed by the CBIC permit assignment of auditees. A module developed by GSTN also permits assignment of auditees to Audit Officers. Some States have also automated this function in their respective Audit Modules.

### 3.2.4 Assignment & team formation for audit:

1. After allocation, the next step is to assign the selected taxpayer to the officers of the Audit Team, who will finally carry out the audit. Normally, such assignment and team formation will be done by the Zonal officer. However, the same functionality has also been provided to the HQ Officer. So, the HQ Officer, if he/she desires, can also assign the Audit Team Lead and Audit Team Members on his/her own.

2. The allocating officer can fetch a list of allocated taxpayers which are pending for assignment. The allocation process involves the following steps:-

A. **Assign Audit Team Lead** – The HQ/Zonal Officer, while assigning a Taxpayer for Audit to a particular 'Team lead' can view the existing assignments i.e. number of audit cases assigned to that particular officer. This will help him to assign taxpayers keeping in view the existing workload on an audit officer and thereby maintain uniformity in work load on the audit officers in his/her jurisdiction. At any stage, if a need for change of Team

Lead arises, the same can be done through the system by reassigning such role to another officer in the jurisdiction.

B. **Assign Audit Team Members –** After assigning the Team Lead, the HQ/Zonal officer can go for assigning the Team Members. The names of the available officers along with their designation and existing work allocation can be viewed on the system and maintaining uniformity in work allocation, Team members can also be assigned. If needed, Team Members can also be changed with other available officers.

The RTPs relating to a particular jurisdiction on being selected for Audit may be allotted by the jurisdictional head to next junior level Officers having functional role of Audit and/or Adjudication in that particular jurisdiction (in some jurisdictions the audit officer may not have adjudicating authority). In the CBIC Audit Module, this step has been automated.

# Chapter 4

This Chapter covers preparatory activities prior to audit, starting with seeking information from the auditee, audit planning and preparation, including Desk Review, and formulation Audit Plan.

## 4.1 **Seeking information:**

## Maintaining a Master File of the RTP:

The Department may maintain certain information relating to the selected RTP in the format named as "Tax payer at a Glance (TAG)" or a Registered Person Master File (RPMF).

This TAG contains the basic profiling of the selected RTP in respect of registration, returns, ITC, payment of tax, and any other pertinent information (e.g. exceptional reports). The officer can also examine GSTR 9 & GSTR 9C and Balance Sheet, if available.

An updated Master File will minimise the information that the audit officer seeks from the taxpayer, increasing the ease of audit for auditor and taxpayer alike.



## 4.2 **Issuance of Notice in FORM GST ADT-01:**

Once the file is allotted to a particular Audit officer/Audit Team, a notice for conducting the audit is to be issued to the auditee in FORM GST ADT-01. The format of GST ADT-01 is provided in this manual as **Annexure – 1** (p.97). Intimation of audit (i.e. ADT-01) is to be issued to the taxable person at least 15 days in advance prior to the conduct of audit. *[Sec 65(3), Rule 101(2)]*. Form GST ADT–01 preferably should be issued within five (05) working days of allotment of files to an audit team or audit officer.

It has been observed that asking for all the books of accounts and records from an auditee with a large volume of business on the very first day of audit causes inconvenience for both the auditee and the auditor. It is difficult and impractical for an audit officer to examine all the documents with equal importance on one single occasion.

As a result, it would be prudent to ask a RTP to keep all his Books of Accounts and records ready to be made available for examination during the course of audit and to produce those in a staggered manner as decided by the audit officer. For example, the Audit Officer may ask for the first set of documents on the first day of hearing which is required for a thorough study of the annual business performances of the RTP, by issuing a separate letter along with the FORM GST ADT-01. This will help the Audit officer to chalk out an effective audit plan.

While directing furnishing of accounts/books/documents, the team/officer should also factor in the risk factor/s leading to the selection of the particular RTP and focus more on such aspects as may have contributed to the particular risk profile associated with that particular taxpayer. For instance, if it is found that a particular taxpayer got selected primarily on account of a very low cash pay-out, the audit team should focus more on the credit claims, the origin of such credit claims, the documentation, the authenticity of the vendors of the selected taxpayer, the break-up of categories of supplies on which credit has been claimed, the value addition profile, the inventory position, etc. records/documents/accounts Accordingly, the demand for should appropriately reflect this.

However, in cases, where the volume of business is not significant, the relevant documents and records may be asked to be produced on the first day of hearing as scheduled in FORM GST ADT-01.

Furthermore, the Audit Officer may send –

• a letter seeking mutual assistance to complete the audit in a focused manner (A sample of the letter is given in Annexure -2 (p.98)

• a questionnaire to the RTP for providing information required for audit (A sample of the same is given in Annexure -3 (p.100)

• a list of documents / statements and books of accounts to be produced for the purpose of audit. (A sample of the list is given in Annexure -4 (p.104).

This questionnaire will help both the auditee and auditor to complete the audit process in a focused and planned manner. The questionnaire should incorporate queries relating to assessment of the business process of the auditee, the documentation process, the scheme of recording of documents in the accounts, and most important, the internal control put into place by the auditee. These questions should help the auditor to assess the overall soundness of the accounting system followed by the auditee, the areas of weakness which could indicate the nature of transactions which should be subjected to a deeper examination by the audit team.

It is needless to say that the questionnaire will change according to the need of the concerned case. The questionnaire should be issued as attachment with FORM GST ADT - 01.

On production of such documents and records by the RTP on the first date of audit as per FORM GST ADT-01, audit will commence and the Audit officer will start chalking out the audit plan.

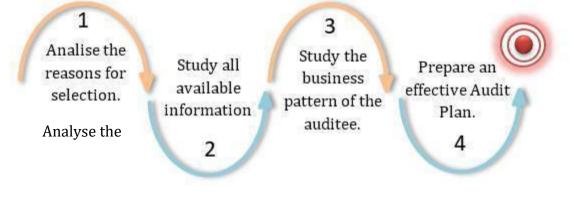
The remaining books of accounts, ledgers, statements, documents, records, etc. may be asked from time to time on the basis of the audit plan in the respective case. A letter may be attached/uploaded with the FORM GST ADT - 01 along with the questionnaire.

Observance of the following principles is suggested while seeking information from the auditees.

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- Avoid making repeated requests for information.
- Obtain as much information as possible from the data sources available in the system.
- Seek information only with respect to areas of audit's interest.
- Develop a white list of documents, to be shared with the taxpayers that would not be sought for from the taxpayers.
- Avoid asking for original copies of invoices/debit-credit/notes, as far as possible; further, ALL/complete set of all invoices issued/received may also not be insisted on, particularly in large taxpayers
- Documents and transactions should be scanned/examined thoroughly on the basis of sampling and the sample should be drawn based on a careful consideration of the implicit risk areas/revenue implication.

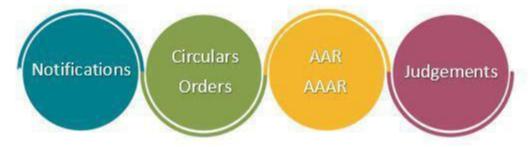
## 4.3 Pre-audit desk review



#### EXHIBIT-16

This is the first phase of the audit programme done in the office by the audit officer. This process needs to be completed by the Audit Officer before the first date of appearance of the auditee as per FORM GST ADT-01. The idea behind this process is that the Audit Officer would get accustomed with the nature of business of the auditee vis-a-vis information available with her/him.

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Upon studying this information, the audit team and its members should have clarity about the following: -

- Reason(s) for selection.
- **Profile of the auditee** with details of ownership, numbers of registered persons under the same PAN within the State, principal and additional places of business, migration status (if any), business trends and compliance level of the RTP in the pre-GST period as well as in the GST regime, business trend of the RTP vis-à-vis trends of the industry etc.
- **Broad types of supply involved** (i.e., resale, manufacturing, export, import, service, works contract, job work, ISD, etc.).
- Business pattern of the auditee i.e. nature of goods and/or services dealt along with classification (e.g. importer of medicine, exporter of leather goods, reseller of iron & steel, manufacturer of jute goods, restaurant service, manpower supply, travel agent, aviation, transport, etc.).
- Return filing & tax compliance pattern of the auditee in GST for the period under audit. If any irregularity is found in submission of Return, the Audit Officer should calculate the Late Fees & Interest payable at the desk-review stage itself. Furthermore, there may be chances of mismatch of Turnover and Tax as disclosed in Form GSTR-3B vis-à-vis Form GSTR-1. Similarly, there may be a mismatch between ITC claimed in Form GSTR-3B vis-à-vis ITC auto-populated in Form GSTR-2B.
- Analysis of business operations as declared by the auditee in the GST Returns in the light of other data sources available in the GST portal itself. The Audit Officer should verify the turnover declared by the RTP in the GSTR Returns for the concerned period vis-à-vis footprint of payments made to the RTP as per GSTR-7 or GSTR-8 filed by TDS

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deductors or TCS collectors, as the case may be. The Audit Officer should also consult the various exceptional reports made available.

- Analysis of business operations as declared by the auditee in the GST Returns in the light of secondary data sources, e.g. turnover declared by the RTP in the GSTR Returns for the concerned period visà-vis the turnover declared in the income tax return(s)/tax audit report or any other source, if available.
- An audit officer is required to study each case from a holistic point of view keeping in view applicability of statutory provisions and amendments thereof, notifications, circulars and orders relevant to the audit period. There have been various instances where a specific transaction, when looked at from a wider perspective, yielded interesting conclusions. Many of these instances are covered by various clarificatory Circulars issued both by the Central Government and the State Government.
- As a part of Desk review, an Audit Officer should:
  - Read the entire original documents as available in various public domains,
  - Understand the reasons and contexts of such clarifications,
  - Cite any relevant portion of the clarification only from such original documents and not from any truncated reference.
- Ratio and trend analysis as also intra-industry comparisons to ascertain significant deviant behaviour and indicate areas requiring enquiry and deep examination
- The pre-audit desk review should enable Audit Officers to gather relevant information about the selected RTP before actual commencement of audit, enabling them to be fully prepared from the very first day of visiting the auditee's place or examining the books produced by the auditee for audit.

## 4.4 **Preparation and approval of Audit plan**

Audit plan for a particular auditee is the **roadmap for a sound performance of the audit**.

This plan will serve as a schema of the entire process. Every such plan should be consistent with the departmental guidelines (Format of Audit Plan is in **Annexure 5 (p.105)**.

All the officers of an audit team should be involved in the process of preparation of the audit plan under the supervision of the immediate Senior Officer of the Audit vertical to draw up a good audit plan. Teamwork ensures buy-in from an early stage, brings forth a greater variety of ideas and can be reasonably expected to improve audit outcomes.

## 4.4.1 **General guidelines to prepare audit plan**

• **Reason(s) for selection –** The audit team should study the reasons for selection and try to identify the focus area. There may be two sets of selection criteria – (i) as available in BIFA Tool of GSTN portal and (ii) as provided by the Department. It should try to identify major risk areas. In case the volume of documents for verification is large, the auditor should adopt sample verification. In such a case, sample selection techniques used should be spelt out. The sample should be chosen in such a way that it represents the whole. Samples should represent relevant time-periods, business activities, value addition chain and other parameters. Sampling criteria should be material.

• Profile of the auditee (Taxpayer Master File, Taxpayer Profile, Taxpayer at a Glance or other suitable nomenclature may be adopted) with details of ownership, numbers of registered persons under the same PAN within the State, principal and additional places of business, migration status (if any), business trend and compliance level of the RTP in the pre-GST period as well as in the GST regime, business trend of the RTP vis-à-vis the trends of the industry etc. Ideally the audit administration should maintain a Taxpayer Master File which contains all this information. Utilities developed for audit should enable automatic updation of the Taxpayer Master File.

• **Broad types of supply involved** (i.e., resale, manufacturing, export, import, service, works contract, job work, ISD, etc.).

• Business pattern of the auditee i.e. nature of goods and/or services dealt along with classification (e.g. importer of medicine, exporter of leather goods, reseller of iron & steel, manufacturer of jute goods, restaurant service, manpower supply, travel agent, aviation, transport, etc.).

• **Return filing & tax compliance pattern** of the auditee in GST for the period under audit. If irregularity is found in case of submission of Return, **the** 

Audit Officer should calculate the Late Fees & Interest payable at the desk- review stage itself. Furthermore, there may be chances of mismatch of Turnover and Tax as disclosed in Form GSTR-3B vis-à-vis Form GSTR-1. Similarly, there may be a mismatch between ITC claimed in Form GSTR-3B vis-à-vis ITC auto-populated in Form GSTR-2A.

• Analysis of business operations as declared by the auditee in the GST Returns in the light of other data sources available in the GST portal itself. The Audit Officer should verify the turnover declared by the RTP in the GSTR Returns for the concerned period vis-à-vis footprint of payments made to the RTP as per GSTR-7 or GSTR-8 filed by TDS deductors or TCS collectors, as the case may be. The Audit Officer should also consult the various exceptional reports made available.

• Analysis of business operations as declared by the auditee in the GST Returns in light of secondary data sources, e.g. turnover declared by the RTP in the GSTR Returns for the concerned period vis-à-vis the turnover declared in income tax return(s)/tax audit report or any other source, if available.

• Analysis of business operations as declared by the auditee in the Annual Financial Statement.

• An audit officer is required to study each case from a holistic point of view of applicability of statutory provisions and amendments thereof, notifications, circulars and orders relevant for the audit period. As mentioned above, there have been various instances where a specific transaction, when looked at from a wider perspective, has yielded interesting conclusions. Many of these instances are covered by various clarificatory Circulars issued by the Central Government and the State Government.

• The auditor should mention the precise issue pertaining to the subject, for example, discounts passed on to the buyer, utilisation of inputs for repair/re- processing, etc.

• **Source document(s)/ information to be verified:** Documents/ information reflecting or having a bearing on payment of GST should be verified, if required. For example GST Invoice(s) showing a particular discount.

• **Back-up** / **supporting document(s):** Back-up or supporting **documents** should be examined to check the correctness of the information contained in the source document (s), if required. The method of their

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examination may also be specified in the plan. For example, commercial invoice, party ledger, discount policy documents, price circulars, etc. reflecting the said discount.

• **Period of coverage:** Normally, the coverage will be for the whole of the audit period. However, the auditor may conduct test verification for specific periods each extending over a short duration, if required.

• Efforts should be made to make a simple audit plan in case of small taxpayers

## 4.4.2 **How to make an effective audit plan**?

An effective audit plan actually starts building up from the stage of desk review.

Audit Plan is the most important stage before the conduct of audit. Each audit team should prepare an Audit Plan for each individual auditee allocated to it based on the information gathered from available sources and based on observations made upon pre-audit desk review and data analysis done by the team in relation to the auditee's business performance and information furnished in response to the questionnaire sent to the auditee along with notice in Form ADT-01. The information available from the GST back-office portal, MIS available internally and various reports (if available) should be analysed to prepare an effective audit plan. Any other pertinent information (e.g. received from any enforcement unit) in respect of the said auditee may also be taken into account.

# The Audit plan should be prepared preferably within seven (07) days prior to the first date of hearing / visit to be fixed in Form GST ADT 01.

An effective audit plan will be a guiding track for Audit conducted under both "Field Audit Method" (Audit at RTP's place) as well as "Desk Audit Method" (Audit at Audit Officer's place of work).

## 4.4.3 **Approval of audit plan**

The audit team shall get each Audit plan approved as per the departmental guidelines provided from the higher authority. The approving officer may modify the Audit plan if necessary.

On the basis of scrutiny of the set of documents and records and the filled-in questionnaire produced by the RTP during audit hearing, new angles may

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open up. Inclusion of these points adds value to the audit plan. In case an Audit Team finds it necessary to modify the audit plan in the course of the audit, details of the same with reasons thereof shall be placed for approval before the same authority that has sanctioned the plan.

GSTN has developed a process to sanction audit plan through a back-office portal. The audit plan submitted should be sanctioned and modified as early as possible, preferably through back-office or through any other electronic means like e-office.

## Chapter 5

This chapter covers conduct of audit, audit findings and finalisation of audit.

## 5.1 **Commencement of Audit**

As per Explanation to Section 65(4) of the CGST/SGST Act, 2017 (p.14), 'commencement of audit' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

Thus, audit will commence on the first date of hearing as per GST ADT-01 provided the auditee produces the requisite documents and records as have been asked for.

GST Administration may decide to audit any individual auditee or a class of auditees remotely in the interest of public health, availability of audit resources, taxpayer's facilitation or for any other reason which is fair and equitable.

## 5.2 **Examination of Books of Accounts and records**

Examination of Books of accounts and records involves verification of data and information and actual verification of documents submitted by the RTP in the course of audit and verification of the points mentioned in the audit plan. This is the most vital part of the audit process. The entire outcome of audit depends on examination of books of accounts systematically and in a planned manner.

- The officer should have primary knowledge about the business pattern of the RTP with respect to the particular trade & industry.
- He should also be well aware of the existing trade practices, conventions and market trends.
- The Audit Officer should be well aware of the statutory provisions, rates of taxes, Circulars, Orders etc. as applicable for the particular period of audit.
- An Audit Officer should apprise the RTP of the provisions of the GST Acts in respect of maintenance of books.
- He should preserve all the documents submitted by the auditee in the course of audit as office records preferably in electronic format.

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- Physical copy duly authenticated or digitally signed copies wherever possible should be collected which are pertinent to the queries / audit para of the audit officer.
- He should take an unbiased and judicious approach in the course of audit.
- An Audit Officer should be tactful to gain the goodwill and confidence of the RTP.
- Technical lapses by the RTP which do not have any revenue implication, and have occurred out of oversight or ignorance, should be ignored. However, any such incident should be noted down in the course of audit.
- Confidentiality should be maintained in respect of sensitive and confidential information furnished in the course of audit.
- Understanding of the Indian Accounting Standards and the impact of GST thereupon while examining the Books of Accounts will facilitate an Audit Officer while examining Books of Accounts.

Some illustrative examples for primary understanding of accounting standards vis-à-vis GST are given as **Annexure 16 (p. 241).** 

## 5.3 Indicative parameters

Some indicative parameters for examination are discussed in this section. Registration/Migration Analysis, Return Analysis, Ratio analysis, Trend Analysis, Balance sheet study are some of the vital areas of Examination/Verification of Books of Accounts and records in the course of audit. The checks to be carried out regarding Reverse Charge Mechanism are given in **Annexure 9 (p. 141)**. Important changes in GST Law and Rates of Tax are in **Annexure 12 (p.184)**.

## 5.3.1 **Registration/Migration analysis**

Previous registration details (if any) under earlier Acts are to be verified. If such information is not disclosed there may be a tendency to hide earlier history of compliance behaviour.

Updated details of business promoters, additional place of business, bank accounts, and details of authorised signatory/(ies) should be examined. If the same are not provided, the auditee should be asked to provide the same.

Furthermore, the Audit Officer should analyse trends and patterns of turnover, tax payment, nature of business etc. from the pre-GST registration data, if available.

## 5.3.2 **Return Analysis**

This is a most vital area before commencement of the Audit program. A great deal of the groundwork can be done upon analysis of the available return figures and thereby having a prima-facie idea of the business trend of the auditee.

5.3.3 Illustrative steps that may be considered for an effective Return Analysis:

- HSN code of the goods and/or SAC of the services dealt in by the RTP should be verified where available to ensure that such are in conformity with the schedules/notifications and it is to be checked that the proper rate of tax thereupon was applied on outward supplies as shown in Form GSTR-1 & Form GSTR-3B.
- Time of filing of returns should be noted and should be checked to confirm whether the returns were filed within the prescribed time.
- Outward supplies as declared in Form GSTR-1, Form GSTR-3B and GSTR-9 should be compared with the Books of Accounts as maintained and produced by the auditee. The reconciliation statement, in case of any difference, is required to be examined with supporting documents and explanations along with Form GSTR-9/9A and Form GSTR-9C, if such have been submitted by the auditee.
- Claim of the RTP under different heads like Zero-rated, Nil rated, Exempted and non-GST outward supplies, etc. as shown in Form GSTR-1, Form GSTR-3B. The reconciliation statement, in case of any difference, is required to be examined with supporting documents and explanations along with Form GSTR-9/9A and Form GSTR-9C, if such have been submitted by the auditee.
- Amount appearing under the head "Advance received" needs to be reviewed carefully since GST is applicable on "Advance received" against future "supply of services". As per Notification

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No.66/2017 - CT. dated 15.11.2017; payment has been delinked to determine time of supply in case of supply of goods.

- Transactions like import of services and transactions between related parties and activities specified in Schedule-I which are required to be considered as supply even without consideration are required to be examined thoroughly. These cases would require very cautious examination of the books of accounts, final accounts, P/L account and balance sheet to determine whether there are any such transactions which are not reflected in the returns. Some illustrative examples are given in Annexure 15 (p. 219) for understanding of the matter.
- Goods sent for approval and goods sent to job workers should be examined with the books of accounts.
- Data in respect of way bills, both inward and outward, should be verified with the books for compliance level analysis. It may happen that the total value of outward waybill grossly differs with the total outward supply. In that case one should go through the details into the accounts.
- Refund may be made to the auditee on account of export with or without payment of tax. In such cases, the veracity of export claims need to be checked. For this, the shipping bill details should be checked with the ICEGATE portal; in case of high volume of export through non-EDI check posts where the shipping bill details cannot be verified through ICEGATE portal, extra caution should be exercised in scrutinising the shipping bills in support of the export claims.
- In the case of export with payment of tax, if the value of export is found to be significantly higher than similar products sold in the domestic market in depth scrutiny of the payment received in respect of the export is required since there may be a possibility of monetizing excess ITC.
- In respect of claim for refund of unutilized ITC on account of zerorated supply, adequate caution is required to be taken so that, ITC

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on account of transitional credit, capital goods are not claimed for refund.

- Claim for refund of unutilized ITC may be made on account of inverted tax structure. In such cases, (i) verification of the classification of inputs and output supplies and the respective rates of taxes attracted by them is very crucial; (ii) Refund of unutilized ITC in accordance with section 54(3)(ii) of the CGST/SGST Act is provided where credit has accumulated on account of rate of tax on inputs being higher than rate of tax on output supplies. Similarly, "Net ITC" for the purpose of refund should not include any ITC relatable to trading activity; nor should it include ITC on account of capital goods or input services.
- The claim of ITC of an auditee should be checked against fulfilment of the conditions laid down in the Acts and Rules made thereunder.
- If usage of ITC for payment on account of export is significantly high, in depth scrutiny of the availment of ITC is warranted.
- In depth checking is needed in respect of goods and services on which ITC is blocked.
- Some illustrations in respect of the provisions of input tax credit are attached as **Annexure 11 (p.163)**.
- Enquiry should be made to confirm whether any specific Advance Ruling/Appeal Order of Advance Ruling is applicable for any of the supplies made by the auditee.
- Output tax payment is required to be examined to ascertain interest liability. Any output liability which has been discharged other than by Form GSTR 3B is required to be examined as to whether interest (if applicable) has also been paid for the same or not.
- Checking should be done in respect of interest and late fee payable as per notification(s).
- All possible areas related to compliance issues that may result in short payment or evasion of tax are also required to be checked.

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The intention of these above illustrations is to create awareness of Officers in the subject so that an Audit Officer looks into the statutory provisions in detail. It may be mentioned in this regard that these illustrations are merely indicative in nature. However, it is desirable that an Audit Officer should not confine himself to these indicative illustrations and should be prudent enough to go through the provisions of law and rule, various clarifications issued in different circulars, judgments passed by various Courts of Law and Rulings passed by AAR & AAAR in this respect in detail. As mentioned in Para 5.8 below, GST Tax administrations should strive to develop a shared platform for sharing audit related information.

## 5.3.4 **Trend Analysis**

This analysis focuses on any abnormality that may have occurred in a particular financial year with respect to the previous financial years. For audit purposes, comparison of either absolute values or certain ratios over a period of time is absolutely necessary to see the trend and the extent of deviation from the average values during any particular period. The analysis of trends may indicate areas where short payment / evasion of taxes is involved. A representative example of such trend analysis is discussed in Annexure 14 (p. 212). The application of the various examples of trend analysis and ratio analysis as discussed here may vary from case to case. In this case, sector specific trend (or the accounting principles followed by an auditee) may play a vital role. The trend of a supplier of particular goods may not be pertinent for another type. Moreover, services sector may demand a different angle of analysis compared to the goods sector. It may be noted that trend analysis should also be consistent with the industry-trends during the same period; a rising/falling trend in industry does not gel with a reverse trend in the case of a particular auditee unless the auditee faces an altogether different/abnormal situation.

## 5.3.5 Areas of concern during examination

Following points may be covered in the process of examination.

## 5.3.5.1 Migration/Registration compliance

	Probable area of	Areas of concern	Action to be
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detection / examination		taken
Previous registration details under earlier Acts and up to date details of information of registration.	If not disclosed there may be a tendency to hide earlier history of turnover and compliance (liabilities of taxes). Up to date details of business promoters, additional place of business, bank accounts, details of authorized signatory.	Asking to provide such numbers and information.

## Why is examination of the above compliance important?

Disclosing of the previous registration details is optional both in case of registration and migration. However, knowledge of previous registration details would help an audit officer to know the pre-GST compliance pattern of an auditee. In many cases it may appear that the RTP has failed to amend his registration and is continuing with the old information. If so, the audit officer should encourage the taxpayer to amend his registration with up-to-date information which would help both the audit officer and the auditee.

A few illustrative examples, as stated below, may help the Audit Officers in this regard. However, the intention of these examples is to provide a glimpse of the matter so that an Audit Officer can look into these aspects in detail.

## Illustrative Examples of some interesting issues in this regard:

**Example 1:** Suppose there is a huge amount of exempted supply in the period under audit. Before entering into the details of the exempted supply the audit officer may first examine the nature of supply in pre-GST regime. So, knowing Pre-GST registration numbers is important. Maybe there was no such exempted supply. Maybe sales in the pre-GST regime were much higher than in GST.

**Example 2:** The auditee fails to deposit the dues as reflected in the audit report after submission of the audit report. The Proper officer raises demand as per provisions of sec. 73 / sec 74 of the SGST/CGST Act, 2017 (as the case may be). The RTP again fails to comply. The officer initiates recovery proceeding by attaching the bank account of the auditee, debtor's account etc. But, if up to date bank accounts details are not amended, the efforts of the officer may not be fulfilled.

**Example 3:** Incorrect information in registration may lead to suppression of taxable turnover and less payment / evasion of tax. Date of commencement of business and date of liability for registration are two important aspects manipulating which an auditee may hide his pre-registration liability.

Probable area of detection / examination	Areas of concern	Action to be taken
Tax Invoice/ Debit Note/ Credit Note/ Bill of Supply etc.	Whether as per Sec. 31 / sec. 34 of the SGST/CGST Act and Rules made there-under?	In case of any discrepancies, clarification may be sought
	Continuity of the SI. No. of such Tax Invoice/ Debit Note/ Credit Note/ Bill of Supply etc.	

<u>Compliance in relation to issue of Invoice, Bill of supply, debit notes and credit</u> <u>notes:</u> Checklist for checks to be carried out and key points of supplies and supply of Goods and Services or both are given in **Annexure 8 (p. 112)**. Check list for key points of value of supply and details of value of supply are in **Annexure 10 (p. 149)**.

A tax invoice is an important document. It not only evidences the supply of goods or services, but is also an essential document for the recipient to avail Input Tax Credit (ITC). Similarly, debit notes and credit notes are also vital documents. A supplier of goods or services or both is mandatorily required to issue a tax invoice. However, various situations may arise in a business, after issuance of an invoice. Possible situations are listed as follows:

• The supplier has erroneously declared a value which is more than the actual value of the goods or services supplied.

- The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
- The quantity received by the recipient is less than what has been declared in the tax invoice.
- The quality of the goods or services or both supplied is found to be deficient.

In the aforesaid cases, the supplier may issue a credit note to the recipient.

But, output tax reduction on that credit note is conditional. It is dependent on the reversal of ITC of the recipient. Credit notes with tax implication in GST can be issued within the time limit as specified u/s 34(2) of the CGST / SGST Act, 2017.

Similarly, following situations may also arise in a business after an invoice is issued:

• The supplier has erroneously declared a value which is less than the actual value of the goods or services supplied.

• The supplier has erroneously declared a lower tax rate than what is applicable for the kind of the goods or services or both supplied.

In such a case, the supplier may issue a debit note to the recipient.

Compliance of invoice, debit notes and credit notes related provisions are directly linked with revenue in GST.

A few examples as given below may help the Audit Officers in this regard. However, these examples are merely indicative in nature:

**Example 1:** The audit officer may notice that there is discontinuity in serial numbers of the invoices issued. A number of reasons may be adduced by the auditee for the same. But, his explanations should be supported with evidence / correspondences. Otherwise, these explanations may be far from reality.

**Example 2:** An auditee has set up an exclusive brand kiosk to sell products of X company.

X Co. pays a consideration for setting up such a kiosk by issuing a commercial Credit Note to the auditee of Rs.10,000 p.m. Is there any revenue implication in GST?

Consideration is received in the form of a Credit Note in respect of supply of service by the auditee to X Co. So, GST is applicable @ 18%.

**Example 3:** The auditee being an importer / manufacturer of medicines has received some expired medicines from a distributor and issued credit notes for the same for an amount of Rs.50 Lakh. The tax component in the credit note was Rs. 3 Lakh CGST and Rs. 3 Lakh SGST. The auditee reduced his liability of output tax to such extent and the recipient also reversed his ITC to that extent. Is this correct?

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Since, the auditee being an importer / manufacturer has received medicines from his distributor which are expired; he has to destroy such medicines. Therefore, the auditee must also reverse the ITC availed on such destroyed medicines.

Areas of concern	Action to be taken	Probable area of detection / examination
To ensure compliance of maintaining books of accounts. To examine cash flow, valuation, input and output ratio, etc.	To examine correctness of tax compliance made in returns.	<ul> <li>RTP will be asked to produce following books of accounts: <ul> <li>Annual report and Director's report (if any)</li> <li>Profit &amp; Loss A/C</li> <li>Balance Sheet</li> <li>Notes to accounts</li> <li>Tax Audit Report</li> <li>Statement of income tax TDS.</li> <li>List of HSN /SAC of the goods /or services in respect of the business.</li> <li>Reconciliation statement in respect of Form GSTR 9, GSTR-1 AND GSTR 3B</li> <li>Suppliers list with GSTIN (where applicable)</li> <li>Ledger accounts of the suppliers</li> <li>Statement of sales party wise and POS wise.</li> <li>Supply for which tax paid in RCM.</li> <li>Bank Statement for the period under audit</li> <li>Stock register</li> <li>Other documents and records as applicable as provided in section 35 of the Act</li> </ul> </li> </ul>

### 5.3.5.3 Maintenance of books of accounts

The basic objective of audit stands on the principle of examination of books of accounts. The GST laws have prescribed the nature of books of accounts required to be maintained by an RTP. The officer in this case should be well aware of such provisions and ask the auditee to produce such books of accounts.

Further, the Officer should be well acquainted with the accounting policies which form the basis of any books of Accounts. Apparently, an entry may not appear to be related with GST revenue but, upon thorough examination in the course of audit such may turn out to be valuable information.

A few examples are given herein below, which may help the Audit Officers in this regard. However, these illustrations are merely indicative in nature with

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the sole purpose to alert the audit officers in this regard who are also required to go through the relevant statutory provision in detail:

**Example 1:** In order to have an idea of the quantum of supply of an auditee, an officer generally examines the Debtors list. But there may be a case, where a Debtor (i.e. customer), say A is also a creditor (i.e. supplier). In such a case, it is required to examine whether A's Ledger A/c (as a Debtor) correctly reflects only the credit supply made by the RTP to A or it is rather a set-off account where the balancing figure reflects the net figure of amount receivable less amount payable.

**Example 2:** It is a normal business practice to get advances from the customers. In this case, advances played a role in determining the time of supply for goods till 14.11.2017. However, tax liability on advances received is still there in case of services. Now, as per the provisions of Rule 56(3), every RTP is required to maintain a separate account of advances received, paid and adjustments made thereto. An advance for which service is not provided or not adjusted in any invoice, the RTP is required to show such amount as Current Liabilities in the Final Accounts. So, the Audit Officer should only examine such Liability Accounts to verify whether such tax on such advances is actually paid or not.

## 5.3.5.4 **Return submission compliance**

There have been various extensions of the due dates and conditional extensions of due dates for the return periods of different financial years. To facilitate an audit officer in this regard, an exclusive annexure is prepared which is attached as **Annexure 13 (p.190)**, which contains due dates, extension of due dates of various returns and other details of the returns alongwith the checks to be carried out. It also contains the State codes **(p.203)**.

## 5.4 **Communication of discrepancies noticed**

Upon examination of the books of accounts and records in the course of audit, the audit officer shall clearly note all his observations relating to the possible areas of lapses, as discussed above.

The grounds of any discrepancies against the disclosed parameters of the auditee should be concise, to the point and self-contained. Different para(s) should be formed depending on the nature of observations.

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Where any discrepancy is based on any circular or clarification or notification issued by the State Government or the Central Government or by the Commissioner or the Board, such must be mentioned clearly. Similarly, where findings are based on discussion or merit of any decision of any Hon'ble Court, decisions of Advance Ruling Authority, and decisions of Appellate Authorities such should be clearly cited. Similarly, where discrepancies are noticed in respect of information disclosed in the return and those ascertained from accounts/documents, the same need to be mentioned clearly in the communication, alongwith the tax implications.

The findings of audit should be prepared and are required to be communicated to the RTP within 30 days of commencement of audit.

The auditee, if he thinks fit, may submit a written explanation in reply to such findings upon adducing supporting documentary evidence and other facts & figures as may be necessary.

The auditee shall be given a time of at least seven (07) days from the receipt of the draft report to submit his/her reply.

The Audit Officer should inform the auditee about the observations made in the course of audit preferably in electronic format. The auditor should also apprise the auditee of the provisions relating to his voluntary compliance and at the same time encourage him to pay the dues in Form GST DRC – 03 in the course of audit.

## 5.5 **Draft Audit Report and approval thereof**

The audit officer shall clearly mention in his working paper the reply of the auditee in respect of the findings drawn and communicated to the auditee. After careful consideration of the reply a **Draft Audit Report (DAR)** should be prepared by the audit officer for internal administrative purpose and not for the auditee.

The DAR shall be placed before the audit plan sanctioning authority for perusal. If the total amount of tax due exceeds a certain amount, DAR should be placed before the appropriate higher authority with a short narration of such dues for perusal and approval. This condition may vary State to State and the Centre. This condition is purely for administrative purposes to ensure that the demand is genuine. The aforesaid narration for such high dues should be concise, to the point and self-contained.

Where any finding is based on any circulars or clarifications or notifications issued by the State Government or the Central Government or by the Commissioner or the Board, such must be mentioned clearly in the DAR. Similarly, where findings are based on discussion, merit of any decision of any Hon'ble Court, decisions of Advance Ruling Authority and decisions of Appellate Authorities, such should be clearly cited.

On points of difference, further consultations / examination may be required.

## 5.6 Monitoring Committee Meeting

Every team of audit should represent the status of audit once in every month on a pre-scheduled date in a format annexed hereto **as Annexure 7 (p. 109)** before the Monitoring Committee in the Monitoring Committee Meeting (MCM) under the chairmanship of the Commissioner/ appropriate authority.

This Committee, besides monitoring the status of audit of every level, will also try to identify the important observations made upon audit by different units for better coherence among all the existing audit teams. At the same time, the Committee will also try to identify the areas of audit related to the unit that need special attention and make suggestions accordingly. The committee may also review the audit objections raised by the Audit Teams and after discussions take a decision on the same.

The Monitoring Committee shall invite the Audit head of all the units, Nodal officer of Information System Division/IT Division and representatives from GST-Planning Unit of the State/Centre to offer their views to maintain the progress and ensure uniformity in audit and subsequent demand and recovery proceedings. The Committee may invite any Audit Team or Audit Officer of any unit if deemed fit.

Composition and procedure of this committee may vary from State to State and at the Centre. As MCM is an important institutional mechanism, the frequency of its meetings and mandate should be revisited from time to time to make it more effective.

## 5.7 **Final Audit Report**

The audit officer shall finalize the findings of the audit and draw **Final Audit Report in GST Form ADT-02** (hereinafter referred to as 'FAR') after due consideration of the reply furnished [Rule 101(4)] and the discussions in MCM.

After approval of the DAR by the appropriate authority, the FAR shall be issued to the auditee preferably through system / electronically to the auditee within 7 (seven) working days of approval.

## Format of GST FORM ADT-02 is annexed herewith as Annexure 6(p. 108)

## After issuing the FAR, the Audit Case will have to be closed.

5.7.1 Such closure of case can be done in the following scenarios:

a) The technical lapses (if any) are corrected and the entire dues as per the FAR are paid by the Taxpayer preferably within 30 days in Form GST DRC-03;

b) FAR is issued with Nil Revenue implication;

c) The tax, interest or any other amount payable by the RTP as have been ascertained as short paid or not paid is not deposited by the taxpayer within 30 days after the issuance of the FAR, and in such situation the case is required to be referred to the respective jurisdiction for initiation of demand and recovery proceedings (after the issuance of show cause notice, as the case may be, depending on the administrative and legal arrangement in this regard).

5.8 GST Tax administrations across the country should endeavour to develop a common platform for sharing important audit findings and other sources of relevant information to improve the quality and efficiency of audit. This inclusion can take the form of an audit bulletin on an online portal or a GST Audit Knowledge Management System.

# CHAPTER 6

This chapter covers follow up of audit.

## 6.1 Audit Consequences

After receipt of the FAR, the auditee may agree to the audit observations in full, or he may disagree in full or he may even agree to a part of the observations made.

In case of full or partial agreement, the audit officer should encourage the auditee to make voluntary payment of the dues in Form GST DRC - 03 as detected in the course of audit. Where the RTP agrees with the short levy as per the show cause notice, the auditor should explain the benefits available u/s 73(6) / 74(6) of the SGST/CGST Act, as the case may be.

Now, the observations made in the FAR may be of 2 types:

- Those of technical nature and not having any real revenue impact.
- Those having revenue impact, i.e. short payment of tax, interest etc. by the auditee.

Technical lapses by the RTP which do not have any revenue implication, and have occurred out of oversight or ignorance, should be allowed for correction (if required).

## 6.2 **Demand & Recovery proceedings**

If the tax, interest, penalty or any other amount payable by the RTP as have been ascertained as short paid or not paid, is not deposited by the taxpayer within 30 days after the issuance of the FAR, the case is required to be referred to the respective jurisdiction as per the provisions of Section 65(7) of the SGST/CGST Act for initiation of demand and recovery proceedings. The proper officer having the assigned role of 'Demand & Recovery' shall initiate action under Section 73 or 74 of the said Acts, as the case may be, through the 'Assessment & Adjudication' module in the back office of GST.

It is the administrative decision of the respective State whether the audit officer will subsequently adjudicate or that will be done by a separate officer.

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Whatever may be the arrangement, it is desirable that the adjudicating officers carefully consider the findings as noted in the Final Audit Report and take subsequent actions independently.

However, repetition of points of examination (including documents thereof) should be avoided unless it is absolutely necessary.

# Chapter 7

This chapter covers audit in certain circumstances.

## 7.1 Different possible scenarios during the conduct of audit

During the course of audit, beginning with the process of selection to completion, various possible scenarios may arise such as registration has been cancelled before or after selection, RTP is in NCLT, death of the proprietor, transfer of business, non- existent person, etc. Such various scenarios during audit along with possible actions are discussed below:

## 7.1.1 **The auditee is found non-existent**

It is to be noted that audit is a document-based exercise and the purpose of audit as delineated in this audit manual is to examine the records, returns and other documents maintained or furnished or filed by the registered person under this Act or Rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his/her compliance with the provisions of the Act or rules made thereunder. Thus, where the taxpayer is not found to be existent the process of examination and verification cannot be carried out as the said taxpayer is a bogus taxpayer with no credentials that can be attributed to a taxpayer registered under the SGST/CGST Act. Therefore, in such a scenario it is proposed that the audit of such taxpayers need not be carried out. The details of such a taxpayer should be shared with the Jurisdictional GST officer and the enforcement wing for further necessary action.

## 7.1.2 **GSTIN/Registration Certificate (RC) of taxpayer is cancelled**

Audit under section 65 is an exercise that is required to be carried out in relation to a registered person to assess his compliance with the provisions of the Act or rules made thereunder. In the scenario where the registration of the auditee has been cancelled from an anterior date which is prior to the initiation of the audit, the audit of such a taxpayer would not be within the ambit of the "Audit" as defined in section 2 of the Act. Therefore, in such a scenario if deemed fit, audit of such a taxpayer need not be carried out. The details of such a taxpayer should be shared with the Jurisdictional GST officer and the enforcement wing for further necessary action.

## 7.1.3 Taxpayer is existent but documents are seized

The case for conduct of audit has already been assigned. There may arise a situation in which a taxpayer is existent and active but the documents relevant for audit are seized or under the possession of some other Government agency like CGST, ED, Court, Police etc. Audit is primarily a document-based exercise which fundamentally examines the records, returns and other documents maintained or furnished or filed by the registered person under the relevant GST Laws or Rules made thereunder. So, in a scenario where records of the auditee have been seized by some authority and the same are not available with the auditee it is suggested that audit of such auditee should be deferred and the audit wing should endeavour to obtain records from the concerned authority which has seized the said records so that meaningful audit can be carried out. As for the information available in the returns which can be examined from the perspective of tax it would be prudent that the said exercise is carried out by the jurisdictional officer rather than audit officer in case the jurisdictional office has a separate wing or section for audit. Once the documents of the auditee are obtained then the audit wing can proceed with the audit. Further course of action in such cases can also be discussed and decided in the MCM.

7.1.4 **Investigation/verification by some other wing/agencies are going on** If the taxpayer is found existent and active and the records of the auditee are available although the investigation into certain activity of the taxpayer is being carried out by the other investigating agencies it suggested that the audit of such taxpayer should be carried out irrespective of the fact that another agency is also investigating the taxpayer. The audit wing should be expected to coordinate with the other investigating authority so as to be abreast of the aspect being examined by the said authority and its repercussions on the audit being carried out. However, different GST tax administrations may, in the interest of administrative exigencies, adopt a different approach in such cases.

# 7.1.5 During examination the business model of the auditee is found fraudulent

The case has already been assigned for conduct of audit. The taxpayer is existent and active, but during the conduct of audit, it emerges that the business model of the auditee is fraudulent and it is beyond the powers of the

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audit officer to deal with the issue under the Act/Rules formulated thereunder. In this scenario, although all the parameters of audit are met by the auditee but during the conduct of audit it emerges that the nature of transactions being carried out by the auditee are so fraudulent that they vitiate the existence of the registered taxpayer to the core and the investigation of same cannot be carried out within the four walls of audit as well as the powers assigned thereunder to the audit officers. It is therefore suggested that in such a scenario, the case should be transferred to the enforcement wing to carry out further investigation in the manner by exercising the various powers assigned to them including that of inspection, search and seizure.

## 7.1.6 **During audit it appears that the taxpayer is engaged in** certain fraudulent activities

The case has already been assigned for conduct of audit. The taxpayer is existent and active. But during the conduct of audit, it emerges that the taxpayer is engaged in certain fraudulent activities beside the regular business. It is to be noted that section 65 of the CGST/SGST Act empowers the tax authority to take action under section 73 as well as section 74 of the Act in relation to the observations originating out of the conduct of audit. Further, Section 74 is specifically for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. Thus, it is suggested that in such a scenario the audit team should carry out the audit and should mention specifically in the final report such fraudulent activities so that any demand of tax for such fraudulent activity should be raised under section 74 of the CGST/SGST Act.

## 7.1.7 **Taxpayer is not cooperating with the audit team**

The case for conduct of audit has already been assigned for audit. The taxpayer is existent and active. But during the conduct of audit, it emerges that the taxpayer is not cooperating in submission of documents sought by the audit team. In this scenario, although all the parameters of audit are met by the auditee, the auditee is not cooperating in submission of documents sought by the audit team. As noted above, audit is primarily a document-based exercise which fundamentally examines the records, returns and other documents maintained or furnished by the registered person under this Act or Rules made thereunder. So, in a scenario where the auditee is not providing

the records, the audit wing/team/audit officer should issue SCN to impose penalty upon the auditee under section 125 of the SGST/CGST Act read with IGST Act and should give a detailed report to the head quarter / head of the audit vertical. In this scenario, the case should also be transferred to the enforcement wing to carry out further investigation by exercising the various powers assigned to them including that of inspection, search and seizure. Progress of such cases referred for investigations should be monitored through MCM.

## 7.2 General guidelines

It is important to ensure that the registration number of non-existing persons does not survive for a long period. As criteria for selection of audit cases is related to the high turnover parameters, it is all the more dangerous that registration of such persons remains active for a long period. As such, in such cases, immediate action is needed against the RTP to cancel the registration and other proceedings against the person. The jurisdictional officer should explain the cause of not initiating action against such RTP for such a long period to their supervisory officer.

Audit selection committee should try to collect the above information before finalising the list for audit so that in the list there should not be any cancelled person and to minimise selection of non-extent persons in the list.

In the above situations where it is advised not to continue audit u/s 65 of the Acts, the audit team or the audit wing should first inform the same through the audit vertical / audit wing to the Commissioner / organisation carrying out the targeting exercise, requesting for de-selection of the selected RTP.

Uniform audit templates go a long way in ensuring uniformity of practices and similar taxpayer experience. Templates that capture the spirit of GST laws, use unambiguous language and cover all the relevant issues will lead to mitigating excessive correspondence with taxpayers, minimize gaps in audit exercise and reduce potential for litigation. Correspondence based on templates should be automated and templates should be made available to the audit officers through an internal communication tool on audit module or a departmental website.

# CHAPTER 8

This Chapter covers administration, role of officers, Constitution of Committees and Standard Operation Procedure (SOP) for the conduct of Thematic Audits and Joint Audits as and when approved by the GST Council.

## 8.1 Thematic Audit

## 8.1.1 **Overview**

Purpose of Theme-based audit is to conduct "focused audit" instead of a "comprehensive audit", so that available resources are directed to check/ verify compliance of sensitive issues or sectors. The results obtained from theme based audit assists the policy makers to assess compliance level of a particular type of service/industry or trade sectors or areas so that compliant sectors may be extended greater facilitation and special focus may be directed to ensuring compliance on sectors with relatively low compliance scores. It is a value-adding approach that helps the Auditors to determine, consolidate and report high-level insights in the business transactions and practices prevalent in a particular type of industry/service sector. Theme-based audit may have both compliance and performance audit objectives.

## 8.1.2 Scenarios which may necessitate conducting thematic audit: The following scenarios may lead to a thematic audit.

- Taxpayers in the same supply chain registered in same/different states;
- Simultaneous audit of units which have same modus operandi of tax evasion and are registered across states;
- Taxpayers dealing in supply of some goods/services which have also been determined as evasion prone.
- Thematic audit may also extend to specificity like trends in availment and utilisation of ITC in any given sector e.g. telecom sector, trends in valuation of supplies to distinct persons in the pharma sector, etc.

# 8.1.3 Administrative arrangement for Selection of themes for thematic audit

For conducting thematic audit, GST Council may form a co-ordination committee at all India level which should choose themes for conducting audit,

constitute a Committee of Officers for selecting taxpayers in a state for conducting thematic audit, coordination among various Audit Authorities for evolving a common minimum audit plans for a given theme and, monitor actual audit by the field formations and disseminate audit outcome to appropriate stakeholders.

It is recommended that the co-ordination committee may be constituted with the following as its members:

• Pr. DG/DG (Audit) or any Pr. Additional Director General (Audit) / Additional Director General (Audit) as nominated by him;

- Joint Secretary, GST Council;
- Pr. Commissioner/ Commissioner (GST), GST Policy Wing;
- CEO, GSTN;
- Three Commissioners of SGST, as nominated by the GST Council;
- One CGST (Audit) Commissioner as nominated by the GST Council.

The co-ordination committee shall be responsible for selecting themes for conducting theme based audit at all India level in a coordinated manner. For selecting the Audit themes, the Committee may consider using the following parameters/ data sources:

## 8.1.4 Indicative parameters for selection of themes are given below:-

- Economic indicators;
- Third party information from Tax authorities and other Regulatory authorities;
- Sensitive nature of the commodity and / or service;
- Risky sectors in news for frauds for e.g., E-commerce, online gaming, jewellers etc.;
- Sectors directly involved in providing services to a large consumer base, such as banking, insurance, air and land travel, utilities etc.
- Sectoral revenue and value addition trends and variations therein

In addition to above, risky themes identified by the State and Central Tax Authorities based on local intervention can also be used for determining a local theme. Certain risk - based parameters may also be adopted for selection of Taxpayers for conducting theme - based audit, such as:

- Taxpayers showing abnormal growth;
- High revenue contributing Taxpayers;

• Sectors/units flagged by the CAG or PAC or otherwise where credible information is available to point out that the provisions of the Act are not being followed or where issues like place of supply issues or point of taxation are cropping up;

- Taxpayers availing benefit of major exemption notification;
- Sectors with low cash pay-out

• Taxpayers engaged in supply of risky and sensitive commodities and services viz., advertising services, event management services, metals, chemicals, entertainment services and Health & education related auxiliary services etc.

## 8.1.5 Administrative arrangement for conduct of Thematic audits.

For coordination of actual audit, the Co-ordination Committee may constitute a Committee of Officers (CoO) for each state/ UT composed of the following two members:

- State GST Commissioner
- CGST Audit commissioner preferably located at the same station

The Committee of Officers shall select the Taxpayers based on the themes which have been finalised by the Coordination committee. The details of the taxpayers so selected, will be shared with Audit formations of the Central and State tax authorities for conducting audit proceedings.

## 8.1.6 **Role of Audit field formations (of Central and State Tax) for conducting thematic audit**

Theme-based audit of a selected Taxpayer would be conducted by the concerned GST audit authority (i.e. the jurisdictional central or state audit officer).

Considering the importance of thematic audit, it is imperative to allocate appropriate resources/staff in each of the Audit formation. The Head of the

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Audit formation in the State/Centre may like to specifically earmark appropriate staff (Audit Groups) exclusively for Thematic Audit. Even separate nomenclature may be adopted for such audit groups. It is emphasised that the Audit groups should be provided with proper infrastructure for efficient handling of the Audit work. Audit groups dealing with Thematic Audits should be given proper training to deal with audit of records of the taxpayers of these themes.

# 8.1.7 Standard Operating Procedure (SOP) for conducting Thematic Audit.

a) The Co-ordination Committee (CC) shall select the themes for Audit and communicate the Themes to the Committee of officers (CoO) responsible for Audit.

b) For a given theme, the committee of officers shall select the taxpayers to be audited in that particular state.

c) Audit groups earmarked for conducting the theme based audit shall request the selected tax payer(s) for providing necessary documents viz. Balance sheet(s), 3 CD reports(statement of particulars required to be furnished under Section 44AB of the Income Tax Act, 1961), profit and loss statements, income tax returns etc. The concerned audit group shall also take out various GST returns filed by the said taxpayer and examine/scrutinise them. They will accordingly prepare the Desk Review (DR) and also the Audit Plan (AP). As with entity-based audit discussed in earlier section above, as much data as possible may be gathered from the documents/returns already available in the system.

d) All such Audit groups (both under Centre and State tax authorities) shall forward the proposed audit plan so prepared by them, to the Committee of Officers which shall examine these audit plans to ensure uniformity in approach and provide further inputs, if any. After this exercise, a common minimum Audit Plan shall be prepared and communicated to all Audit Groups for conduct of audit.

e) The Committee of Officers for conduct of thematic audit shall also indicate a date on which audit of all such taxpayers irrespective of their jurisdiction (whether under Centre or State) shall commence.

f) After conduct of audit, all the Audit Groups shall prepare their

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observations and convey to the taxpayer (s) for their written response to these observations. In their written response, the taxpayer is expected to communicate their agreement or disagreement as the case may be to the observations pointed out by the Audit Group. After taking into account the written response from the taxpayer, the Audit Group shall prepare the draft audit para(s).

g) The Audit Group shall forward their draft audit para(s) to the Committee of Officers for approval. Before approving the draft audit para(s), the Committee of Officers may hold a meeting (physical/virtual) with concerned audit groups. This Committee may also point out certain additional areas which need to be looked into by the audit groups before finalising the audit paras.

h) Once draft audit para(s) are approved by the Committee of Officers, the audit group (s) shall present their draft audit report before their respective Audit Authorities for approval. The Audit Authorities may adopt a practice of holding monthly meetings of the monitoring committee for approval of audit paras presented by their audit groups. At present, Central Tax Authorities are holding monthly meetings of the monitoring committee consisting of Commissioner (Audit), Joint Commissioner/Additional Commissioner (Audit) and Assistant/Deputy Commissioners heading various Audit Circles wherein audit objections are discussed and approved.

i) Once audit para(s) are finalised after approval of the Monitoring Committee, the concerned audit officers/groups shall issue Final Audit Report (FAR), a copy of which shall also be endorsed to the coordination committee for dissemination to Central Tax Audit Commissionerates /State Audit Officers across India for information.

j) The audit paras which have been agreed upon by the taxpayer shall be closed after payment of the due tax amount along with appropriate interest and penalty, if any.

k) As regards unpaid/short paid GST is concerned where the taxpayer is not in agreement with the audit para and is not willing to pay outstanding GST along with interest and penalty, the audit groups shall prepare demand cum show cause notice to be adjudicated by the appropriate Tax Officer. Before issue of demand cum show cause notice, the taxpayers may be given pre-consultation so as to give them one more opportunity to explain their

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point of view to the senior tax officers before a final decision is arrived at. The Tax Authorities may also use this opportunity to explain the department's view point to the taxpayers and encourage them for voluntary compliance. This will reduce unnecessary litigation which is good for both the taxpayer as well as the government.

I) After adjudication proceedings, recovery action against the taxpayer shall be taken by the appropriate jurisdictional tax authority (i.e. Central Tax Commissionerates or State Tax Jurisdictional Authority) in accordance with Section 79 of the CGST/SGST Act read along with relevant rules and provisions issued therein.

m) The jurisdictional tax authorities shall upload the audit findings (in a predetermined format), in an Audit Utility which shall be accessible to all the Audit formations across the country. These findings may be helpful in detecting similar types of anomalies in similar cases across the country.

## 8.2Joint Audit

## 8.2.1 **Overview**

It is possible that some taxpayers registered on the same PAN may be spread across multiple locations either within the same State or across States of India. These multi-location taxpayers may fall under different tax administrations, particularly so in case of multistate operators. Therefore, there is a need to ensure a coordinated approach for conducting audit of such multi-location taxpayers.

## 8.2.2 Administrative arrangement for Selection of Joint audits

Constitution of Coordination Committee - It is proposed that the Coordination Committee constituted by the GST Council for the purpose of thematic audit may also be entrusted with the work of coordinating joint audit.

The Coordination Committee may select certain taxpayers for joint audit out of the database provided by GSTN. It is proposed that the taxpayers may be selected for joint audit based on clear and mutually agreed criteria/risk parameters between different tax administrations.

## 8.2.3 Examples of criteria for selection of taxpayers for joint audits :-

• Registration in two or more GST Tax administrations.

• Entities above a certain turnover aggregate threshold, for example, more than Rs. 100 Crore.

• Taxpayers dealing in the service industry, having national or multi state operations. Inter-agency coordination failure in the aforementioned cases may lead to lack of uniformity in interpretation of law leading to compliance hassles for the taxpayer and increased litigation for the department. Therefore, there is a need for well-defined procedures to delineate the modalities of conducting theme-based audit.

The Coordination Committee may also adopt any other parameters/criteria for selecting taxpayers for joint audit.

#### 8.2.4 Administrative arrangement for conduct of Joint audits.

Constitution of Committee of Officers - For coordination of conduct of joint audit of a multi locational taxpayer, Committee of Officers (hereinafter referred to as Supervisory Committee) may be constituted.

It is proposed that this committee may comprise the following:-

• The Commissioner (SGST/CGST) of the jurisdiction where the headquarter of the said company/business entity is located.

• The Commissioner (SGST/CGST) of the jurisdiction having the highest risk score in the GSTINs of the company/business entity.

• The Commissioner (SGST/CGST) of the jurisdiction other than the above two where the turnover of the GSTIN of the said PAN is the highest.

• The Commissioner (SGST/CGST) of the jurisdiction other than the above three where the ITC utilisation of the GSTIN of the said PAN is the highest. (If it is the same as the unit where the highest turnover is then this criteria does not come into play)

• The Commissioner (SGST/CGST) of the jurisdiction where the selected company/business entity maintains its compliance and financial records.

#### 8.2.5 Standard Operating Procedure for conducting Joint Audit

a) The Co-ordination Committee shall select the multi-locational taxpayers for joint audit and communicate the same to the concerned Supervisory Committee. This should be done no later than the month of February for the next financial year. This Committee in turn will intimate the jurisdictional Audit Authorities to allocate the selected taxpayer to a particular audit group for conduct of audit.

b) The nominated Audit group shall request the taxpayer for providing necessary documents viz. Balance sheet(s), 3 CD reports (statement of particulars required to be furnished under Section 44AB of the Income Tax Act, 1961), profit and loss statements, income tax returns etc. The concerned audit group shall also take out various GST returns filed by the said taxpayer and examine/scrutinise them. They will accordingly prepare the Desk Review (DR) and also the Audit Plan (AP). As recommended in para 10.7 above any documents not available with the taxpayer administration/GSTN/other regulators should be sought from the auditee.

c) All such Audit groups (both under Centre and State tax authorities) shall forward the proposed audit plan to the Supervisory Committee which shall examine these audit plans to ensure uniformity in approach and providing further inputs, if any. After this exercise, a common minimum Audit Plan shall be prepared and communicated to all Audit Groups for conduct of audit.

d) The Supervisory Committee shall also indicate a date on which an audit of all such taxpayers irrespective of their jurisdiction (whether under Centre or State) shall commence. An effort should be made to start and conclude the audit within 3 months and at any rate, within the same financial year.

e) After conducting an audit, all the Audit Groups shall prepare their observations and convey to the taxpayer(s) for their written response to these observations. In their written response, the taxpayer is expected to communicate their agreement or disagreement as the case may be, to the observations pointed out by the Audit Group. After taking into account the written response of the taxpayer, the Audit Group shall prepare the draft audit para(s).

f) The Audit Group shall forward their draft audit para(s) to the Supervisory Committee for vetting. Before vetting the draft audit para(s), this Committee may also hold a meeting (physical/virtual) with concerned audit groups. The Committee may also point out certain additional areas which need to be looked into by the audit groups before finalising the audit paras.

g) The Supervisory Committee shall, before finalising the audit paras, resolve any inconsistency or conflicting interpretations on any point of law

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made by the different audit teams and recommend modification of such interpretations accordingly and the audit teams shall suitably incorporate them in their report.

h) Once draft audit para(s) are vetted by the Supervisory Committee, the audit group(s) shall present their draft audit reports before their respective Audit Authorities for approval. The Audit Authorities may adopt a practice of holding monthly meetings of the monitoring committee for approval of audit paras presented by their audit groups. At present, Central Tax Authorities are holding monthly meetings of the monitoring committee consisting of Commissioner (Audit), Joint Commissioner / Additional Commissioner (Audit) and Assistant/Deputy Commissioners heading various Audit Circles wherein audit objections are discussed and approved.

i) Where it is felt that different audit authorities are adopting different opinions with regard to approval of audit para in their respective monitoring committees, the role of the supervisory committee will come into the picture. It is proposed that they may hold meetings with all CGST Audit Commissioners/State GST Commissioners quarterly or more frequently, if needed for establishing a uniform approach in this regard across tax jurisdictions in India.

j) Once audit para(s) are finalized after approval of the Monitoring Committee (or Supervisory Committee), the concerned audit officers/groups shall issue Final Audit Report (FAR), a copy of which shall also be endorsed to the Supervisory Committee for dissemination to Central Tax Audit Commissionerates/State Audit Officers across India for information.

k) The audit paras which have been agreed upon by the taxpayer shall be closed after payment of the due tax amount along with appropriate interest and penalty, if any.

I) As regards unpaid/short paid GST is concerned where the tax payer is not in agreement with the audit para and is not willing to pay outstanding GST along with interest and penalty, the audit group shall prepare demand cum show cause notice to be adjudicated by the appropriate Tax Officer. Before issue of demand cum show cause notice, the taxpayer may be given pre-consultation so as to give him/her one more opportunity to explain his/her point of view to the senior tax officers before a final decision is arrived at. The Tax Authorities may also use this opportunity to explain the department's

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view point to the taxpayer and encourage him/her for voluntary compliance. This will reduce unnecessary litigation which is good for both the taxpayer as well as the government.

m) After adjudication proceedings, recovery action against the taxpayer shall be taken by the appropriate jurisdictional tax authority (i.e. Central Tax Commissionerates or State Tax Officers) in accordance with Section 79 of the CGST/SGST Act read along with relevant rules and provisions issued therein.

n) The jurisdictional tax authorities shall upload the audit findings (in a predetermined format), in an Audit Utility which shall be accessible to all the Audit formations across the country. These findings may be helpful in detecting similar types of anomalies in similar cases across the country.

The follow up action to be taken after completion of above audits is the same as given in Chapter 6 above (p. 62)

# CHAPTER 9

This chapter covers capacity building in specialised areas.

#### 9.1 **Training and Capacity Building**

The erstwhile VAT did not have service sectors therefore it has been felt that officers of State GST needs to be trained specifically in service sectors which needs to be identified by the states and NACIN will draw a program to train the Master Trainers for each state based on the requirements of those states. NACIN through its Zonal Campus are already conducting bi-monthly training course on GST Audit & Accounting and one training program for Master Trainers of GST Audit has already been conducted.

#### 9.1.1 **This training program will identify**

- The frequency with which the training program needs to be conducted by NACIN for the master trainers as well as for the other officers.
- Nomination of Nodal officers from States for identification of Training needs
- Training on specific service sector which has been identified by the respective State GST (around top 5 services)
- Identification of officers to create proper training modules for identified specific service sectors.

The above needs shall be identified in coordination with the State GST by the ZTI NACIN. The identification and conduct of the program shall be a continuous one where the SGST can even rotate the master trainers and officers to create training modules on specific sectors based on their requirement.

The frequency of the training program will be shared by State GST based on their requirements and the officers which need to be trained.

This training program will be in addition to the regular training program on GST Audit.

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Since there are multiple types of services being supplied by business entities therefore it is also suggested that the process flow along with the case study of that service sector shall be part of the training program. For eg, banking sector and insurance sector are giving multiple services therefore there is a need to explain and train the officers on the overall work flow of the services so that the holistic picture of the services being supplied is available to the officers.

This work flow of the services needs to align with the GST Act so that the officers shall understand the services which are taxable and which are exempted. They shall also understand the concept of mixed and composite supply in the gamut of services being supplied.

9.1.2 Identification of Specific Service Sectors for focused training

NACIN in coordination with the State GST will identify the specific service sectors where there is a need to train the officers for capacity building. It is also suggested that since there are multiple services being offered by the business entities therefore there is a need to understand the supply in accordance with the GST law and procedures. In this regard supply of services needs to understand properly and various concepts like time of supply, place of supply, mixed vs. Composite supply, taxable and exempted supply etc. needs to be focused upon so that the model of the sector along with the taxability is clear to the officers.

For identification of the specific sectors it is recommended that a Committee at the zonal level shall be formed with the following as its Members

- ADG NACIN ZTI
- Commissioners of State GST or his representative

This Committee shall decide the sectors which needs to be focused upon. Further the committee shall meet every quarter to review the specific sector areas.

Some of the sectors which have been identified where there is a need for training are

- 1. Work contract
- 2. E commerce Services
- 3. IT & ITES
- 4. Banking & Insurance
- 5. Hospitality
- 6. Telecom
- 7. Online Information Database access & Retrieval(OIDAR)

It is recommended that the industry experts along with the officers may be involved in the training program to understand the specific sector model.

#### 9.2 **Building knowledge on financial accounting**

#### 9.2.1 Introduction

a. Accounting is reporting through financial statements. It is the process of recording, summarizing, and reporting the myriad of transactions resulting from business operations over a period of time and results in the preparation of Financial Statements (including Balance sheet, Profit & Loss account etc.).

b. Financial accounting is keeping track of a company's financial transactions. Using standardized guidelines, the transactions are recorded, summarized, and presented in a financial report or financial statement such as an income and expenditure statement, trading and P & L account and a balance sheet. GST Audit basically refers to examination of various records, returns and other documents maintained or furnished by the auditee, like

- Monthly/ Quarterly/ Annual Return;
- Copy of the audited annual financial statements;

- Reconciliation statement, reconciling the value of supplies declared in the Annual return furnished for the financial year with the audited annual financial statement in FORM GSTR 9C/any other form, etc.;

- Such other particulars, as may be prescribed.

#### 9.2.2 Audit in GST with reference to financial accounting

a. While implementing the GST Law, the GST officers come across the

financial accounts of the taxpayer. Taxpayers' business consists basically of his daily transactions of outward or inward supplies (alongwith events related to such supplies), and each transaction may have GST implications i.e. either levy of GST or the claim of legitimate and eligible ITC or the GST by way of RCM. Hence, the GST officers are required to have a working knowledge of financial accounting, on the basis of which entire business transactions are recorded and compliance is made by the taxpayer.

b. GST audit casts a huge responsibility on the auditor for detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized etc. Hence, it is very important that the auditor possesses a good understanding of accounting fundamentals as well as sufficient accounting skills to read and analyze financial statements. Further, there are several transactions which may not appear in the financial accounts and records maintained by the registered persons such as stock transfers, free samples (except in stock registers), services received from outside India from related parties (except in correspondences), other supplies made without consideration, etc. Due care must be exercised by the auditor to identify such transactions as there may be no direct reference to these transactions in the financial records. Another skill that is very important is being able to link the 3 financial statements, i.e., income statement, balance sheet, and cash flow statement.

c. Following are various aspects of financial accounting having impact on GST, which have to be examined and analyzed by the auditor thoroughly:

d. Identification of various types of Income (Taxable, Exempt, Export, SEZ supplies, Other Income, Reimbursements etc.) of companies in respect of Supply of Goods and Services.

- Study of various items of balance sheets that impact GST like Capital Account (Withdrawal of assets, Debits/credits in nature of supplies), Loans (Figures in odd amounts, standing for long, No interest, No movement), Current liabilities (Advances, RCM, reversal of ITC), GST paid on RCM, Mismatched Credits, Other credits in dispute, Duty Paid on Exports and so on.

- Understanding of "Notes to Accounts" in financial statements which would help in understanding the business of the entity, Taxes / Contingent Liabilities, Cost or Net Realizable Value (Assistance in valuation provision

under GST), Information about related parties & Payments made to Related Party / Key Managerial Personnel, Payments made to Foreign subsidiaries/ Associated concerns, Valuation of Inventory etc.

- Analysis of various accounting ratios (like Net profit ratio, Gross profit ratio, Supplies/Turnover ratio, Creditor Turnover ratio, ITC/ gross tax liability ratio, Non-GST expenses/GST expenses ratio, Addition to fixed assets/Total assets ratio etc., Liquidity/Solvency ratios to indicate areas of probing.

- Indian companies follow Indian Accounting Standards, while the companies operating in the US follow the Generally Accepted Accounting Principles (GAAP) and companies with international exposure follow International Financial Reporting Standards (IFRS). Hence, it is imperative to familiarize the Auditors to these accounting/ reporting Standards.

- Different software tools are available for conducting an audit, and the one appropriate to the financial accounting must be chosen or designed for the auditor.

e. In this context, it is relevant to note that the importance of evaluating the internal control mechanism of the entity under audit cannot be overemphasised. Evaluation of the internal control system is a very important step in the actual conduct of audit as it enables drawing of correct samples for auditing and effective targeting of risk areas. Internal control mechanism is actually the sum total of all policies and procedures which are adopted by the entity in order to achieve the objective of "orderly and efficient conduct of its business", including safeguarding of assets, prevention and timely detection of any fraud/error, ensuring accuracy and completeness of recording, classification and disclosure of transactions.

f. Essentially, the efficacy and effectiveness of the internal control mechanism of the auditee provides a reasonable assurance to the auditor as to the degree of reliance that can be placed on the accounts and financial statements of the auditee. Based on his/her assessment of the effectiveness of such a mechanism the auditor can draw appropriate samples for subjecting them to detailed scrutiny and verification.

g. Internal control systems with regard to accounting have the following objectives: -

- that ALL transactions are RECORDED
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- that recorded transactions are REAL
- that ALL transactions are RECORDED TIMELY
- that all recorded transactions are PROPERLY VALUED
- that all recorded transactions are PROPERLY CLASSIFIED & POSTED
- that all recorded transactions are PROPERLY DISCLOSED
- that all recorded transactions are PROPERLY SUMMARISED

h. Internal control mechanism provides reasonable assurance, not only to the auditor but also the management, that all essential aspects of all transactions have been properly and appropriately recorded and that there are no material errors of omission or commission. Internal control mechanism can be evaluated through appropriate questionnaires, check lists and through a study of the business process adopted by the entity. It is recommended that such an exercise should be undertaken before commencing the audit and verification process and the outcome of the evaluation exercise should be utilized for deciding the scope and extent of audit and also for identifying which areas of the operations the auditor must specially focus on.

#### 9.2.3 A perspective through Accounting Standards

The GST Officer, while looking into the financial statements of a Taxpayer/ Company, should first understand the accounting standards applicable to the Taxpayer/company. There could be differences in the manner of the accounting and treatment of certain transactions as per Accounting Standard in the financial statements vis-à-vis the treatment under GST. This can lead to difference in turnover as per GST law and the principles of accounting and, consequently, turnover as per final accounts. This could be better understood through the following example:

#### Time of Supply Recognition from the GST Perspective:

• As per the provisions of CGST Act, in respect of 'Time of Supply of Goods' revenue shall be recognized as per Section 12 and in respect of 'Time of Supply of Services' as per Section 13 of the said Act. The Value to be considered for such transactions is as per the provisions of Section 15 of the CGST Act. However, primarily GST is triggered when the entity makes supply of goods or services or both. The definition of supply under GST is very comprehensive and includes sale, transfer, barter, exchange, rental,

lease, disposal, stock-transfer etc. of goods and/or services.

• On the contrary, in 'financials' revenue is recognized when the goods are sold, or services are rendered. No revenue is recognized when the fixed assets are sold / disposed of, except for profit on sale of such assets or when goods are transferred to the branches.

• For instance, from an accounting standpoint, revenue from sale of goods is recognized when significant risks and rewards in the goods is transferred by the seller to the buyer while in case of services revenue is recognised either on proportionate completion method or completed service contract method. These events may not correspond to the time of supply set out in sections 12, 13 and 14 of the Act and, accordingly, revenue as per the books of accounts may differ with that under GST law.

• This leads to the concept of billed/unbilled revenues and prior period items.

#### 9.2.4 Value of Supply recognition from a GST perspective

• Such transactions would result in difference between the revenue reported under GST when compared to the 'financials'.

• Value of supply of goods or services or both under Section 15 of GST law is the transaction value i.e. the price actually paid or payable for the said supply and would include any duties and taxes paid under any other law other than GST, incidental expenses incurred to meet such supplies, interest charged, if any, etc.

• Valuation of contracts under Indian Accounting Standards (Ind AS) might differ on certain aspects from GST Laws. For example, the contract value may not include any duties and taxes paid which is refundable, interest on delayed payment, expenditure incurred by the recipient etc. These differences might lead to differences in valuation of contracts.

• Supplies without consideration: As per Schedule I of the CGST Act-GST is leviable on certain transactions even if such transactions are made without consideration – like supply of goods from principal to agent, disposal of business assets, supplies to related parties etc. Under Ind AS transactions without any consideration would not form a part of the financial statements and would be treated as a non-balance sheet item / off- balance sheet item. Agenda for 48th GSTCM Volume 2

• Post sales discounts: Usually if the entity has a practice of granting discounts to its customers on post-sale basis, then for providing such discounts the entity may raise a financial credit note which will not be subjected to GST but would be reported as discounts in the financial statements.

#### 9.2.5 **Cash Flow - The third important financial statement**

• A cash flow statement is one of three mandatory financial reports generated by every business organization monthly, quarterly, or yearly. It measures the rate at which a business generates its cash so as to operate, **invest** and pay its debts. The statement of cash flow complements the other two financial statements of the business, i.e. the income statement and the balance sheet.

• The cash flow statement summarizes the inflow and outflow of cash and cash equivalents pertaining to a business. Main objective of a cash flow statement is to help a business keep track of its cash inflow and outflow.

• As per GST law Cash flow statement is required to be disclosed as per (Part B of GSTR 9C), though for 2017-18 and 2018-19 its optional, its verification will be an integral part of verification by the GST Officer. Even if it were not mandatory in terms of GST law, the cash flow statement would, nevertheless, be a very useful tool in most cases for verifying whether all supplies to external entities have been reflected in the return.

• Further, it can also help GST officer to understand the working of a business and its operations. It provides them with details about the business' cash flow, from where is it coming and where it is going. Cash flow is the indicator of the Taxpayer's financial well-being, its liquidity, and its operating ability.

• The GST officer needs to calculate and reconcile the Receipts disclosed and find out and confirm that they are appropriately disclosed and subjected to tax.

#### 9.2.6 Sector specific approach

Some sectors involve complex income streams, financial reporting mechanisms etc., of which officers may not always be fully conversant. For example, various income/revenue heads often need to be verified by the

officers during audit of Banking, Insurance and Non-Banking Financial Companies (NBFC) sectors. The Banking sector generates income among others through interest income, capital markets operations (e.g., sales and trading services, underwriting services, mergers & acquisition advisory), other fee-based income (e.g., credit card fees, savings/ current accounts charges, mutual fund revenue, investment management fees, custodian fees). The revenues could also come through alternative financial services, investment banking and wealth management. Each of these aspects merit a close look by the audit officers for possible implications with regard to GST. Similarly, in the insurance sector, various streams exist like premiums earned, income (e.g., from investments interest. profit reinsurance. on sale/redemption of investments, transfer/gain on revaluation/change in fair value). As these are specialised sectors, it is necessary that the audit-related training modules focus on these sector-specific accounting principles, accounting standards etc. for a better appreciation of audit requirements of these sectors.

9.2.7 In view of the above, capacity building of tax officials in respect of financial accounting is necessary. This can be done through:

1. Imparting Training/capacity building of officers in the field of financial accounting from institutions like NACIN to:

a. analyze and examine Financial Statements, various accounting ratios etc.;

b. enhance skills of officers for detecting lacunae in the financial accounting of any company;

c. learn about different strategies used to detect tax fraud and evasion.

2. Utilizing services of experienced tax officers from States and the Centre. The sharing of knowledge amongst the officers of both the tax administrations is of utmost importance as tax administrations on both the sides have evolved over the years and both of them have certain unique attributes which have to be factored in before devising an approach to GST audit. The experience of Central Tax officers in the services and manufacturing and that of the State Tax officers in dealing with the traders can be mutually beneficial to improve the overall quality of the Audit systems and procedures.

3. Creation of various Checklists to be examined during the audit. The checklists to be prepared should also be able to reflect the industry specific

factors and the domain expertise of officers from both the tax administrations can be made use of.

Creating a strategy that builds the right mix of skills and experience — IT, statistical, analytical and tax domain knowledge. Learning and knowing the theoretical aspects of financial accounting albeit important but it has to be backed up with the knowledge of the modern tools of accounting software and systems.

#### 9.2.8 Interpreting Business Contracts/Agreements

a. A business contract/agreement is the statement, either oral or written, of an exchange of promises in business. It is a negotiated and legally enforceable understanding between two or more legally competent parties.

b. There are different types of business agreements/contracts. Scrutiny of these contracts or agreements constitutes one of the important functions of audit, some of which are discussed below:-

c. Foreign Technical Collaboration Agreement: This agreement may be a pure technical collaboration agreement or technical-cum-financial collaboration agreement. In the latter, there is equity participation also. Sometimes, collaboration agreements are only financial in nature wherein only equity participation by a foreign company is involved. This is relevant for the following reasons:

• Where there is equity participation, imports from the collaborator may be subjected to scrutiny;

• Payment of royalty/technical know-how fee may involve GST liability towards import of services including IPR;

• Whether consideration paid to the collaborator has been taken into account in arriving at cost of production; etc.

• When the supply is from a related party (a) with consideration, (b) without consideration .

d. Joint Venture Agreement: Many times, a joint venture company is set up by Indian Companies with equity participation. Generally, there is a joint venture agreement or promoter's agreement which defines various terms and conditions subject to which a joint venture has been formed. This is relevant for the following reasons:-

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• Nature of shareholding in the company;

• If there are any clauses regarding pricing pattern for sale to one of the joint venture partners that may have a bearing on related persons sale or sale at arms-length. This may impact valuation;

• The agreement may contain clauses for payment for certain services which may have tax implication;

• There may be provisions for common Managing Director or common Directorship indicating control/management of various companies which may have a bearing on related persons concept; etc.

#### e. Joint Development Agreement in Real Estate Sector and GST Audit

• Joint Development Agreements are common in the real estate industry wherein the Land Owner enters into an agreement with a Builder/Developer for the development of the land in lieu of certain consideration. The consideration in such cases can be varied- ranging from a lump sum payment by the builder to the land owner to a share in the ultimately constructed flats/property or a combination of both.

• Such agreements involve an element of transfer of land for developmental purposes. Transfer of Development Rights (TDR) are covered under the GST and there is no ambiguity in this regard unlike the Service Tax period.

• Various transactions in a JDA with concomitant GST implications are as follows:

- (i) Land Owner to Builder/Developer.
- (ii) Builder/Developer to Land Owner.
- (iii) Land Owner to Customers/buyers.
- (iv) Builder/Developer to Customers/buyers.
- (v) Retention of flats/property for own use.

• All such transactions have GST implications like the eligibility of ITC, Time of Supply, Rate of Tax, Value of Supply etc. which would require a detailed reading of the various agreements entered between the concerned parties. A case in point is the eligibility of ITC in such cases only for the portion of the flats/property sold before a completion certificate is obtained. The ITC availed and utilized in the flats/property sold after the completion certificate is obtained has to be reversed. The exact liability of the GST on such projects can be arrived at only after the details of the agreements are studied thoroughly in consonance with the provisions of the GST Act and Rules. The treatment of transfer of development rights and implications in varied schemes like rehabilitation also have to be understood clearly.

#### f. Works Contract:

Works contract is an activity wherein supply of both service and goods takes place, for example, construction of building; erection, commissioning, installation of plant and machinery, etc. In common parlance, a works contract relates to both 'movable property' and 'immovable property'. In the Service Tax regime, the service portion in the supply of works contract service for carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any 'moveable property' or 'immoveable property' was subjected to levy of Service Tax. In the GST period, the definition of works contract has been restricted to any work undertaken for an 'immovable property' only. Consequently, any composite supply (comprising supply of goods and supply of service) on movable property (goods), for example, a fabrication work or paint work done in automotive body shop does not fall within the definition of works contract under the GST; and such contracts would be treated as composite supplies and would be taxed accordingly. Further, circumstances under which a seemingly immovable property is to be treated as a moveable property and vice versa in terms of judicial pronouncements is crucial in this context and has to be considered carefully in the light of facts of the case. Under the GST law, works contract has been treated to be supply of services, as per Entry No. 6(a) in Schedule II of the CGST Act. This is relevant for the following reasons:-

• If a works contractor has his project office in a State, he has to take registration in that State once he crosses the threshold limit of Rs. 20 lakhs (Rs. 10 lakhs in a Special Category State).

• As the works contract has been defined to be a supply of service, the works contractor is not entitled to avail of the Composition Scheme, because it is available only to suppliers of goods and the restaurant industry (not serving alcohol).

• Unlike the Service Tax and VAT regimes, no abatement from the value of service is allowed to the works contractor under the GST law.

• ITC of tax paid on works contract service is not available when such works contract service is supplied for construction of an 'immovable property'

(<u>other than plant and machinery</u>) except where works contract service is an input service for a supplier of works contract service. [refer to section 17(5)(c) of the CGST Act]. In other words, ITC of tax paid on the works contract service can be availed only by a recipient of such works contract service (taxable person) who is using these services for further supply of works contract service. For example, a company, not engaged in the supply of works contract service, cannot be entitled to avail of ITC of GST paid on the works contract service received from a works contractor.

• As the supply of works contract service under the GST laws necessarily involves immovable property, the place of supply of service would normally be the place of where the immovable property is located.

• The value of supply of works contract service, involving transfer of property in land or undivided share of land, as the case may be, shall be equivalent to the 'total amount' ('consideration charged for works contract service *plus* the 'amount charged for transfer of land or undivided share of land', as the case may be) charged for such supply *less* the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the 'total amount' charged for such supply.

#### g. Manufacturing Agreement:

There can be contract / manufacturing agreements which a company might enter into with another company, usually brand owner of repute. Such brand owning companies usually contract out the manufacturing of finished goods to a contract manufacturing facility under certain terms and conditions. This is relevant for the following reasons:-

• The payment under the contract manufacturing arrangement may be looked into;

- What happens to the waste and scrap generated under the contract;
- Whether the contract manufacturer is the real manufacturer or the dummy created for the purpose of declaration of lower assessable value;
- Whether the agreement contains any other consideration which can be converted into monetary terms; etc.

#### h. Service Agreement:

There may be service agreements/MOUs on various aspects of the business.

In some businesses, Purchase Orders constitute the agreement which contains various terms and conditions for supply of services. Specific focus could be sector-wise service agreements in automobile, FMCG and infra projects. This is relevant for the following reasons:-

- Service given or parts supplied during AMC
- To verify the terms and conditions especially with respect to supply of services;
- Whether the invoice is raised as per the Agreement/contract;
- To compare the total price charged in the Agreement/contract with the GST invoice to ensure that no extra flow back is received outside the invoice through commercial invoice/debit note;
- To study tax structure agreed upon in the Agreement/Contract;
- Any clause regarding Liquidated damages, or Penalties etc.

#### i. Job Work Agreement:

Job work agreements would be formal agreements or through letters exchanged between the parties which contain the basic terms and conditions of the job work. This is relevant for the following reasons:-

- Nature of job work done;
- Time period of returning job worked items as per Section 143 of the said Act;
- What happens to the waste and scrap generated during the job work;
- Whether an applicable rate of tax is charged; etc.

#### j. Dealership/Distribution agreement:

Manufacturers/ suppliers usually market goods through a distributor or dealer network; and enter into dealer/distribution/stockist agreements containing various terms and conditions. Supplies by Principal and Agent as defined in CGST Act 2017 are areas of specific focus. This is relevant for the following reasons:-

• Whether the agreement contains any condition or terms whereby the dealer/distributor is to advertise on behalf of manufacturer; if so, what are the conditions;

- Post sale discounts
- Warehousing facility

- Whether there is any provision for sharing of expenses;
- Whether the goods under supply require after sale service/warranty;

• Whether there is any separate optional warranty agreement, set to commence immediately after the initial mandatory warranty period;

• Is there any provision in the agreement for delivery of free gift items through dealer;

• What is the discount pattern or incentive offered by manufacturer in the agreement; Is it based on the commercial considerations normally prevailing in the trade or not;

• Whether the agreement provides for any non-refundable security deposit with or without interest; etc.

#### k. Purchase Contract:

Purchase of materials/goods are under specific contracts or by tenders floated. These purchase contracts/tenders may also contain information related to audit. This is relevant for the following reasons:-

• Who is the supplier; whether he is related person or not;

• Whether the delivery of goods made directly to factory or to job worker; etc.

#### I. <u>Lump sum turn-key contract:</u>

The assessee may have a turnkey contract which may involve supply, erection at site and commissioning of the goods. This is relevant for the following reasons:-

• Whether the price of the goods is inclusive of erection, commissioning at site;

• Whether any attempt has been made to overload the erection and commissioning charges;

• Whether the machinery is supplied by the manufacturer; etc.

• Case study of solar project (70% of value as goods @ 5% and 30% of value as services @ 18%).

m. Apart from the above there can be many other types of contracts/agreements such as Works Contracts, Constructions contracts, Leasing contracts, Hire purchase agreements, Franchisee agreements, Non-disclosure agreement, Non-Competitive contract, Insurance and reinsurance agreements / contracts, Banking contracts – to the extent of the Banking

fees, charges, penalties charged for services rendered to its customers, other banks, etc. and the exact nature and nuances of such contracts/agreements will have to be understood by the officers conducting audit by factoring in the scope and type of business activity being conducted by the taxpayer.

n. GST officer has to verify and ensure that the results or outcomes of various agreements are accounted for appropriately and the appropriate compliance is made by the taxpayer.

o. It is the duty of GST officer to not only plug the revenue leakages, but to also keep a close watch on systemic tax planning that may adversely affect GST revenues. It should be ensured that while conducting the audit, the terms and conditions of the contracts are gone through and their impact on the value of the supply should be ascertained appropriately so as to point out any duty evasion. For this, conditions of contract, compliance of such terms & conditions, scope of manipulations while performing the contract (e.g. Supplies under Schedule-II of CGST Act, 2017), liquidated damages, penalty clause etc. need to be checked and factored in appropriately.

p. At times this may also require cross-referencing between the contract(s) and the financial statements.

# 9.2.9 Understanding System Driven Business Process through SAP, Oracle, Tally Etc.

a) A process is a series of tasks that are completed in order to accomplish a goal. A business process, therefore, is a process that is focused on achieving a goal for a business. Processes are something that businesses go through every day in order to accomplish their mission. The better their processes, the more effective the business. As processes grow more complex, they need to be documented. For businesses, it is essential to do this, because it allows them to ensure control over how activities are undertaken in their organization. It also allows for standardization. The complex nature of the business transactions these days has made it mandatory to make the business processes and specifically the accounting processes to be automated and system driven.

b) With the advent of GST, a large number of GST software packages

have been developed and have become widely available. These software packages help organizations simplify the process of GST billing, filing returns, and generating GST invoices. These software packages vary in cost, complexity, features, security, data processing ability, scalability etc. Effective GST software can aid businesses in managing their finances, accounts, inventory, purchase, sales, payroll, taxation, and other processes efficiently.

c) Financial Accounting System is an accounting system where the financial data of the organization is maintained. It is important for auditors to be well conversant with various industry standard softwares like SAP, Oracle, Tally etc.; and also to various accounting methods like Cash Accounting and Accrual Accounting methods. Hence, the auditors must be well trained in financial accounting concepts and use of financial accounting systems that would help them examine and analyze the accounting process, various transactions and ledgers of the assessee while correlating the same with various GST Returns, financial statements etc. Therefore, it is necessary to:

• Impart knowledge related to latest financial accounting systems and methods through various training programs;

• Use of Software for identifying risk parameters similar to CAAP used in the Central Excise regime.

• Developing software to collect back up of Financial Accounts maintained by the Taxpayer.

#### 9.2.10 Audit in an ERP Environment

a) The objective of an GST auditor is to identify and assess the risks of material misstatement, whether due to fraud or error, at the financial statement or entry feeding level. The auditor has to understand the nature of the governance structures of the entity i.e. the business structures as well as the IT structures. The IT team is usually the custodian/owner of the application and the business team is the custodian/owner of the data residing within that application, therefore, it is imperative to segregate and understand the roles of both the structures/team. The GST officer has to understand the IT systems and related procedures within IT and business processes by which the transactions are initiated, recorded, processed, reported in the ERP environment. It will also be desirable for the GST officer to get a grasp of the various access controls and rights like the Administrator role/rights,

senior management role/rights and the like so as to access data accessible only to a certain level of officers of an entity. A company may be using a number and variety of software packages to carry out its various functions as depicted in the table below:

Information System	Purpose	Location	In-house or Packaged
SAP/Tally	Accounting, Supply Chain, Production	USA	Packaged
Pay Master	ster Pay Roll India		Packaged
Budget king	MIS, Budgeting	India	In-house

b) The GST officer will thus be required to have a good knowledge of the general IT systems and the Automated Application software being used in a business for carrying out the task of audit in an efficient and effective manner.

c) The modern tools/software like Tally. ERP9 designed specifically for the purpose of preparing and finalizing GST Returns has in-built mechanisms to generate various Reports. For example, the GSTR-1 statements can be generated from Tally. ERP9 in JSON format, compressed in the .zip format and uploaded. An advanced tool such as the Tally.ERP9 not only allows the officers to get a summary of the various reports but also goes a long way in finding out about the mismatches in the data. The knowledge of the ERP software will help the GST officers in reconciling the various figures submitted on the portal with those of the financial statements. Further, the ERP systems are designed to cater to a multitude of taxpayer's needs such as Profit tracking, Fixed Assets Management, Risk Management, Multi- Currency Management and Tax Management and therefore, the GST officer auditing an entity should be able to understand various aspects related to these automated accounts.

d) The traditional system of bookkeeping mandated the preparation of separate ledgers like the Purchase Ledger, Sales Ledger, Credit Ledger, Bank/Cash Book etc. but the shift to the automated environment has done away with these requirements and all the transactions are now integrated. An enterprise resource planning system inherently means that all the modules within the system are seamlessly connected with each other and the transactions flow through the relevant modules. Thus, there is one Primary Set of Books and all the transactions reside here. For example, if we take 2 purchase transactions involving 2 Vendors

Purchases Dr -	Purchase Control Account
To Vendor 1 A/c -	Creditors Control Account
Purchases Dr -	Purchase Control Account
To Vendor 2 A/c -	Creditors Control Account

e) In the above example, the ERP will maintain the details of transactions separately for Vendor 1 and Vendor 2 and also have a Creditors Control Account to capture the total of all Creditors balances.

f) In such an automated environment, while deciding on the audit procedures the GST officer should consider the risk of material misstatement at the assertion level (at the level of initial entry) for each class of transactions, account balance and disclosure. Thus, the traditional way of conducting audit may not prove to be fruitful for the department because of the inherent risks prevalent due to the complexity of systems, use of sophisticated application software, systems being distributed over geographies, volume of transactions, outsourced processes and the like.

g) In view of the above cited difficulties, the GST officers will have to mould their thought process and start relying more on what the accountants call the "Controls Based Audit". Some of the basic tenets of conducting audit under systems driven approach are:

1) Design of the Audit Team- incorporation of more experts/ specialists who can extract the data from the ERP systems. Obtaining data independently from the software gives the officers more direct audit evidence.

2) Use of Computer Assisted Audit techniques;

3) Preparation of customised and specialised systems in-house by the department by using the experience of the tax administrations;

4) Use of latest technology like cloud computing;

5) Develop competence for "forensic audit".

#### Annexures

Annexure 1: Notice for conducting audit (p. 39)

Form GST ADT – 01 [See rule 101(2)]
Reference No.: Date:
То,
GSTIN Name Address Period - F.Y.(s)
Notice for conducting audit
Whereas it has been decided to undertake an audit of your books of account and records for the financial year(s) to in accordance with the provisions of section 65. I propose to conduct the said audit at my office/at your place of business on
And whereas you are required to:-
(i) afford the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and
(ii) furnish such information as may be required and render assistance for timely completion of the audit.
(iii) furnish/keep ready the following on the said date
<ul> <li>(a) your reply to the questionnaire annexed hereto vide Annexure A,</li> <li>(b) Information duly filled in the Tables annexed hereto vide Annexure B</li> <li>(c) The documents/accounts listed in Annexure C hereto</li> </ul>
You are hereby directed to attend in person or through an authorised representative on(place) before the undersigned and to produce your books of account and records for the aforesaid financial year(s) as required for audit.
In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard.
Signature Name Designation

Annexure 2 (p.40)

Sample letter seeking mutual assistance to complete the audit in a focused manner.

	GOVERNMENT OF	
	Office Name	
	Address	
Memo No. AD'	T/AUDIT YEAR/Section/Audit Gr./case no.	Date:
[e.g.: Memo No	o. ADT/2017-18/Park Street/Team 1/5	Date: 1st December, 2021]
То		
GSTIN	:	
Address	:	
Period	:	

You are aware by now that you have been selected by the Commissioner, State Tax/Central Tax, ...... for audit of your books of accounts and records for the **period from.....to** ...... in accordance with the provisions of section 65 of the SGST/CGST Act, 2017 read with section 20 of the IGST Act, 2017.

In accordance with the provisions of the Acts and Rules made there under, you are required to (i) provide the undersigned the necessary facility to verify the books of account and records or other documents as may be required in this context, and (ii) furnish such information as may be required and render assistance for timely completion of the audit.

To avoid any inconvenience from your part to produce the entire set of book of accounts and records on the first date of hearing as specified in Form GST ADT-01, it will be much more practical to produce such books of accounts in a staggered manner and to the extent of what actually will be required from time to time. This will help you and the audit authority to complete the audit process in a focused and planned manner. For such reasons **you are hereby asked to produce following statements and accounts (duly signed and stamped) before the undersigned on first date of hearing as specified in Form GST ADT-01 issued to you:** 

- Annual report and Director's report for the FY .....
- Profit & Loss A/c for the year ended on 31st March, .....
- Balance Sheet as they stood on 31<sup>st</sup> March, .....
- Auditor's Notes to the A/c for the FY .....
- If GSTR -9C is not submitted for the period then Trial Balance for the RTP having above mentioned GSTIN (It is applicable where the RTP has multiple GSTIN),

• Consolidated statement (party-wise total for the period under audit) of inward & outward supplies including exempted and non-GST supply:

		Total numb			Tax	(Rs)			
RTP to whom supply made	GSTIN	ers of invoic e/ debit notes issue d	Supply Value (Rs)	CGST	SGST	IGST	Cess	Broad category of Goods/services	
RTP from		Total numbers			Tax	(Rs)		Broad category	
whom supply received	GSTIN	of invoice/ debit notes issued	Supply Value (Rs)	CGST	SGST	IGST	Cess	of Goods/services	

• List of HSN code of goods and SAC of services in respect of your supply.

• Reconciliation statement in respect of Turnover as disclosed in GSTR 3B and GSTR 1 and as per books of accounts.

• ITC as claimed in GSTR 3B and as auto populated in GSTR-2A.

You are requested to fill up the Questionnaire as annexed herewith and produce it (duly signed and stamped) before the undersigned on the first date of hearing as specified in Form GST ADT-01 issued to you. You are also requested to mail all these afore-stated statements and accounts at: \_\_\_\_\_\_ well in advance.

The other accounts, statements, records and documents as and when will be required during the course of audit will be duly informed to you or your authorized representative.

Signature of the Audit Officer	Signature of the	Audit Officer	
--------------------------------	------------------	---------------	--

Name	:
Designation	:
Full Address	:
E-mail Address	:
Phone Number:	(Office),(M)

Annexure 3: Sample questionnaire for auditee (p.40)

[Please fill up and attach separate sheets wherever necessary]

#### 1. General Information about the RTP (auditee):

a)	Legal Name & Trade Name (if any)					
b)	GSTIN					
c)	Address (Principal place)					
d)	Period of GST Audit					
e)	Name and contact number and e- mail address of the 'Authorized Person' for Audit and the person responsible for Accounts & Billing.					
f)	Total tax paid for supply of goods and/or services for the period under audit (Act wise).	Tax SGST CGST IGST CESS	From e-creo ledger		n e-cash edger	
g)	Whether possesses GSTIN as ISD / TDS deductor / TCS collector in the State?	GSTIN as GSTIN as deductor GSTIN as collector	TDS			
h)	Constitution of Business and names of the current business owners/promoters.					
i)	Details of transactions with related and distinct persons [Ref: Sch. I as appended in Sec 7]	Name with GSTIN, if any	Total supply value during the period	Total tax involved (act wise)	POS in case of inter state supp ly	Disclos

		I								
				C G S T	S G S T	G S	C E S S			
j)	Details of transactions without any consideration, excluding details mentioned in sl. No. i) above [Ref: Sch. I as appended in Sec 7]	Please fill in sl.no. i)	up in an ide	ent	ica	l ta	ble	as in a	bove	
k)	Types of goods and or services supplied [with HSN/SAC] other than those attracting tax under Reverse Charge	Name of t services	he goods /	H C		1/S/	A	Rate Tax	of	
I)	Types of goods and or services received [with HSN/SAC] on which tax is payable under Reverse	Name of t services	he goods /	H C		I/S/	A	Rate	of tax	
m)	Charge Whether any offence case is booked in respect of Tax for supply of goods/or services, by any Authority under any law in force. If so, details thereof.									
n)	Whether any amount payable/ paid to the Client has been adjusted against the receipt/ receivable and net income shown in the P&L Account. If yes, details thereof.									
o)	If the answer to question (n) above is yes, then, whether it has affected the Turnover as per GST Returns and whether due tax on the receipt/ receivable and net income shown in the P&L Account (relating to supply) has been paid?									
p)	Whether any advance payment is received towards providing services? If yes, whether Tax for supply of services was paid on such receipts?									
q)	Whether any advance payment is received towards supply of goods? If yes, whether Tax was paid on such transactions accordingly?									

r)	Details of any refund applied for the period concerned (please provide details of the status of the refund application: accepted/rejected, if rejected reasons thereof, amount of refund received etc.)
----	--

### 2. Information on invoicing and accounting pattern:

a)	Is invoice issued in all transactions? If not, reasons for not issuing invoice.	
b)	How many series of invoices are being used?	
c)	If more than one series is used, give details of each such series.	
d)	If there are more than one series of invoices, is tax for supplies paid on all the series of invoices?	
e)	If the answer to question (d) is not, then the reasons for not paying tax for supplies on such series of invoices (e.g. exempted / zero rated without payment of tax / trading / nontaxable goods /services). Give details.	
f)	In case of provision of service, is the invoice issued on the date of provision of service or before or later?	
g)	List of the different account heads under which invoices issued for taxable supplies are recorded in the P/L account or in Trial Balance.	
h)	List of the different account heads under which invoices/bills issued for exempted and non-GST supplies are recorded in the P/L account or in Trial Balance.	
i)	Whether the Invoice Numbers are generated automatically or are fed manually. Give the name and designation of the person having the authority to cancel an invoice.	
j)	Whether any amount is recovered by issue of debit note and whether it is included in the gross value of supplies?	
k)	Are any goods or services provided free of cost or at subsidized price? If so, provide details of such goods / services.	
I)	Are any reimbursements received from the recipients? If so, quantum and reasons for such.	
m)	Is any expenditure that the supplier is liable to pay for a supply but is actually borne by the recipient? If so, details of such.	
n)	Whether the Accounts are maintained electronically? If yes, the name of accounting packages / computer software installed for maintaining accounts in the units like Tally, FAS etc	

o)	Are the accounts prepared on mercantile basis or cash basis?	
p)	Whether there has been any switching over of the accounting software during the audit period?	
q)	Have any changes been made in the accounting policies affecting GST liability relating to reimbursement of expenses, timing of payment of Tax for supply of services and treatment of payments in foreign currency?	
r)	Are the accounts audited by a Statutory Auditor? If so, name, address, phone number and E-mail id of the auditor.	

Annexure 4: List of documents/ statements and books of accounts to be produced for the purpose of audit (p. 40)

- Annual report and Directors report (if any)
- Profit & Loss A/C
- Balance Sheet
- Notes to Accounts
- Tax Audit Report
- If GSTR -9C is not submitted for the period then Trial Balance for the RTP having above mentioned GSTIN (It is applicable where the RTP has multiple GSTIN),
- Statement of Income Tax TDS
- List of HSN /SAC of the goods /or services in respect of the business dealt in by the auditee
- Reconciliation statement in respect of Form GSTR 9, GSTR-1 AND GSTR 3B
- Suppliers list with GSTIN (where applicable)
- Ledger accounts of the suppliers in respect of inward supplies
- Statement of outward supplies (party wise and POS wise).
- Statement of inward supplies for which tax paid/payable in RCM.
- Statement of outward supplies for which tax is payable in RCM by the recipient.
- Bank Statement for the period under audit
- Stock register
- Other documents and records as applicable as provided in section 35 of the Acts and the rules made thereunder and as may be required for the purpose of audit.

Note - 1: On the first date of audit the auditee may be asked to produce only the documents and statements as specified in the letter annexed with ADT - 01.

Note – 2: The above list is illustrative. It is recommended that GST Administrations ensure to identify documents/records/filings already available in the system and not to ask for the same from the taxpayers.

#### Annexure 5: Format of a sample Audit Plan (p. 44)

#### SAMPLE AUDIT PLAN

Note: This is only an illustrative Audit Plan. Plan for each auditee should be prepared based on the specific requirement of the audit of that auditee.

#### A. Basic Information

1. Name of the auditee					
2. GSTIN					
3. Period of Audit					
4. Nature of Business	4.1. Goods & ···· Service ··· s:	4.2. Manufacturin unit (if any), name of the State(s) only		4.3. Corporate office / ISD [Name of the State(s)]:	
5. Risk score of selection					
6.       Major risk         3)					
7. Audit Case No.			Date of issuance ofADT - 01 with ref.no		ence No:  Date:
8. Date of Commencement			ormal date of ompletion by		
9. Name & designation of Officers in the Audit team.					

10. Audit Unit	
(Name)	

#### B. Audit Plan drawn by Audit Officer/Audit Team.

SI. No.	Type of working paper (Ratio study, Trend analysis, Others)	Description (e.g.: Return filing pattern, Outward supply, inward supply, reverse charge, ITC, refund, etc)	Documents to be examined	Audit proce dure (Desk Audit / Field Audit/ 3 <sup>rd</sup> party enquir y)	Ratio Study/Trend study/ Other study in brief	Remarks
1						
2						
3						
4						
5						
6						

.....

[Signature of the Audit Team Lead

Date..... Name: ..... Designation: ....

#### C. Modifications suggested by Ratifying Officer

Comments

Placed before the Sanctioning Officer for final sanction.

Date:....

Date

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Signature Name.....

Designation of Ratifying Officer.....

#### D. Modifications suggested by Sanctioning Officer:

Comments	

Sanctioned / sanctioned as modified.

Signature	Date:
Name	
Designation of Sanctioning Officer	

# Annexure 6: Final Audit Report (FAR)- FORM GST ADT 02 (p.61)

	-	<b>GST ADT – 02</b> e rule 101(5)]	2	
Reference No.:	-		Da	ate:
To,				
GSTIN Name Address				
Audit Report No	dated			
	Audit Repor	t under sectio	n 65(6)	
Your books of acco and this Audit Re documents furnishe	port is prepared	on the basis	of information	
and this Audit Re	port is prepared	on the basis	of information	
and this Audit Re documents furnishe Short payment	port is prepared d by you and the f	on the basis indings are as	of information under:	available /
and this Audit Re documents furnishe Short payment of	port is prepared d by you and the f	on the basis indings are as	of information under:	available /
and this Audit Re documents furnishe Short payment of Tax	port is prepared d by you and the f	on the basis indings are as	of information under:	available /

You are directed to discharge your statutory liabilities in this regard as per the provisions of the Act and the rules made thereunder, failing which proceedings as deemed fit may be initiated against you under the provisions of the Act.

Signature.....

Name .....

Designation

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## Annexure 7: Format of status report to MCM (p.60)

#### MCM REPORT (Format) CONSOLIDATED

1.	Period of Audit		
2.	Name of Team Leader (Audit Team)		
3.	Other members of the Audit Team		
4.	No. of cases allotted		
5.	No. of audit cases completed		
6.	No. of cases pending		
		Pending at the stage of desk-review	
		Pending for approval of audit plan	
7.	Status of pending cases:	Pending at the stage of examination of books	
		Examination completed but DAR is pending	
		Pending at the stage of preparation of FAR	
8.	Notable findings in respect of cases	Findings in brief (case-wise report may be placed in such cases only as per	
	where FAR is issued.	following format)	

#### **CASE-WISE REPORT**

1.	Case No.	
2.	Legal Name and Trade Name	
3.	GSTIN	
4.	Period of Audit	
5.	Name of the Audit Officer(s) with designation	
6.	Name and designation of the officer who sanctioned the Audit Plan	

7.	Important dates		Date of initiation	Date o sanction Audit P	n of	Date of FAR
8.	Date of first appearance					
9.	Name & other details (phone no. appearing	, e-mail) of A/				
10.	Mode of Audit (specify)		Desk Audit	Field Au	udit	Both
	List of observations made upon audit [in brief]	Revenue implication (Rs.)	by Au			Yes, amount lized, Act-wise (Rs.)
	i)Rate difference (wrong HSN/SAC) PI. mention in brief.					
11.	ii)Supply not disclosed in returns. (Separate row may be used for each type of such non- disclosure)					
	iii) Tax was payable under RCM but not paid					
	iv)Wrong claim of ITC					
	v)Reversal of ITC not made (specify in brief).					
	vi)Excess refund claimed (specify brief findings)					
	vii) Similarly add rows, if required	l.				
	Particulars	Integrated Tax with POS	Central Tax	State T	ax	Cess
12.	(a)Total amount of tax involved for the discrepancy found (in Rs.)					
	(b)Tax paid during audit or after getting FAR					

	Tax dues (12a – 12b)		
	(a)Total interest payable		
13	(b)Interest paid during audit or after getting FAR		
	Interest dues (13a-13b)		
	(a)Penalty payable		
14	(b)Penalty paid during audit or after getting FAR		
	Penalty dues (14a-14b)		
15	Total amount paid during audit or after getting FAR		
16	Total amount dues (Tax + Interest +Late fees +Penalty)		

# Annexure 8: KEY POINTS FOR SUPPLY and SUPPLY OF GOODS OR SERVICES OR BOTH (p. 55)

	TABLE I: KEY POINTS FOR SUPPLY					
Sr. No.	Key issues	Reference Points from returns/law	Accounts			
1	Whether the kind of outward supplies like Taxable supply, exempted supply, Zero- rated supply, NIL rated supply, Supplies to SEZ unit/ developers, Deemed Export etc. are appropriately classified under GST law?	<ul> <li>Sr. No. 4 &amp; 5 of GSTR 9</li> <li>Taxable Supply: Sr. No. 5N of GSTR 9</li> <li>Exempted: Sr. No. 5D of GSTR 9</li> <li>Nil: Sr. No. 5E of GSTR 9</li> <li>Non-GST Supply: Sr. No. 5F of GSTR 9</li> <li>Zero Rated: Sr. No. 5A, 4C of GSTR 9</li> <li>Supply to SEZ: Sr. No. 5B, 4D of GSTR 9</li> <li>Deemed exports: Sr. No. 4E of GSTR 9</li> <li>Section 7 of SGST/CGST Act</li> <li>Section 17(3) of SGST/CGST Act</li> <li>Schedule I, II and III of SGST/CGST Act</li> <li>Schedule I, II and III of SGST/CGST Act</li> <li>Section 16 of IGST Act</li> </ul>	<ul> <li>Invoice /Bill of Supply</li> <li>Tax rate Notification</li> <li>Exemption</li> <li>Notification</li> <li>HSN/SAC</li> <li>Contract</li> <li>Shipping Bill/Bill of</li> <li>Export</li> <li>Bill of Lading</li> <li>Letter of Undertaking</li> <li>Duty drawback</li> <li>availed</li> <li>Payment received</li> <li>(Bank/Cash)</li> <li>Composite/Mixed</li> <li>Supply</li> </ul>			
2	Whether any activity or transaction which falls within the scope of supply has not been identified by the Registered Person?	of GSTR 9 • Schedule III of SGST/CGST	<ul> <li>Invoice/Bill of Supply</li> <li>Contract</li> <li>Consideration</li> <li>received</li> <li>Analysis of cash flow and mapping cash flow onto the returns</li> <li>Business purpose</li> </ul>			
3	Whether supply has been correctly classified as Inter- State supply/Intra- State as per Section 7(5) & 8 of the IGST Act, 2017?	<ul> <li>Sr. No. 3.1 &amp; 3.2 of GSTR 3B</li> <li>Section 10,12,13 of IGST Act</li> </ul>	<ul> <li>Invoice/Bill of Supply</li> <li>Party-wise supply</li> <li>with address</li> <li>Contract</li> <li>Transportation</li> <li>document</li> <li>Whether B2B or B2C</li> <li>in case of supply of services</li> </ul>			
4	What is the treatment of promotional items	• Sr. No. 5E & 5 F of GSTR-9	<ul> <li>Sales promotion</li> </ul>			

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	given from to and		Sr No 14N 14D 14O of	ovnon	200
	given free to end consumers by FMCG companies?	• GSTR	Sr. No. 14N, 14P, 14Q of -9C	expens • Distrib nts	ses Ledger account of utors/Franchisees/Age Stock Register
5	Whether the Zero - rated supply is verified as per the provisions of law?	•	Sr. 5A & 4C of GSTR-9 Section 16 of IGST Act	•	Contract Shipping Bill/ Bill of Bill of Lading Payment received Statement) Letter of Credit / aphic Transfer Letter of Undertaking Duty drawback
6	Whether supply of capital goods has been subjected to GST and as to whether the same has been included in the returns filed?	• Act	Section 18(6) of CGST/SGST	machir • scrap • Tax Ac	Contract Ledger account of ssets/plant and nery Ledger account of TCS under Income
/	Whether the transactions are correctly classified as supply of goods or supply of services as per Schedule-II of the CGST/SGST Act, 2017?	• • Act	Table 9 of GSTR 9C Sr. No. 17 & 18 of GSTR 9c Schedule II of CGST/SGST	• • Supply	Invoice/Bill of Supply Contract Composite/Mixed
8	Are there any transactions wherein goods sent for job- work are not received back within the specified period?	• Act	Form ITC -04 Section 143 of CGST/SGST	• registe •	Delivery Challan Gate outward r Gate Inward register Stock register Job work charges
9	Whether any business asset has been permanently disposed off for which input tax credit had been availed?	• Act	Sr. No 6B of GSTR-9 Schedule I of CGST/SGST	• Sched • fixed a machir	Contract Ledger account of ssets/plant and

				Ledger account of
				scrap Stock register Bank Statement (Payment received) Cash flow statement
10	Whether "Related persons" or "Distinct persons" in relation to the registered person have been identified and whether activities or transactions with them have been duly identified and accounted for as per law?	● Act ●	Section 15(4) of CGST/SGST	<ul> <li>List of related/distinct persons</li> <li>Ledger account of Related persons</li> <li>Loans and advances</li> <li>Income tax Audit report</li> <li>Annual return under Companies Act</li> </ul>
11	Whether any "Agent" has been appointed by the registered person and whether transaction with such agent has been duly accounted for as per law?	• Act •	Schedule I of CGST/SGST	<ul> <li>Commission</li> <li>expenses</li> <li>TDS/ Form 26AS</li> <li>Contract with</li> <li>franchisee /distributor</li> <li>Structure of business</li> <li>supply chain</li> </ul>
12	Whether any foreign exchange has been remitted outside India for any import of services and whether tax on the same has been paid as per law?	•	Sr. No. 6E and 6F of GSTR- 9	<ul> <li>Contract</li> <li>Bank Statement</li> <li>(payment made)</li> <li>Letter of credit/</li> <li>telegraphic transfer</li> <li>Director report</li> </ul>
13	Whether the goods for business use have been put to personal use?	• Act • Act	Section 17 (1) of CGST/SGST Schedule II of CGST/SGST	<ul> <li>Stock register</li> <li>Drawings account</li> <li>Nature of expenses</li> <li>especially telephone, repair</li> <li>and maintenance, insurance</li> <li>etc.</li> </ul>
14.	Whether tax has been paid on RCM on inward supplies?	• CGST	Section 9(3) and 9(4) of /SGST Act	<ul> <li>Self- invoices issued</li> <li>Payment vouchers</li> <li>Examine the nature</li> <li>of expenses especially</li> <li>freight (inward and outward),</li> <li>legal charges, import of</li> <li>services etc.</li> <li>Bank Statement</li> <li>(payment made)</li> </ul>

15.	Whether tax paid on advances received?	<ul> <li>Sr. No. 4F of GSTR-9</li> <li>Section 12 and 13 of</li> <li>CGST/SGST Act</li> </ul>	<ul> <li>Bank Statement         <ul> <li>(Payment received)</li> <li>Cash book for any cash received</li> <li>Loans and advances in the Balance Sheet</li> <li>Ledger account of debtors</li> <li>Current liabilities on account of unearned income/advance received</li> </ul> </li> </ul>
16.	Whether any credit note issued for supplies made?	<ul> <li>Sr. No. 4I of GSTR-9</li> <li>Section 34 of CGST/SGST</li> <li>Act</li> </ul>	<ul> <li>Credit Note Vouchers</li> <li>Goods return register</li> <li>Ledger account of sale returns</li> <li>Weigh bill</li> <li>Gate Inward pass</li> <li>Transportation</li> <li>document</li> <li>ITC reversed by</li> <li>recipient</li> <li>Whether issued</li> <li>within timeline defined by</li> <li>section 34</li> </ul>

### Supply of Goods or Services or both.

In the pre-GST era, incidence of taxation on goods and services varied under different tax laws. 'Excise duty' was levied upon removal of products manufactured from the factory, 'Service Tax' was levied on 'provision of service' and VAT was levied on the value of sales or deemed sales of goods. These multiple incidences of taxation of the pre-GST era have been converted into the single incidence of taxation of SUPPLY in GST.



EXHIBIT 17

GST Law has defined 'supply' in an inclusive manner. Supply in GST comprises of all forms of supply of goods or services or both. It includes sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business [section 7(1)(a) of CGST & SGST Act].



### EXHIBIT 18

• Import of services for a consideration whether or not in the course or furtherance of business is also a supply.

- Some activities as specified in Schedule I of CGST/ SGST Act, even if made or agreed to be made without a consideration, are treated as supply.
- Further, activities or transactions specified in Sch III shall be treated neither as a supply of goods nor a supply of services in GST.

### Thus, supply has following important characteristics

- Supply shall be for a consideration except transactions specified in Sch.I which shall be treated as supply even if made without consideration.
- Supply is done in the course or furtherance of business except import of service for a consideration which is considered as supply whether or not in course or furtherance of business.
- There are certain activities specified in Sch. III which are not to be treated as supply of goods or services.

#### Conditions of 'Supply' in GST:

(a) for a consideration and (b) in the course or furtherance of business

#### **Exceptions:**

(a) Activities in Schedule I to be treated as supply **even if made without** consideration

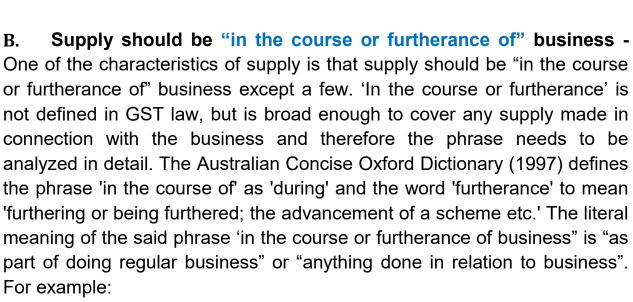
(b) Import of Service to be treated as supply even if it is not in the course or furtherance of business

#### The above conditions are discussed below with some examples:

#### A. Consideration is a condition of supply - EXHIBIT 19

A person runs two coaching centres. One is for needy students which is absolutely free, whereas the other is against fees. He is providing the same services from both the coaching centres. But, the services provided from the free coaching centre does not fulfil the first characteristic of supply (i.e. consideration) in GST. So, it is not a supply in GST. But, the services from the other coaching centre fulfills all the characteristics of supply. It must be remembered that consideration may not wholly be in monetary form; it may be in forms other than money too. For instance, supply of a new mobile phone worth Rs.50000 in exchange for a specified old mobile phone worth Rs.10000 and Rs.40000 in cash. When the consideration is not wholly in money, the value of the supply is to be ascertained as per rule 27 of the CGST Rules, 2017.





i. Purchases & Sales of goods by reseller.

ij. Selling scrap generated in the process of manufacturing is also in the course of business.

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iii. Activities done as part of CSR by a Company are also in the course of business.

Thus, the phrase widens the scope of supply to bring more activities in its ambit.

### **C.** Import of services for a consideration is supply in GST even if not in course or

furtherance of business. Suppose, a person 'P' of West Bengal is constructing his own house for his personal use. availed He the services of an architect in the USA and paid USD 10,000 for it. In this case, though it is not in the course of furtherance of business, still it would be treated as supply in GST and Mr. P would be liable for payment of GST under RCM; that he may be exempted from payment is another matter but the liability is there.





It is also relevant to mention in this respect that, services are considered to be imported when three conditions are fulfilled- (i)Supplier of services is located outside India, (ii) Recipient of services is located in India and (iii) Place of supply of services is located in India [sec 2(11) of the IGST Act, 2017].

### D. Exceptions in respect of 'Consideration' being an essential condition for Supply in GST –

There are some exceptions where activities are treated as 'Supply' under GST even if such are made without consideration. These are specified in Schedule- I under section 7 of the Act.

Schedule I: Following activities to be treated as supply even if made without consideration:

1. Permanent transfer or disposal of business assets where ITC has been availed on such assets.

2. Supply of goods or services or both between related persons (such as officers or directors of one another's business, employer & employee,

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members of the same family, legally recognized partners in business etc.) or between distinct persons as specified in sec 25, when made in the course or furtherance of business. But gifts not exceeding rupees fifty thousand in value in a financial year by an employer to an employee shall not be treated as supply.

3. Supplies of goods by principal to his agent where the agent undertakes to supply such goods on behalf of the principal.

Supplies of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of his principal.

4. Import of services by a **person** from a related person or from any of his other establishments outside India, in the course or furtherance of business.



EXHIBIT 21

**1. Permanent transfer or disposal of business assets without consideration:** There is no doubt that disposal of business assets against consideration is a supply. However, if ITC on any business asset has been availed, then disposal of such business assets even if made without consideration should also be treated as supply. Examples –

a. **Permanent transfer: Example No. 1** - Suppose XYZ Ltd., is in the business of hospitality. He purchases an air conditioner and a car for his hotel business and avails ITC on the air-conditioner but no ITC is availed in respect of the car. After 2 years, he permanently transfers the AC to one director and

the car to another director, both without any consideration. Though no consideration is taken in case of transfer of the air conditioner still, it would be treated as a supply as per Schedule I and supplier shall have to pay an amount determined according to section 18(6) of the CGST/SGST Act. In the case of permanent transfer of the car, it will not be treated as supply since no ITC has been availed on the same.

**Example No. 2** - Woodwork, being a sole proprietorship firm is in the business of selling furniture. However, if the owner takes a set of furniture from its inventory to furnish his bedroom, the transfer of the furniture by the owner is a supply as per Schedule I and would be subject to GST.

### Whether temporary transfer of business assets would be considered as supply in GST?

Temporary transfer of business assets with consideration is a supply in GST. However, temporary transfer of business assets without consideration has not been covered under Sch. I. So, it will not be treated as supply. But, for that limited period for which such assets are not used for the purpose of business, ITC shall have to be reversed as per provisions of section 17(1) read with rule 42 and 43.

**Disposal of business assets:** There are various reasons for disposal of business assets without any consideration. Most common reasons for such disposal are following: Assets are not in usable condition, Assets donated etc. **e.g.** – A company disposes of its old fans to a nearby rural health Centre as a donation during renovation of its office. The company had availed ITC on such fans. So, even if no consideration is involved in this disposal, it will still be treated as supply in GST.

### Supplies between related persons:

a. Transactions between related persons is considered a supply in GST even if made without any consideration. Related persons are defined u/s 2(84) of the CGST/SGST Act. Persons shall be deemed to be related if they fall under any of the following categories:

• Officer/ director of one business is the officer/ director of another business,

- Businesses are legally recognized as partners,
- An employer and an employee,

• Any person holds at least 25% of shares in another company either directly or indirectly,

- One of them controls the other directly or indirectly,
- They are under common control or management,
- The entities together control another entity,
- They are members of the same family.

However, in accordance with the provision in entry no. 2 of Schedule I, gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply.

**Example:** Company X gives a mobile phone worth Rs. 25000/- to each member of its sales team as a gift in 2017-18. The same Company X gives a high-end laptop worth Rs. 60,000/- to the head of the sales team for his performance.

Here, the gift of mobile phone to a salesperson as stated above, would not be treated as supply since the value of such gift to an employee does not exceed Rs.50,000/- in that FY. However, say, the company over and above the above, also gifts a family tour package to that employee which is worth Rs.30,000/- in the same FY. In this case, since the value of the gift exceeds Rs.50,000/-, the entire amount of Rs.55, 000/-(=Rs.25, 000/- + Rs.30, 000/-) would be treated as a supply by the employer. In the second case also, gift of laptop worth Rs.60, 000/- to the sales head would be treated as a supply since the value of gift exceeds Rs.50,000/-.

### Sometimes companies' gift to non-related persons without any consideration. The same may be illustrated as follows –

a. **Gifts provided by pharmaceutical companies to the Doctors –** Gifts given by the pharmaceutical companies to the doctors shall not be treated as supply since in this case, both are not related persons or distinct persons as specified in section 25 and the activity (of giving gift) is made without consideration. However, the pharmaceutical company in this case, is not entitled to claim ITC on corresponding purchase of such gift items in accordance with section 17 (5) of the CGST/SGST Act.

**b.** Diwali gift / New Year gift to business Clients – The activity of giving Diwali Gifts or New Year gifts to business clients would also not qualify as supply since the activity is not between related parties and is without

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consideration. However, ITC on corresponding purchase of the same needs to be reversed, if already availed, in accordance with S.17 (5) of the SGST/CGST Act.

#### Supply between distinct persons:

Stock transfer from one branch to another branch or from the manufacturing unit to different sales units within or outside the State is a very common practice in business. In the pre-GST regime, this type of inter-state transaction was exempted subject to fulfilment of certain conditions. However, this stock transfer is a supply between distinct persons in GST. Following persons are distinct persons –

a. All registered persons (whether in the same State or different States) under a single PAN are distinct persons (section 25(4) of the CGST/SGST Act).

b. Where registration has been obtained by a person in respect of an establishment in a State (or a union territory), another establishment of the same person in another State (or union territory) they are treated as establishments of distinct persons (section 25(5) of the CGST/SGST Act).

**Example:** A registered manufacturer in Delhi, transfers finished goods worth Rs.5,00,000/- to its depot located in Kolkata, WB. This would be treated as a supply in GST.

**Supply of principal and agent:** In pre-GST regime, consignment transfer to consignment agents in VAT and CST Acts was exempted subject to fulfilment of certain conditions. However, supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of his principal is treated as supply by principal to the agent even if such is made without consideration. Similarly, supply of goods by an agent to his principal where the agent undertakes to receive goods on behalf of the principal is treated as supply by the agent to his principal even if such is made without consideration. The key here is whether the invoice for the supply has been issued by/to the agent in his own name rather than in the name of the principal; if so, the transaction between the principal and the agent is a supply, otherwise not. (Circular no. 57/31/2018-GST dated 4th September, 2018 refers)

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The same is illustrated below-

A manufacturer of hosiery products in Kolkata engages an agent in Siliguri to sell his products as an agent. When the manufacturer transfers his stock to the agent it would be treated as supply by the principal to the agent and subsequently when the agent sells the same to the customer such would be treated as supply by the agent.

This manufacturer further engages an agent in Nadia to receive cotton yarn from vendors of Nadia. When the agent transfers cotton yarn to the manufacturer the same would be treated as supply by the agent to the principal.

#### Import of services from a related person or from overseas establishment

Import of services is a supply, if it is made for a consideration.

However, Import of Service without consideration would also be treated as supply if such is made **in the course or furtherance of business** and is made from any related person or from any establishment outside India to him in India and the same is made. **Example –** A multinational company engaged in engineering services provides engineering drawing from its unit at France to a unit in Kolkata, free of cost.

This import of service would be treated as supply even if it is without any consideration.

However, in this case it is very difficult to identify such services., if there is no self-compliance made by the RTP. If we examine the books of accounts carefully, we may find some areas where an audit trail of such supply may be identified. In such cases a list containing details of establishments outside India can be obtained and the correspondences between the entity in India and its foreign counterpart can be examined, at least on a sample basis.

For example, a company asks engineers from his foreign establishment to supply engineering services to a client in West Bengal. The foreign establishment charges nothing for the services but travel expenses and all other expenses of such engineers are borne by the registered company in West Bengal. So, audit trail of such services can be found in the relevant head of expenses. Therefore, it is very important to know the business pattern of the auditee to identify probable areas where reflection of such type of transactions may be identified.

### E. Activities neither to be treated as supply of Goods nor as supply of service

Before going into the detailed discussion on activities or transactions which shall neither be treated as supply of goods nor supply of service as provided in Schedule III, it is important to know the context of Schedule-III. In GST law, services are defined in the widest form ; 'anything other than goods' is defined as services. So, the services provided by an employee to his employer also becomes a supply of services. Functions performed by MLAs and MPs also get into the ambit of services as far as the definition of services is concerned. But it was never the intention of the GST law to bring services by the employees or MLAs or MPs and similar other activities into the scope of supply.

### Accordingly, the following activities or transactions which are enlisted in Sch. III, shall neither be treated as a supply of goods nor a supply of services:

i) Services by an employee to the employer in the course of or in relation to his employment.

ii) Services by any court or Tribunal.

**iii)** Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

**iv)** The duties performed by any person who holds a post in pursuance of the provisions of the Constitution in that capacity;

v) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central/ State Govt. or a local authority and who is not deemed as an employee before the commencement of this clause.

**vi)** Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

vii) Sale of land, sale of building (other than specified in Para. 5(b) of schedule II of the Acts].

viii) Actionable claim, other than lottery, betting and gambling.

**ix)** Supply of goods from one non-taxable territory to another without entering into India.

**x)** (a) Supply of warehoused goods to any person before clearance for home consumption.

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port

of origin located outside India but before clearance for home consumption (High Seas Sale).

### i) Services by an employee to the employer in the course of or in relation to his employment

In case of supply of services by an employee, fulfilment of the following three broad conditions is required for the levy of GST -

- i. presence of service,
- ii. existence of consideration and

iii. the supply is in the course of or in relation to the employment of the employee; that is to say, the services rendered by the employee are as per the contract of employment or within the scope of the employment.

But, as per entry no.1 in Schedule III, services rendered by an employee to his employer in the course of or in relation to his employment, shall neither be treated as supply of goods nor as supply of services.

It is important to note that the exclusion is applicable only in circumstances where the services are rendered in the course of or in relation to his employment and not otherwise. Any service rendered by an employee to his employer beyond the normal course of employment can be subject to GST unless otherwise exempted. Therefore, employee-employer agreement should have comprehensive details about the roles and responsibilities of the employee and remuneration against those services. These are also important areas to examine.

For example -

a. There is a condition in the employment clause of a pharma company that an Area Sales Manager is required to fulfil his target during a year otherwise, it would affect his increment and next promotion. An Area Sales Manager who is highly efficient exceeded the target prior to the end of the financial year. The company, being pleased, gifted him a personal car. This is nothing but a gift by the employer to the employee but the same would be treated as supply in accordance with entry 2 of Schedule I.

**ii)Actionable claim, other than lottery, betting and gambling:** Except lottery, betting and gambling, all other actionable claims are neither to be treated as supply of goods nor as supply of services.

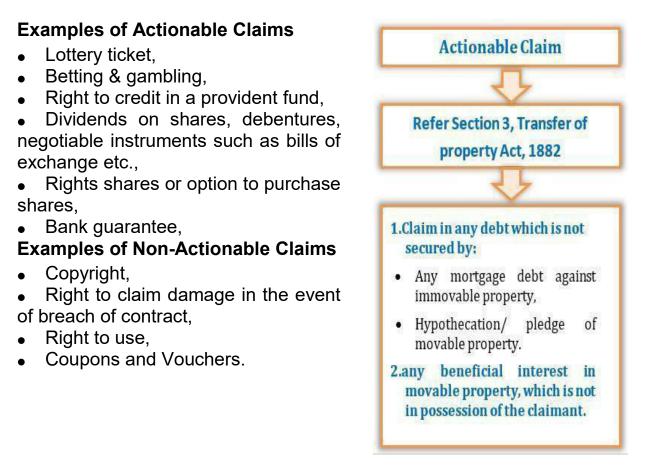
Section 3 of the Transfer of Property Act, 1882 defines Actionable Claim. It is a claim of –

- 1. any debt which is not secured by:
- a. Mortgage of immovable property,

or

b. Hypothecation, or pledge of movable property,

2. any beneficial interest in movable property, which is not in possession of the claimant. The possession can be actual or constructive.



### EXHIBIT 22

There are several examples of actionable claims. But, only lottery, betting and gambling are liable to GST.

### iii)Sale of land, sale of building (other than specified in Para. 5(b) of schedule II of the CGST/ SGST Act):

Sale of land is outside the ambit of GST. But there may be many activities and transactions related to land which can be taxable in GST. Some of these activities are mentioned in Sch. II.

# Schedule II: Activities or transactions to be treated as supply of goods or supply of services

### 1. TRANSFER

(a) Any transfer of title in goods is a supply of goods - Transfer of title of goods means transfer of possession and control on such goods i.e transfer of ownership. However, sometimes, title may be transferred before getting physical possession of goods. For example, X being a reseller of sewing machines receives an order to supply 15 pieces of sewing machine to a business person Y in Bihar. But, Y instructs X to deliver the same to Z in Jharkhand. In this case, Y transfers the title of the goods to Z without getting physical possession of the goods. Hence, in this case there are two distinct supplies of goods, first one by X to Y and the second one by Y to Z.

There may be situations where transfer of title of taxable goods may not be treated as supply in GST. In the case of 'High Sea Sales', transfer of title of goods occurs on high seas. Subsequently, documents of Customs clearance i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale. This high sea sale is not a supply in GST as per entry no. 8(b) of Sch. III.

(b) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof is a supply of services – "Transfer of right to use of goods" was always a point of dispute between two different taxation authorities. Transfer of effective control and possession over any goods along with the transfer of right to use was considered as deemed sale under the VAT Acts. However, if there was no transfer of effective control and possession over any goods, mere transfer of right to use was considered as supply of service. So, upon consideration of all the conditions it was always difficult to decide whether a particular transaction was liable to levy of VAT or service tax. This particular entry in Sch. II has done away with any such confusion and henceforth any transfer of right in goods or of undivided share in goods without the transfer of title thereof would be considered as supply of services.

Excavators, Cranes, Dumper trucks, Generator, Transit Mixer and many such machineries are usually supplied on rent basis without transferring the title. All such transactions are treated as supply of service in GST. But, as

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per the rate notification, rates of applicable GST of such services is equivalent to the rates of the particular goods.

### (c) Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods-

Example of the aforesaid entry can be Hire Purchase. There may be a twoparty transaction between the owner and the hirer or there may be a tripartite agreement between seller, the buyer and the financer. Obviously the second type of agreement is more popular nowadays. However, this kind of tripartite arrangement cannot be considered as hire purchase. In this case, full payment is made by the financing company for the purchase of the buyer and the purchaser becomes the owner of the goods. The finance company has only the right to seize the goods for non-payment of loan. In case of failure to pay the loan, the finance company sells the goods after taking possession of the goods. In such a case, it is a supply in GST and there is specific valuation rule 32(5) of the CGST/ SGST Rules, 2017 which reads as follows:

"Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession".

This is further clarified by Question No.63 in FAQ issued by the CBIC on Banking, Insurance and stock brokers sector dated 27.12.2018.

### 2. LAND AND BUILDING

(a) Any lease, tenancy, easement, licence to occupy land is a supply of services,

# (b) Any lease or letting out of the building including a commercial, industrial, or residential complex for business, or commerce, either wholly or partly is a supply of services -

Land and buildings being immovable properties are kept outside the ambit of 'Goods' as defined under the CGST/SGST Act, 2017. But services like lease, tenancy, tenancy transfer, easement, licence to occupy land, lease or letting out of any building or part thereof are treated as supply of service in GST. Even, the tenancy premium is liable for levy of GST. There are certain kinds of such supplies which are notified as nil rated supply. e.g. Leasing of industrial plots or plots for development of infrastructure for financial business. Grant of tenancy rights in a residential dwelling for use as residential dwelling against tenancy premium or periodic rent or both is also exempt supply [vide sl. no 12 of Notification No. 12/CT (R)2017].

An interesting ruling by AAR of GST, Karnataka is relevant to mention here [vide, ruling 2020 (4) TMI 692]:

Applicant has let out a Residential complex to a company who is engaged in the business of providing residential accommodation to students by entering into sublease agreement with students for providing residential accommodations with amenities, security, entertainment facilities for a period varying from 3 months to 11 months. The ruling held that they are like hotel rooms and no circumstances can be termed as a residential dwelling. The services provided are not for use as a residence by the lessee. Hence it is not the nature of the property which determines taxability but the purpose of letting out the property which determines taxability.

### 3. TREATMENT OR PROCESS

### Any treatment or process which is applied to another person's goods is a supply of services –

Any treatment or process applied to another person's goods is a service. Further, any treatment or process undertaken by a person on goods belonging to another registered person is defined as "job work" in GST. Now, if consumables are supplied by the job worker in the process of applying treatment or process then also it would be treated as supply of services. However, if goods are also supplied by the job worker for manufacturing of a product as per the specification of the Principal then the same may be considered as manufacturing of that particular goods. Accordingly, the job worker is liable to charge GST at applicable rates for supply of that particular goods. In this respect clarification in Circular No: 52/26/2018-GST dated 09.08.2018 is relevant:

**Fabrication of buses may involve the following two situations -** (a) Bus body builder builds a bus, working on the chassis owned by him and supplies the built-up bus to the customer, (b) Bus body builder builds body on chassis provided by the principal for bodybuilding. In situation (a), the supply of a bus is being made, and accordingly the supply would attract GST@ 28%. In situation (b), fabrication of body on chassis provided by the principal (not on account of bus bodybuilder), the supply would be treated as services, and 18% GST as applicable will be charged accordingly.

### 4. TRANSFER OF BUSINESS ASSETS

(a) Where goods forming part of the assets of a business are transferred or disposed of by or under the direction of a person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person.

In this entry "business assets" means both Fixed and Current assets. Transfer or disposal of the same would be taxable under GST irrespective of whether the transaction is done with consideration or without consideration.

(b) Where, by or under the direction of a person carrying on business, goods held or used for the purpose of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services.

Where goods held or used for the purpose of business -

(i) are put to private or personal use; or

(ii) made available to another person for use for any purpose other than a purpose of the business,

In both such cases it would be a supply of services **only** if such a transaction is made **for** consideration.

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e.g1. A proprietor who is in the business of selling cars brings a car temporarily for 2 months to his residence for personal use. Here, it should be deemed as a supply of services by the said registered person to the proprietor if he pays to the business for the personal usage of the car; otherwise, credit proportional to such usage is to be reversed in terms of section 17(5)(g).

e.g2. When a registered person transfers the right to use his assets to his sister concerns (who are distinct persons) for a limited period of time, it would also be a supply of services even if there is no consideration involved **by virtue of falling within the scope of entry 2 of Schedule I**.

(c) Where any person ceases to be a taxable person, any goods forming part of the assets of the business carried on by him, shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person unless-

(i) The business is transferred as a going concern to another person, or

(ii) The business is carried on by a personal representative who is deemed to be a taxable person.

Example- A manufacturer of hosiery goods has decided to close his business. At the time of filing application for cancellation of registration, he has raw materials and finished goods as stock worth Rs.10 Lakh. He also has Plant & Machinery worth Rs.15 Lakh. He has disclosed such assets but failed to pay any tax. His application is accepted and registration is cancelled. This manufacturer is liable to pay tax on his stock including Plant & Machinery as the same is deemed to be supplied by him immediately before he ceases to be a taxable person. However, in the present case if the person would have transferred the business as a going concern to another person, in such case, it would have been treated as exempt supply of services in accordance with sl.no 2 of Notification No. 12-CT(R)/2017 dated 28.06.2017. Similarly, in case of death of the person, if the business is carried on by his legal heir as a taxable person under GST then all liability of the deceased proprietor would be transferred to the legal heir.

### **5. SUPPLY OF SERVICES**

As per Sch. II the following activities are treated as supply of services:

(a) renting of immovable property.

(b) Construction of a complex, building, civil structure or a part thereof, including a complex or a building intended for sale to a buyer, wholly or partly, except where entire consideration has been received after the issuance of completion certificate, where required by the competent authority or after its first occupation, whichever is earlier.

(c) Temporary transfer of right to use or enjoyment of intellectual property right is service.

(d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software.

(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.

(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment, or other valuable consideration.

(a)Renting of immovable property is service - The word 'Immovable Property' has not been defined in the CGST/WBST Act, 2017, however the same has been defined u/s 2(19) of the General Clauses Act, 1977 - "Immovable Property" shall include land, benefits to arise out of the land, and things attached to the earth, or permanently fastened to anything attached to the earth.

Suppose, a heavy generator is installed on the ground of any registered person. Whether the same would be treated as immovable property? In the judgement of Mallur Siddeswara Spinning Mill case (166) ELT 154 (SC) the Hon'ble Supreme Court of India held that if a machine (say a Genset) is fastened on a frame and is capable of being shifted from that place, it is capable of being sold. It is goods and not immovable property. In such cases the twin test of "permanence" and "marketability" have been laid down by the Apex Court. It is advised to go through the relevant judgements in this regard.

Several activities are associated with renting of immovable properties such as:

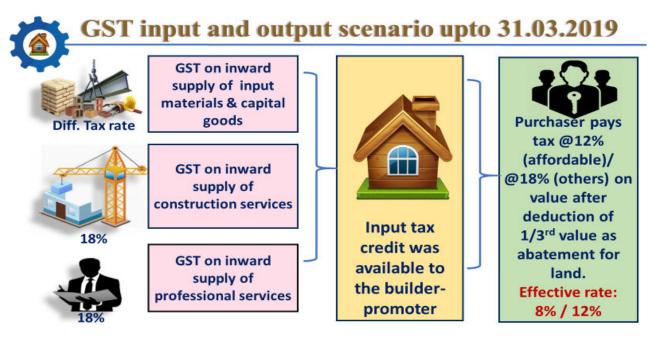
- Renting of residential complex / building / flats/ etc.
- Renting of a commercial complex/unit/flat.
- Renting of a place / property/ complex for a religious function.
- Renting of a place / property/ complex for social function.
- Renting of a place / playground for sports and games.

• Renting of property to an educational institution.

### (b)Construction of a complex, building, civil structure or a part thereof, including a complex or a building intended for sale to a buyer, wholly or partly -

Where any consideration in respect of construction of complex, building, civil structure or part of it is received partly or wholly, before issuance of completion certificate, then the entire consideration shall be treated as consideration for the services provided and, the same is taxable under the Act. But, if no consideration is received before getting completion certificate or after its first occupancy, whichever is earlier, then sale of that complex or building or any civil structure will neither be treated as supply of services nor as supply of goods.

The tax rate on supply related to real estate projects has undergone a change w.e.f. 01.04.2019. The input- output scenario up to 31.3.2019 was as follows:



### **EXHIBIT 23**

### In the real estate sector, a Developer - Promoter or a Landowner – Promoter is primarily engaged in supply of service.

A Developer-Promoter is a promoter who constructs or converts a building into apartments or develops a plot for sale.

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A Landowner-Promoter is a promoter who transfers the land or development rights or FSI to a developer-promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.

Apart from the aforesaid services there are various other services also associated. A separate book has been published by the Directorate of Commercial Taxes, West Bengal on the real estate sector. An Audit officer entrusted with the job of auditing a taxpayer in the real estate sector is advised to follow the book and go through the notifications related to real estate.

Present input- output scenario in the real estate sector which is effective from 01.04.2019 is as follows:

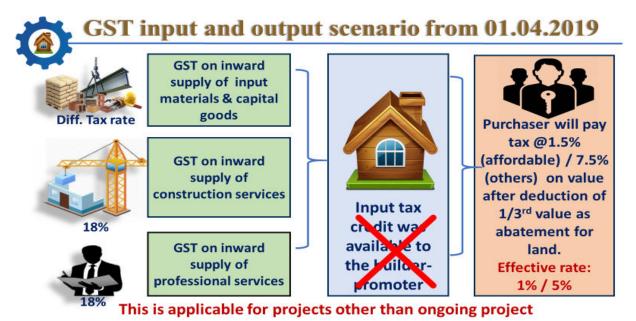


EXHIBIT 24

	Comparative view				
SI. No.	Description	Effective New Rate	Effective Old Rate		
1.	Construction of affordable Residential Apartment by a promoter (RREP & REP other than RREP)	1% (without ITC)	8% (with ITC)		
2.	Construction of other than affordable Residential Apartment by a promoter (RREP & REP other than RREP)	5% (without ITC)	12% (with ITC)		
3.	Construction of commercial apartment in RREP by a promoter	5% (without ITC)	12% (with ITC)		
4.	Construction of commercial apartment in REP other than RREP by a promoter	12% (with ITC)	12% (with ITC)		

### (c)Temporary transfer or permitting the use or enjoyment of any intellectual property right -

The term 'Intellectual Property Right' (IPR) has not been defined in the GST Act. However, IPR includes Copyright, Trademark, Patents and other similar rights to an intangible property. In GST law goods comprise of both tangible and intangible goods. IPR is nothing but goods. Temporary transfer or permitting the use or enjoyment of IPR is treated as supply of service in GST. However, if IPR is permanently transferred it would be considered as a supply of Goods.

### (d)Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software -

### Software a goods or service?

Software in physical form is considered as goods in GST. However, the act of development of software is service.

### (e)Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is service in GST-

One of the services which have always been the point of discussion in pre-GST regime as well as in the GST regime is the supply of service for "agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act". The key here is whether any of the following activities of:

(a) refraining from doing an act, or

(b) tolerating an act or a situation, or

(c) doing an act,

has been carried out

(I) in accordance with an agreement or contract (express or implied) which provides for the same, and

(II) whether any consideration (whether in money or otherwise) is paid in return for engaging in any of the aforesaid activities.

If both the aforesaid conditions at (I) and (II) above are satisfied then such activity constitutes a supply within the meaning of the Act.

(f)Transfer of Right to use goods for cash, deferred payment or valuable consideration is considered supply of services under Schedule II.

It has already been discussed in SI. No.1(b) above. Let us discuss some rulings by AAR in this respect:

Example 1: AAR Kerala in the case of M/s. Abbott Healthcare Pvt. Ltd. -

Abbott undertakes an agreement for placement of specified medical instruments to customers like hospitals, labs etc., for their use without any consideration but with the condition that these hospitals, labs etc. agree to purchase at least a specified number of products like reagents, calibrators, disposals etc. The ruling says that it is a composite supply where the principal supply is the transfer of right to use of any goods for any purpose which is supply of service and is liable to GST under SI No. 17 (iii) – Heading 9973 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

Example 2: Case Number 46 of 2019, Order Number 40 of WBAAR/2019-20 - M/s Ishan Resins & Paints Limited, the applicant engaged in the business of leasing out trucks or tankers without operator to GTA raised query as to whether it would be covered under serial no. 22 (b) of Notification No. 12/2017 CT(Rate) dated 28/06/2017 (corresponding State Notification No. 1136 – FT dated 28/06/2017) as exempt services by way of giving on hire of transportation of goods to GTA.

The AARWB HELD THAT: - The Applicant intends to lease out vehicles like trucks, tankers etc. that are designed to transport goods. The control and possession of the vehicle will be transferred to the lessee, who will engage the operators and bear the cost of repair, insurance etc. It is, therefore, not classifiable under SAC 9966, which is restricted to rental services of transport vehicles with operators. The service is classifiable under SAC 997311 as leasing or rental services concerning transport equipment without an operator. It amounts to transfer of the right to use the goods and taxable under SI No. 17(iii) of the Rate Notification.

### 6. COMPOSITE SUPPLY

### The following composite supplies shall be treated as a supply of services, namely:

(i) works contract as defined in clause (119) of section 2; and

(ii) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

#### (i)Works contract:

Works Contract has been defined in Section 2(119) of the CGST Act, 2017 as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract."



**EXHIBIT 25** 

Thus, it is seen from the definition that the term works contract has been restricted to a contract for building construction, fabrication etc. **of any immovable property only**. This is a clear diversion from the concept of works contract as per the VAT Act. This diversion is expected to solve many disputes in the realm of taxation of works contracts.

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In a works contract both goods and services are naturally bundled and supplied in conjunction with each other in the ordinary course of business. So, basically it is a composite supply. But, there is no need to find the principal supply since this entry 6(a) in Schedule II specifies works contract as a supply of service.

Apart from works contracts in GST, there are several other composite supplies such as fabrication or painting jobs done in automotive body shops, service contracts relating to different machines and equipment etc. However, these would not be covered within the definition of works contract in GST. In such contracts it is important to identify the principal supply for levy of appropriate rate of tax.

(ii)Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration is a supply of service –

There were several judgements before the 46<sup>th</sup> amendment of the Constitution of India in this respect. Hon'ble Apex Court in the matter of State Of Punjab vs M/S. Associated Hotels Of India (on 4 January, 1972) analyzed the nature of contract where a customer stays in the hotel and meals are served as part of and incidental to that service.



EXHIBIT 26

Hon'ble Andhra High Court in the matter of Durga Bhavan And Ors. vs The Deputy Commercial Tax Officer on 19th September, 1980 categorized the sale of food in restaurant into two parts -

The supply of food, etc., by restaurants may be made to customers who sit in the restaurants and consume the food. In such a case they enjoy the amenities provided by the owners of the restaurants.

The second class of cases comprise of supply of food-stuffs, snacks, drinks, etc., across the counter where there is practically no service rendered or amenities provided except in the manner of supplying the goods like packing, etc.

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Finally, it was needed to make 46th Constitutional Amendment in the year 1981.

### Key Elements of Article 366(29A)(f)

"Tax on the sale or purchase of goods includes:

(f) a tax on the supply, by way of or, as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery of supply is made."

Thus, in the pre-GST regime both Service Tax and VAT was levied on this supply. This entry 6(b) of the Schedule II is expected to reduce any confusion in respect of determination of this particular nature of supply since entry 6(b) of the Schedule II specifies the supply as the supply of service.

However, there may still prevail some confusion regarding the nature of certain supplies.

Illustration -

a. Whether tobacco consumed in hookah bars would get covered in the entry 6(b) of Schedule – II "as any other article for human consumption"?

To analyse this, we need to take resort to a well-recognised and established principle of a law which is "*Ejusdem Generis*".

"*Ejusdem Generis*" is an aspect of the principle of "*Noscitur a sociis*". The Latin word 'sociis' means 'society', 'Society' of the same nature. It is an established principle of law that when general words follow specific words, such cannot be read in isolation. Their colour and their contents are to be derived from the context of specific words. In this case "any other article for human consumption" can't be read in isolation. It must be read as "being food or any other article for human consumption".

The phrase 'any other article' takes its colour from the word 'food'. Now the question arises whether hookah is a food? Since it is not a food it will not be covered under this entry of Schedule II. In hookah bars, hookah paste is supplied with the right to use a smoking apparatus. So, it is a composite supply, where hookah paste is the principal supply.

<sup>139</sup> Model All India GST Audit Manual 2022: Prepared by the CoO on GST Audits

[There is a very famous judgement in respect of the principle of *"Ejusdem Generis". Interested readers may go through the judgement in the case of* McBoyle v. United States 283 U.S. 25 (1931)].

# Annexure – 9: Levy of tax on Reverse Charge Mechanism (RCM) (p.49)

Tax is payable by a 'taxable person' in GST. Usually, tax is levied on the outward supplies of goods or services or both by a supplier. But in some specified transactions liability to pay tax gets **shifted** i.e., in such cases tax is levied on the recipient.



EXHIBIT 27

This mechanism of liability / leviability to pay tax by the recipient is called Reverse Charge Mechanism (hereinafter referred to as RCM).

a. **Definition of reverse charge:** "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under section 9(3) or section 9(4) of the CGST /SGST Act or under section 5(3) or 5(4) of the Integrated Goods and Services Tax Act. [sec. 2(98)]

### b. Notified supplies under sec 9(3):

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. [sec. 9(3) of the SGST/CGST Act/sec. 5(3) of the IGST Act].

### Notifications issued:

SI. No.	Subject	Notification No. & date
1.	Consolidated list of goods on which tax is payable under RCM under section 9(3) of the SGST Act, 2017.	CGST Notification No. 04/2017- CT(Rate) dt. 28.06.2017

2.	Consolidated list of services on which tax is payable under RCM under section 9(3) of the SGST Act, 2017	CGST Notification No. 13/2017- CT(Rate) dt. 28.06.2017
3.	Notification for RCM on goods under section 5(3) of the IGST Act, 2017	4/2017-ITR dated 28.06.2017 as amended time to time.
6.	Notification for RCM on services under section 5(3) of the IGST Act, 2017	10/2017-ITR dated 28.06.2017 as amended time to time.

### c. Supplies received from unregistered person under sec 9(4):

The provision of section 9(4) of CGST/SGST Act /5(4) of IGST Act has been amended w.e.f. 01.02.2019. Before this amendment the aforesaid provision upto 31.01.2019 was as follows - "*The State tax/central tax/integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*"

Thus, as per the above provision (s), a registered person was liable to pay tax on RCM whenever he received any taxable supply from an unregistered person.

But, on the recommendation of the GST Council, notification under section 11(1) has been issued to exempt payment of tax under section 9(4) of the CGST/SGST Act upto a certain limit (Rs.5000/- per day) of inward supply from 01.07.2017. [CGST Notification No. 08/2017-CT(Rate) dt. 28.06.2017.]

The Gist of the said notification is as under:

• If the amount of inward supplies of goods or services or both, received in a day by a registered person from all unregistered suppliers, does not exceed Rs.5000/-, no tax is payable on RCM under section 9(4) by a registered recipient.

• If a registered person receives inward supplies of goods or services or both exceeding Rs. 5000/- in a day from all unregistered suppliers, he is liable to pay tax on RCM basis on the entire amount of such supplies received by him.

**Example** - on 01.08.2017, a registered person X receives goods and/or services from five suppliers. Three of such suppliers are unregistered from whom total supplies have been received to the tune of Rs. 4900/-. In this

case, the entire amount of Rs. 4900/- is exempted from payment of any tax u/s 9(4) by virtue of the notification No. 1132-F.T. Now, on the same day another registered person Y has received supplies of goods and/or services from ten suppliers out of whom six are unregistered from whom, total supplies received on that day is of Rs. 5100/. In this scenario, Y is liable to pay tax on the entire value of supplies received from the unregistered persons i.e., on Rs.5100/-.

### • The above provision was effective from 01.07.2017 to 12.10.2017.

From 13.10.2017 the provision for payment of tax under section 9(4) of SGST/CGST Act and section 5(4) of IGST Act have been omitted by amending CGST Notification No. 08/2017-CT(Rate) dated 28.06.2017 and CGST Notification No. 38/2017-CT(Rate) both dated 13.10.17.

CGST Notification No. 08/2017-CT(Rate) dated 28.06.2017 have been finally rescinded w.e.f. 01.02.2019 vide CGST Notification No. 01/2019-CT(Rate) dated 29.01.2019.

### d. Supplies received from unregistered person under amended provisions of sec 9(4):

Finally, the provision is amended w.e.f. 01.02.2019 as below:

"Govt. may specify by notification a class of Registered recipients who shall pay tax on RCM on supply received from an unregistered supplier.

CGST Notification No. 07/2019-CT(Rate) dated 29.03.2019 have been issued w.e.f. 01.04.2019 to specify that subject to certain conditions a promoter is liable to pay tax under section 9 (4).

### e. Compulsory Liability of Registration for a person liable to pay tax on RCM:

As per the provisions of section 24(iii) of the SGST/CGST Act, persons who are required to pay tax under reverse charge are liable to be registered without any threshold.

Hence if any person receives inward supply of goods and/or services for the purpose of business on which tax is payable on RCM, he is liable to be registered without any threshold.

### f. Tax payable by e-commerce operator [Sec 9(5)]:

The Government on the recommendation of the GST Council may notify categories of services wherein the person responsible for payment of taxes in GST would neither be the supplier nor the recipient of supply, but the e-commerce operator through which the notified services are effected. It is important to know that all the provisions of the Act are applicable to such e-commerce operator as if he is the supplier of the specified services and liable to pay tax.

The Govt. has notified certain services in this regard vide, CGST Notification No.17/2017-CT (R), dated 28.06.2017 as amended time to time, including services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle, etc. on which tax will be payable by the e-commerce operator u/s 9(5).

Where the e-commerce operator does not have a physical presence in the taxable territory, any person representing him in the taxable territory would be liable to pay the taxes. If no such representative exists, the e-commerce operator is liable to appoint such a person to discharge all the obligations.

SI. No	Question	Answer
1	A registered person receives service from a Goods Transport Agency (GTA) who doesn't charge any GST. a. Is the registered person liable to pay tax on RCM? b. What would happen if the recipient was unregistered? In that case, who will pay the tax, and at which rate?	<ul> <li>a. Yes. (vide, Entry No. 1 of CGST Notification No. 13/2017-CT(Rate) dt.28.6.2017)</li> <li>b. The recipient, other than an individual or a HUF, is liable to pay tax on RCM.</li> <li>(i) From 01.07.2017 till 21.08.2017, the GTA was liable to pay tax @ 5% without ITC;</li> <li>(ii) from 22.08.2017 to 12.10.2017 the GTA may pay tax @ 5% without ITC or @12% with ITC; and</li> <li>(iii) from 13.10.2017, no tax is payable on such supply to an unregistered individual as it became "NIL" rated only in such cases vide Entry No. 21A of CGST Notification No. 12/2017-CT(Rate) dated 28.06.2017.</li> </ul>

#### g. Some queries on RCM

Agenda for 48th GSTCM Volume 2

2	<ul> <li>i) XYZ Co. is the title sponsor of a cricket tournament. In this case, is there any supply involved? What is the nature of such supply?</li> <li>(i) Who is the supplier, and who is the recipient?</li> <li>(ii) Who is liable to pay GST?</li> </ul>	<ul> <li>(i) In this case, there is a supply of "Sponsorship service (SAC Code-998397)".</li> <li>(ii) Here, the tournament's organizing body is the supplier of such services and XYZ Co. is the recipient.</li> <li>(iii) Here, the tax is payable under RCM by XYZ Co</li> </ul>
3	A registered person in India imports services (other than OIDAR services provided by a person in a non-taxable territory received by a non-taxable online recipient) from a company in the USA. Is there any liability to pay tax under GST by either of the parties? If the answer is 'Yes', who is liable to pay tax?	Yes. Notification No. 10/2017-ITR dated 28.06.2017 issued under section 5(3) of the IGST Act stipulates that the recipient registered person is liable to pay tax on RCM. Note: In case of OIDAR services provided by a person in a non-taxable territory received by a non-taxable online recipient, the supplier of services located in a non-taxable territory is liable for paying integrated tax.
4	A Panchayat Samithi sells old and used goods to a registered person. In this case who is liable to pay tax ? If such sale would have been effected on say, 01.11.2017 who is liable to pay tax?	If the recipient of the supply is a registered person, then such recipient was liable to pay tax on RCM. (Entry No. 6 of CGST Notification No. 04/2017- CT(Rate), dated 28.06.2017 inserted by CGST Notification No. 36/2017-CT(Rate) w.e.f. 13.10.2017). However, if the said supply is made to an unregistered person, the Panchayat Samithi itself has to charge tax on forward charge basis.

5	A registered person imports goods from Bangladesh. Is he liable to pay tax (IGST) on RCM as in case of importer of services?	While importing goods from Bangladesh, he has to pay IGST. But such tax is paid by him in accordance with section 3 of the Customs Tariff Act, 1975. It is worthwhile to mention that subject to conditions, the importer is eligible to avail ITC on such payment of IGST.
6	A GTA has accrued liability for registration. He thinks that as tax is payable on GTA service by the recipient on RCM basis, he is not required to be registered under GST. Is he correct?	As per CGST Notification No. 05/2017-CT dated 19.06.2017, <b>persons</b> who are <b>only</b> engaged in making supplies of taxable goods and/or services, the total tax on which is liable to be paid on RCM by the recipient under section 9(3) of the CGST/SGST Act are exempted from obtaining registration. But in the case of a supplier of GTA services, the option is there to pay tax on forward charge also. So, it cannot be said that total tax on that service is liable to be paid on RCM by the recipient under section 9(3). Thus, the person is not correct, and may be required to get himself registered.
7	An Advocate decided not to get registration even though he has crossed the threshold of Rs. 20 lakhs. Is he correct as per GST Law?	Yes. Advocate service is exclusively taxable on RCM under section 9(3). So, the said Advocate is correct in his position.

#### h. Court judgements on RCM under GST

Several judgments have been pronounced by different High Courts on reverse charge mechanism under GST. Gist of some important judgements are compiled in the Table below:

SI. No.	Issue of the case	Gist of the Judgement		
1.	Bombay High Court	Q.1. Whether GST is liable to be paid on services or assistance rendered by the Court Receiver appointed by Court?		
	Bai Mamubai Trust and 2 Ors vs	A.1 There may be instances where payments received by the Court Receiver may attract GST-		

Suchitra Wd/Of	(i) Where the Court Receiver is appointed to run
Sadhu Koraga	the business of a partnership firm in dissolution, the
on 13 September,	business of the firm under the control of receivership
2019 Bench:	may generate taxable revenues.
S.J. Kathawalla	(ii) Where the Court authorises the Court
0.0. Nathawalia	Receiver to let out the suit property on leave and licence, the licence fees paid may attract GST.
(Courtesy: Indian	(iii) Where the Court Receiver collects rents or
Kanoon Org)	profits from occupants of properties under receivership, the same will be liable to payment of GST. (iv) Consideration received for assignment,
	licence or permitted use of intellectual property.
	In such cases, GST may be collected from the Court Receiver as a representative assessee under Section 92 and as such the Court Receiver may be required to obtain registration under the relevant GST laws. [Para. 84 & 85]
	However, if the Court Receiver is deputed to make an inventory of goods, collect rents with respect to immovable property in dispute or where the property has to be sealed, or the Receiver is appointed to call bids for letting out the premises on leave and licence, the fees or charges of the Court Receiver are exempt. [Para. 86]
	Q.2. Whether GST is liable to be paid on royalty or payments under a different head paid by a defendant (or in a given case by the plaintiff or third party) to the Court Receiver in respect of properties over which a Court Receiver has been appointed? A.2. The answer is in the affirmative, subject to the payment towards royalty or the payment to the Court Receiver (described by whatever name) is towards or in relation to a "supply" within the meaning of the CGST Act. [para. 87]
	Q.3. Specifically, in the facts of the present Suit, where the Plaintiff alleges the Defendant is in illegal

		occupation of the Suit Premises: Whether there is any 'supply' within the meaning of the CGST Act? Whether payment of royalty for remaining in possession of the Suit Premises, either during the pendency of the Suit, or at the time of passing of the decree, falls within the definition of 'consideration' for a 'supply' chargeable to payment of GST under Section 9 of the CGST Act? A.3. The answer is in the negative. [Para. 88] Q.4. If in any circumstance, GST is payable or applicable to payments made to the Court Receiver, how that statutory liability is to be discharged? Is it to be paid by the Defendant / party in occupation directly, or by the Court Receiver? A.4. Where any payment to be made under an order of the Court attracts GST, the agent appointed by the Court Receiver must have or must obtain CGST registration and make such payment on behalf of the Receiver and indemnify the Receiver for any liability that may fall upon the Receiver under Section 92 of the concerned GST Act. Where no agent is appointed, naturally the Court Receiver will have to obtain registration. [Para. 91 & 92]
2.	Rajasthan High Court - Jodhpur Vinod Kumar Sharam vs State Of Rajasthan on 10 April, 2019 read with Ladu Lal Hiran and Ors vs State Of Rajasthan And Ors on 28 August, 2018	<ul> <li>(i) Whether Royalty Contractors (termed as ERCC Contractors) appointed by the Government of Rajasthan exclusively for collecting the royalty on behalf of the Government from the mining lessee of natural resources without supply of such natural resources can collect GST @ 18% as forward charges – the answer is in the negative.</li> <li>(ii) Whether the royalty paid for mining activities as chargeable under the notification dated 28.06.2017 provides that the lease holders are required to pay the GST under the reverse charge mechanism – the answer is in the affirmative.</li> </ul>

# Annexure 10: Key points for value of supply and details of value of supply (p.55)

	TABLE II: KEY POINTS FOR VALUE OF SUPPLY				
SR. NO.	10	Reference Points from returns	Accounts		
1	Whether the transaction value is in accordance with the terms of the contract?	<ul> <li>Contracts/Agreement</li> <li>Purchase order</li> <li>Invoices</li> <li>File of Correspondence with Client/Customer</li> </ul>			
2	Whether the discounts allowed are in accordance with regular practice of the taxpayer and the purchaser has paid the sum originally charged less the discount?	<ul> <li>Price Circular</li> <li>Invoice linked to Discount</li> </ul>			
3	Whether any amount that the supplier is liable to pay but incurred by the purchaser has been included in the value of supply?	<ul><li>Price circular</li><li>Contract/Agreement</li></ul>			
4	Whether interest or late fee or penalty for delayed payment of any consideration for any supply collected from the purchaser is included in the value of supply?	Debit Notes			
5	Whether there are supporting documents for the credit notes issued for supplies made?	Price circular Contract/Agreement			
6	Whether there are supporting documents for the debit notes issued for supplies made?				
7	Whether terms of contract detail any consideration flowing from the third party?	Contract/Agreement			
8	check whether there is significant	List of related persons Inter-unit movement check through delivery challan.			

9	Whether the taxpayer has made any supplies where money is not the sole consideration?		
10	Whether any exchange offer or scheme has been offered by the taxpayer?	Exchange offers during festive months.	

### Value of supply

The GST is applied on the value of supply of goods and services. The consideration may be in money or in other forms. Buyer can also pay for his inward supply with nonconsiderations by monetary giving the seller other goods or services in exchange. There may be a situation when there is no consideration at all. Then what will be the value of supply? Hence it is really important to calculate the value of supply properly as per provisions of laws.



**EXHIBIT 28** 

There are several situations where valuation takes a vital role, such as the case of different sales offers, free distribution, combo offers etc. Therefore, what can be part of the value of supply or what does not, is very important to understand to levy GST.

# A. The methodology of valuation of a particular supply is exclusively discussed in Section15 of the CGST/SGST Act, 2017.

#### What is the value of supply under GST?

As per Section 15(1), the value of supply is the transaction value actually paid or payable for the supply of goods and / or services between parties **not related** and where **price is the sole consideration.** The value of supply shall include -

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than CGST Act, SGST Act, UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

The above provisions of Section 15(1) are applicable to determine value of supply when the parties are not related. So, it is important to know first as to who are related parties and who are not.

#### **Related Parties**

The supplier and recipient of a particular supply will be considered as related persons if they satisfy the below mentioned situations enumerated in the explanation to Section 15(5) of the CGST /SGST Act 2017:

- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;

# Where persons are related, price determined under section 15(1) is irrelevant and is subject to verification under section 15(4) by reference to the rules applicable.

#### Price is the sole consideration

It is important then to understand the term 'price is the sole consideration'. If there is any consideration not in money, the money actually paid cannot be taken as the basis of valuation. Any additional consideration received apart from the monetary consideration shall also be considered to arrive at the actual transaction value. In fact, the consideration can be both monetary and non-monetary which is well defined in Section 2(31) of the CGST / SGST Act.

**There is an important clause in the provisions of valuation** – "any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable.."

This clause is a check to ascertain that any amount of a supply may not be diverted by the supplier from the actual value of supply.

<u>Example:</u> There is a supply agreement between a principal and an agent where the principal fixed his supply value to the agent at Rs.500/- per unit for a taxable item and also fixed the sale price of the agent to any buyer at Rs.600/- per unit of that item where Rs.50/- per unit will be retained by the agent as commission and balance as incidental expenses. Question arises now, what will be the supply value of principal to the agent? As per the above clause of valuation provision, the supply value should include this commission and incidental expenses of the agent. The supplier (here the principal) manages to escape from the liability of paying commission and incidental expenses to the agent by transferring them to the buyer. But, it shall be part of supply value from principal to agent.

**Incidental expenses as a part of supply value –** Incidental charges incurred before or at the time of supply shall form part of supply value.

<u>Example</u> – There is a supply contract of door delivery of fragile goods with proper packing. Suppose, the value of the goods is Rs.10,000/-, packing

<sup>152</sup> Model All India GST Audit Manual 2022: Prepared by the CoO on GST Audits

charges are Rs.500/- and door delivery cost is Rs.600/-. Then, it will be a composite supply with the supply of that goods as principal supply and value of supply is Rs.11,100/-.

So, the incidental charges incurred before or at the time of supply shall be part of supply value. But, if such charges incurred after the supply whether that should not be part of supply value? Let us explain it with an example –

Warranty supply of parts to end-customers through a dealership - Suppose a company sold a car with a consideration of Rs.10 Lakh to a customer with 3 years free service warranty. An authorised service centre of that car company supplies service of servicing of the car to that car owner. This service is actually provided by the car company (as per terms of purchase of car), through the authorised service centre. There may be replacement of parts under warranty also. Now, the transaction of free service and / or warranty replacement between the car company to the customer is not liable to GST not because it is free now, but since the price for the replacement is built into the price of the car originally supplied and therefore tax has already been paid by the car company at the time of selling of the car. Now, the question arises then what is the role of the service centre here? In fact, the service centre delivers the part and rendered service to the customer but 'supplies' it to the car company. Hence, there is another supply involved here between the service provider and the car company which is taxable supply in GST.

[*Reference:* Mohd. Ekram Khan's decision of SC in 144 STC 542. As such, warranty involves two supplies and neither of which are free from tax. One is tax pre-paid and another is currently taxed though not involving the end customer].

Interest, late fee or penalty for delayed payment are also part of supply value- All these special charges are linked to an underlying original supply, therefore, shall be part of supply value. So many questions may arise – what will be the time of supply for these special charges? Whether the rate of tax of original supply will be applied for the special charges also? Whether all such special charges are liable to GST? It is better to explain it with an example –

*Example:* A contractee awarded a contractor with a 'turnkey project' to build a road with an agreed price of Rs.100 Cr (Excluding GST). Some of the terms of agreement were as follows –

i. The contractor must pay earnest money Rs.5 Cr in the form of FD as a security to abide by the terms and conditions to use machinery and materials not below the specified standard and also for timely completion of the project. However, if completion is delayed by more than 6 months, 50% of the security will be forfeited. Similarly, any breach in the condition of quality is liable to forfeiture of 10% of the security. At the same time, if it is completed 2 months prior to the date, the company will provide prize money of Rs.50 Lakh to the contractor. There was also a clause that if the contractee fails to provide land in time the contractor will charge 1 Cr. for each month of delay.

ii. The contractor finished the work 2 months prior to scheduled time. Due to bad quality of machinery used, the contractee forfeited 5% of earnest money. The contractee failed to deliver land to the contractor in due time therefore, the contractor charged Rs. 4 Cr extra to the contractee. The contractor also charged interest of Rs.60 lakh for late payment.

In this example, there are so many incidental charges. But, all are not taxable in GST. Earnest money is a kind of security only. So, GST is not leviable on the same. The taxability of the above charges is explained the table below –

SI. No.	Description	Amount	Remarks
1	Turnkey project of construction of road	100 Cr	Taxable as works contract service.
2	Security	5 Cr.	Not a supply in GST
3	Forfeiture of security by the contractee	2.5 lakh	It is a penalty for not using the specified quality of machinery and hence it is not a supply
4	Award for early completion	50 Lakh	Taxable service being a supply ancillary to the main

			supply of construction service
5	Penalty for delay to handover land.	4 Cr	It is a penalty (hence not a supply) for not adhering to the terms of the contract which stipulated transfer/providing land on a specific date
6	Interest for delayed payment of contractual price	60 Lakh	Taxable and shall be part of the value of construction service.

Thus, there are so many special charges but only the last one is for the underlying original supply of construction service.

**Discounts to be excluded from Taxable Value –** As per Sec 15(3) value of supply will not include discount, provided:

• It is allowed before supply, or

• It is allowed after supply, provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by the recipient.

**Example:** M/s. A of Kolkata supplied 10 pcs of i-Phone to M/s. B of Kolkata on 20.09.2019 where basic price of such phones is Rs. 10 lakh. A discount of Rs. 1 lakh is offered and courier charges of Rs.1000.00 is charged at the time of supply. What is the value of supply in the above transaction if the tax rate of such i-phones is 12%? As per the conditions, 50% payment was made at the time of delivery and further condition was that if balance payment is made within 20.10.2019 then 10% further discount on basic price will be allowed. If such payment is made in time, whether this discount will also be deducted from the supply value?

In this example, courier charges are to be added to the value of supply as incidental charges and discount is to be deducted as it is offered at the time of supply. Hence, taxable value will be Rs. 9,01,000/-. GST @ 12% is to be added to Rs. 9,01,000/- to get the value of supply i.e. Rs. 10,09,120/-. If 50% of the amount is paid and rest is paid within 20.10.2019, further

discount of 10% on basic price will be allowed. Though it is a post-sale discount, the condition was fixed at the time of supply. So, the discount is allowed as a deduction. Accordingly, M/s A may decrease his output tax subject to the condition that M/s B reverses an equal amount of ITC.

In lieu of discounts if promotional items are offered by the supplier to increase sales volume and to attract new customers for their products, such promotional items are not discounts as not satisfying the requirements of section 15(3).

**Example:** Two goods, say A (tax rate 12%) & B (tax rate 18%) are offered for a single price of Rs. 3000/- under the scheme 'Buy one get one free'. Now, what will be the transaction value? What will be the rate of tax on such supply?

In this example, it may appear first at a glance that one item is being 'supplied free of cost' without any consideration. But it is not an individual supply of free goods rather a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Hence, here transaction value will be Rs. 3000/-. Taxability of such supply will be dependent upon whether the supply is a composite supply or a mixed supply. If it is a composite supply, then the tax rate of the principal supply will be applicable and if it is a mixed supply, tax rate shall be 18%.

#### B. Determination of Value of Supply as per GST Rules:

Reference to GST Rules related to valuation is permitted only if the transaction value cannot be determined as discussed above. These are cases where either the parties are related/distinct/agent or the price is not the sole consideration. Valuation Rules are prescribed under Chapter IV of the CGST/SGST Rules, 2017 from Rule 27 to Rule 35.

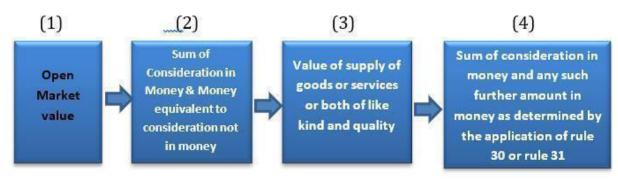
#### The above Rules are explained below:

#### 1. Where consideration is not wholly in money - Rule 27

This rule is applicable for the supplies like barter, exchange and transactions listed in schedule I where the transaction is not wholly in money as they fail to qualify for application of section 15(1).

Now, the order of application of the methods to determine the value of supply has to be maintained in the following sequence.

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#### Example 1:

(a) X Co. supplied a car to Mr. Sen in exchange for Mr. Sen's old car and on payment by Mr. Sen of Rs. 5,00,000/-. If the price of the new car without exchange is Rs. 9,00,000/-, then the open market value of the new car is Rs. 9,00,000/-.

(b) If the open market value of the new car is not known, and the price of the old car is Rs. 4,00,000/- at the time of supply, then the value of supply of the new car will be Rs. 9,00,000/-.

(c) A customized air conditioning unit whose open market value is not available is installed at an office wherein the consideration is paid in the form of money of Rs. 40,000 and an old air conditioning unit whose price is not available at the time of supply. A similar air conditioning unit in terms of characteristics, quality, functional components, materials and reputation etc. has been installed by the company at another client's premises for Rs. 60,000/-. Since, the value of goods of like kind and quality is available, the value of Rs. 60,000/- will be taken under Rule 27.

(d) value determined by rule 30 or rule 31.

# 2. Where supply is made between related persons with or without consideration and distinct persons without consideration - Rule 28 The value of supply under this rule will be:

(a) **Open market value:** <u>*Example:*</u> A cell phone dealer gifts a cell phone set worth Rs. 23,000/- to his son. Since, this is the open market value, it will be the value of supply for the mobile set supplied to a related person.

(b) Value of Supply of Like kind and quality: If open market value is not available, then value of supply may be determined on the basis of supply of like kind and quality.

(c) Value determined by rule 30 or rule 31.

#### The two provisos to this rule are of significance:

(i) If the supply to a related or distinct person is for further supply, then the value may be an amount equivalent to 90% of the value of supply of like kind & quality to non-related person.

(ii) where it is the recipient, who is entitled to full credit, the value declared in the invoice is deemed to be open market value. This provision appears to accommodate internal preferences between distinct persons.

[*Reference:* In a case of GKB Lens Pvt Ltd, Advance Ruling had been sought on whether goods supplied to the branches in the States other than West Bengal can be valued in terms of the Cost Price under the Second Proviso to Rule 28 of CGST Rules, 2017, instead of 90% of MRP as required under the First Proviso of the same Rule. AAR West Bengal held - The Applicant has the option of not supplying goods to its branches under the First Proviso of Rule 28 and is eligible to value these goods by applying the terms of the Second Proviso to Rule 28 of GST Act.]

#### 3. Where supply is made or received through agent - Rule 29

This rule is applicable only in case of **'supply of goods'** and not 'supply of services'. The value of supply under this rule will be:

(a) Open market value or 'at the option' of supplier 90% of the price charged for goods of 'like kind and quality' by the Agent.

Example: Agent supplies groundnut @5000/- per Qtl. Agent is purchasing groundnut from a non-related supplier @4550/- per Qtl. What should be the supply value from principal to agent?

It should be 90% of Rs. 5000/- ie. Rs. 4500/-

(b) Value determined by rule 30 or rule 31.

This rule is applicable only in case of those transactions where the Agent 'handles' the goods of the Principal. It is clarified vide Circular No. 73/47/2018-GST dated 05-11-2018 that in case of supply of goods, if the invoice is issued by supplier to customer either himself or through del credere agent (DCA) then it does not fall under the ambit of agent. However, in a case where the invoice is issued by the del credere agent then it would fall under the ambit of an agent.

#### 4. Value of supply based on cost - Rule 30

This rule is applicable for valuation of supply of goods and services, only where the other methods of valuation do not apply. It provides that the value will be 'cost plus 10%'.

<u>Example:</u> Suppose ABC Limited is a manufacturer of office furniture. Say, the cost of manufacturing a chair is Rs. 4,000/-. Similar chair in the open market is valued at Rs. 4,500. These chairs are supplied to a furniture showroom at the rate Rs. 3,000 and balance in non-monetary consideration. Now since the open market value is available, Rs. 4,500 will be considered for valuation of supply. However, if Open Market Value is not available, the value of supply as per cost method will be 110% of the cost of manufacturing i.e. Rs. 4,000\*110% = Rs. 4,400.

#### 5. Residual method of valuation - Rule 31

As per the residual method, where the value of supply of goods or services or both cannot be determined under the cost method, the same shall be determined using reasonable means consistent with the principles and general provisions of the GST law. Unitary method or number of man hours required to complete a job can be examples of such valuation method.

#### 6. Lottery, betting, gambling and horse racing - Rule 31A

**Supply Value in case of Lottery**: Value shall be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

<u>Note:</u> The above Rule is as amended by the CGST/SGST (Second Amendment)

Rules, 2020, w.e.f. 1-3-2020. Prior to the amendment, the Rule provided for determination of value of supply for lottery run by state Government as 100/112 of the face value of ticket or the price as notified in the Official Gazette by the organising State whichever is higher. Value of supply for the lottery authorized by a State Government is determined as 100/128 of the face value of ticket or the price as notified in the Official Gazette by the organising State whichever is higher.

**Betting, Gambling or Horse Racing**: Actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid to the totalisator. This implies that the value on which GST has to be paid will be the amount of bet placed or the amount paid to the totalisator instead of the commission or share of revenue of the race club.

Actionable claim is "goods" under section 2(52). Hence, actionable claim in the form of chance to win betting, gambling and horse racing with reference to the above definitions will be goods and not services. The tax rate notifications issued for goods states that 'actionable claim in the form of chance to win in betting, gambling, or

horse racing in a race club' is liable to tax at the rate of 28%. The rate notification issued for services also specifies that the gambling as an activity involving services and accordingly, liable to tax at 28% (refer entry No. 34(v) of Notification No. 11/2017 (Rate)).

With the above ambiguities there may be some confusion whether to tax actionable claims as goods or services.

#### 7. Specific valuation provisions – Rule32

Rule 32 is only an option available to the supplier for determination of valuation of certain specific supplies. He may opt for the mechanisms specified in rule 32 or in rules 27-31 or in section 15 as the case may be.

## (a) Purchase and sale of foreign currency including money changing:

Option 1	Option 2
Difference between buying-selling rate and the RBI reference rate. Where reference rate is not available, 1% of gross Indian Rupee provided/received. And where the conversion is not into Indian Rupees, then 1% of the lesser of the Indian Rupee equivalent of each currency exchanged. <u>Example:</u> Suppose a company M/s Thomas Cook Ltd, a money changer, converts 1000 Euro into rupees @90 per Euro. The RBI reference rate for Euro is Rs. 88. So, the value of supply shall be = (90-88) * 1000 = Rs. 2000/	For currency exchange ≤Rs.1 L: 1% or Rs.250/- which one is higher. For currency exchange >Rs.1Lbut ≤ 10L 0.5% of exchanged amount exceeding 1 L plus Rs.1000/- For currency exchange >Rs.10L: 0.1% of exchanged amount exceeding 1 L plus Rs.5500/- but maximum Rs.60000/- <u>Example:</u> Suppose a money exchanger received Singapore Dollar and provided Indian Rs. 5,00,000/ The value of supply shall be (4,00,000*0.5%) +1000 =Rs. 3000/-

(b) Value of service in relation to air travel agents: 5% of basic fare in case of domestic booking and 10% of basic fare in case of international booking of passengers by air. Commission to the travel agent may flow from passenger or airline or any other person and the value determined here will be the tax for all the sources of commission.

#### (c) Supply of services in relation to life insurance

(i) If in the policy allocation for investment of certain amount is intimated to the policy holder: Gross premium - Investment amount

(ii) In case of single premium other than (i): 10% of single premium

(iii) In cases other than (i) & (ii): 25% of premium charged for first year & 12.5% for subsequent year

#### (d) Supply of services of person dealing in second-hand goods

(i) If supplied as it is or after minor processing without changing nature of goods and without availing ITC: Sale price - Purchase price (If this difference is negligible, that shall be ignored)

(ii) Purchase price in case of repossessed goods from a defaulting borrower who is unregistered: Purchase price - 5% from purchase price for each quarter from date of purchase to date of disposal after repossession.

(e) Supply of voucher: The value will be the redemption value of the voucher. Voucher includes coupon, stamp, token, et

#### 8. Service of pure agent - Rule 33

This rule applies only to supply of services. The cost incurred by the supplier shall be excluded from value of supply if the following tests are satisfied:

(a) the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorisation by such recipient;

(b) the payment made by the pure agent on behalf of the recipient of supply is separately indicated in the invoice issued by the pure agent to the recipient of service;

(c) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

#### Pure agent:

• A person who enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure in the course of supply of goods or services or both;

• Neither intends to hold or holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply.

• Does not use for his own interest such goods or services so procured as pure agent.

• Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

<u>Example:</u> Mr. A is an importer who goes to Mr. B for Customs clearance work in respect of import of a consignment. The clearance of goods would also require taking of transporter service. Mr. A also authorizes Mr. B to incur expenditure on his behalf for procuring the transporter service and agrees to reimburse such expenses. In this scenario, Mr. B is providing custom broker service to Mr. A, which is principal to principal basis and the transportation services procured by Mr. B on behalf of Mr. A is a pure agent service and expenses incurred by Mr. B on transportation shall not form part of the value of the Customs broker service.

#### 9. Rate of exchange of foreign currency - Rule 34

Any transactions undertaken in foreign currency must be converted into INR and the rate of such exchange is as follows:

(a) For determination of the value of taxable goods the rate of exchange shall be the applicable one as notified by the Board under section 14 of the Customs Act, 1962.

(b) for determination of the value of taxable services rate of exchange shall be the applicable one determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

# 10. Value of supply inclusive of integrated tax, central tax, state tax, union territory tax – Rule 35

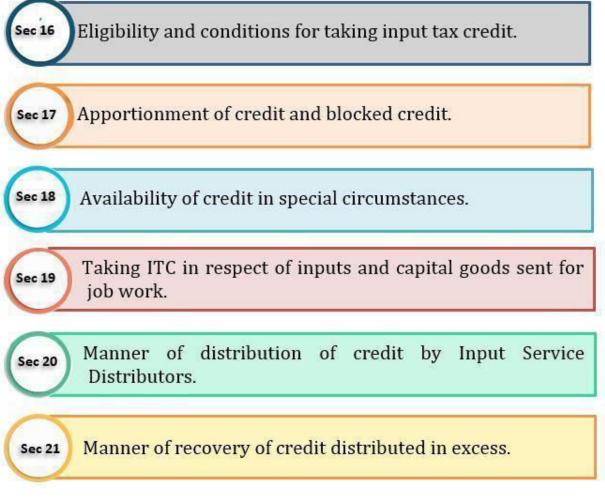
In such cases, the tax amount shall be determined in the following manner: Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100 + sum of tax rates, as applicable, in %)

### Annexure 11: Input Tax Credit (p. 52)

Availability of Input Tax Credit throughout the value chain is the GST essence of in India. Needless to say that examining the veracity of ITC availed by an auditee is of paramount importance to an auditor. The provisions related to ITC are as follows:



**EXHIBIT 30** 



#### EXHIBIT 31

**Relevant Rules** 

Rule 36	Rule 37	Rule 38	Rule 39	Rule 40
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Rule 41	Dula 42	Dula 42	Rule 44 &	Rule 45
Rule 41	Rule 42	Rule 43	44A	Rule 45

#### a. How is Input Tax Credit (ITC) defined in GST

Section 2(63) of the CGST/SGST Act defines Input Tax Credit as the credit of input tax.

Section 2(62) defines input tax as follows: "input tax" in relation to a registered person means any tax such as Central Tax, State Tax, Integrated Tax or Union territory tax charged on any supply of goods or services or both made to him & includes: -

- Integrated Tax charged on import of goods &
- Tax payable under reverse charge mechanism,

#### but does not include the tax paid under the composition levy.

**Input** is defined in Sec 2(59) as any goods other than capital goods used or intended to be used by the supplier in the course or furtherance of business.

**Capital goods** is defined in Sec 2(19) as goods, the value of which is capitalized in the books of account of the person claiming ITC and which are used or intended to be used in the course or furtherance of business.

**Input service** is defined in Sec 2(60) as any service used or intended to be used by a supplier in the course or furtherance of business.

### b. **Provisions of section 16(1)**

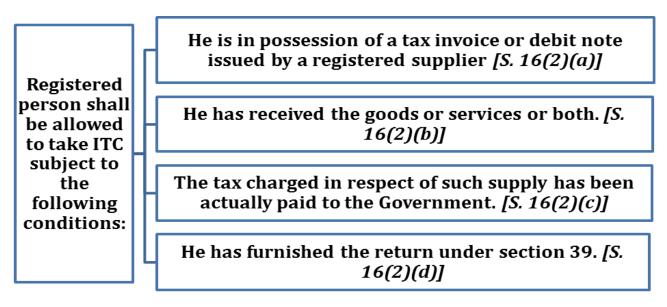
Who can claim	In respect of	Primary
ITC?	which?	condition?
Every registered person subject to conditions and restrictions	In respect of credit of input tax charged on any supply of goods or services or both	Used or intended to be used in the course or furtherance of his business.

#### EXHIBIT 32

In accordance with Section 16(1) of the CGST/SGST Act, 2017:

(i).Only a registered person other than persons under composition scheme is entitled to claim ITC.

- (ii).However, this claim is not unconditional and is subject to conditions and restrictions as prescribed.
- (iii).Self-assessed ITC taken in the return is credited to the electronic credit ledger of the taxpayer.
- (iv).ITC can be taken on such supply of goods or services or both to the registered person which are used or intended to be used in the course or furtherance of his business.
  - c. Provisions of sec 16(2) provide conditions to avail of ITC -



With effect from 01.01.2022 another condition to the effect that supplies in respect of which credit is being claimed have been declared by the supplier in his GSTR-1 and the credit available has been communicated to the recipient (vide GSTR-2B) and that the credit is not restricted in terms of the said communication

#### d. Deemed recipient of goods / services

Where goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods either by way of transfer of documents of title to goods or otherwise, it shall be deemed that the registered person has received the goods for the purpose of Section 16(2)(b).

Where services are provided by the supplier to any person on the directions of and on account of another registered person, it shall be deemed that the

<sup>165</sup> Model All India GST Audit Manual 2022: Prepared by the CoO on GST Audits

registered person has received the services for the purpose of Section 16(2)(b).

It may be noted in this regard that the date of receipt of the goods or services is vital for availing ITC. It may happen that the supplier issues invoice on 30<sup>th</sup> of a particular month and uploads details of the same in Form GSTR-1 of that month and the same is auto-populated in GSTR-2A of the recipient in the same month. However, this does not make the recipient eligible to avail of ITC in the return of this said month if he receives the goods in the subsequent month. In the case of goods, many audit trails can be found in respect of receipt of goods in documents like E-Waybill, GRN etc.

This, however, may be difficult to ascertain in the case of services. Further, there may be a situation where goods are received in the subsequent month but purchase is auto populated in GSTR 2A in the month of sale as disclosed by the supplier in GSTR 1. In such cases there is a probability to claim ITC wrongly by the recipient though the goods are not received.

#### e. Goods received in lots

If goods are received in instalments against a single invoice, credit can be availed only upon receipt of the last instalment of goods.

Suppose, a consignment of iron ores was dispatched from Jharkhand to Kolkata by 10 trucks. Invoice was raised to the recipient on 28.10.2018. Three trucks reached Kolkata by 30.10.2018 but the truck carrying the final lot of the consignment reached the recipient on 03.11.2018. The supplier also disclosed such sales in his GSTR 1 for the month of Oct'18. In this case, **ITC in respect of the invoice issued on 28.10.2018 can be availed not before the month of November, 2018.** 

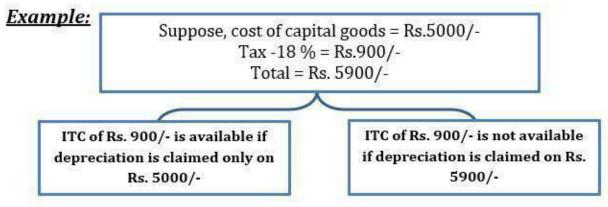
#### f. Payment in respect of the supply as a condition to avail ITC:

When a recipient fails to pay his supplier (other than supplies on which tax is payable under RCM), the amount of value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice, the recipient is liable to add the ITC availed on such supply to his output tax liability along with interest thereon.

However, the recipient is also entitled to avail the credit of ITC once he makes the payment towards the amount of value of supply along with tax payable thereon.

#### Capital goods and plant & machinery on which depreciation is claimed on the tax component under the Income Tax Act:

Sec 16 (3) **does not allow** a registered person to take **ITC on such a tax component** of the **cost of capital goods** and **plant and machinery**, on which he has **claimed depreciation** under the provisions of the **Income Tax Act, 1961**.



#### g. Time limit to claim ITC

As per Sec 16(4), a registered person shall not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return (Form GSTR-3B) under section 39 for the month of September following the end of financial year to which such invoice or 'invoice relating to such debit note pertains' or furnishing of the relevant annual return, whichever is earlier.

• For F/Y 2017-18, a taxpayer shall be allowed to take ITC till the due date of furnishing of the return for the month of March, 2019 i.e. 23.04.2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the FY 2017-18, the details of which have been uploaded in the Form GSTR-1 for the month of March, 2019.

• For F/Y 2018-19, a taxpayer shall be allowed to take ITC till the due date for furnishing of the return for the month of September, 2019 i.e. 20.10.2019. For the FY 2018-19, for the taxpayers having aggregate turnover upto Rs. 2 cr, filing of GSTR-9 is optional and for the taxpayers having aggregate turnover upto Rs. 5 cr filing of GSTR-9C is optional. The Ministry of Finance, GoI in an Official Press Release dt.24.10.2020 announced the extension of due date to file GSTR 9, GSTR 9A & GSTR 9C for the FY 2018-19 to 31st December, 2020.

h. ITC in respect of supplies not declared by the supplier in Form GSTR1

A supplier is supposed to disclose all B2B supplies in Form GSTR 1 which gets auto populated in Form GSTR 2A of the recipient. Auto-population of invoices in Form GSTR 2A primarily assures disclosure of relevant supply by the supplier. However, disclosure in Form GSTR-1 does not sufficiently ensure that tax in respect of such supplies has been paid by the supplier which is paid in the return in Form GSTR-3B.

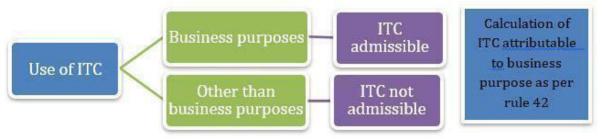
Rule 36(4) has been inserted vide notification No 49/2019-CT, dt. 09-10-2019 (corresponding State notification. No 1730-F.T. dt.16.10.2019) and it applies to all returns filed after 9<sup>th</sup> Oct 2019. In accordance with Rule 36(4), a registered person is entitled to avail of maximum 10% (20% from 09.10.2019 to 31.12.2019) of eligible credit on the basis of auto-populated details in Form GSTR-2A of a particular month in respect of details of invoices or debit notes which have not been uploaded by the corresponding suppliers (i.e. which have not been auto-populated in Form GSTR-2A).

#### Illustration:

Suppose X calculates ITC at Rs. 100/- for the month of January 2020 on the basis of invoices in his possession. However, his suppliers declare invoices whose corresponding ITC calculates to Rs. 60/- only, in their Form GSTR-1 which is autopopulated in Form GSTR-2A for the month of January 2020 of X. It is also found out that ITC is eligible for Rs. 60/- since nothing in this amount is restricted by Section 17(1)/(2)/(5) etc.

In this case, X is eligible to avail of ITC to the tune of Rs. 66/- [Rs. 60/- + Rs. 6/- (=Eligible ITC: Rs. 60/- x 10%)]

### i. Apportionment of Credit [Sec 17(1)]



#### EXHIBIT 33

Example: A registered person claims ITC as follows -

a. ITC of Rs.20,000/- for purchase of taxable goods for resale.

b. ITC of Rs.5000/- on rent payment for a two storied building, where 1<sup>st</sup> floor is used for business purpose and 2<sup>nd</sup> floor for residential purpose.

c. ITC of Rs.1500/- for renting cab services both for business and for personal use.

d. ITC of Rs.6000/- for purchase of furniture for residence.

#### Ineligible ITC:

Rs.1500/-: Restricted in accordance with section 17(5)

Rs.6000/-: On purchase of Furniture for residence (for purpose other than business).

#### Eligible ITC:

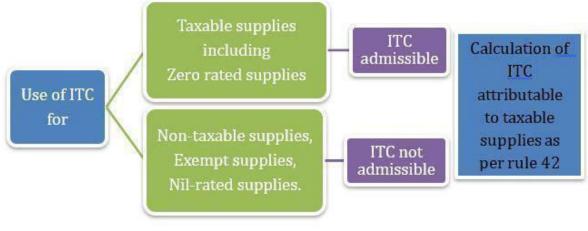
Rs.20,000/-

ITC to be apportioned in accordance with rule 42

Rs.5,000/-: Common Credit for service availed for both business and non – business purpose.

Eligible to claim portion of ITC out of Rs.5, 000/- which is attributable to business purpose (to be calculated in accordance with rule 42)

# j. Availability / apportionment of ITC when used for taxable supplies (including zero-rated supplies) as well as exempt supplies [Sec 17(2)]





Value of exempt supply for the purpose of apportionment of ITC [Sec 17(3)] Exempt supply has been defined in sec 2(47) of the CGST/SGST Act as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of the CGST/SGST Act or under section 6 of the IGST Act, and it includes non-taxable supply.

For the purpose of apportionment of ITC as per sec 17(2) exempt supply includes the outward supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause 5(b) of Schedule-II, sale of building.

**However**, **it shall not include** the value of activities or transactions specified in Schedule III, except sale of land & subject to clause 5(b) of Schedule II, sale of building.

**Example:** A registered person engaged in manufacturing of both taxable and exempted goods and pays tax amounting to Rs.1,50,000/- on procurement of inputs and input services for a particular period.

The corresponding tax paid on inputs and input services which are used as follows –

- a. Rs.5,000/- exclusively for non-business purposes.
- b. Rs.45,000/- exclusively for exempt supply.
- c. Rs.10,000/- ineligible credit u/s 17(5).
- d. Rs.40,000/- exclusively for taxable supplies including zero rated supply.
- e. Rs.50,000/- Common credit for both taxable and exempt supply.

f. Exempt supply during the period was Rs.1,20,00,000/- and taxable supply was Rs.80,00,000/-.

What will be the eligible credit during the period?

#### Answer:

#### Ineligible ITC:

Rs.5,000/-: exclusively for non-business purposes.

Rs.45,000/-: exclusively for exempt supply

Rs.10,000/-: Restricted in accordance with section 17(5)

#### Eligible ITC:

Rs.40,000/-: exclusively for taxable supplies including zero rated supply ITC to be apportioned in accordance with rule 42

Rs.50,000/-: Common Credit used for both taxable supply & exempted supply

### Eligible to claim portion of ITC out of Rs.50, 000/- which is attributable to taxable supply (calculated in accordance with rule 42)

Rs.50,000× (Rs.80,00,000/(Rs.80,00,000+ Rs.1,20,00,000) = Rs.20,000/-. Total eligible credit available to the registered person: Rs.40,000/- + Rs.20,000/- = Rs.60,000/-

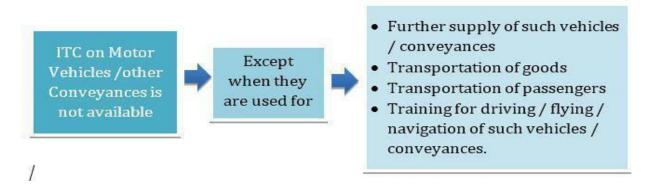
### Availability of Credit for a banking Company or a financial institution including NBFC [Sec 17(4)]

Descriptions	Options of availing of ITC	Conditions
Banking company or a financial institution including a non- banking financial	• Either apportion the ITC as per provisions of section 17(2).	• Option once exercised shall not be withdrawn during the remaining part of the FY
company, engaged in supplying services by way of accepting deposits, extending loans or advances.	OR • Avail 50% of the eligible ITC on inputs, capital goods and input services every month and the rest shall lapse.	• The restriction of 50% shall not apply to the tax paid on supplies made by one registered person to another registered person having the same PAN.

#### k. Ineligible Input Tax Credit [Sec 17(5)]

Input tax credit is not available in respect of certain inward supply of goods or services in accordance with Section 17(5) (blocked credit). The provision of Section 17(5) was amended w.e.f 1<sup>st</sup> February, 2019. Hence, the provisions are discussed accordingly:

#### i. Motor vehicles and other conveyances (valid upto 31.01.2019)-



#### EXHIBIT 35

#### Example:

ABC Pvt Ltd has purchased an SUV @ Rs 7.5 lac +GST on 31.12.2018 to be used by one of its directors. Shall the company be allowed to avail of this ITC?

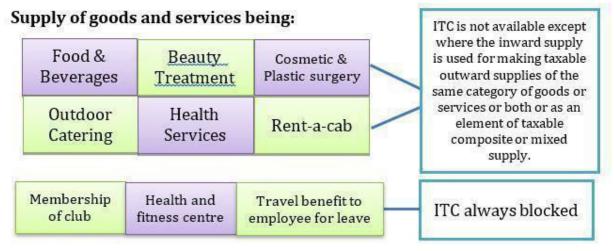
Ans: No, the company is not eligible avail of this ITC since this is blocked as per the provisions of Sec 17(5).

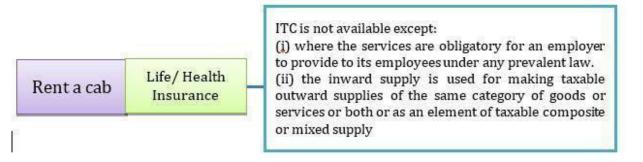
There may be a situation where a company may claim ITC on cars purchased in the name of the company with the plea that cars are used to carry employees to office / factory / work site.

#### Whether ITC is allowable in such cases?

#### No, ITC is not allowable in this case also.

## ii. Food, beverages, outdoor catering, beauty treatment etc (valid up to 31.01.2019)





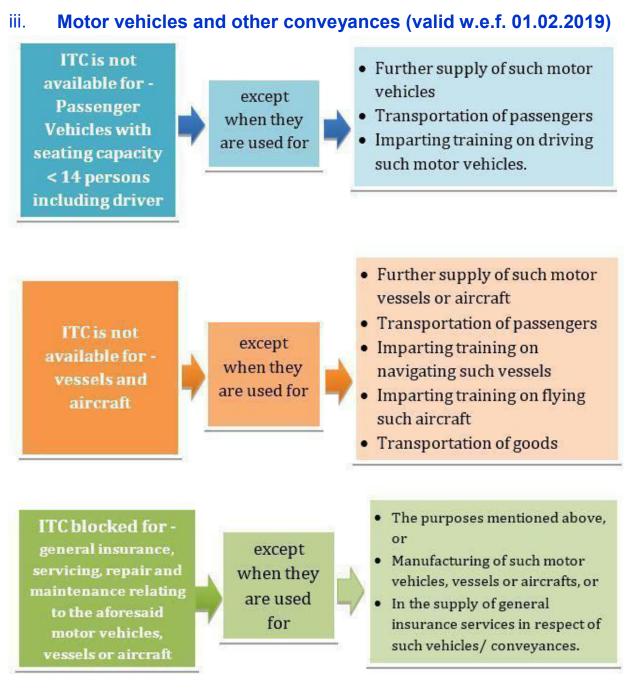
#### EXHIBIT 36

**Example:** A company pays tax on procurement on some input services as follows:

- a. Rs.15,000/- on food and beverages for factory workers.
- b. Rs.2,500/- for outdoor catering for picnic of office employees
- c. Rs.3,500/- for health-related services to employees
- d. Rs.3000/- on rent-a-cab services for guests,
- e. Rs.10,000/- for purchase of GI policy for workers (150 workers),
- f. Rs.12,000/- for health insurance policies of office staff
- g. Rs.4,000/- for membership and other expenses of club
- h. Rs.5,000/- for travel benefit to employees for visiting different sites.
- i. Rs.2,600/- for travel benefit to employees going on leave.

### Calculation of eligible ITC.

Group insurance to workers is obligatory on the part of the employer as per Workmen Compensation Act. Therefore, ITC is admissible on such input service. Travel benefit is restricted only during leave. Thus, input tax credit for procurement of services under sl. No. 'e' and 'h' above are only eligible for availing.



#### EXHIBIT 37

Subsequent to amendment of Section 17(5) the ambit of availability of ITC on motor vehicles is expanded. Prior to 01.02.2019, passenger vehicles, goods vehicles and other conveyances were treated at par and ITC was available for specific purposes only as mentioned above in Table in (i) above. However, subsequent to the amendment w.e.f. 01.02.2019, ITC is made available for goods vehicles. In respect of the passenger vehicles, ITC has been denied for vehicles with seating capacity not more than 13 persons including the driver. This means that, ITC is available on passenger vehicles with seating capacity more than 13 persons including the driver, doubts may prevail in respect of availability of ITC in respect of construction machineries like tractor, crane, road roller, tippers and dumpers etc. i.e. Whether they can be classified as motor vehicles?

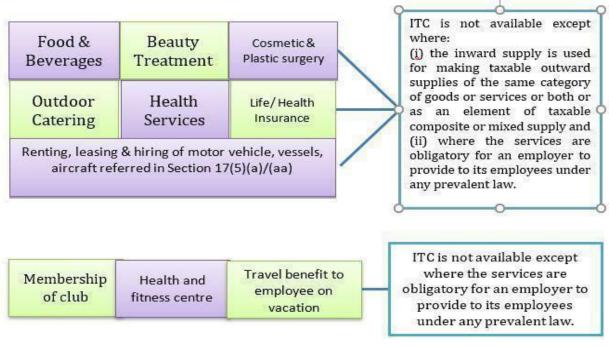
It may be noted that, most of the earth moving machineries require registration under MV Act as motor vehicle. Since, earth moving machineries like tractor, crane, road roller, tippers, dumpers etc are also considered as motor vehicles, they are not outside the restriction clause in section 17(5).

It may further be noted in this regard that, fulfilment of conditions specified in section 16 and 17 of the CGST/SGST Act may not be sufficient sometimes for availing of ITC. Certain restrictions in respect of availability of ITC are also provided in the rate notifications.

#### Illustration-

Tax paid on purchase of a goods vehicle by a GTA would otherwise be available as ITC, but as per rate notification no.13/2017 – CT(R) dt.28.06.2017, services of a GTA in relation to transportation of goods is taxable @ 5% provided that the ITC on goods and services used in supplying the service has not been taken

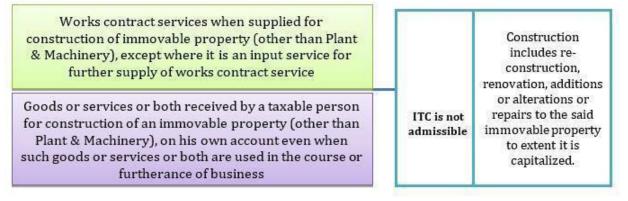
## iv. Food, beverages, outdoor catering, beauty treatment etc (w-e-f 01.02.2019)





Hence, w-e-f 01.02.2019, ITC would be available in respect of the aforesaid services if it is obligatory on the part of employer to provide the same to its employees under any law for the time being in force.

# v. Works Contract Service used for immovable property other than plant & machinery but including repair maintenance and renovation to the extent of capitalization



#### EXHIBIT 39

**Works contract is defined** under section 2(119) as a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in

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goods (whether as goods or in some other form) is involved in the execution of such contract.

Works contract as defined under section 2(119) though being a composite supply is treated as a supply of services as per Para 6(a) of Schedule II of the CGST/SGST Act, 2017. If a registered person avails of works contract service as input service for further supply of works contract service, then in such a scenario he would be eligible to avail of the ITC on such service procured by him.

**Illustration-** A taxpayer is constructing his new factory for manufacture of taxable goods. Contractor 'A' supplies construction services and another vendor 'B' supplies 'Plant & Machinery'. The taxpayer also procures goods and services on his own account to develop the boundary wall of the factory premises.

In this case, the taxpayer is not in the business of supplying works contract service. Therefore, he is not eligible to claim ITC in respect of tax paid on inward supplies of works contract service. He is eligible to claim ITC on plant & machinery. The taxpayer is also not eligible to claim ITC on tax paid on procurement of goods and services on his own account for building the boundary wall.

However, if contractor 'A' engages a subcontractor, he is eligible to claim ITC on procurement of works contract service from the sub-contractor since the same is procured for further supply of works contract service.

Plant and Machinery may also be of the nature of immovable property in certain cases when affixed permanently to the earth. It may be noted that, when a works contract service is procured for construction of plant and machinery, ITC would be available to the recipient, since works contract service procured for construction of plant and machinery is excluded from the negative list.

For the purpose of Input Tax Credit "plant and machinery" means apparatus, equipment, & machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

#### vi. Other unavailable credit -

Tax paid u/s 10	Tax paid on inward supplies by a non- resident taxable person except on goods imported by him		
Supplies received for personal	Goods lost, stolen, destroyed, written off or disposed of by way of free gift or free samples.	$   \rightarrow $	ITC is not
	Any tax paid in accordance with the provisions of sections 74, 129 and 130		admissible

#### EXHIBIT 40

ITC is blocked in respect goods lost, stolen, destroyed, written off or disposed off by way of free gift or free samples. Confusion may arise that whether those goods are only inputs and capital goods or also manufactured end product or any intermediary products. Since, there is no such condition, so whether those goods are inputs, capital goods, finished product or any intermediary products ITC is required to be reversed when such goods are lost, stolen, destroyed, written off or disposed off by way of free gift or free samples.

#### I. Availability of credit in special circumstances:

a. Sec 18(1) and 18(2) -

	Stock held as				
Supplier	Inputs or Inputs contained in semi- finished/ finished goods	Input Services	Capital Goods	Stock to be considered as on	
Person, who has applied for <b>registration within</b> <b>30 days</b> from the date of incurring liability for registration and who has been granted such registration	ITC available	Stock of service is not possible. ITC not available	ITC not available	The day immediately preceding the date from which he becomes liable to pay tax	

Voluntarily Registered	ITC available	ITC not available	ITC not available	The day immediately preceding the date from which supplier is liable to pay tax under the regular scheme.
Person ceases to pay tax under the composition scheme	ITC available	ITC not available	ITC available	The day immediately preceding the date from which supplier is liable to pay tax under the regular scheme.
Exempt supplies become taxable	ITC available on inputs relatable to such exempt supply	ITC not available	ITC available on capital goods exclusively used for such exempt supply	The day immediately preceding the date from which exempt supplies become taxable.

#### Note:

a. ITC in respect of inputs or inputs contained in semi-finished/ finished goods or capital goods held in stock as noted in the above table would be available only within one year from the date of issuance of the tax invoice related to such supply.

b. The credit on capital goods shall be reduced by five percentage points per quarter or part thereof from the date of invoice.

### b. Transfer of credit in special circumstances [Sec 18(3)]



#### EXHIBIT 41

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#### c. Other circumstances provided under section18

After availing ITC opts for the Composition Scheme	Liability for Payment: <ul> <li>By way of debit in the electronic credit ledger/electronic cash ledge</li> <li>Equivalent to the ITC in respect of inputs held in stock &amp; input contained in semi-finished/finished goods held in stock &amp;</li> </ul>	r <b>Conditions:</b> f After payment d of such amount, the <b>balance of</b>
Supply becomes wholly exempt	<ul> <li>on capital goods, reduced by such percentage points as may by prescribed</li> <li>on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption</li> </ul>	e in his electronic Credit ledger shall <b>lapse</b>
	EXHIBIT 42	
	Liability for Payment	C

Supply of capital goods or plant and machinery, on which ITC has been taken To pay an amount equal to the ITC taken on the said capital goods or plant & machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined u/s 15, whichever is higher

#### **Conditions:**

 Where refractory bricks, moulds & dies, jigs & fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined u/s 15

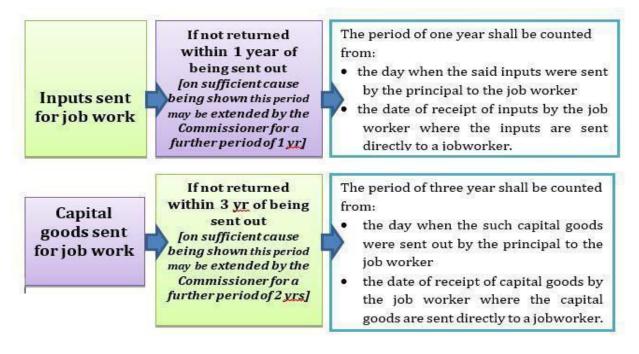
#### **EXHIBIT 43**

#### d. ITC in respect of inputs and capital goods sent for job work.

Who can claim ITC?	In respect of what?	If directly sent to job worker?
The principal	<ul> <li>On inputs</li> <li>On capital goods sent to a job worker for job work.</li> </ul>	The principal shall be entitled to take ITC on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

#### **EXHIBIT 44**

If the inputs/ capital goods sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker (Sec 19)



#### EXHIBIT 45

• The above time period for returning back inputs/ capital goods from job workers to the principal shall not apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

• Principal means a registered person referred to in section 143(1)

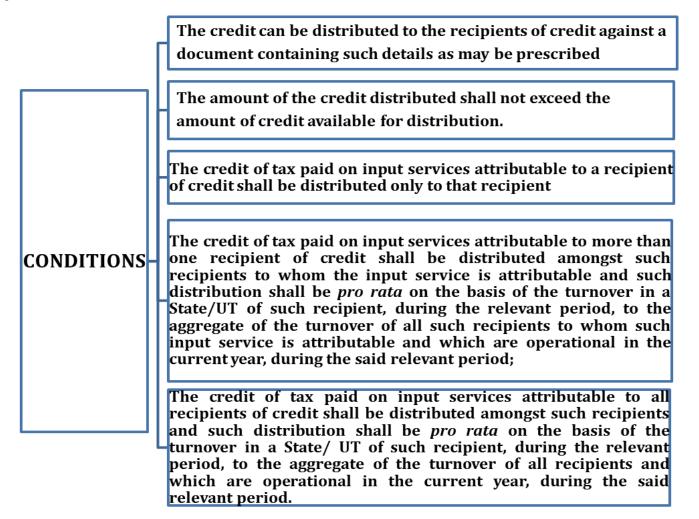
• For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker

#### e. Manner of distribution of credit by Input Service Distributors.

Who can distribute?	What to distribute?	How?	
The Input Service Distributor	<ul> <li>the credit of State tax as State tax /IGST</li> <li>the credit of Central tax as Central tax /IGST</li> <li>IGST as IGST or State tax/Central Tax</li> </ul>	By way of issue of documents containing the amount of ITC being distributed in such manner as may be prescribed	



### a. Conditions for distribution of Credit by ISD



<u>"relevant period"</u> for the purposes of Section 20 shall be-

(i) if the recipients of credit have turnover in their States or UTs in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or UTs in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed

• <u>**"recipient of credit"**</u> means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

• <u>"turnover"</u>, in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84

and 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

#### Example of distribution of ITC by ISD:

A company has 6 numbers of GSTIN under a single PAN in the following States:

- i. In Delhi as normal taxpayer
- ii. In Delhi as ISD
- iii. In West Bengal as normal taxpayer
- iv. In Bihar as normal taxpayer
- v. In Uttar Pradesh as normal taxpayer
- vi. In Punjab as normal taxpayer

The ISD received invoices from different vendors as follows:

a. Factory building renovation in West Bengal involving IGST of Rs.1,00,000/- (renovation works duly capitalized in the books in HQ Delhi)

b. Advertisement in all the above States involving input tax of Rs.30,000/- as IGST.

c. Repairing of plant & machinery at Delhi and UP involving input tax of Rs.10, 000/- as CGST and Rs.10, 000/- as SGST.

d. Tax audit in Punjab involving input tax of Rs.20, 000/- as IGST.

#### Turnover of previous year of the above GSTINs was as follows:

	Delhi	UP	Punjab	MP	WB	Bihar
Turnover	10 Cr	10 Cr	4 Cr	5 Cr	8 Cr	1 Cr
Pro-rata ratio	25%	25%	10%	12.5%	20%	2.5%

#### The ISD distributed ITC as follows:

Invoice wise total credit (Rs.)	Delhi	UP	Punjab	MP	WB	Bihar
Inv. a 1,00,000					IGST=10000 0	
Inv. b 30000	CGST=375 0 SGST=375 0	IGST=7500	IGST=3000	IGST=375 0	IGST=6000	IGST=750

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Inv. c 20000	CGST=500 0 SGST=500 0	IGST=1000 0			
Inv. d 20000			IGST=2000 0		

Distribution of ITC by the ISD as appeared in the above tables is correctly done except in respect on Inv. a. for which ITC is blocked as per provisions of section 17(5) of the CGST/SGST Act. Now, the question arises how and from whom that can be recovered? Let us go through the provisions of section 21 below.

Manner of recovery of credit distributed in excess [Sec21].

Distributes excess credit	What to do?	How?
When the Input Service Distributor distributes the credit in contravention of the provisions contained in sec 20 to one or more recipients of credit	The excess credit so distributed shall be recovered from such recipients along with interest	The provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

#### **EXHIBIT 47**

Thus, the credit distributed in excess to West Bengal by the ISD as IGST of Rs.1,00,000/- for renovation of factory building which has been capitalized can be recovered under section 73 or 74 as applicable along with interest from the distinct person in West Bengal as he was the recipient in this case.

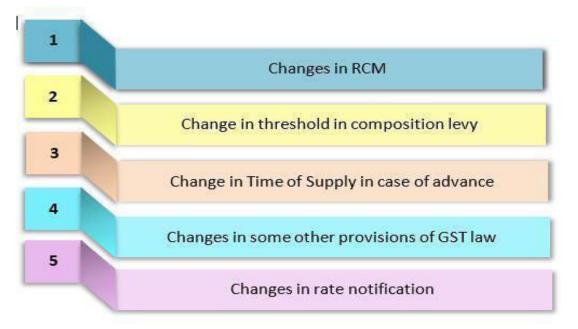
# Annexure 12: Important Changes in GST Laws and Rates during 2017-18 & 2018-19 (p.49)

#### Introduction:



Good and Services Tax came into force on the 1<sup>st</sup> day of July, 2017. With passage of time the provisions of the said laws have been changed on amending the GST Acts through issuance of notifications under sections 23, 128, 148 and 172 to give relief to the stakeholders. The Acts were also amended twice through legislation with effect from 1<sup>st</sup> February, 2019 and with effect from 1<sup>st</sup> January, 2020 respectively. Moreover, the rates of taxes were amended several times during 2017-18 and 2018-19. It is felt that some of the changes discussed above have direct impact over the payability of GST by a registered person. Hence those important changes are being ehlisted in the following paragraphs.

#### **EXHIBIT 48**



#### EXHIBIT 49

## Changes in Reverse Charge Mechanism (RCM)

Reverse charge is a mechanism under which the recipient of the goods or services is liable to pay the tax instead of the provider of the goods and services. Under the normal taxation regime, the supplier collects the tax from the buyer and deposits the same after adjusting the output tax liability with the input tax credit available. But under reverse charge mechanism (RCM), liability to pay tax shifts from supplier to recipient.

In respect of RCM u/s 9(3) of the SGST/CGST Acts, 2017, the CGST Notification no. 04/2017-CT(Rate), dt.28.06.2017 and CGST Notification no. 13/2017-CT (Rate), dt.28.06.2017 notify certain specified Goods and Services for the supply of which tax is payable under RCM.

In respect of section 9(4) of CGST/SGST Act and section 5(4) of IGST Act the original provision has been amended as follows:

• If the amount of inward supplies of goods or services or both, received in a day by a registered person from all unregistered suppliers, does not exceed Rs.5000/-, no tax is payable on RCM under section 9(4) by a registered recipient.

• If a registered person receives inward supplies of goods or services or both exceeding Rs. 5000/- in a day from all unregistered suppliers, he is liable to pay tax on RCM basis on entire amount of such supplies received by him.

From 13.10.2017 the provisions of section 9(4) of SGST/CGST Act and section 5(4) of IGST Act have been kept suspended.

#### Finally, the provision has been amended w.e.f. 01.02.2019 as below:

"Govt. may specify by notification a class of Registered recipients who shall pay tax on RCM on supply received from an unregistered supplier."

It may be noted that, w.e.f. 01.04.2019 CGST Notification no. 03/2019 CTR dt.29.03.2019 have been issued on certain specific conditions and situations of "Construction Services" where tax is to be paid under reverse charge mechanism.

Changes at a glance in Sec 9(4) of CGST/SGST Act, Sec 5(4) of IGST Act Tax payable by registered person in respect of supply by unregistered person

From 01.07.2017 To 12.10.2017	<ul> <li>Registered person as a recipient shall pay tax on reverse charge basis when supplied by an unregistered person.</li> <li>When such inward supplies per day not exceeds Rs.5000/- no such tax under RCM is payable by such recipient.</li> <li>[CGST Notification No. 08/2017-CT(Rate) dt. 28.06.2017]</li> </ul>
From 13.10.2017 To 31.01.2019	<ul> <li>No tax is payable in RCM which is supplied by a unregistered person</li> <li>[CGST Notification No. 38/2017-CT(Rate) dated 13.10.17]</li> </ul>
From 01.02.2019	"Govt. may specify by notification a class of Registered recipients who shall pay tax on RCM on supply received from an unregistered supplier." [CGST Notification No. 07/2019-CT(Rate) dated 29.03.2019 have been
	issued to specify that subject to certain conditions construction services is liable to pay tax under section 9 (4)]

## Composition levy

• Threshold limit for opting Composition Levy was 75 lakh rupees at the advent of GST. Said threshold has been extended to 1 Crore rupees.

[CGST Notification No. 46/2017-CT, dated13.10.17]

• Option for Composition Levy in the middle of 2017-18 has been allowed by inserting sub-rule (3A) to rule 3.

[CGST (Ninth Amendment) Rules, 2017 issued vide Notification No. 45/2017-CT, dated 13.10.17]

• Restaurants, eateries etc. shall not be barred from Composition Levy even if it supplies any exempt services including services by way of extending deposits, loans or advances

[RoD Order issued vide CGST Order No. 01/2017-CT, dated 13.10.17]

• Rate Reduction with effect from 01.01.2018:

• Rate of Composition Levy for manufacturers has been reduced from one (01) per cent. of turnover in the State to half (0.5) per cent. of turnover in the State.

• Rate of Composition Levy for traders has been reduced from half (0.5) per cent. on turnover in the State to half (0.5) per cent. of the **turnover of taxable supplies of goods** in the State

[CGST (1<sup>st</sup> Amendment) rules, 2018 issued vide notification No. 03/2018-CT, dated 24.01.2018]

## Tax on Advance received

Section 12(2) of the SGST/CGST Act:

"The time of supply of goods shall be the earlier of the following dates, namely:

(a) the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:"

• So, in terms of the above provisions, tax is payable when advance payment is received for supply of both goods or services.

• But taxpayers having aggregate turnover in the preceding financial year upto 1.5 crore are exempted from payment of tax on Advance received in case of **supply of goods** with effect from 13.10.2017

[CGST Notification No. 40/2017-CT, dated 13.10.17] The above benefit has been extended to all taxpayers from 15.11.2017. [CGST Notification No. 66/2017-CT, dated 15.11.17]

### Changes in SGST/CGST Act relevant for 2017-18 & 2018-19

• Import of services without consideration by a **taxable person** from a related person or from any of his other establishments outside India, in the course or furtherance of business has been treated a supply as per para. 4 of Schedule I. Such provision is amended so that it will be applicable not only to a taxable person, but to **any person.** [w.e.f. 01.07.17]

• Scope of No supply extended w.e.f. 01.02.2019 by amending Schedule III:

• Supply of goods from non-taxable territory to another non-taxable territory without entering into India. (*Para. 7*)

• Supply of warehoused goods to any person before clearance for home consumption; and

• Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. [*In common parlance HIGH SEAS SALE*] (*Para. 8*)

Input Tax Credit:

• Where the **services** are provided by the supplier to any person on the **direction and on account of a registered person**, for the purpose of **entitlement of input tax credit** it shall be deemed that the said registered person has **received services** [Explanation to Sec. 16(2)(b) of SGST/CGST Act amended w.e.f. 01.02.2019]

• Subject to conditions, Input tax credit in respect of invoices or invoice relating to such debit notes for **supplies made during 2017-18** can be availed till the due date of furnishing return (GSTR-3B) for the month of **March, 2019** i.e. 23.04.2019 (*as extended by Notification No. <u>09/2019-C.T./GST</u> <i>dated 22.04.2019*)

• **Condition:** Details of such invoices or debit notes are uploaded by the supplier in GSTR-1 till the due date for furnishing GSTR-1 for the month of March, 2019.

[Proviso added to section 16(4) by ROD Order No. 2/2018 dated 31.12.2018]

• ITC can be transferred on obtaining separate registration for multiple places of business within the State w.e.f. 01.02.2019 [*rule 41A inserted, dated 29.01.2019*]

• Order of utilisation of ITC changed:

• **Existing provision (from 01.07.17 to 31.01.19):** For payment of State tax/central tax, ITC of State tax/central tax has to be debited first, then ITC of integrated tax can be debited

• **New provision:** ITC of State tax/central tax shall be utilised for payment of integrated tax or State tax/central tax, only after the ITC of integrated tax has first been utilized fully towards such payment. [New section 49A inserted w.e.f. 01.02.2019.

Important Changes in the IGST Act in relation to export of services and place of supply made by <u>IGST (Amendment) Act, 2018</u>

**Export of services [sec. 2(6)(iv)]:** 

• **Original provision [01.07.17 to 31.01.19]:** One of the condition to be satisfied for export of services is that the payment has to be received in convertible foreign currency

• **Changed provision from 01.02.19:** Now even if payment is received in Indian rupees wherever permitted by the RBI, if other conditions are satisfied such supply would be treated as export of services

#### • Place of supply:

• **Original provision [01.07.17 to 31.01.19]:** POS of services by way of transportation of goods to a registered person, shall be the location of such person, and that to an unregistered person, shall be the location at which such goods are handed over for their transportation. [*section 12(8) of the IGST Act*]

• **Changed provision from 01.02.2019:** Where the transportation of goods is to a place outside India, POS shall be the place of destination of such goods [*proviso added to section 12(8)*]

• Original provision [01.07.17 to 31.01.19]: Subject to other conditions, POS of services supplied in respect of goods temporarily imported into India for repairs is the location of the recipient

• Changed provision from 01.02.2019: Now, POS of services supplied in respect of goods temporarily imported into India for repairs or for any other process or treatment also is the location of the recipient [Second proviso to section 13(3)(a) substituted].

# Annexure 13: Due dates and extension of due dates of submission of various returns (p.58)

## Financial Year (2017-2018)

#### a. Return type – Form GSTR - 3B

Month	Due date/Extended due date	Submit ted on	Days of delay	Late fee payable per day	Total Late fee payable	Remarks	
July, 17	25.08.2017 <sup>1</sup>					Waived	
July, 17	28.08.2017 <sup>2</sup>					(CGST Notification No, 28/2017-CT, dt. 01.09.2017)	
Aug'17	20.09.2017					Waived	
Sep'17	20.10.2017					(CGST Notification No, 50/2017-CT, dt. 24.10.2017)	
Ocť 17	20.11.2017					<b>@Rs. 25/day</b> (Where total amount of tax	
Nov'17	20.12.2017					payable in a return is nil, <b>Rs. 10/day</b> ) subject to	
Dec'17	22.01.2018					max of Rs. 5000/- under each of the CGST/SGST	
Jan'18	20.02.2018					Act from the due date of	
Feb'18	20.03.2018					return, till the date on which return is filed.	
Mar'18	20.04.2018					(CGST Notification No, 64/2017-CT, dt. 15.11.2017)	
	Total late fee pa	yable					
	Total late fee	paid					
	Late fee due						
<ol> <li>for all registered dealers other than those specified in 2 below. [06–C.T./GST dt. 21.08.17]</li> <li>for registered dealers entitled to avail ITC and opting to file GST TRAN-1 (conditions apply) [05–C.T./GST dt. 17.08.17]</li> </ol>							

## a.1 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Late fee waived	Condition
October, 2017	Waived in full	<ul> <li>Return in FORM GSTR-3B was submitted but not filed on the common portal, after generation of the application reference number.</li> <li>[CGST Notification No. 41/2018-CT, dt. 04.09.2018]</li> </ul>
July, 2017 to March, 2018	Waived in full	<ul> <li>If the said return is furnished between the period from 22nd December, 2018 to 31st March, 2019.</li> <li>[ CGST Notification No. 76/2018-CT, both dt. 31.12.2018]</li> </ul>

#### a.2 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Return in GSTR-3B furnished <b>between</b> 01.07.2020 to 30.09.2020	Return in GSTR-3B furnished <b>after</b> <b>30.09.2020</b>
July, 2017	<ul> <li>Maximum Rs.</li> <li>250/- under each of the CGST/SGST Act for each return period.</li> </ul>	✤ @ Rs. 25 / day subject to maximum of Rs. 5000/- under each of the CGST/SGST Act from the due date of return, till the date on which return is filed
to March, 2018	<ul> <li>Nil where the total amount of tax payable in the return for a tax period is nil.</li> </ul>	<ul> <li>Where total amount of tax payable in a return is nil:</li> <li>Rs. 10 / day subject to a maximum of Rs. 5000/- under each of the CGST/SGST Act from the due date of return, till the date on which return is filed</li> <li>[CGST notification no. 52/2020-CT, dt. 10.07.2020]</li> </ul>

## b. Return type – Form GSTR - 9

Period	Due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
2017-18	07.02.2020 [01/2020- C.T./GST, dt. 18.03.2020]			Rs. 100 per day max. quarter per cent. of turnover in the state	
	Total late fee payable				

Total late fee paid	
Late fee due	

#### c. Form GSTR - 1

Period (Month / Quarter)	Due date	Submitted on	Days of delay	Late fee payable per day	Total Late fee payable
Jul'17	31.10.2018			@Rs. 25/day	
Aug'17	31.10.2018			(Where total amount of tax payable in a	
Sep'17	31.10.2018			return is nil, Rs.10/day)	
Oct'17	31.10.2018			subject to max of Rs. 5000/- under each of the CGST/SGST Act from the due date of return, till the date on which return is filed. (CGST Notification no. 04/2018-CT dt. 23.01.2018)	
Nov'17	31.10.2018				
Dec'17	31.10.2018				
Jan'18	31.10.2018				
Feb'18	31.10.2018				
Mar'18	31.10.2018				
	Total late fee pa	yable			
	Total late fee p				
	Late fee du	9			

Amnesty: No late fee is payable for the registered persons who failed to furnish FORM GSTR-1for the months/quarters from July, 2017 to September, 2018 by the due date but furnishes FORM GSTR-1 between the period from 22nd December, 2018 to 31st March 2019 [CGST Notification no. 75/2018, dt. 31.12.2018]

**No late fee is payable** for the registered persons who failed to furnish FORM GSTR-1for the months/quarters from July, 2017 to November, 2019 by the due date but furnishes FORM GSTR-1 between the period from 19th December, 2019 to 17th January, 2020 [CGST Notification no. 74/2019-CT dt. 26.12.2019 read with CGST Notification no. 04/2020, dt. 17.01.2020]

## Financial Year (2018-2019)

## a. Return type – Form GSTR - 3B

Month	Due date / Extended due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
Apr'18	22.05.2018				
May'18	20.06.2018			@Rs. 25/day	
Jun'18	20.07.2018			(Where total amount of tax	
Jul'18	24.08.2018			payable in a return	
Aug'18	20.09.2018			is nil, <b>Rs.10/day</b> ) subject to max of	
Sep'18	25.10.2018			Rs. 5000/- under each of the CGST/SGST Act from the due date of return, till the date on which	
Oct'18	20.11.2018				
Nov'18	20.12.2018				
Dec'18	20.01.2019			return is filed.	
Jan'19	22.02.2019			(CGST Notification no. 64/2017-CT,	
Feb'19	20.03.2019			both dt. 15.11.2017)	
Mar'19	23.04.2019				
	Total late fee pay	able			
	Total late fee paid				
	Late fee due				

#### a.1 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Late fee waived	Condition
April, 2018 to Sept, 2018	Waived in full	If the said return is furnished between the period from 22nd December, 2018 to 31st March, 2019. [CGST Notification no. 76/2018- CT, dt. 31.12.2018]

## a.2 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-

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Tax period	Return in GSTR-3B furnished <b>between</b> 01.07.2020 to 30.09.2020	Return in GSTR-3B furnished <b>after</b> <b>30.09.2020</b>
April, 2018 to March, 2019	<ul> <li>Maximum Rs.</li> <li>250/- under each of the CGST/SGST Act for each return period.</li> <li>Nil where the total amount of tax payable in the return for a tax period is nil.</li> <li>[CGST notification no.</li> <li>52/2020-CT, dt.</li> <li>10.07.2020]</li> </ul>	<ul> <li>@ Rs. 25 / day subject to maximum of Rs. 5000/- under each of the CGST/SGST Act from the due date of return, till the date on which return is filed</li> <li>Where total amount of tax payable in a return is nil:</li> <li>@ Rs. 10 / day subject to a maximum of Rs. 5000/- under each of the CGST/SGST Act from the due date of return, till the date on which return is filed</li> </ul>

## b. Return type – Form GSTR 9

Period	Due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
2018-19	31.12.2020 [12/2020- C.T./GST, dt. 04.11.2020]			Rs. 100 per day max. quarter per cent. of turnover in the state	
	Total late fee pa	yable			
Total late fee paid					
Late fee due					

#### c. Form GSTR - 1

Period (Monthly/ Quarterly	Due date	Submitted on	Days of delay	Late fee payable per day	Total Late fee payable
Apr'18	31.10.2018				
May'18	31.10.2018			<b>@Rs.25/day</b> (Where total	
Jun'18	31.10.2018			amount of tax payable in a return	

Jul'18	31.10.2018		is nil, <b>Rs.10/day</b> ) subject to max of	
Aug'18	31.10.2018		Rs. 5000/- under each of the	
Sep'18	31.10.2018		CGST/SGST Act from the due date	
Oct'18	11.11.2018		of return, till the	
Nov'18	11.12.2018		date on which return is filed.	
Dec'18	11.01.2019			
Jan'19	11.02.2019		(CGST Notification no. 04/2018-CT, dt.	
Feb'19	11.03.2019		23.01.2018)	
Mar'19	11.04.2019		· · · · <b>,</b>	
Apr-Jun 2018	31.10.2018			
Jul-Sept 2018	31.10.2018			
Oct-Dec 2018	31.01.2019			
Jan-Mar 2019	30.04.2019			
Total late fee payable				
Total late fee paid				
	Late fee due			

#### Amnesty:

**No late fee is payable** for the registered persons who failed to furnish FORM GSTR-1 for the months/ quarters from **July, 2017 to September, 2018** by the due date **but furnishes FORM GSTR-1 between the period from 22nd December, 2018 to 31st March 2019** [*CGST Notification no. 75/2018, dt. 31.12.2018*]

No late fee is payable for the registered persons who failed to furnish FORM GSTR-1 for the months/ quarters from July, 2017 to November, 2019 by the due date but furnishes FORM GSTR-1 between the period from 19th December, 2019 to 17th January, 2020 [CGST Notification no. 74/2019-CT dt. 26.12.2019 read with CGST Notification no. 04/2020, dt. 17.01.2020]

### Financial Year (2019-2020)

#### a. Return type – GSTR 3B

Due date (A T.O. R	e date aggr. . up to s. 5 rore)	Days of delay	Late fee payable per day	Total Late fee payable
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Apr'19	20.05.2019				
May'19	20.06.2019			@Rs. 25/day	
Jun'19	20.07.2019			(Where total amount of tax	
Jul'19	22.08.2019			<b>pay</b> able in a return is nil,	
Aug'19	20.09.2019			Rs.10/day)	
Sep'19	20.10.2019			subject to max of Rs. 5000/-	
Oct'19	20.11.2019			under each of the	
Nov'19	23.12.2019			CGST/SGST Act from the	
Dec'19	20.01.2020			due date of return, till the	
Jan'20	22.02.2020	24.02.202 0		date on which return is filed.	
Feb'20	20.03.2020	24.03.202 0		(CGST Notification no. 64/2017-CT, dt.	
Mar'20	20.04.2020	24.04.202 0		15.11.2017)	
	Total late fee payable				
	Total late fee paid				
		Late fee due			

a-1 Conditional waiver of late fee for delayed furnishing of return in Form GSTR-3B

Tax period	Return in GSTR-3B furnished <b>between</b> 01.07.2020	Return in GSTR-3B furnished <b>after</b> <b>30.09.2020</b>
	to 30.09.2020	

	<ul> <li>Maximum Rs.</li> <li>250/- under each of the CGST/SGST Act for</li> <li>each return period.</li> </ul>	@ Rs. 25 / day subject to maximum of Rs. 5000/- under each of the CGST/SGST Act from the due date of return, till the date on which return is filed
April, 2019		✤ Where total amount of tax payable in
to March, 2020	<ul> <li>Nil where the total amount of tax payable in the return for a tax period is nil.</li> <li>[CGST notification no. 52/2020-CT, dt. 10.07.2020]</li> </ul>	<ul> <li>Where total amount of tax payable in a return is nil:</li> <li>@ Rs. 10 / day subject to a maximum of Rs. 5000/- under each of the CGST/SGST Act from the due date of return, till the date on which return is filed</li> </ul>

## b. Return type – Form GSTR - 9

Period	Due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
0040.00				Rs. 100 per day	
2019-20	31.12.2020			max. quarter per cent.	
				of turnover in the state	
Total late fee payable					
Total late fee paid					
Late fee due					

#### c. Form GSTR - 1

Period (Month / Quarter)	Due date	Submit on	Days of delay	Late fee payable per day	Total Late fee payable
Apr'19	11.05.2019			<b>@Rs. 25/day</b> (Where total	
May'19	11.06.2019			amount of tax	
Jun'19	11.07.2019			payable in a return is nil,	
Jul'19	11.08.2019			Rs.10/day)	
Aug'19	11.09.2019			subject to max of Rs. 5000/- under	
Sep'19	11.10.2019			each of the	
Oct'19	11.11.2019			CGST/SGST Act from the due date	

Nov'19	11.12.2019		of return, till the date on which	
Dec'19	11.01.2020		return is filed.	
Jan'20	11.02.2020		(CGST Notification	
Feb'20	11.03.2020		no. 04/2018-CT, dt.	
Mar'20	11.04.2020		23.01.2018)	
Apr-Jun 2019	31.07.2019			
Jul-Sept 2019	31.10.2019			
Oct-Dec 2019	31.01.2020			
Jan-Mar 2020	30.04.2020			
	Total late fee pa	yable		
Total late fee paid				
	Late fee du	e		

#### Amnesty:

1. No late fee is payable for the registered persons who failed to furnish FORM GSTR-1 for the months/ quarters from July, 2017 to September, 2018 by the due date but furnishes FORM GSTR-1 between the period from 22nd December, 2018 to 31st March 2019[CGST Notification no. 75/2018, dt. 31.12.2018]

2. No late fee is payable for the registered persons who failed to furnish FORM GSTR-1 for the months/ quarters from July, 2017 to November, 2019 by the due date but furnishes FORM GSTR-1 between the period from 19th Dec, 2019 to 17th January, 2020 [CGST Notification no. 74/2019-CT dt. 26.12.2019 read with CGST Notification no. 04/2020, dt. 17.01.2020]

3. **No late fee is payable** for the registered persons who failed to furnish FORM GSTR-1 for the month **March, 2020** and for the quarter **Jan-Mar 2020** by the due date **but furnishes FORM GSTR-1 on/before 10.07.2020 and 17.07.2020** respectively. [CGST Notification no. 53/2020-CT dt. 10.07.2020 read with CGST Notification no. 04/2020, dt. 17.01.2020]

4. The months of Return filing as shown in the Tables below are based on all months of any FY. However, the audit officer should consider the months applicable for the period under audit.

#### a. Return type – GSTR 3B

Period			Dave of	Late fee
(Month /	Due date	Submitted on	Days of delay	payable
Quarter)			actay	

Apr										
May										
Jun	Notes: System									
Jul	calculates late fee									
Aug										
Sep		However, for the return periods of different FYs various extensions of due dates and conditional								
Oct	extensions of due									
Nov										
Dec										
Jan										
Feb										
Mar										
	Total late fee payable									
	Total late fee paid									
	Late fee due									

### b. Statement in GSTR 1

Period (Month / Quarter)	Due date	Submitted on	Days of delay	Late fee payable
Apr				
May				
Jun				
Jul				
Aug				
Sep				
Oct				
Nov				
Dec				
Jan				
Feb				
Mar				
	Late fe	e due		

## c. Return type – GSTR 9 / 9A

Period	Due date	Submitted on	Days of delay	Late fee payable
FY				

Total late fee payable	
Total late fee paid	
Late fee due	

#### Part D [Correctness of turnover in State (monthly statement)]

Turnover disclosed in GSTR 3B (Rs.)	Turnover disclosed in GSTR 1 (Rs.)	Turnover disclosed in GSTR 9 / 9A (Rs.)	Turnover as in P/L account (Rs.)	Differenc e (Rs.)			
Reconciliation statement with supporting documents needs to be examined.							
Any other supply fields but disclose	oove						

## Additional information from the books / other sources to examine correctness of the turnover disclosed finally at the time of audit (monthly statement):

		Value of supply			Additional tax liability (if any)			
Areas of concern	Exam inatio n	Intra-State (S)	Int er- Sta te (I) wit h PO S (St ate Co de) *	Discl osed in retur n (Y/N)	St at e ta x	C en tr al ta x	In te gr at ed ta x	Ces s
Other/Misc. income								
Whether in the pre-GST or in the GST regime, "Other Income" ledger has always been an important ledger to examine. It is important to go through every transaction								

been an important ledger to examine. It is important to go through every transaction reflected in this ledger to confirm as to whether GST is applicable on any transaction for which tax compliance has not been made. For example, penal interest, penalty / damages recovered etc.

Stock transfer to other State(s)/UT				
(5)				

Stock transfer to distinct persons in the State and other States never form part of turnover in P/L account in consolidated books of accounts. In the erstwhile VAT regime, stock transfer to branches and consignment agents in other States were nil rated subject to production of declarations in Form F under the CST Act, 1956. In GST, stock transfers to distinct persons are taxable. Therefore, it is very important to check the stock transfer value (both inwards and outwards) to ascertain the compliance. There is a specific rule for valuation in this regard. If any auditee takes the benefit of the 2<sup>nd</sup> proviso of Rule 28 then the audit officer should check whether such has been taken properly or not.

An example is given below for proper understanding of the Audit Officers:

**e.g:** A banking company purchased 4 cars and dispatched those to 4 branches in 4 States (1 car / branch) by raising tax invoice where value of each car is shown at a nominal price of Rs.10,000/-. On being asked, the auditee bank may reply that valuation has been done as per rule 28 of CGST Act, 2017. Is it a correct valuation done by the bank?

As per the 2<sup>nd</sup> proviso of rule 28, the value declared in the invoice shall be deemed to be the open market value where the recipient is eligible for full input tax credit. In the instant case, the recipient is not eligible to avail of ITC and therefore, the value declared cannot be accepted as open market value.

	Sale c	of a	ssets	is alwa	ys ta	axable	e in	GST.
	Moreov	/er,	perma	anent tra	ansfer	oro	dispos	sal of
	busines	ss a	ssets	on whicl	n inpu	ut tax	cred	it has
	been a	vaile	ed is al	so consi	derec	l as s	upply	even
	if no co	onsio	deratio	n is rec	eived	(Sch	. I of	Sec
	7).							
Sale of assets	disposa sale –	al in i.e. as '	any o , for supply	ness as ther ma a consi /', where	nner derati	(othei on) \	r than would	as a also

Goods sent on approval basis	2017(bu 1.7.2017 more in impleme person in time lime returned not returned	ut no 7) if n ca entat retur it, th d the rned	ot more return ase of ion, th ning th en GS goods within	pproval e than si ed within sufficie en no t e goods. T is paya [sec 142 above tin able to pa	x mon n 6 m nt ca ax is lfitis able b 2 (12)] ne lim	nths e nonths ause) paya returr y the l. If the it, the	earlie (2 n from able b ned af perso e goo	r from nonths GST by the ter the n who ds are
	<b>In GST regime:</b> The invoice with respect of goods sent on approval basis has to be issued at the earliest of – (i) Before or at the time of supply, (ii) 6 months from the date of removal of goods from factory / godown etc. If the goods are not approved within 6 months, it will be deemed that sale of the said goods has taken place by the person who has sent the goods for approval. [S. 31(7) read with S. 12(2)]							
Goods sent to job workers								

Inputs sent for job work are not received back
by the principal after completion of job work or
otherwise not received within 01 year of their being
sent out, it shall be deemed that such inputs had
been supplied by the principal to the job worker on
the day when the said inputs were sent out [sec
143(3)]. In such cases liability to pay interest
will also arise

Capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for jobwork are not received back by the principal after completion of job work or otherwise not received within 03 years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out [sec 143(4)]. In such cases liability to pay interest will also arise

Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered [sec 143(5)].

Disposal of assets without any				

consideration [Entry 1 of Sch – I]. Supply of goods or services to related person or to distinct person even without consideration) [Entry 2 of Sch – I] Note: When the related persons are employee and employer then the next row is applicable.	There is no doubt that disposal of business assets against consideration is a supply. But, if ITC on any business asset is taken then disposal of such business assets even made without consideration is also to be treated as supply. Suppose XYZ Ltd., is in the business of Hotel. He purchased AC for business purposes and availed ITC and a car for which no ITC has been claimed. After 2 years, he permanently transfers the AC to one director and the car to another director without any consideration. Though there is no consideration in case of transfer of AC machine still it shall be a supply as per schedule I and supplier has to pay an amount determined according to sec 18(6). In the case of permanent transfer of the car, it will not be treated as supply since no ITC has been claimed on the same.
Supply of goods or services to related person or to distinct person (even without consideration) [Entry 2 of Sch – I] When the related persons are employee and employer.	Distinct person is defined in Sec 25(4) and related person is defined in Explanation to sec 15. This issue needs careful examination because in most of the cases there may not be any reflection of transactions with related or distinct persons in P/L account or in any ledger. In the case of goods there may be an audit trail of transactions among the distinct or related person without any consideration. But in the case of services, such trails may not be found in the books of accounts. The auditor needs to study the particular business pattern of the auditee and should try to find out probable areas. Valuation of such supply needs examination.
Expenses accounts to ascertain if	Image: second

there are any expenses for free gift or facility (free holiday package, etc.) to any employee for value exceeding Rs. 50,000/- in a year.	may fail Sch I of in differ other ex	to c sec ent o open	omply 7]. Mos expens ses, wa	portant a with the p st of such e ledgers ages-sala directors'	orovisi i supp s like ary-alle	ons [e lies m misc. owanc	entry r lay be expe ces, be	no.2 of found nses / enefits
<b>Commission agent of goods</b> (both the commission and the supply value of								
goods on behalf of the principal will form part of supply value) [Entry 3 of Sch – I].	of suppl agent a of good	ly th re lia ls m	rough a able to ade or	ns of the agent bot pay tax. received - 29 need	th the So, th d thro	princ le valu ugh a	ipal a ue of s an age	nd the supply ent as
Income from land and building	land an rent, le develop develop	d bu ase, men men	ilding s easer t, trans t right,	are linked subject to ment, lic sfer of te and buil real estat	o entr ence nancy ding a	y no.8 to o right apart f	5 of s ccupy , trans from s	ch. III, land, sfer of
Agreeing to the obligation – i. to refrain from an act ii. to tolerate an act or a situation	includes scope provides from an	s act of s s tha act,	ivities supply. It 'agre or to to	the CC referred t Clause eeing to t olerate ar treated as	to in \$ 5(e) the ob n act c	Sched to ligation r a sit	ule II Sched on to uatior	in the ule II refrain n, or to
iii. to do an act								
Any other areas of concern								

	The above Tables may not be exhausting audit officer in respect of particular audit there may be other areas of concern. There may be other areas of concern. There may be other areas of concern. There would mention his detection table. These would include adjustmaccount of unbilled revenue (at the band at the end of the year) and adjustmaccount of advances received in reservices						audite on in tmen begi stmen	e and audit n this ts on inning nts on			
Total undisclosed supply value	d supply value										
Tax involvement on undisclosed su	upply										

\*Refer to next table for list of State Codes

#### LIST OF STATE CODES: For noting Places of supply

STATE/UNION TERRITORY	CODE	STATE/UNION TERRITORY	CODE
Jammu and Kashmir	1	Jharkhand	20
Himachal Pradesh	2	Odisha	21
Punjab	3	Chhattisgarh	22
Chandigarh	4	Madhya Pradesh	23
Uttarakhand	5	Gujarat	24
Haryana	6	Daman and Diu	25
Delhi	7	Dadra and Nagar Haveli	26
Rajasthan	8	Maharashtra	27
Uttar Pradesh	9	Andhra Pradesh(before division)	28
Bihar	10	Karnataka	29
Sikkim	11	Goa	30
Arunachal Pradesh	12	Lakshadweep	31
Nagaland	13	Kerala	32
Manipur	14	Tamil Nadu	33
Mizoram	15	Puducherry	34
Tripura	16	Andaman and Nicobar Islands	35
Meghalaya	17	Telangana	36
Assam	18	Andhra Pradesh (new)	37
West Bengal	Ladakh	38	

Part E (Correctness of purchase / procurement for which tax is payable u/s 9(3) & 9(4) of the SGST/CGST Act and u/s 5(3) & 5(4) of the IGST Act)

As disclosed in GSTR 3B (Rs.)	As disclosed in GSTR 9/9A (Rs.)	As disclosed in P/L (Rs.)	Difference (Rs.)						
Reconciliation state	ment with supporting do	cuments needs to	be examined.						
Any other supply which is not disclosed in any of the above fields but disclosed at the time of audit.									

Additional information from the books / other sources to examine correctness of the finally disclosed liability to pay tax u/s 9(3) & 9(4) of the SGST/CGST Act and u/s 5(3) and 5(4) of the IGST Act (month wise statement):

				le value Rs.)								
Relevant section	Areas of concern in at io n		Intra - Stat e (S)	Inter- State (I) with POS (State Code)	Discl osed in retur n (Y/N)	St at e ta x	ie sai itput x cre ax sh t uno (RCI of imp also, f also, f also, f oID, rritory	l n t e g r a t e d t a x	C e s s			
9(3) of SGST / CGST Act	Goods under Notification no.4/2017 (R) dt.28.6.2017.											
5(3) of IGST Act	Goods under Notification no. 4/17-IT(R) dt.28.6.17.		Normally a supplier collects tax fr									
9(3) of SGST / CGST Act	Services under Notification no.13/17 (R) dt.28.6.17		the bu after a	ame tax								
5(3) of IGST Act	Services under Notification no.10/17-IT(R) dt.28.6.17.		availat	ole. Liabi	lity to p	bay t	ax sl	hifts				
7(1)(c) of SGST / CGST Act and sec 20 of IGST Act [Entry 4 of sch – I]	Import of services (with or without consideration) from related person in the course or furtherance of business.	Apart from this, in the case of of goods and/or services als recipient is liable to pay tax ex some specific cases like		f Apart from this, in the case of i of goods and/or services also recipient is liable to pay tax exc		from supplier to recipient und reverse charge mechanism (RCM Apart from this, in the case of impo of goods and/or services also, th recipient is liable to pay tax except some specific cases like OIDA						
7(1)(b) of SGST/ CGST Act	Import of services for a consideration.			o non-tax				-				

Proviso of Sec 5(1) of IGST Act	Import of goods				
9(4) of SGST / CGST Act	Intra-state procurement of goods and services from unregistered person where daily amount of such purchase is more than Rs.5000/- [applicable for 01.07.17 to 12.10.17]				
5(4) of IGST Act	Inter-state procurement of goods and services from unregistered person where such purchase is more than Rs.5000/- per day [applicable for 01.07.17 to 12.10.17].				
Residual	Any other areas of concern				
Total undisc	losed supply value			L	
	nent on undisclosed supp				

\*Refer to previous page for list of State Codes

## Part F (Correctness of claim of Input Tax Credit)

		grated ax		ntral ax	State Tax		Cess	
Details of ITC [month-wise]	A s p er 3 B	As per au dit	A s p er 3 B	A s er a u di t	A s p er 3 B	A s er a u di t	A s p er 3 B	A s er a u di t
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
a. Import of goods								
b. Import of Services								
c. Inward supplies liable to Reverse Charge (except a, b above)	In GST, ITC can be availed by every registered taxable person							
d. Inward supplies from ISD								
e. All other ITC including ITC on TRAN								

Α.	ITC available (a+b+c+d+e)	capital	good	ls use	d or i	ntende	ed to	
f.	ITC required to be reversed as per Rule 42 &	be use	ed in t	he co	urse o	of or fo	or the	
43		further	ance	of bus	siness	with a	a few	
g.	Other ITC required to be reversed	except	ions.					
В.	ITC required to be Reversed (f+g)	Howev	/er, th	nere a	ire co	nditior	ns to	
C.	Net ITC Available [A-B]	avail						
h.	Ineligible ITC as per Sec. 17(5)	becom	nes r	nore	comp	lex \	when	
i.	Other ineligible ITC	there	is co	mmor	n cred	lit use	ed in	
D.	Ineligible ITC	busine	ess ar	nd no	n- bu	isines	s, or	
		used	in t	axabl	e su	ipply	and	
		exemp	ot sup	ply.				
E.	Net eligible ITC[C-D]							

## Part G (Payment of Tax)

Month	Туре	Apr	Ма У	Ju n	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Tax paid	IGST													
upon	CGST													
setting	SGST													
off ITC	Cess													
	IGST													
Tax paid	CGST													
in cash	SGST													
	Cess													
Total tax	IGST													
paid as	CGST													
per GSTR-	SGST													
3B	Cess													
Tota	al													

Month	Tax pa		er GSTR wise*	-3B or	Тах	payable	as per A	udit	Balance Tax payable				
Month	CGS T	SGS T	IGST	Cess	CGS T	SGST	IGST	Cess	CGST	SGST	IGST	Cess	
Apr													
May													
Jun													
Jul													
Aug													
Sep													
Oct													
Nov													
Dec													
Jan													
Feb													
Mar													
Total													

\*payment made by any other instrument like DRC-03, payment against DRC-07 etc.

#### Part H (Correctness of Payment of Interest)

#### 1. Interest payable due to late payment of tax

Particulars	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Amount of tax paid													
Due Date of payment													
Date of payment													
Default period (days)													
Rate of Interest													
Interest payable													

#### 2. Interest payable due to non/short payment of tax

Particulars	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Amount of non/ short													
payment of tax													
Due Date of payment													
Date of FAR													
Default period (days													
upto the date of													
FAR)*													
Rate of Interest													
Interest payable													

\*The actual interest payable shall be calculated till the date on which such interest is actually paid.

#### 3. Interest payable due to excess ITC availed

Particulars	Apr	Мау	Ju n	Ju I	Au g	Sep	Oct	Nov	Dec	Ja n	Feb	Mar	Total
Amount of excess ITC													
availed													
Date of claim													
Date of FAR													
Default period (days													
upto the date of FAR)*													
Rate of Interest													
Interest payable													

\*The actual interest payable shall be calculated till the date on which such interest is actually paid.

#### 4. Interest payable due to excess amount Refunded

Particulars	Apr	Мау	Ju n	Ju I	Au g	Sep	Oct	Nov	Dec	Ja n	Feb	Mar	Total
Amount of excess refund													
Date of receipt of refund													
Date of FAR													
Default period (days upto the date of FAR)*													
Rate of Interest													

\*The actual interest payable shall be calculated till the date on which such interest is actually paid.

Particulars	Amount (Rs.)
Total Interest payable (as observed upon audit)	
[Sum of Interests payable under Tables 1 to 4 above]	
(-) Interest paid [as disclosed in GSTR-3B]	
(-) Interest paid [as voluntarily through DRC-03 or through GSTR-9 or in the course of	
audit, other than any payment made in compliance of Sec. 73 or 74]	
Interest Due	

\*The actual interest due shall be calculated till the date on which such interest is actually

paid.

#### Part I (Correctness of Any other amount due)

Particulars	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Any other amount due													
Due date of payment													
of such amount													
Date of FAR													
Default period (days													
upto the date of FAR)*													
Rate of Interest													
Interest payable													

## Annexure 14: Ratio Analysis & Trend Analysis (p.53)

The relative values of one data field when compared with another could help to detect potential errors or areas of noncompliance. It also helps to detect wrong Input Tax Credit availed, wrong valuation, claiming of input tax credit on inputs used in exempted goods services. 1 availment of ITC without receipt/actual use of input, etc.



**EXHIBIT 50** 

#### Example 1

Audit Officer finds that the RTP (auditee) has a tax liability of Rs. 72 lakh out of which Rs. 70 lakh has been paid upon setting off ITC from his credit ledger and only Rs. 2 lakh has been paid in cash.

In this case, the Officer should apply the ratio of [ITC availed : Total tax paid through Electronic cash ledger + tax paid through Electronic credit ledger].

In this case,

The result is 70/(2+70) = 70/72 = 0.972, i.e. 97.2%.

The result on such higher side may be of various reasons including accumulation of high stock resulting in accumulation of ITC.

But, if the RTP is a reseller without having significant warehouses, or if the goods dealt in are perishable in nature, the issue of stock holding will not stand good.

This should ring a bell in the audit officer's head that there may be a case of:

• wrong availment of input tax credit on goods/services in excess including claiming of input tax credit on inputs used in exempted products.

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- under valuation of goods as value-addition should involve adequate difference between the two.
- or suppression of sales.

#### Example 2

The auditee deals with both exempted goods and taxable goods. Total supply in the audit period is of Rs. 10 crore out of which exempted supplies amount to Rs. 6.5 crore.

In this case, the Audit Officer should apply the ratio of [Value of exempted outward supply: value of total outward supplies made]. This ratio helps to identify:

- outward supplies made in the guise of exempted supplies.
- supply of essential parts of outward supply as exempted supplies.
- under valuation of outward supplies by overvaluing exempted outward supply

As in this case, the ratio comes out as 0.65 or 65%.

If the audit officer is satisfied that the figures pertain to actual supply of exempted goods, it should be thoroughly examined whether the supplier has availed any ITC on inputs related to such exempted supplies. In such case, including cases of availing common credit, proportionate ITC is to be reversed.

#### Example 3

Ratio analysis for over a continuous period, say 3 years gives a holistic picture of the trend of the RTP. Taking an example, if the ratio of [Amount of input tax credit availed on inward supply : Total tax liability on outward supply] is studied over a period of 3-4 years, and if the ratio is increasing there is the possibility of the following irregularities:-

- Rendering of unaccounted outward supply;
- Under valuation of outward supply;
- Showing outward supply income as non-taxable outward supply income.
- Inflation of inward supply credit.

## Some of the indicative ratio analysis and trend analysis as follows may be carried out by the audit officer

#### **RATIO ANALYSIS**

#### **I.BASED ON RETURN DATA**

SI.	RATIO	2017-18	2018-19	2019-20
i)	Inward supply value : outward supply value			
ii)	EWB value of inward supply : EWB value of outward supply			
iii)	Non-GST Turnover : Total Turnover			
iv)	Exempted Supply value: Total Turnover			
v)	Value of Goods Sent for Job Work : Total Turnover			
vi)	ITC on inward supply : Total inward supply			
vii)	Total ITC available : Total GST payable			
viii)	ITC availed on capital goods purchased during the years : addition to capital goods			
ix)	ITC availed on Capital Goods : Total ITC availed			
x)	Transitional ITC availed : ITC availed in the year			
xi)	Tax payable: Total turnover			
xii)	Total Ineligible & Reversed ITC : Total ITC Availed			
xiii)	Tax payment by ITC : Total Tax paid			
xiv)	Tax paid in cash : Tax paid on setting off ITC			

#### II.BASED ON FINAL ACCOUNTS DATA

SI.	RATIO	2017-18	2018-19	2019-20
i)	Inward supply value : outward supply value			
ii)	Other income : outward supplies			
iii)	Gross profit : Gross revenue			

iv)	Power consumption/fuel consumption (Qty) : production quantity as per P&L Account		
v)	Production of Goods : Scrap Scrap: Production of goods		
vi)	Quantity of Actual production : installed capacity		
vii)	Cost of Major input: Value of outward supplies		
viii)	Consumables value: Value of taxable supplies.		
ix)	Net profit : Value of outward supplies		
x)	Capital employed : Value of outward supplies		

#### TREND ANALYSIS

#### I.GENERAL TRENDS

SI.	PARTICULARS	2017-18	2018-19	2019-20
a)	Total Turnover			
b)	Total Zero Rated (Exports) Supply,			
c)	Supply to SEZ			
d)	Deemed Export			
e)	Total Exempted Supply			
f)	Total NIL rated Supply			
g)	Total Non-GST Supply			
h)	Total Taxable Outward Supply			
i)	Total Inward Supply subject to Reverse Charge			
j)	Total Tax payable on Outward Supplies			
k)	Additional Tax paid by DRC-03 (Annual Return)			
I)	GST of a particular goods/service vis-a-vis overall growth of that industry. (%)			
m)	Trend in proportion of value of exempted goods/services to the total value of goods/services. (%)			

n)	Gross operating profit		
o)	GST paid by debit in Electronic Cash ledger vis-à-vis GST paid by debit in Electronic Credit Ledger		
p)	GST paid by debit in Electronic Credit ledger vis-à-vis Total GST paid		
q)	Value of outward supplies made to related person vis-a- vis total value of supplies. (%)		
r)	Inter unit transfers /sales to related party as per Balance Sheet		
s)	Total refund claimed		
t)	Total refund sanctioned		
u)	Demand raised (if any)		
V)	Value of EWB outward		
w)	Value of EWB inward		

#### II. ANALYSIS FOR MANUFACTURER OF GOODS

SI.	PARTICULARS	2017-18	2018-19	2019-20
a)	Cost of production of major finished Goods (as per cost record)			
b)	Quantity of inputs consumed in the production of Finished Goods			
c)	Value of inputs consumed in the production of Finished Goods			
d)	Production of finished goods compared to outward supplies			
e)	Production of scrap compared to Production of finished goods			
f)	Production of taxable outward supplies vis-a-vis exempted supplies			
g)	Movement of inward supplies vis-a-vis total production			
h)	Movement of inward supplies for goods manufactured on job-work vis-a-vis total production			

#### III. ANALYSIS FOR MANUFACTURER AS WELL AS RESELLER OF GOODS

SI. PARTICULARS 2017-18 2018-19 2019
--------------------------------------

a)	Difference in ITC taken & ITC available on purchase of raw materials		
b)	Job work income as per P&L Account or Trial balance		
c)	Movement of inward supplies vis-a-vis total outward supply		

#### IV. ANALYSIS FOR SUPPLIER OF SERVICES

SI.	PARTICULARS	2017-18	2018-19	2019-20
a)	Difference in ITC taken & ITC available on input services			
b)	Cost of procurement of major services provided (as per books)			

#### V.ITC TREND ANALYSIS

Particulars	2017-18	2018-19	2019-20
Opening balance			
Total ITC availed on Inputs			
Total ITC availed on Input Services			
Total ITC availed on Capital Goods			
Total ITC received from ISD			
TRAN credit claimed			
Total ITC eligible & availed			
Ineligible ITC, Not availed			
Credit utilized for payment of tax (Debit entries in e-credit ledger)			
ITC reversed			
Closing balance			

# VI.TURNOVER TREND ANALYSIS

Year	Turnover as per P&L A/c or Trial Balance	Other Income	Value of Taxable Supplies	Total GST paid	GST paid in cash	GST paid by setting of ITC
2017-18						
2018-19						
2019-20						

# Annexure 15: Study of Profit and Loss Account and Balance sheet (p.51)

#### **Financial Statement, Accounts and GST**

i. Every business organization draws up financial statements in respect of any financial year comprising (a) the Balance Sheet as on the last day of the financial year {summarising the value of "owings" (what it owns) and "owings" (what it owes) or the value of assets, liabilities and capital} of the entity as on the said last date, (b) the Profit and Loss Account or the Income Statement {summarising the revenue receipts during the year from its business operations (does not include receipts of a capital nature) and the expenses incurred for earning the said revenue during the year}.

The aforesaid financial statements are generally referred to as the final ii. accounts of the entity and are prepared for every distinct legal entity (as opposed to a "distinct person" in terms of Section 25). Thus, branch offices of a company/entity having business operations in more than one State will have consolidated financial statements in respect of all its transactions across the country, unless the different State "Units" ("distinct person" in terms of Section 25) are independent profit centres recognized as such by the company itself. Thus, in cases where the different State Units are not recognized as independent profit centres, the returns filed by the entity in a particular State cannot be mapped on to the financial statements on a one-to-one basis. In such cases (and even otherwise) every unit prepares a trial balance as at the end of the year (which also forms the basis for preparation of financial statement); the trial balance comprises balances/totals in respect of each item of revenue, expenditure, capital receipts, capital expenditure, assets/properties and liabilities/obligations. Thus, wherever the audited final accounts, i.e. profit and loss account and balance sheet are not available, the reconciliation of the return with books of accounts should be carried out vis-a-vis the trial balance. It may be noted that the trial balance may not be readily available in respect of individual units of a multi-location entity (viz. some Pan-India entities with centralised control on debtors, creditors and payments) operating on a SAP/ERP platform where the vendors, customers or the bank accounts are operated centrally. In such cases the trial balance has to be extracted with some effort.

iii. Different kinds of businesses entities like companies, banking companies, insurance companies, public utility (e.g. electricity generation/transmission/ distribution) companies, etc. are governed by different statutes which have generally prescribed formats for the preparation of final accounts and also the information to be contained in such accounts. By and large, the formats and content prescribed under the Companies Act *vis-a-vis* final accounts for companies is a standard document in the accounting world and all relatively large undertakings, whether or not companies, adopt the same.

iv. Schedule III to the Companies Act, 2013 prescribes the norms, content and format of the balance sheet and the profit and loss account of a limited company. The Schedule also contains instructions for preparation of the financial statements.

v. An important component of the financial statements is the Notes to accounts which contain detailed information and break-up regarding different items of the information and contents of the Balance Sheet and the Profit and Loss Statement.

vi. The most important of which, for our purposes, is the Statement of Profit and Loss (Part-II of the said Schedule III). This statement comprises information regarding "Total Revenue" which has two significant and separate components viz. "Revenue from Operations" and "Other Income". This statement also has information regarding "Cost of materials consumed", "Purchases of Stock-in-Trade", "Changes" in inventory levels, "Employee" costs, "Finance costs", "Depreciation" and "Other" expenses. On the basis of this information, the operating profit is derived and disclosed; it is from this profit that adjustments towards prior periods and exceptional items, tax, effect of discontinuing operations are made and the net resultant earnings are derived.

The general instructions for preparing this Statement (as contained in this vii. Part) specify that companies (other than finance companies i.e. those generally engaged in financing operations of other business entities or extending/accepting loans/deposits) are required to separately disclose in the Notes to the Accounts, revenue from sale of goods/products, sale/supply of services and other operating revenues and the said Notes are to also separately disclose Excise Duty (now GST). In respect of finance companies, the revenue from operations shall include revenue from Interest and Other

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financial services. In case of supply of services, supplies under broad heads are to be separately disclosed.

Each such category of supply would refer to an "outward" supply in terms viii. of GST and the values of such supplies as appearing in the financial statement/trial balance should be traced to the respective ledger accounts in the books of accounts. The business operations of an entity may comprise different kinds of goods/services and transactions involving them may be recorded differently in the books by different entities. For instance, an entity engaged in supply of readymade garments may have separate ledger accounts for supply of hosiery, shirts/trousers, kids clothing, woollen garments and accessories. These items may attract different rates of tax, depending on their classification. In such a case, the validation of outward supplies declared in the return may ideally begin with seeking a break-up of the aggregate value of each category of outward supply declared in the said returns into its various items/sub-items i.e. hosiery, shirts/trousers, kids clothing, woollen garments and accessories. The value of each such item/sub-item (separately recorded by the auditor in a document forming part of his working papers) may be validated by the auditor through the profit and loss statement/trial balance. The scheme of validation to be adopted by the auditor has to depend on (and, ideally, follow) the scheme of classification of his activities/transactions and the level of detail adopted by the supplier in the ordinary course of his business.

ix. The details regarding "Other Income" in the Profit and Loss Statement are to be classified in the Notes as "Interest income" (in case of other than finance companies), "Dividend", net gain/loss on sale of investments (i.e. shares, debentures, bonds, etc.), and other non-operating income. It is this component of "Other Income" which is of particular significance in verifying whether all 'other supplies' (transactions that are incidental or connected, whether related or unrelated, to the primary operations of the entity) have been disclosed properly in the GST returns or not. Hence, the details of this component should be carefully examined by the auditor and every item should be co-related to the appropriate ledger accounts in the books of accounts maintained by the entity.

x. In the process of seeking a break-up of the aggregate value of each category of outward supply as referred to in Para above, the auditor may encounter categories of such supplies which are not in the nature of the primary

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activities of the business entity. For instance, the said entity engaged in the supply of readymade garments may have, during the said period, sold off/disposed empty cartons in which it may have received the items that it sells. off/disposed may also have sold old furniture or old air It conditioners/computers. The entity is engaged in the business of selling readymade garments and the supply of empty cartons (related to its main business), air conditioners/computers (not so related) is not part of its main activity; but it is connected to/incidental therewith. The supply of these items is also leviable to tax and has been clubbed together in the outward supplies declared in Table 3.1 of GSTR-3B. But the same will not appear in the "Revenue from operations" component of its profit and loss statement; rather, the same will be disclosed as "Other Income" component. Accordingly, each such item may be verified with respect to the ledger accounts.

xi. The auditor should pay particular attention to the mapping of every item of revenue recorded in the books of accounts (appearing on the 'income' side of the profit and loss statement or 'credit' side of the trial balance) on to the breakup of outward supplies referred to above. Care should be taken to ensure that every item of income appearing in the profit and loss statement/trial balance (except the "no supplies" referred to below) plus the "deemed supplies" explained below is included in some item of the break-up of outward supplies as derived from Table 3.1 of GSTR-3B and the aggregate value of all such items of income appearing in the profit and loss statement/trial balance (as adjusted for "no supplies" and "deemed supplies") matches with that of the aggregate value of outward supplies declared in Table 3.1 of GSTR-3B. If not, it is indicative of supplies on which tax not being paid/short paid.

xii. It is important to note that the outward supplies reported in Table 3.1 of GSTR-3B may include values of supplies for which no corresponding values are available in the profit and loss statement and/or trial balance (except where any asset has been permanently alienated, in which case there will be a "write/written off" account/balance in the profit and loss statement/trial balance and also a reduction/disposal in the fixed asset account, in case of such an asset). These are the "deemed supplies" of Schedule I of the Act. The major transactions in this category are transfers of goods or cross-charge on account of services to other branch offices/depots/agents/units (this will reflect as ITC in case of receipts under similar circumstances). In the case of goods, such

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transactions are easily verifiable from the stock register/statements and/or goods transfer register. The valuation in such cases is not a problem if the same is a B2B transaction where credit is fully available; the value in the invoice suffices. However, in case of B2C transactions of this nature, valuation rules 27-31 will have to be applied. Transactions in services under such circumstances present a different problem, however. Where centrally procured services have not been dealt with in accordance with the ISD mechanism, there could be entries (and tax invoices) relating to supply of services by the Head Office (HO) to a Branch Office (BO) or by one BO to another Bo or by BO/s to HO (who are all distinct persons within the meaning of section 25). It is in such cases that the auditor has to tread with caution as even the fact that whether services have actually been supplied as claimed or the issuance of tax invoices is just an attempt to move credit around from one such entity to another entity in view of the second proviso to rule 28. The auditor should carefully examine and seek evidence/documents to validate whether the 'supplier' has the wherewithal and has deployed the quantum of resources necessary for the generation of services claimed to have been so provided to other units because no service can be supplied unless it is 'generated' through some resources or method.

xiii. There is another category of transactions which are reflected in the profit and loss statement/trial balance but are not part of supplies liable to tax as reflected in Table 3.1 of GSTR-3B. These are the "no supplies" of Schedule III. Of particular importance in this category are supplies of land, supplies of building (before completion certificate), high sea sales or supply of goods in the customs area before filing a bill of entry. These are all business transactions involving goods or services between different persons with consideration and, as such, they are recorded in the books of accounts (and reflected in the profit and loss statement/trial balance) but they have been declared as not being leviable to GST and, hence, they will not appear in GSTR-3B.

xiv. The value of 'inward supplies liable to reverse charge', as disclosed in Table 3.1 of GSTR-3B may also be sought to be dis-aggregated similarly with reference to supplies of goods and/or services on which payment on reverse charge has been notified. This can be validated with reference to entries on the debit side of the trial balance or the expenditure side of the profit and loss statement. While very few goods have been notified as taxable on reverse

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charge basis, there is a long list of services on which tax is payable on reverse charge by the recipient.

xv. Accordingly, the value shown at serial (d) of Table 3.1 of GSTR-3B should be broken-up into its separate components. An illustrative list could be as follows:-

Goods			Service	S	
Description	Value	Tax	Description	Value	Tax
Import of the Goods			Import of Services		
Separately for each item dealt in (e.g. cashew, biri leaves, etc.)	(separately for Inter- State and Intra state)	(separately For IGST, CGST, SGST, Cess)	from GTA	(separate ly for Inter- state and Intra- state)	(separately for IGST , CGST, SGST, Cess)
			Legal Services		
			Services received from Government/ LT (service-wise separately)		
			TDR or FSI		
			Long term lease of land		
			Add rows for other RCM services if received		

xvi. Each of the above items (except possibly in case of goods) will correspond to different entries in the trial balance from where they can be referred back to the respective ledger accounts. The value of import of goods is separately disclosed in the Notes to accounts. Receipt of certain services (e.g. services from Government, import of services, TDR/FSI, etc.) may not be available as separate headings in the trial balance. These have to be ascertained from the ledger of the personal accounts to whom payments have

<sup>224</sup> Model All India GST Audit Manual 2022: Prepared by the CoO on GST Audits

been made e.g. Government, Builder, Foreign Supplier, etc. The values in respect of each of the above items is to be validated with reference to the ledger accounts and/or purchase register, where available, via the trial balance.

xvii. The ITC availed is to be validated with reference to Table 4 of GSTR-3B. The ITC availed on account of import of goods, import of services and other inward supplies liable to tax on reverse charge basis is to be validated in the manner specified above. ITC availed on account of receipts from ISD is not readily verifiable from the trial balance or profit and loss statement (except where HQ- Branch/Branch-HQ/Inter-Unit services are billed on cross-charge basis), since this does not involve any monetary consideration. Thus, ISD credit is to be verified with reference to the Journal book in which they are specifically entered. There are other means of verification of such ISD credit, particularly the GSTR-2A.

xviii. By far, the largest component of ITC is reported at serial (e) of Table 4 of GSTR-3B under the head "All other ITC". This is the most frequent and most widely availed ITC since it pertains to purchase/receipt of goods and/or services in the normal, primary and routine course of business, relating to the essential activities of the business entity.

xix. This item too should be segregated by the auditor under its various components viz. inputs, input services, capital goods and each of these components may be further segregated into each of its various heads (e.g. 'inputs' into different goods, HSN wise, 'input services' into various services, again HSN wise and 'capital goods' into each of different category of capital goods). In so far as 'inputs' are concerned, these are generally recorded separately category-wise and may be traced back from the dis-aggregated GSTR-3B to the separate ledger accounts via the trial balance. 'Input services' too can be validated similarly. In this context, it must be remembered that no credit is availed on account of anything that is not recorded in the books of accounts and is not reflected in the profit and loss statement/trial balance (except in case of receipt of "deemed supplies" or ISD). If so, it would be indicative of a case of credit being "wrongly availed".

xx. As explained above while every item of income/receipt (including "deemed supplies" but excluding "no supplies") is to appear in the outward supplies of GSTR-3B, failing which it would be indicative of tax being not/short paid.

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However, every item of expenditure will not appear in Table 4 of GSTR-3B since credit is not available in certain cases (Section 17(5) of the Act). However, where the credit is not otherwise blocked under Section 17(5), and if it is still not availed it may be indicative of the credit availment being either deferred to a future period or the credit not being availed in which case it may be indicative of the purchase/receipt being suppressed; this needs to be investigated further.

# Examples of some types of Account that require thorough examination

S I. N	Exampl es of some types of Accoun t that require thoroug h examin ation	Remarks	
1	Introduct ory Director' s Report and Auditor's Notes	The Annual Report prepared by a company <i>inter alia</i> contains the following: a) <b>Director's Report:</b> This gives information like overall financial results of the company, important happenings during the year and future plans of the company. Information in respect of advance received and order booked. Some of the important happenings like fire and loss of material in the company, details of new products launched, change in the marketing pattern etc. reported in the report may be useful to the auditor. It will help to know the business model of the company. It may contain certain details such as:	

goods or services	can lead to
incorrect GST payme	
□ Foreign Exchange year;	earned during the
□ Foreign Exchange particles of the services received by the services received by the solution of the services received by the solution of the services received by the se	ccount of taxable ne Auditee where he
☐ Advance received. A then concentrate on o (current & recurring) w is accounted for.	operational liability
<ul> <li>Information o</li> <li>carried out by the A</li> <li>year under report. T</li> <li>finding the exact na</li> <li>provided by the Audit</li> </ul>	This may help in ature of services
□ It may show Directors having of some having receive Are these receipts If yes what will be the Besides sitting fees like car, flat, club me provided whether all of consideration or n should follow provis read with rule 27 of Act, 2017.	ived sitting fees. liable to GST? If, e value of supply? if other facilities embership etc are I such will be part not? Audit officers isions of sec 15
If any Direct company by standing in taking a loan whe treated as supply or p	ether that will be
□ We may ge respect of <u>Second</u> <u>entity</u> to render serv Entity not as emp entity. This importat treated as supply as Sch.I appended to CGST/SGST Act, 20	vices to an Indian oloyee of Indian tion of service is per entry no.4 of section 7 of the
b) Auditor's Report	: · · · · · · · · · · · · · · · · · · ·
<ul> <li>These may</li> <li>Statutory auditor or I</li> <li>C &amp; AG Audit. In the</li> </ul>	

audit, a separate report under CARO (Companies Auditor's Report Order, 2003/2015) is required to be given. The same should be studied to find out any qualified/adverse opinion given by the auditors which may have impact on GST liability. For example, Auditor may report that goods meant for outward supply, available in stock were not reconciled or provision for obsolete items have not been made during the year. Tax auditor may like to examine such opinion in detail.	
Company Auditor's Report Order (CARO) may be studied to find out whether the fixed assets records have been maintained properly or whether physical verification of inward supply and goods meant for outward supply was under taken and whether any discrepancies were noticed on such verification or whether the company has maintained proper records for unserviceable or damaged goods. It also shows disputed tax liabilities separately for Customs, Income Tax, GST etc. Cases booked under Income Tax may be examined to find out any implication on GST.	
<ul> <li>In the case of Public Sector unit, C &amp; AG report and comment of the company available in the Annual Report should be examined.</li> <li>Disclosure of accounting policies followed in the presentation of financial statement – Auditor's Notes may contain accounting standards with the disclosure of significant accounting policies followed in the preparation and presentation of financial statements. Such policies often give additional valuable information, e.g. The auditee may disclose revenue as per AS 7, where the principles of accrual system of revenue are acknowledged. But, the auditee for GST purpose may disclose supply</li> </ul>	

		value from works contract on certified bill basis.	
		Profit & Loss Account:	
		The Profit and Loss Account shows major items of expenditure and income. This is one of the important documents used during desk review to find out the overall working of the unit. In the main body of the Profit & Loss Account, only major heads of expenditure and income are given and the constituents of these headings are given in a separate annexure. The said annexure should be studied in detail.	
		P/L account may be studied for the following purposes:	
2	P & L A/c	□ The most important step of audit is to determine the Total Turnover in the State and the tax liability of the auditee. This information in the P&L A/c may be available as Sale or Operating Revenue or in any other similar nomenclature. However, this part denotes only the operating income, i.e. income from the main activity of business.	
		□ The auditee may have other incomes like scrap, insurance claims receipt, profit on sale of fixed assets, commission received, erection and commissioning, freight and insurance recovered etc. which may be examined in detail to find out the exact nature of such incomes and whether these have any bearing on the valuation or whether these are liable for GST. They should carefully study the nature of business income – some of which may have accrued from the supply of taxable services and the balance from the supply of non-taxable services. The exact nature of these services may be determined from the supporting documents such as vouchers, bills or	

	contracts.	
	□ The primary documents to be examined in this case are: Supply Invoices; Bank Statement; Debtors Ledger; Party-wise customer list. To ascertain the veracity of the figure reported in the Sale A/c vis-à-vis the Turnover disclosed in the Returns, additional documents like Sale contracts, Delivery Challan, Material Transfer Notes may be examined.	
General Ledger A/cs for various expense s	Scrutiny of expenses ledger is very important for an Audit Officer as the expenditure accounts have direct impact on availment of ITC, valuation of finished goods and payment of GST on the taxable value, value of inward supply on which GST is pay able under Reverse Charge. (e.g. Expense Accounts: Purchase, Packing and Forwarding Expenses, Advertisement Expenses, Transportation/Freight Charges, Outward supply Expenses, Sale Promotion, benefits to employees, entertainment expenses etc.) The General Ledger may contain various accounts depending upon the scale of business of the auditee. Hence, selection of account for scrutiny is an important task for an auditor. For this purpose, accounts should be selected from the Trial Balance (if available) which gives names of all the accounts maintained by a unit. While making the detail examination - All the important Purchase accounts need to be checked to find	

out whether any rejection of raw material or short receipt of input have taken place which will have impact on the ITC availed by the auditee.□Raw material consumption account may also be verified to find	
out with regard to writing off obsolete material.	
<ul> <li>Expenditure accounts where recovery of expenses is possible like Packing and Forwarding Expenses Account, Advertisement Expenses Account, Transportation/Freight Charges Account, Outward supply Expenses Account etc. may be scrutinized in order to find out any recoveries being made from the customer.</li> </ul>	
□ From the Trial Balance, the income accounts (these types of accounts will have credit balances) should be selected for scrutiny and the exact nature of such income's accounts should be found out from the study of the documents mentioned in the relevant ledger accounts. Some of these accounts might have direct impact on the valuation of finished goods or it may also affect the GST liability.	

		The Tax Audit Report is given by Chartered Accountant. The said report is given in the form 3 CD and it is required to be enclosed along with the Income tax return filed by the taxable person.	
		Depreciation statement as per the provisions of Income Tax Act enclosed with Tax Audit Report may be verified to confirm the correctness of availment of ITC on capital goods.	
4	Income Tax Audit Report	As per Clause 27(a) of the said report, amount of ITC availed or utilised during the year and its treatment in the Profit & Loss Account and treatment of outstanding ITC in the account is required to be given. Tax Auditor may compare the said information with the information as per taxable value records. As per clause 35(a) to 35(c), details like opening stock, purchases, outward supply and closing stock of trading activities and in the case of manufacturing unit quantitative details or principal items of raw materials, finished goods and by- products showing opening stock, purchases, consumption, outward supply, closing stock, yield of finished goods, percentage of yield and shortages/excesses is required to be given. This information may be used by Tax Auditor to verify the input-output ratio. The reasons for excessive shortage/ excesses and whether GST has been paid on the outward supply of raw material as reported in the tax audit report may	

		be inquired into.	
		This is the report submitted by	
		internal auditors appointed by the	
		company which looks into day-to-	
		day activities and the systems followed by the unit.	
		This report can be used for cross verification of loss of any input,	
6	Internal	excess availment of ITC, collection	
	Audit Report	of additional consideration.	
	1	Also the implications on the past	
		period for any short payment or non- payment of tax can be examined	
		from this report.	
		Internal Auditor also reports about	
		stock verification and in case of	
		shortages the ITC availment needs	

r			
		to be examined.	
		This schedule contains the details of	
		addition, deletion to the asset and	
		depreciation charged thereupon.	
		The examination thereof has	
		multiple impact – in terms of	
		turnover arising out of	
		miscellaneous income and reversal	
		of ITC under certain conditions.	
		An asset can be deleted upon	
		various circumstances – it may lose	
		its working condition and hence may	
		be written off. In such case, it may	
	Fixed	yield a scrap value.	
	Asset	Whether any consideration has	
	Schedul	been received in this case can be	
7	е	verified from the Other	
	[availabl	Income/Miscellaneous Income A/c.	
•	e in	This will have an impact on the	
	Balance	Turnover.	
	Sheet]	An old asset may also be	
		permanently transferred to any	
		related or distinct person. In such	
		case, the matter should be looked	
		into from the angle of Schedule I of	
		Sec 7 of the SGST/CGST Acts,	
		2017. In case ITC has been availed	
		on such asset, such has to be	
		reversed.	
		Furthermore, running assets are	
		depreciated in prescribed rates. In	
		case depreciation has been charged	
		on a value inclusive of GST, such	
·			

		ITC has to be reversed. Verification of the claim of depreciation on capital goods should be made from the Income tax return filed by the taxable person or from the Income Tax Audit Report (Form 3CD). There may also be possibilities of recording both expenses as well as income relating to a particular asset in the same account, thus affecting the net balance of such account. In this case, each Ledger Account for individual assets need to be checked to ascertain whether there are any sale or disposal or transfer of such asset hidden in such account. Presence of such may have impact on the tax liability of the auditee.	
8	Other Income/ Miscella neous Income	Other income/Miscellaneous Income as reported in the P & L A/c comprises of income from all those sources which do not form its operating revenue. A supplier in GST has its operational revenue generating from supply of goods or service or both. But there are other sources from which he may earn something more which is not booked under the A/c heads of Sales or Services or Revenue, as the case may be. Such incomes in a consolidated manner are known as Other incomes/Miscellaneous Income. Some major sources of other/miscellaneous income are income from: • Sale of scrap	

Receipt of insurance claim
Profit on sale of fixed assets
Commission received
Penalty / demurrage/
compensation received from
employee/customers/suppliers
Rental income
Interest from Bank
Interest from debtors for late
payment
Revaluation gain on fixed
assets
Gain on exchange rate
Discount received
Dividends
Freight and insurance
recovered etc.
Many of such incomes are subject
to GST such as sale of scrap or sale
of fixed assets, as the nomenclature
sale suggests. But there are many
other account heads forming part of
miscellaneous income (except a
few) which also qualify as supply
and should be forming a part of the
GST Aggregate Turnover. Thus,
these incomes are required to be
examined in detail to find out the
exact nature of such incomes and
whether these have any bearing on
the valuation or whether these are
liable for GST.

	T		
		Un-billed revenue is actually	
		recorded in the books of account	
		and reflected in the financial	
		statements, but in different	
		accounting periods and it arises	
		mainly in the context of supply of	
		services. This arises from the	
		concept of revenue recognition i.e.	
		the question as to when should	
		revenue in respect of a transaction	
		or activity be recognized and	
		recorded as such in the books of	
		accounts and taken therefrom to the	
		financial statements. Accounting	
		Standard 9, issued by the Institute	
		of Chartered Accountant of India,	
		deals with revenue recognition and	
		states that, generally:	
		"Revenue from sales or service	
		transactions should be recognised	
		when the requirements as to	
		performance are satisfied,	
		provided that at the time of	
	Line la Silla al	performance it is not unreasonable	
9	Unbilled	to expect ultimate collection. If at the	
	revenue	time of raising of any claim it is	
		unreasonable to expect ultimate	
		collection, revenue recognition	
		should be postponed."	
		It may so happen that the terms of	
		the contract stipulate that the	
		invoice in relation thereto may be	
		issued on the happening of a certain	
		milestone, say the seventh day of	
		the month following the month in	
		which the work has been certified.	
		But in such a case the revenue	
		accrues on certification even though	
		the invoice should be issued next	
		month. If such an event were to	
		happen in the last month of the	
		financial year, the books of accounts	
		and the financial statements would	
		recognize the revenue on this count	
		and the turnover declared in the	
		financial statement would include	
		this. However, since the invoice is	
		issued in the next year, this turnover	
		would be reported in the GST return	

	[		1
		for the next year. Thus, for the purpose of reconciling the turnover declared in the returns for any year (say, Y1), the value of unbilled revenue in respect of the preceding year (Y-1) shall be added to the turnover declared in the financial statements of Y1. Similarly, the unbilled revenue as at the end of financial year Y1 should be deducted from the turnover declared in the financial statements of Y1. This information is also available in rows A and I of Table 5 in Part II of Form GSTR-9C. The exact amount of unbilled revenue as at the end of any financial year can be verified from the financial of the relevant years; however, in respect of 2017-18, this exercise would have to be carried out separately for the period between April, 2017 to June, 2017 since this information may not be readily available from the financial statements as such.	
1 0	Un- adjuste d Advanc es	<b>Un-adjusted Advances</b> in respect of which GST has been paid during the financial year in accordance with the provisions of Section 12 and 13 of the Act also need to be <b>added to</b> (where such advances have been received during the <i>current</i> financial year) or <b>deducted from</b> (where such advances have been received during the <i>preceding</i> financial year) the turnover declared in the financial statements for the current financial year. This adjustment is necessary for reconciliation since GST liability on advances received has been discharged in the year in which such advances has been received while the revenue in respect of the said advances has been recognized in the books of accounts/financial statements of either the preceding or succeeding year;	

		Other adjustments are also	
		required to be carried out to the	
		turnover as declared in the books of	
		accounts/ financial statements	
		drawn from such books of accounts	
		in order to reconcile the said	
		turnover with the turnover declared	
		in the GST returns. Such	
		adjustments have been listed at	
		serial numbers 5E to 5O, except	
		serial numbers 5H and 5I thereof	
		(which have already been discussed	
		above, of the Reconciliation	
		Statement in Form GSTR-9C. It may	
		be noted that although, in	
		accordance with the provisions of	
		section 35(5) read with section 44(2)	
		of the Act, the reconciliation	
		,	
		statement may not be required in cases where the annual turnover is	
		below Rs. 2 crores, the aforesaid	
		adjustments will apply to every	
	Other	taxpayer the turnover declared by	
1		whom in his returns is to be	
1	adjustm	compared with the turnover	
	ents	declared in his books of accounts	
		and the financial statements drawn	
		on the basis of such books of	
		accounts. The adjustments noted	
		here in this para, and the preceding	
		paras, should be recorded	
		separately in a Tabular manner	
		showing clearly the nature of the	
		adjustments (e.g. unbilled revenue,	
		credit notes, advances, etc.), the	
		value as per the returns, the value	
		as reflected in the books of	
		accounts or financial statements	
		and the difference, if any. That there	
		will be differences in the turnover as	
		per the return and the turnover as	
		per the books/financial statements is	
		inevitable and the two can be	
		reconciled within the framework of	
		preparation of financial statements	
		and maintenance of books of	
		accounts and the framework of the	
		GST Law. However, where the	
		turnover as declared in the returns	

does no	t reconcile with tha	t
	n the accounts even afte	
	out the aforesai	
, , ,	ts, the reasons for such	
,		
	may be examined in the	
0	e evidence and record	
presented	to the auditor and	1
explanatio	ns may be sought fron	1
the taxpa	er. The tax implications c	f
such unre	conciled differences ma	/
	d out, the workings an	
	ation should be made par	
	rking papers/file/record c	
	should form part of the	
	n's report which is also	
made ava	lable to the taxpayer.	

# Annexure 16: Indian Accounting Standard in the perspective of GST (p.49)

Indian Accounting Standards (Ind ASs) are Standards prescribed under Section 211(3C) of the Companies Act, 1956. This Standard prescribes the basis for presentation of general purpose financial statements to ensure comparability both with the entity's financial statements of previous periods and with the financial statements of other entities



It sets out overall requirements for the presentation of financial statements, guidelines for their structure and minimum requirements for their content.

There are various fields where the manner of the accounting and provisions under GST may vary. GST in India is a paradigm shift with complete business change, which impacts finance, accounting and reporting functions.

The following illustrative examples are for primary understanding before conducting audit and there could be many more cases of differences in the turnovers between the financial statements and the GST Law when the auditor will audit in practical field.

# 1. AS 1 / IND AS 1: DISCLOSURE OF ACCOUNTING POLICIES

AS 1 deal with the disclosure of significant accounting policies followed in the preparation and presentation of financial statements. It states that an enterprise needs to disclose significant accounting policies followed by it to prepare and present its financial statements.

The following are a few examples of the areas in which different accounting policies may be adopted by different enterprises.

- a) Methods of depreciation, depletion and amortisation
- b) Treatment of expenditure during construction
- c) Conversion or translation of foreign currency items

- d) Valuation of inventories
- e) Treatment of goodwill
- f) Valuation of investments
- g) Treatment of retirement benefits
- h) Recognition of profit on long-term contracts
- i) Valuation of fixed assets
- j) Treatment of contingent liabilities.

**e.g.1: Supplies on behalf of the principal** are not reflected in the financial statements of the agent and only commission is shown as the revenue of the agent. Under the GST Law, such turnover would be treated as part of the agent's turnover also *[Ref: Sch I under sec 7]*.

e.g.2: Disposal of business assets without any consideration – Suppose assets of a company are damaged due to flood. The company claimed insurance and also received the claim amount. The company disposed of such damaged assets. If no consideration is received on such disposal of business asset then also it will be considered as sale of assets in GST if input tax credit has been availed on such business assets *[Ref: Entry no. 1 of Sch I under sec 7]*.

# e.g.3: Other income from penal interest

The interest may be for various reasons like bank interest against deposit, penal interest received for payment received beyond interest free credit period, etc. So, when examining such other income, the audit officer should check whether such interest is taxable or exempted. In the present case interest received from bank against deposit is exempted but interest received from the recipient of goods and/or services for late payment is taxable if the supplied goods and/or services were taxable [*Ref: sec 15(2)(d)*].

e.g.4: Sometimes auditee may prepare his final statement by showing certain income in different head of expenses. The following are a few examples of expenses in which supply may be involved-

- a) Printing & Stationery,
- b) Repairing of office and godown,
- c) Repairing of furniture & Fixture,

For example, the auditee incurred expenses for purchase of office stationery and at the same time also received some sale proceeds against sale of old office stationeries. This sale proceeds may be accounted as other income or may be treated as credit entry in the printing & stationery head. So, the audit officer should check such expenses account to identify whether any supply is also clubbed in such expenses account or not.

**e.g.5:** Accrual accounting: The auditee may disclose revenue as per Accounting Standard 7 (AS 7), where the principles of accrual system of revenue are acknowledged. But, the auditee for GST purpose may disclose supply value from such works contract on certified bill basis. In this situation there may be difference in turnover as per books and as disclosed in GST return. While dealing with these cases the audit officer should know the exact provisions of time of supply and time limit to issue tax invoice to ensure whether there is any under reporting of supply value or not [Ref: Sec 13, Sec 31 and Rule 47].

**e.g.6:** As per Ind AS, excise duty is included in value of supply but, GST is not included [Sec 15(2)(a) of CGST/SGST Act]. For the first three months of 2017-18 revenue would be presented at Gross for Excise Less Excise Duty paid, and for the subsequent period it would be shown only the net.

# 2. AS 2 / IND AS 2: VALUATION OF INVENTORY

As per AS-2 the costs of purchase of inventories comprise the purchase price, import duties and other taxes (other than those subsequently recoverable by the entity from the taxing authorities), and transport, handling and other costs directly attributable to the acquisition of finished goods, materials and services. Trade discounts, rebates and similar items are deducted in determining the costs of purchase.

In the CGST/SGST Act several provisions are there for the availment of input tax credit and refund of input tax credit in specified situations. Thus, to the extent credit is available or refund is available, it would not form part of the cost of inventory. But, in following situations input tax is not available for credit:

- (i).Input / input services /capital goods are used for other than business purposes.
- (ii).Tax paid on inward supplies by the composition tax payers.
- (iii).Restricted credits u/s 17(5) of the CGST/SGST Act;
- (iv).Depreciation claimed on tax element;
- (v).Input/input services/capital goods used for exempted supply.

(vi).Any other ineligible input tax credit.

Thus, a systematic evaluative process is required to determine "what" credit is claimed and "what is" part of the cost of inventory as per the applicable accounting standard.

**e.g.1:** Goods and or services are procured where basic value is Rs. 1,00,000/- and tax paid @ 18% is of Rs. 18,000/-. Now, if ITC is available for set off against this inward supply, the cost would be recorded to the tune of Rs. 1,00,000/- only in the books whereas if availability of ITC is restricted u/s 17(5), the entire bill value of Rs. 1,18,000/- will be recorded as cost in the books as per AS 2.

**e.g.2:** A proprietor of a business having purchased face-masks distributes some to his office staffs and keeps a few for his home consumption. In that case, as per the AS2, the cost of such goods for business use as well as for personal use cost needs to be segregated keeping in mind that ITC is not available for goods used for personal use. Accordingly, the cost of goods is to be calculated and recorded in the books.

#### 3. AS 3 / IND AS 7: CASH FLOW STATEMENTS

The AS 3 deals with the provision of information about the historical changes in cash and cash equivalents of an enterprise by means of a Cash Flow Statement which classifies cash flows during the period from operating, investing and financing activities.

The Cash Flow Statement reports the cash flows during the period for the following activities:

- (i).**Operating activity:** Principal revenue producing activities and other activities that are not investing or financing activities.
- (ii).**Investing activity:** Acquisition and disposal of long-term assets and other investments not included in cash equivalents.
- (iii).**Financing activity:** Activities that result in changes in the size and composition of the owners' capital (including preference share capital in the case of a company) and borrowing.

However, out of the operating activities as stated above, the principal revenue producing activities and other activities that are not investing or financing activities, i.e. sale of goods or services or both will have GST implication except in a case where purely money is dealt with. This is because money is not goods as per the CGST/SGST Act(s).

Again, relating to investing activities, permanent transfer or disposal of business assets where input tax credit has been availed on such assets have been termed as an activity to be treated as supply even if made without consideration.

Furthermore, where financing activities are concerned, services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) and (b) *inter se* sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers are exempted from GST.

As per the GST Laws, interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised.

So, acquisition of capital, taking a loan, payment/receipt of interest or dividend will not attract GST, but any service charge or /processing fee incurred at the time of a loan will attract GST.

**e.g.1:** A business firm receives Rs. 10,00,000/- as dividend from its investments in share capital. This will be reflected in the cash flow statement as per AS 3 but will not have any GST implication.

**e.g.2:** A business firm borrows Rs. 10 crore from the bank for its business expansion. It pays Rs. 10 lakh as processing charge and starts repaying the loan with principal and interest components. Both the inflow of fund (as loan) and outflow (as EMI and processing charge) will be reflected in the cash flow statement as per AS 3 out of which, the firm has to pay GST only on the service charge part.

# 4. AS 4 / IND AS 10: CONTINGENCIES AND EVENTS OCCURRING AFTER THE BALANCE SHEET DATE

A contingency is a condition or situation, the ultimate outcome of which, gain or loss, will be known or determined only on the occurrence or nonoccurrence, of one or more uncertain future events.

A contingent asset is a *potential* asset that is associated with a potential gain. The asset and gain are contingent because they are dependent upon some future event occurring or not occurring.

<sup>245</sup> Model All India GST Audit Manual 2022: Prepared by the CoO on GST Audits

For example, Company X has filed a lawsuit claiming for Rs. 1 crore from another Company Y. Even if it is probable that Company A will win the lawsuit it cannot be held as certain till a favourable judgement is declared. Thus, the probable gain of Rs. 1 crore is a contingent asset and a contingent gain. As such, it will not be recorded in Company A's general ledger accounts until the lawsuit is settled.

As per AS 4, a contingency gain is reported only when realised/earned. If a specific event causing such gain occurs and the gain is realised, then only the gain is disclosed.

In terms of GST, in this case, the contingent gain of Rs. 1 crore will be against services provided by Company X to Company Y as agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act and will be subject to GST only after actual occurrence of the event.

Similarly, contingent Liability is that kind of a liability which is non-existent as on date, but it may become an actual liability in the future.

For example, a customer has filed a suit against the company for compensation. This can become an actual liability in the future if the firm loses the case. However, as on date, it is not a liability as the outcome is not known today. Now, let's assume that the company's legal department thinks that the claimant has a strong case, and the business estimates a Rs. 2 lakh loss if the firm loses the case.

Since this liability is estimated, the firm will disclose this liability in its books as a footnote below balance sheet.

Product warranties given by the company can also be considered a contingent liability, since there is no certainty about the exact number of units that will be returned by customers for repair or replacement.

# 5. AS 5/ IND AS 8 : NET PROFIT OR LOSS FOR THE PERIOD, PRIOR PERIOD ITEMS AND CHANGES IN ACCOUNTING POLICIES

AS 5 mainly deals with the following items:

- (i).Net Profit or Loss for the Period These can be categorized into Profit/Loss from ordinary activities and from extraordinary activities.
- (ii).Prior Period Items While preparing the financial statements, there are certain items which actually correspond to prior accounting periods. The income or losses due to these items are a result of error or omission in the financial statements of the prior period. By nature, these items are not frequent.

Now, Profit or loss from ordinary activities is such which arise in the normal course of business, i.e. they are a part of business and related activities. Examples: Profit/loss on sale of goods, services.

Profit or loss from extraordinary activities is such which do not arise under the normal course of business. These activities do not occur regularly. Example: – Profit on sale of fixed assets, Loss due to theft.

As, profit out of normal business activities have GST implication, the point of concern can be whether the goods/services dealt with are exempted or taxable and whether the turnover for which such profit element has been disclosed is at par with the Turnover on which GST liabilities have been fulfilled or not.

Similar is the case for profit out of extraordinary activities. Even if such activities are extraordinary, they will form a part of the Turnover for GST Audit and accordingly tax should be paid.

However, it may be stated that permanent transfer/disposal of fixed assets will be treated as supply even if made without consideration where input tax credit has been availed on such assets.

Again, availment of ITC will be blocked for goods lost, stolen, destroyed, written off.

So, any profit/loss arising out of extraordinary events will indicate a countercheck of such transactions from the GST angle.

Furthermore, there are certain estimates which are used while preparing the financial statements for any period. For example estimate on the useful life of machinery, estimate on the realisable value of an item in inventory. At times, these estimates are required to be revised due to any reason Accounting policies are the accounting principles and method of applying those principles while preparing the financial statements. A change in accounting policy should be undertaken only in two cases: (i) If the change is required by law or accounting standard; or (ii) If the change helps in better presentation of financial statements

Any change in an accounting policy which has a substantial/material effect is also disclosed as per AS 5.

**e.g. 1,** There was a theft of goods in the warehouse of ABC Pvt. Ltd. in the 2018-19 amounting to Rs. 40 lakh. The same has been detected in the year 2019-20 at the time of physical verification of inventory. The theft is not expected to take place on a frequent or regular basis and is not in a normal course of business of ABC Pvt. Ltd. Thus, the same qualifies to be an extraordinary item. Also, the theft took place in the financial year 2018-19 but was discovered in 2019-20. This suggests that although the loss related to

prior period, it was not shown and the profit was overstated by such amount i.e. Rs. 40 lakh. While taking the effect of such loss in the current year, this is a prior period item. Thus, such loss will be disclosed in the current year's financial statements as per AS 5. Accordingly, appropriate ITC already enjoyed on such goods is to be reversed as per GST Laws.

**e.g. 2**, the rate of depreciation of a particular asset is changed from 7% to 10% due to a statutory change. The business firm charges depreciation in his books which is inclusive of GST. Such tax portion depreciated is not entitled for ITC. Accordingly in the changed scenario where the depreciation amount will be enhanced as per AS 5, the amount of ITC reversal will also increase as per the GST Laws.

# 6. AS 6 & 10/ IND AS 16: PROPERTY, PLANT AND EQUIPMENT (PPE) & DEPRECIATION ACCOUNTING AND ACCOUNTING FOR FIXED ASSETS

As per AS 6 & 10, at the time of recognition, an item of property, plant and equipment (PPE) that qualifies for recognition as an asset should be measured at its cost.

Elements of cost include Purchase cost i.e. purchase price including import duties after deducting applicable discounts/rebates + Directly attributable and necessary costs to bring the asset to the location and condition necessary for it to be operating + costs of dismantling and restoration.

Some examples of directly attributable costs are – (i) Costs of employee benefits arising directly from the construction or acquisition of the item of PPE; (ii) Costs of site preparation; (iii) Initial delivery and handling costs; (iv) Installation and assembly costs; (v) Professional fees; (vi) Costs of testing whether the asset is functioning properly, after deducting the net proceeds from selling any items produced while bringing the asset to that location and condition (such as samples produced when testing equipment) Administration and other general overhead expenses are usually excluded from the cost of fixed assets because they do not relate to a specific fixed asset. However, in some circumstances, such expenses as are specifically attributable to the construction of a project or to the acquisition of a fixed asset or bringing it to its working condition, may be included as part of the cost of the construction project or as part of the cost of the fixed asset.

In this case, three sections of the GST laws, viz. S. 16(1), S. 16(3) and S. 17(5) need to be referred to. S. 16(1) of the CGST/SGST Act(s) mandates that to enjoy ITC on the asset (i.e. PPE in terms of the AS), the related goods

or services or both need to be of the nature of being used or intended to be used in the course or furtherance of business. This is also to mention that business is also defined in the GST Laws.

At the same time, S. 17(5), lays down conditions where ITC is not available.

So, although an asset may be booked and accordingly depreciated as per AS 6 & 10, the same may not qualify for ITC.

**e.g.** Company X manufacturing processed food receives works contract service for constructing a warehouse. The same property will be recognized in the books as per AS 6 & 10, but ITC on the same will not be available as per Sec. 17(5) of the CGST/SGST Act(s).

Now, as per AS 6 & 10, the cost of Fixed Assets is the amount of cash paid or the fair value of the other considerations given to acquire an asset at the time of its acquisition or construction. Where applicable, that amount recorded as per the books may be the amount attributable to that asset when initially acquired in accordance with the specific requirement of other Indian accounting standards.

From the GST perspective, as per Section 16(3) where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed. In nutshell, Input tax credit shall not be allowed on the tax component of the cost of capital goods and plant and machinery if depreciation on such tax component has been claimed under the provisions of the Income Tax Act, 1961.

#### 7. AS 7/ IND AS 11: CONSTRUCTION CONTRACT

AS 7 Construction Contract describes the accounting treatment of the revenue and of a construction contract. There are different types of construction contract like fixed price contract, cost-plus contract etc. Fixed price contract is very common where the contract between the contractee and contractor is agreed against a fixed price. In some cases, there may be a clause of escalation in the contract which is mutually agreed for various reasons like increase of the cost of raw materials, delay in completion etc.

Divisible contract and indivisible contract: In divisible contract the elements of each contracts are clearly segregated. But in indivisible contract both the contractor and contractee agree lump-sum consideration for the entire contract. The word "Turnkey" is commonly used in the construction industry

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in case of indivisible contract. It represents an indivisible composite contract with "single point Turnkey responsibility". According to this single point turnkey responsibility the Contractor undertakes all the things necessary for the project implementation from design to procurement of materials and construction of Works, from inception to completion, and makes ready for the use of the Owner. Here, only one entity takes the total responsibility for design, supply and execution of a project and provides a fully-equipped facility, ready for operation "at the 'turn of the key'.

Revenue of a contract and costs of a contract are two important areas for the audit officers. Revenue of a contract includes agreed initial revenue as well as revenue from escalation. In cost plus remuneration or cost plus a margin type of agreement both the cost and the remuneration and percentage amount on such cost will form part of revenue. Even claim of incentive for completion of project before time or for various reasons will also form part of revenue. The treatment of such revenue may vary in GST.

**e.g.1:** A contractor received mobilization advance of Rs.50 lakh on 30.08.2017. it will form part of GST revenue. The time of supply is the date of raising receipt voucher or 30.08.2017 whichever is earlier. If, this advance is adjusted with any RA bill within one year it will be treated as liability of the contractor though it is a revenue in GST.

**e.g.2:** A contractor maintaining books as per AS 7 booked revenue for FY 2017-18 for Rs.1.5 Cr for which revenue accrued on 25.11.2017 but no invoice is generated (commonly known as unbilled revenue). Whether it will be part of GST Turnover for the FY 2017-18?

Yes, it will be part of GST turnover. As per provisions of sec 13 read with sec 31 and rule 47 the time of supply of this service is this case is the date of payment or provisions of service whichever is earlier. Provision of service is made on 25.11.2017. As per provisions of rule 47 the contractor was supposed to raise invoice within 30 days of provisions of service. But, he failed. So, 25.11.2017 is the time of supply.

**e.g.3:** A contractor received an incentive of Rs.55 Lakh due to completion of construction project before the agreed time. Whether it will be part Turnover in GST? Then which type of supply is this?

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Yes, it will form part of turnover in GST, since there is a supply of service. But, this is not any construction service. This is nothing but 'agreeing to the obligation to do an act' which is a kind of service as per 5 (e) of Sch. II under sec 7 of the CGST/SGST Act.

e.g.4: There may be a situation when the contractee may claim a penalty from the contractor for various reasons like delay in completion, inferior quality of works, construction machinery used not as per specification of the agreement etc. Whether this penalty will also be part of turnover in GST? If so, then what kind of service is it and who is the supplier of service?

Yes, it will form part of turnover in GST, since there is a supply of service. But, this is not any construction service. This service is nothing but 'agreeing to the obligation to tolerate an act' which is a kind of service as per 5 (e) of Sch. II under sec 7 of the CGST/SGST Act. The contractee is the supplier of such service to the contractor in this case.

**Work-in-progress** – As per AS 7 when a contractor incurs costs that relate to future activity in a contract. Such costs are recognized as an asset if it is probable that they will be recovered.

In such cases the RTP as a contractor is eligible to claim ITC on such costs subject to fulfillment of conditions and restrictions of the Acts and Rules made there under.

# 8. AS 13/ IND AS 40: ACCOUNTING FOR INVESTMENTS

A business entity may have investments for various diverse reasons such as, operations, where the assessment of the performance of the business may largely, or solely, depend on the results of such investment activity.

Some investments are intangible e.g., shares while others exist in a physical form e.g., land & buildings. By nature, an investment may be in the form of a debt, other than a short- or long-term loan or a trade debt, representing a monetary amount owing to the holder and usually bearing interest. Again, it may be in the form of results and net assets of an enterprise such as equity shares.

As per this AS 13, the financial accounts are required to disclose the acquisition and disposal of all the investments.

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Accordingly, the P/L A/c is required to include the following items:

- Income from interest & dividends;
- Profits and losses on disposal of current investments;
- Profits and losses on disposal of investments;

Now, as money is not covered under goods as per the GST Act(s).

Again, relating to investing activities, permanent transfer or disposal of business assets where input tax credit has been availed on such assets have been termed as an activity to be treated as supply even if made without consideration.

Furthermore, where financing activities are concerned, services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) and (b) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers are exempted from GST.

As per the GST Laws, interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

So, acquisition of capital, taking a loan, payment/receipt of interest or dividend will not attract GST, but any service charge or /processing fee incurred at the time of a loan will attract GST.

# 9. AS 15/ IND AS 19: EMPLOYEE BENEFITS

The objective of this Standard is to prescribe the accounting treatment and disclosure for employee benefits in the books of employers except employee share-based payments.

Employee benefits are all forms of consideration given by an enterprise in exchange for service rendered by employees. This may be in the form of long/short term employee benefits, post-employment benefits, termination/retirement benefits etc.

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Now, as per entry no. 1 of Schedule III, Services by an employee to the employer in the course of or in relation to his employment, is an activity which is treated neither as a supply of goods nor as a supply of services. Thus the employee benefits provided to an employee and recorded as per AS 15, does not come under the purview of GST.

e.g. 1, Mr. A receives an arrear payment of Rs. 70,000/- after retiring from Company X. Here, the expense will be recorded as post-employment benefit as per AS 15. From the GST perspective it may be said that, although at the time of recording of such expense, there exists no employer-employee relation between A & X, the said expense will not attract any GST as it is an accrued expense for Company X in terms of employer-employee relation only.

The guiding factor in this case will be the term "employee". If the expenses are borne on a person who is not an employee as per the pay-roll, the same will be treated as a consideration paid against receipt of supply of services from that person.

e.g. 2, Salary paid to a full-time Director of a company is a consideration paid to him out of employer-employee relationship. Hence such will not attract GST. But, remuneration paid to independent director and remuneration other than salary to employee director (such as, sitting fees) are not considerations out of employer-employee relationship. Hence, such will be treated as consideration paid against receipt of supply of services as per the GST Act(s) and will be taxable @ 18%.

Furthermore, as per the provision to entry no. 2 of Schedule I, gifts of value upto Rs. 50,000/- in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. Otherwise, such gift whose value exceeds Rs. 50,000/- will be treated as a supply even though made without a consideration.

e.g. 3, Company X gives a mobile phone worth Rs. 25000/- to each member of its sales team as a gift in 2018-19. This will not be treated as a supply. But if the same Company X gives a high-end laptop worth Rs. 60,000/- to the head of the sales team, the same will be treated as a supply.

# 10. AS 16/ IND AS 23: BORROWING COSTS

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This Standard is applied in accounting for borrowing costs. Borrowing costs are interest and other costs incurred by an enterprise in connection with the borrowing of funds. This includes:

- Interest and commitment charges on borrowings
- Discounts and premiums related to borrowings
- Ancillary costs incurred in connection with arrangement of borrowings
- Finance charges in respect of assets acquired under finance lease

• Exchange differences arising from foreign currency borrowings to the extent they are regarded as adjustment to interest costs.

In this case, this is to mention that detailed discussions regarding GST implication on interests, other financial fees (processing fees etc) and that on foreign exchange have already been made in Paras 3 & 9 respectively.

# 11. AS 17/ IND AS 108: SEGMENT REPORTING

The objective of this Standard is to establish principles for reporting financial information, about the different types of products and services an enterprise produces and the different geographical areas in which it operates.

If a single financial report contains both consolidated financial statements and the separate financial statements of the parent, segment information needs to be presented only on the basis of the consolidated financial statements.

Here, the concept of related person and distinct person comes in under the GST Laws.

As per entry no. 2 of Schedule I, Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is an activity to be treated as supply even if made without any consideration.

In the explanation provided to Section 15(5) of the CGST/SGST Act(s), persons will be "related" if:

- such persons are officers or directors of one another's businesses;
- such persons are legally recognised partners in business;
- such persons are employer and employee;
- any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;

- together they directly or indirectly control a third person; or
- they are members of the same family.

Again, as per Section 25(4) of the CGST/SGST Act(s), a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as "distinct persons".

This means that two separate branches, or cost centres, or business segments (as per AS 17) of the same Company having two different GST registration numbers will be treated as related and distinct persons.

In this case, if such segmented accounting happen to be of two different cost centres having one single GST registration, special care needs to be taken to ensure that the summation of the segmented accounts have been duly reported in the GST Returns under the single registration and accordingly tax liability has been discharged.

# 12. AS 20/ IND AS 33: EARNINGS PER SHARE

AS 20 prescribes principles for the determination and presentation of earnings per share for comparison of performance among different enterprises for the same period and among different accounting periods for the same enterprise.

In common parlance, earnings from shares means dividend. The term 'dividend' has not been defined under the GST law. However, Section 2(35) of the Companies Act, 2013 defines the term 'dividend' to include any interim dividend. It is an inclusive and not an exhaustive definition. In common parlance, 'dividend' means the profits of a company, not retained in the business but distributed among the shareholders in proportion to the amount paid-up on the shares held by them.

The Supreme Court in CIT vs. Girdhardas & Co. (Private) Ltd. [1967 SCR (1) 777] observed that the expression "dividend" has two meanings-

• As applied to a company which is a going concern, it ordinarily means the portion of the profits of the company which is allocated to the holders of shares in the company.

• In case of a winding up, it means a division of the realised assets among the creditors and contributories according to their respective rights.

Now, as per S. 2(52) of the CGST/SGST Acts, "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Thus, dividend Income may be treated as not being in the ambit of GST as such is a money income and money is excluded from goods.

Also, Section 17(3) of the CGST/SGST Act provides that the value of exempt supply under Section 17(2) shall be as prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

It is pertinent to note that Section 2(101) of the said Acts provides that "securities" shall have the same meaning as assigned to it in Section 2(h) of the Securities Contracts (Regulation) Act. The term 'dividend' in itself is not included in the said definition. However, it becomes relevant to examine if the earning of dividend on account of holding shares (qualifying as 'security' under the definition) is in any manner connected to the expression, "transaction in security".

The above examples and discussion on accounting standards are indicative only. Audit officer may go through other accounting standards also if required.



# ANNEXURE 17 (p.xi)

Recommendations for Model GST Audit Best Practices and Procedure as per the report of the sub-committee on point No, 1 of the Terms of Reference for the CoO on GST Audit

# **Recommendation – 01**

# Basis for selection of cases for audit Identification of cases for audit is of threefold:

#### Based on risk assessment:

Selection of cases on the basis of compliance risks is very essential and integral to GST audit. Currently, the returns data of taxpayers i.e., GSTR-3Bs are being considered by various States and the Centre. The guiding principle of audit envisages selection of taxpayers for audit based on certain risk parameters. The Commissioner/Appropriate authority by a general or specific order may select any registered person for audit of his books of accounts for a specific period. on certain parameters as he may deem fit.

The Commissioner/ Appropriate Authority may fix the criteria of selection basis This turnover limit while fixing the selection criteria may vary from State to State, in different Zonal levels of a particular State and also for service sector when compared to that for goods.



#### EXHIBIT 52

All risk parameters are required to be identified and all probable aspects need to be considered to identify non- compliance and non-payment / short payment of tax, interest, late fee, penalty etc. availment of credit and claims for refund and evasion of tax. The taxpayers may be classified into three

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segments, Large/Medium/Small based on the total turnover. The States can also be divided into three Categories, viz. I II and III based on the taxpayer's spread across various segments. By and large, the categorization may be uniform across the States subject to the availability of more risky taxpayers in a particular category. Example for categorization is given below. This may vary from State to State and in the Centre. An illustrative scheme of classification is discussed hereinbelow:

**Large** - taxpayers with turnover more than Rs. 40 Crore for category 1 Commissionerates, Rs. 30 Crores for category 2 Commissionerates and Rs. 20 crores for category 3 Commissionerates.

**Medium –** taxpayers with turnover Rs.10 Crores to Rs.40 Crores for category

1 Commissionerates, Rs. 7.5 Crores to Rs. 30 Crores for category 2 Commissionerates and Rs. 5 Crores to Rs.20 crores for category 3 Commissionerates.

**Small** – taxpayers with turnover below Rs. 10 Crores for category 1 Commissionerates, below Rs. 7.5 Crores for category 2 Commissionerates and below Rs. 5 Crores for category 3 Commissionerates.

The above schema is only indicative and should be adapted keeping in view the risk profiles, revenue involved and the resources available to conduct the audit.

The turnover includes total taxable, exempt and zero rated supplies of goods and services but excludes non-GST supplies during a financial year.

To select the taxpayers for audit in an effective manner, secondary data source (such as VAT/Service Tax/Central Excise/Custom data, Income Tax data etc.) may be considered along with the primary data source (i.e. GST data).

The weightage of each parameter may vary depending upon its importance in selection of taxpayers for audit. Based on the average weight, considering all the parameters, a final score may be calculated on the basis of which the final selection may be done.

The final selection of taxpayers to be audited may be done based on the descending order of the final score thus calculated. In case, more than one

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RTP has the same final score, the parameter of declared liability will then be considered and a taxpayer with more declared liability will be selected first.

A Selection Committee may be constituted to identify various risk parameters for selection for audit considering all the aspects where there are chances of lack of compliance of the Act resulting in short payment of tax etc. such as: Entity level risks (e.g. Turnover, Tax, ITC, Refund, Commodity such as Iron & Steel, Paints & Chemicals, Textiles, Cement, Medicine, Footwear, Branded food grain, Automobiles etc., Service: Works contract, Real Estate, Information Technology, Consultancy service, Manpower service, Hospitality, Travel & Tourism, Leasing etc.).

Risks associated with compliance behaviour (e.g. late filing of return, nonsubmission of Form GSTR-1, Form GSTR-3B, Form GSTR-9 Form GSTR-9C).

# Certain representative selection criteria that can be considered for risk assessment are given below<sup>:-</sup>

1. Ratio of Taxable turnover – present year vis-à-vis previous year.

2. Ratio of ITC reversed vis-à-vis Total ITC availed during the year.

3. Ratio of total ITC availed in this year vis-à-vis previous year. Ratio of IGST payment at the time of import vis-à-vis Total

4. ITC availed ({Col.2 of table 4(A) (1) & (2) of GSTR-3B} in corresponding period).

5. Ratio of tax paid through ITC to total tax liability

6. Ratio of nil/exempt supplies (Col.2 of Table 3.1(C) of GSTR- 3B) to total turnover (excluding non GST supplies ) (col.2 of Table 3.1(a) + (b) + (c) of GSTR-3B).

7. Ratio of Zero-rated supplies (col.2 of Table 3.1(b) of GSTR-3B) to total turnover (excluding non-GST supplies) (col.2 of Table 3.1 (a)+(b) + (c) of (GSTR-3B).

8. Ratio of Non-GST supplies to total turnover. {(Col.2 of Table 3.1(e) / (col.2 of Table 3.1 (a) + (b) +(c) of GSTR-3B)}.

9. Ratio of inward supplies (liable to reverse charge) to total turnover [col.2 of Table 3.1(d)}/Col.2 of 3.1 (a)+(b)+(c) of GSTR-3B)].

10. Ratio of ITC shown in Table 4A(5) of GSTR 3B and ITC as per GSTR-2A.

11. Ratio of tax paid under reverse charge (as per {Col.3+4+5+6 of Table

3.1(d)} to ITC taken on import of services/other reverse charge (other than import of goods) {Col.2+3+4+5 of Table 4A (2+3) of GSTR 3-B}.

12. Ratio of ISD credit {Col.2+3+4+5 of Table 4A (4) of GSTR-3B) to total ITC taken {Col.2+3+4+5 Table 4A of GSTR-3B}.

13. Ratio of ITC reversed {Col.2+3+4+5 of table 4(B) of GSTR 3B} to ITC taken {Col.2+3+4+5 of table 4(A) of GSTR-3B}.

14. Ratio of zero-rated supply to SEZ as per Table 6(B) of GSTR-1 to total GST turnover.

15. Ratio of deemed exports as per Table 6(C) of GSTR-1 to total GST turnover.

16. Turnover declared in Form GSTR-3B vis-à-vis Form GSTR-1.

17. Claim of ITC from cancelled RTPs, aggregate turnover in GST return vis-à-vis Turnover disclosed in Income Tax return.

18. Turnover declared by RTP in Form GSTR-3B compared to turnover on which TDS deducted as reflected in Form GSTR-7 submitted by TDS deductor.

19. Turnover declared by RTP in Form GSTR-3B compared to turnover on which TCS collected as reflected in Form GSTR-8 submitted by TCS collector.

20. Refund claimed against purchase from taxpayer having no autopopulation of ITC in Form GSTR-2A.

21. Purchases from non-existent RTPs.

22. RTPs having adverse reports in VAT/Service Tax/Central Excise who are operative in GST etc.)

23. In case, the RTP selected for audit has multiple registrations under the same PAN / TAN in the State, it is suggested that all such registration numbers may be selected for audit.

24. 10% of the selection of the taxpayers may be done on a random basis.

25. Relating to compliance behaviour-based risk (e.g. late filer of return)– RTPs defaulting in filing GSTR-3B for 3 months will be marked 5, those defaulting for 2 months will be marked 3.33 & those defaulting by 1 month will be marked 1.67.

26. Taxpayers claiming ITC of more than the amount from eligible ITC.

27. Taxpayers who have filed all returns and tax adjusted from cash ledger is less than an amount.

28. Taxpayers who have filed all returns and difference in tax liability in

GSTR-1 > GSTR-3b by n amount.

29. Composition tax payers having turnover more than 1.25 crore.

30. Newly registered taxpayers with high turnover more than an amount.

31. Newly registered taxpayers with turnover exceeding a pre-decided threshold and cash payout percentage below a certain threshold

32. Taxpayers with (a) multiple use of pan (b) multiple use of email id (c) multiple use of mobile no.

33. Refund amount is greater than the amount.

34. Shipping bill/export proof submitted by taxable person not verified from Ice gate.

35. Turnover declared in GSTR 3b must be compared with TDS/TCS deducted (it should be more than 100 times than TCS deducted and more than 50 times than TDS deducted).

36. Taxable persons dealing in evasion-prone commodities/services as per HSN/SAC code.

37. High spike by n amount in e-way bill value in n months.

38. Ratio of Output Tax paid in cash to the total turnover in the current year is n percentage higher to the ratio of the same in the previous year.

39. Ratio of Output Tax paid to Net Profit in the current year is "n" percent higher to the ratio of the same in the previous year.

40. Taxable Person whose Turnover is less than "n" percentage of turnover from previous year.

41. Ratio of expenses to turnover in the current year is greater than by "n" percent than the ratio of the same in the previous year.

- 42. Inward supply from bogus dealers.
- 43. Zero cash set-off against tax liability.
- 44. Inward supply received but no outward supply.
- 45. GSTR-1 submitted but GSTR-3B not submitted.
- 46. Manufactures whose cash set-off is less than 5 per cent.
- 47. Three or more cases apprehended by mobile squad.
- 48. Cancellation of E-way bill is more than 2 per cent.

## Based on Local Risk parameters/wild card entry:

Several State GST Departments have mobile squads for checking the correctness of the documents carried in support of the goods transported in the state and it is an integral part of their enforcement activity to supplement

their efforts to prevent and check tax evasion. It is the experience of the States that tax is evaded by businesses by transporting goods without documents or with fake/ invalid documents or by recycling of old documents that were not checked earlier, enabling them not to record and declare the corresponding transactions in their books. Apart from the seller and purchaser, unscrupulous transporters also form part of the network indulging in tax evasion. Based on the inputs gathered from mobile squad vigilance, risk parameters can be identified by the Officers of Anti-evasion/Enforcement wings and the corresponding tax payers may be selected for audit based on the above risk assessment. Percentage of taxpayers that may be selected on the basis of the above risk assessment may be left to the decision of the State GST Departments.

## Random selection:

Tax payers (roughly around 10%) may also be selected randomly on the basis of local intelligence networks which otherwise may not be covered strictly by the overall risk parameter selection. The discretion for selecting cases may rest with the appropriate authority of a Zone or a Division.

# **Recommendation – 02: Scope of audit**

Whether restricted to only the flagged risk parameters or all business transactions of the auditee.

Risk parameters are meant for determining the total risk score based on which registered persons would be selected for audit. When, once a registered person is selected, the audit should be carried out as per definition of 'Audit' (under Section 2(13) of the CGST Act/ KGST Act). Thus, audit would not be restricted only to the flagged risk parameters and audit should be taken up based on desk review conducted by the audit team and audit plan prepared accordingly. An efficient and effective Audit system in all aspects based on a checklist will increase voluntary compliance. A focused audit increases taxpayers' cooperation, shortens audit and improves audit yield.

# Recommendation – 03: Norms for audit and co-ordination among audit officers.

Audit of all or some of the other related registered persons in the value chain based on audit findings in selected primary cases. Norms for such action i.e., whether to have the same audit officer for all cases, approach for coordination among different audit officers, oversight etc.

State audit jurisdictions do not have an annual scheduling of Audit for a financial year. Such elasticity in planning Audit of related registered persons in the value chain based on audit findings in selected primary cases is possible. Whereas, in the CGST audit manual, the annual Schedule for audits for a financial year would be drawn at the beginning of the year and there is a need to adhere to such schedule, taking up the audits of other registered persons in the value chain based on audit findings, may not be possible during the same year. Furthermore, taking up audit of other persons in the value chain may not always yield good results unless they are part of a fake credit chain. However, if the risk scores of such registered persons in the value chain are identified to be higher, the same can be taken up for audit during subsequent audit years. Whether to have the same Audit Officer for all such cases including monitoring the same may be left to the discretion of the divisional heads or any officer authorized by the State Commissioner.

# **Recommendation – 04: Open ended assignment for Audit.**

# Audit of other years of the same auditee based on audit findings in selected cases.

In general, when a registered person is selected for audit based on risk scores arrived at for a financial year or multiples thereof, the audit is to be taken up for the entire period for which previous audit (GST audit) is not covered. It need not be restricted to a particular financial year, a complete audit by clubbing more than one financial year is to be done. In other words, a taxpayer may be subject to Audit from the un-audited period till the last return filed up to the date of visit. The Parameters to analyze data base can be ascertained by adopting the following method as -



# **Recommendation 05 - Authorization for Audit.**

Authorization of the officers for selection of cases for audit and the process for final approval of a case for audit i.e., administrative system of audit in a State including the assignment issuing authority.



Commissioner/Additional Commissioners in-charge of Audit work or any other wing entrusted with the task of monitoring audit mechanism in a State may finalize a list of 70% of the taxpayers to be taken up for audit by each Joint Commissioner (Divisional Head), based on risk scores arrived at State level. Joint Commissioner (Divisional Head), may be authorized to select 20% of the tax payers for audit based on local risk parameters and 10% of the tax payers at random based on local intelligence network. However, all such selections must be ratified by the Commissioner/Pr. Commissioner head of Audit before the audit is authorised. The issue of overall number of cases that could be taken up for audit is dealt separately. These numbers may be changed from one year to the next based on audit detections and recoveries in each of these categories.

# Note: The practice followed in CGST Audit is as under:-

The registered persons are selected on the basis of assessment of the risk to revenue. This process, which is an essential feature of audit selection, is known as 'Risk Assessment'. It involves ranking of the registered persons according to a quantitative indicator of risk known as a 'risk parameter'. Risk Assessment Programme jointly run by DG (Audit) & DGARM. Lists of

category– wise taxpayers provided by DGARM. Allocation of units as per Large, Medium and Small amongst the audit teams. Allot to the Audit teams 70% of the taxpayers out of the 80% list of Taxpayers provided by DGARM. Allot 10 % of taxpayers out of the Random list of Taxpayers amongst the Audit Teams. The remaining 20% of the taxpayers to be audited should be selected by the Audit Commissionerate based on local risk factors, after obtaining approval from the jurisdictional Chief Commissioner.

# Recommendation – 06 -Basis/criteria for allocation of cases for auditcadre, turnover

Taxable turnover-wise allocation of cases or pecuniary jurisdiction for audit may be considered based on the corresponding State's GST department's administrative architecture. Audit officers in many States are in the cadres of Deputy Commissioner, Assistant Commissioner and Commercial/State Tax Officer, while it may not be so in others. In keeping with the hierarchical structure in a State, taxpayers for audit may be assigned to the officers. Allocation of cases for audit may be based on the turnover as may be decided by the appropriate authority.

#### **Recommendation – 07 Numerical targets for Audit**

# Fixing numerical targets, both upper and lower limits, on the number of cases that are to be audited in a year by the State

For conduct of audits in a State, targets may be fixed for every year depending upon the number of officers allocated/available for conduct of audits. The calculation of target can be made by taking into account the total number of working days in a year, the norms for number of days required to complete the audit of different years and the working strength of the audit officers.

## **Recommendation – 08: Time limit for completion of Audit**

Time limit for completion of audit of various sectors: large, medium, small etc., (lesser than that mandated by the Act).

Section 65 (4) of the CGST Act/ SGST Act specifies that the audit initiated shall be completed within three months from the date of Commencement. The word commencement of audit as explained under the said subsection is the date on which the records and other documents called for by the authorities

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are made available by registered person or date of actual institution of audit whichever is earlier. However, it would be reasonable to fix a lesser duration for Audit depending upon the volume and complexity so that the limited audit resources are utilised optimally. Reliance on documents already available in the system and devising a simpler procedure for audit for certain classes of taxpayers, such as small taxpayers would also enable earlier completion of audit.

#### **Recommendation – 09: Feedback mechanism**

Feedback mechanism and its functioning – in selection of cases for audit, in the process and conduct of audit and in the acceptance of final audit report.

Feedback mechanism under the GST Audit is an important component of the GST eco-system itself; feedback obtained from the taxpayer fraternity in regard to the strength and weakness of the audit system itself will go a long way in not only fixing the rough edges, but also establishing a vibrant and robust audit system. Feedback exercise should be a regular feature in the GST administrative calendar in each and every State. Feedback can be through various modes of taxpayer engagement, such as Third Party surveys, analysis of social media feeds for keywords related to taxpayer's experience of audit, interactive online and physical sessions with taxpayers through industry chambers and associations etc.

Further feedback from each exercise should also be made systematically available to their tax managers in order to enable refinement of targeting practises, increasing audit quality and performance, and to identify areas in which audit capacity can be augmented.

## **Recommendation – 10: Audit Monitoring Committee**

Post-audit process –

- (i) Committee for review of the audit report
- (ii) recommendation for adjudication and the adjudicating authority.

**Audit is treated to be completed,** when an audit report which may contain objections detected during the audit is finalised by the Department. But before finalising the objections, the initial objections being raised by the audit officer

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may be taken up for discussion by a Committee of officers in a monthly/periodical meeting (which could be called "Audit Monitoring Committee") with regard to the sustainability/correctness or otherwise in respect of each objection. This system of AMC that may be instituted in each State department will probably reduce unproductive disputes and also standardise practices. The Audit Monitoring Committee may consist of the Joint Commissioner (Divisional Head), Deputy Commissioner, Assistant Commissioner and GST Officer (Commercial Tax Officer, Sales Tax Officer as the case may be). However, the constitution of such a committee may be decided by the State Commissioner to suit the administrative architecture in the State.

In addition to such a committee, an online exchange of Inter -zonal / Interdivisional audit insights / findings may also be a useful knowledge sharing platform. Any zone or a division which has come across interesting audit findings may make use of the said platform and update it once in fifteen days (or such frequency that can be decided by State gst administration). such information sharing would be important for identifying productive areas of audit, documents and records required for supporting a particular line of audit inquiry. it would also help to build capacity by enabling exchange of knowledge.

Adjudication authority can be established as per the administrative arrangement of each state/centre. It should be ensured that the show cause notice for the recovery of tax as decided by the audit monitoring committee may, preferably, be raised within a period of one month of the meeting. the adjudication of such show cause notices maybe completed within a period of six months. Principles of natural justice should be followed in the adjudication proceedings.

## **Recommendation – 11: Post-adjudication proceedings follow- up**

Mechanism for post-adjudication proceedings and follow-up of additional demand created, ascertaining the correctness of the order for its sustainability, putting up proper defence in appeal, etc.

Section 108 of the CGST Act/ SGST Act empowers a revisional authority to take up review of any decision taken by his subordinate officers. a Revision or Review wing under the supervisory control of jurisdictional Chief

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Commissioner (CGST) or the State Commissioner (SGST) should take up review of all adjudication orders so as to ensure there is no loss of revenue on account of some incorrect interpretations/orders. existing Revisional Authorities in the State Administration can also be entrusted with the task of review of adjudication orders. review should end in full, partial or nonacceptance of the adjudication orders, with appropriate subsequent action in each of the three events.

## **Recommendation – 12: A Central repository of audit outcomes**

# CENTRAL REPOSITORY OF AUDIT OUTCOMES:

At the Central Government level, the Director General-Audit is preparing a monthly/quarterly audit bulletin containing important audit objections raised during each quarter. The same may be considered for circulation amongst the audit officers of all the States too. **The State of Karnataka** maintains a compilation of interesting audit paras that are discussed in the <u>'IDEA-i Meet'</u> **platform (Inter Divisional Exchange of Audit insights)** held once in a fortnight. Similarly, each State may have its own mechanism of maintaining and circulating Audit outcomes. gst administrations may consider creation of a joint knowledge sharing platform that would enable exchange of knowledge, audit findings and other relevant information. such a repository would go a long way in driving convergence of taxpayer experience of audit under different GST administrations.

# Recommendation – 13: Coordination between State an Central audit officers

# Coordination between State and Central audit officers - in similar cases, similar businesses, exchange of approaches, findings, outcome in appeals etc.

A coordination cell may be established by the GST Council consisting of senior officers from the Centre and the State in order to have collaborative and cohesive strategies for audit and also to share various initiatives developed by the Centre and the State and this will certainly usher in regular sharing of best practices.

#### **Recommendation – 14: E-Audit Module**

# Role of technology in automating audit process – Connecting electronically every audit procedure seamlessly - the E-audit modules developed by States, or those in the pipeline, to introduce technology in the audit process and its interface with the audit officer and the auditee.

It is recommended that the e-audit module should attempt to capture as many functions as possible and senior administration should be able to extract all mis reports related to audits.

From the feedback submitted by various States, it is found that some of the States are preparing software requirement specification for Audit backend, based on the workflow system of Audit. Several states are also using the audit workflow created by GSTN. Some States and CGST already have functional audit modules. The functionalities that may be designed by the States should cover the entire Audit processes such as Selection, Planning, and actual conduct of Audit, Reporting, Payment, Closure and Adjudication. Capturing the data electronically at each stage of audit will probably enhance the performance of the Audit team and create intellectual and professional atmosphere.

2. The Department of Commercial Taxes, **Karnataka** has developed an automated online Audit module called *E-Shodhane Online Audit module* in collaboration with NIC, Bengaluru, *i.e.*, *www.gst.kar.nic.in/gstprime* whereby registered persons are selected for scrutiny based on risk evaluation method and the audit officers seek assignment for audit electronically. It's an end-to-end digital back office application which covers the entire audit process starting from the selection of cases to the finalisation of audit report and adjudication process with the exception of on-premises audits physically carried out by designated Audit teams. To be more precise, the Audit module is not 100% seamlessly connected electronically. Certain audit processes are to be uploaded onto the system.

3. The GSTN has also developed the GST Audit Module which is an endto-end digital back-office application that helps in carrying out the entire GST audit process electronically (with the exception of on-premises audits physically carried out by the designated Audit teams). Right from selection of

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taxpayers for auditing and assigning the same to various Audit Teams to serving the Final Audit report and/or SCN to the Taxpayer, every Audit proceeding is seamlessly connected electronically.

Some of the Model-II States are found to have adopted the GSTN Audit Module. GST Audit Modules developed by GSTN and the State of Karnataka broadly have the same features with minor tweaks as the GST Audit process is partly dictated by the GST Act itself. Therefore, E-audit Modules that may be developed by States may have these common audit tools with tweaks that conform to their administrative structure.

## AUDIT MIS APP

MIS APP is a tool which focuses on the need for sound information for decision making and which aims to find the relationship between an audit officer and their audit practice.

MIS and Audit processes are targeted at satisfying the information required for appraisal of performance of Audit Divisions on a real time basis.

MIS is a system that enables the Audit Divisional head and the Head Office or Audit Commissionerate to have access to dependable information for planning and decision making. This information could be either qualitative or quantitative or both depending on the method employed in the process.

An MIS APP Tool on the lines mentioned herein may be developed exclusively for audit officers to upload the day- to-day activities with respect to the findings of the Audit, Audit observations made, demand created, collected and the recovery made thereof. Benefits for MIS: -

MIS plays the role of information generation, communication, decision making, management, Administration, and operation of an organisation. The benefits accruable from an effective MIS could be reiterated thus:

1) The MIS App fulfils the informational needs of an Individual or a group of individuals.

2) MIS satisfies a variety of systems such as query system, analysis system, modelling system & decision support system. The MIS helps in strategic planning, management control and operational control.

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3) MIS helps in target setting like Audit disposals, recovery and Refund.

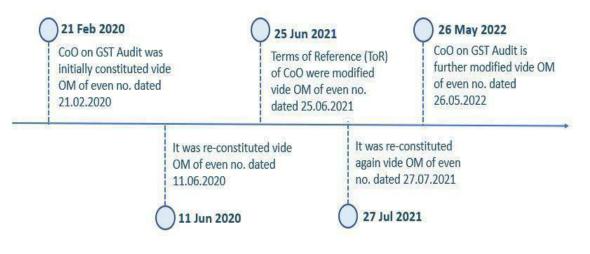
The MIS assists the Head Office or Audit Commissionerate in goal setting, strategic planning, evolving audit plans and implementation of the same.

# ANNEXURE 18 (p.x)

# Constitution and purpose of the Committee of Officers (CoO) on GST Audit<sup>1</sup> and modified Terms of reference.

#### Purpose of the formation of the Committee:

Committee of Officers (CoO) on GST Audit was constituted in pursuance of discussion and decision in the 1st National GST Conference held on 25.11.2019 to have joint & collaborative efforts for GST Audit; capacity building for audit and to follow uniform practices for GST Audit in Centre and State Tax administration. Timeline with respect to the Committee of Officers is presented below.



#### Initial Terms of Reference (ToR)

To prepare a **comprehensive All India GST Manual** taking into account procedures & practices in vogue in different States and Centre;

To explore having **joint and collective GST Audit** by Centre & State for the taxpayers in many sectors that have all India presence like Telecom, Airlines, Banking, Railway etc.;

To explore **conducting thematic audit** by both tax administration;

Using capability of data analytics developed by DGARM for identification of State taxpayers for audit;

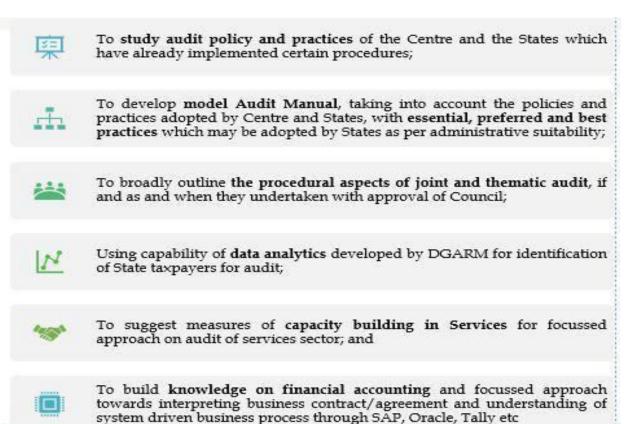
To suggest measures of capacity building in Services for focused approach on audit of Services sector; and

To **build knowledge on financial accounting** and focused approach towards interpreting business contract/agreement and understanding of system driven business process through SAP, Oracle, Tally etc.;

#### <sup>1</sup> (From the Presentation of Ashima Bansal, Joint Secretary GST Council)

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# Modified Terms of Reference (ToR):



SI. No	Name of the Member	Designation
1	Dr. Ravi Kumar Surpur [ <b>Co-Convenor</b> ]	Commissioner of Commercial Taxes, Rajasthan
2	Smt. Shikha C.	Commissioner of Commercial Taxes, Karnataka
3	Shri Samir Vakil	Special Commissioner, State Tax, Gujarat
4	Shri Anil Banka	Special Commissioner of State Tax, NCT of Delhi
5	Shri Amit Gupta	Additional Commissioner, State Tax, Uttarakhand
6	Shri Ravi Jesuraj S.	Additional Commissioner of Commercial Taxes, Karnataka
7	Shri Arun Kumar Mishra	Special Secretary, State Tax, Bihar
8	Shri Prasad Joshi	Joint Commissioner, State Tax, Maharashtra
9	Shri C. Palani	Joint Commissioner, State Tax, Tamil Nadu
10	Shri Narayan Chandra Guriya	Joint Commissioner, State Tax, West Bengal

# Members (State):

11	Shri Vivek Singh	Joint Commissioner, State Tax, Uttar Pradesh
12	Shri K. Sridhar	Deputy Commissioner (ST), Puducherry

# Members (Centre/GSTC/GSTN)

SI. No	Name of the Member	Designation
1	Dr. Amandeep Singh [Convenor]	Addl. DG, DG Audit Headquarters, CBIC - [Convenor]
2	Shri Sanjay Mangal	Pr. Commissioner/ Commissioner, GST Policy Wing, CBIC
3	Shri Rajiv Jain	Pr. Commissioner, Meerut
4	Shri Nitish Kumar Sinha	Principal ADG/ADG, DGGI Headquarters, CBIC
5	Shri Gurusharan Singh	Pr. ADG/ADG, DG Analytics & Risk Management
6	Shri Yogendra Garg	Pr. ADG/ADG, NACIN, Faridabad
7	Shri Dheeraj Rastogi	EVP, GSTN
8	Smt. Ashima Bansal	Joint Secretary, GST Council Secretariat
9	Shri Kshitendra Verma	Director, GST Council
10	Shri Karan Chaudhary	Under Secretary, GST Council

# **Annexure-III**

# Thematic Audit

# **1.** Introduction

Purpose of Theme-based audit is to conduct "focused audit" instead of a "comprehensive audit", so that available resources are directed to check/ verify compliance of sensitive issues or sectors. The results obtained from theme based audit assists the policy makers to assess compliance level of a particular type of service/industry or trade sectors or areas so that compliant sectors may be extended greater facilitation and special focus may be directed to ensuring compliance on sectors with relatively low compliance scores. It is a value-adding approach that helps the Auditors to determine, consolidate and report high-level insights in the business transactions and practices prevalent in a particular type of industry/service sector. Theme-based audit may have both compliance and performance audit objectives.

The various scenarios which may necessitate conducting thematic audit are as follows:

- Taxpayers in the same supply chain registered in same/different states;
- Simultaneous audit of units which have same modus operandi of tax evasion and are registered across states;
- Taxpayers dealing in supply of some goods/services which have also been determined as evasion prone.
- Thematic audit may also extend to specificity like trends in availment and utilisation of ITC in any given sector e.g. telecom sector, trends in valuation of supplies to distinct persons in the pharma sector, etc.

# **2.** Constitution of co-ordination committee

For conducting thematic audit, GST Council may form a co-ordination committee at all India level which should choose themes for conducting audit, constitute a Committee of Officers for selecting taxpayers in a state for conducting thematic audit, coordination among various Audit Authorities for evolving a common minimum audit plans for a given theme and, monitor actual audit by the field formations and disseminate audit outcome to appropriate stakeholders.

It is recommended that the co-ordination committee may be constituted with the following as its members:

• Pr. DG/DG (Audit) or any Pr. Additional Director General (Audit) / Additional Director General (Audit) as nominated by him;

- Joint Secretary, GST Council;
- Pr. Commissioner/ Commissioner (GST), GST Policy Wing;
- CEO, GSTN;
- Three Commissioners of SGST, as nominated by the GST Council;
- One CGST (Audit) Commissioner as nominated by the GST Council.

The co-ordination committee shall be responsible for selecting themes for conducting theme based audit at all India level in a coordinated manner. For selecting the Audit themes, the Committee may consider using the following parameters/ data sources:

Parameters which emerge from the systematic and methodical risk analysis conducted by GSTN, DGARM, ADVAIT and the state revenue intelligence units/economic intelligence units.

- Economic indicators;
- Third party information from Tax authorities and other Regulatory authorities;
- Sensitive nature of the commodity and / or service;
- Risky sectors in news for frauds for e.g., E-commerce, online gaming, jewellers etc;
- Sectors directly involved in providing services to a large consumer base, such as banking, insurance, air and land travel, utilities etc.
- Sectoral revenue and value addition trends and variations therein

In addition to above, risky themes identified by the State and Central Tax Authorities based on local intervention can also be used for determining a local theme. Certain risk - based parameters may also be adopted for selection of Taxpayers for conducting theme -based audit such as:

- Taxpayers showing abnormal growth;
- High revenue contributing Taxpayers;
- Sectors/units flagged by the CAG or PAC or otherwise where credible information is available to point out that the provisions of the Act are not being followed or where issues like place of supply issues or point of taxation are cropping up;
- Taxpayers availing benefit of major exemption notification;
- Sectors with low cash pay-out

• Taxpayers engaged in supply of risky and sensitive commodities and services viz., advertising services, event management services, metals, chemicals, enter-tainment services and Health & education related auxiliary services etc.

# **3.** Constitution of Committee of Officers

For coordination of actual audit, the Co-ordination Committee may constitute a Committee of Officers (CoO) for each state/ UT composed of the following three members:

- State GST Commissioner
- CGST Audit commissioner preferably located at the same station

The Committee of Officers shall select the Taxpayers based on the themes which have been finalised by the Coordination committee. The details of the taxpayers so selected, will be shared with Audit formations of the Central and State tax authorities for conducting audit proceedings.

# **4.** Role of Audit field formations (of Central and State Tax) for conducting audit

Theme-based audit of a selected Taxpayer would be conducted by the concerned GST audit authority (i.e. the jurisdictional central or state audit officer).

Considering the importance of thematic audit, it is imperative to allocate appropriate resources/staff in each of the Audit formation. The Head of the Audit formation in the State/Centre may like to specifically earmark appropriate staff (Audit Groups) exclusively for Thematic Audit. Even separate nomenclature may be adopted for such audit groups. It is emphasised that the Audit groups should be provided with proper infrastructure for efficient handling of the Audit work. Audit groups dealing with Thematic Audits should be given proper training to deal with audit of records of the taxpayers of these themes.

# **5.** Standard Operating Procedure (SOP) for conducting Theme based Audit.

a. The Co-ordination Committee (CC) shall select the themes for Audit and communicate the Themes to the Committee of officers (CoO) responsible for Audit.

b. For a given theme, the committee of officers shall select the tax payers to be audited in that particular state.

c. Audit groups earmarked for conducting the theme based audit shall request the selected tax payer(s) for providing necessary documents viz. Balance sheet(s), 3 CD reports(statement of particulars required to be furnished under Section 44AB of the Income Tax Act, 1961), profit and loss statements, income tax returns etc. The concerned audit group shall also take out various GST returns filed by the said taxpayer and examine/scrutinise them. They will accordingly prepare the Desk Review (DR) and also the Audit Plan (AP). As with entity-based audit discussed in earlier section above, as much data as possible may be gathered from the documents/returns already available in the system.

d. All such Audit groups (both under Centre and State tax authorities) shall forward the proposed audit plan so prepared by them, to the Committee of Officers which shall examine these audit plans to ensure uniformity in approach and provide further inputs, if any. After this exercise, a common minimum Audit Plan shall be prepared and communicated to all Audit Groups for conduct of audit.

e. The Committee of Officers shall also indicate a date on which audit of all such taxpayers irrespective of their jurisdiction (whether under Centre or State) shall commence.

f. After conduct of audit, all the Audit Groups shall prepare their observations and convey to the taxpayer (s) for their written response to these observations. In their written response, the taxpayer is expected to communicate their agreement or disagreement as the case may be to the observations pointed out by the Audit Group. After taking into account the written response from the taxpayer, the Audit Group shall prepare the draft audit para(s).

g. The Audit Group shall forward their draft audit para(s) to the Committee of Officers for approval. Before approving the draft audit para(s), the Committee of Officers may hold a meeting (physical/virtual) with concerned audit groups. This Committee may also point out certain additional areas which need to be looked into by the audit groups before finalising the audit paras.

h. Once draft audit para(s) are approved by the Committee of Officers, the audit group (s) shall present their draft audit report before their respective Audit Authorities for approval. The Audit Authorities may adopt a practice of holding monthly meetings of the monitoring committee for approval of audit paras presented by their audit groups. At present, Central Tax Authorities are holding monthly meetings of the monitoring committee consisting of Commissioner (Audit), Joint Commissioner/Additional Commissioner (Audit) and Assistant/Deputy Commissioners heading various Audit Circles wherein audit objections are discussed and approved.

i. Once audit para(s) are finalised after approval of the Monitoring Committee, the concerned audit officers/groups shall issue Final Audit Report (FAR), a copy of which shall also be endorsed to the coordination committee for dissemination to Central Tax Audit Commissionerates /State Audit Officers across India for information.

j. The audit paras which have been agreed upon by the taxpayer shall be closed after payment of the due tax amount along with appropriate interest and penalty, if any.

k. As regards unpaid/short paid GST is concerned where the taxpayer is not in agreement with the audit para and is not willing to pay outstanding GST along with interest and penalty, the audit groups shall prepare demand cum show cause notice to be adjudicated by the appropriate Tax Officer. Before issue of demand cum show cause notice, the taxpayers may be given pre-consultation so as to give them one more opportunity to explain their point of view to the senior tax officers before a final decision is arrived at. The Tax Authorities may also use this opportunity to explain the department's view point to the taxpayers and encourage them for voluntary compliance. This will reduce unnecessary litigation which is good for both the taxpayer as well as government.

1. After adjudication proceedings, recovery action against the taxpayer shall be taken by the appropriate jurisdictional tax authority (i.e. Central Tax Commissionerates or State Tax Jurisdictional Authority) in accordance with Section 79 of the CGST/SGST Act read along with relevant rules and provisions issued therein.

m. The jurisdictional tax authorities shall upload the audit findings (in a predetermined format), in an Audit Utility which shall be accessible to all the Audit formations across the country. These findings may be helpful in detecting similar type of anomalies in similar cases across the country.

# 2. Joint Audit

# Introduction

It is possible that some taxpayers registered on the same PAN may be spread across multiple locations either within the same State or across States of India. These multi-location taxpayers may fall under different tax administrations, particularly so in case of multi\_state operators. Therefore, there is a need to ensure a coordinated approach for conducting audit of such multi-location taxpayers.

It is proposed that the Coordination Committee constituted by the GST Council for the purpose of thematic audit may also be entrusted with the work of coordinating joint audit. From the available database provided by GSTN, the Coordination Committee may select certain taxpayers under this category for joint audit. It is proposed that the taxpayers may be selected for joint audit based on clear and mutually agreed criteria/risk parameters between different tax administrations. Examples of such criteria include:-

- Registration in two or more GST Tax administrations.
- Entities above a certain turnover aggregate threshold, for example, more than Rs. 100 Crore.
- Taxpayers dealing in service industry, having national or multi state operations. Inter-agency coordination failure in the aforementioned cases may lead to lack of uniformity in interpretation of law leading to compliance hassles for the taxpayer and increased litigation for the department. Therefore, there is a need for well-defined procedures to delineate the modalities of conducting theme-based audit.

The Coordination Committee may also adopt any other parameters/criteria for selecting taxpayers for joint audit.

# 2.1 Committee of Officers (hereinafter referred to as Supervisory Committee)

For the purpose of actual audit, the Coordination Committee may constitute a committee of officers for supervising joint audit of a multi locational taxpayer. It is proposed that this committee may comprise the following:-

- The Commissioner (SGST/CGST) of the jurisdiction where the headquarter of the said company/business entity is located.
- The Commissioner (SGST/CGST) of the jurisdiction having highest risk score in the GSTINs of the company/business entity.
- The Commissioner (SGST/CGST) of the jurisdiction other than the above two where the turnover of the GSTIN of the said PAN is the highest.
- The Commissioner (SGST/CGST) of the jurisdiction other than the above three where the ITC utilisation of the GSTIN of the said PAN is the highest. (If it is the same as the unit where the highest turnover is then this criteria does not come into play)
- The Commissioner (SGST/CGST) of the jurisdiction where the selected company/business entity maintains its compliance and financial records.

# 2.3 Standard Operating Procedure for conducting Joint Audit

a. The Co-ordination Committee shall select the multi-locational taxpayers for joint audit and communicate the same to the concerned Supervisory Committee. This should be done no later than the month of February for the next financial year. This Committee in turn will intimate the jurisdictional Audit Authorities to allocate the selected taxpayer to a particular audit group for conduct of audit.

b. The nominated Audit group shall request the taxpayer for providing necessary documents viz. Balance sheet(s), 3 CD reports (statement of particulars required to be furnished under Section 44AB of the Income Tax Act, 1961), profit and loss statements, income tax returns etc. The concerned audit group shall also take out various GST returns filed by the said taxpayer and examine/scrutinise them. They will accordingly prepare the Desk Review (DR) and also the Audit Plan (AP). As recommended in para 10.7 above any documents not available with the taxpayer administration/GSTN/other regulators should be sought from the auditee.

c. All such Audit groups (both under Centre and State tax authorities) shall forward the proposed audit plan to the Supervisory Committee which shall examine these audit plans to ensure uniformity in approach and providing further inputs, if any. After this exercise, a common minimum Audit Plan shall be prepared and communicated to all Audit Groups for conduct of audit.

d. The Supervisory Committee shall also indicate a date on which audit of all such taxpayers irrespective of their jurisdiction (whether under Centre or State) shall commence. An effort should be made to start and conclude the audit within 3 months and at any rate, within the same financial year.

e. After conduct of audit, all the Audit Groups shall prepare their observations and convey to the taxpayer(s) for their written response to these observations. In their written response, the tax payer is expected to communicate their agreement or disagreement as the case may be, to the observations pointed out by the Audit Group. After taking into account the written response of the tax payer, the Audit Group shall prepare the draft audit para(s).

f. The Audit Group shall forward their draft audit para(s) to the Supervisory Committee for vetting. Before vetting the draft audit para(s), this Committee may also hold a meeting (physical/virtual) with concerned audit groups. The Committee may also point out certain additional areas which need to be looked into by the audit groups before finalising the audit paras.

g. The Supervisory Committee shall, before finalising the audit paras, resolve any inconsistency or conflicting interpretation on any point of law made by the different audit teams and recommend modification of such interpretations accordingly and the audit teams shall suitably incorporate them in their report.

h. Once draft audit para(s) are vetted by the Supervisory Committee, the audit group(s) shall present their draft audit reports before their respective Audit Authorities for approval. The Audit Authorities may adopt a practice of holding monthly meetings of the monitoring committee for approval of audit paras presented by their audit groups. At present, Central Tax Authorities are holding monthly meetings of the monitoring committee consisting of Commissioner (Audit), Joint Commissioner / Additional Commissioner (Audit) and Assistant/Deputy Commissioners heading various Audit Circles wherein audit objections are discussed and approved.

i. Where it is felt that different audit authorities are adopting different opinions with regard to approval of audit para in their respective monitoring committees, the role of the supervisory committee will come into the picture. It is proposed that they may hold meetings with all CGST Audit Commissioners/State GST Commissioners quarterly or more frequently, if needed for establishing a uniform approach in this regard across tax jurisdictions in India.

j. Once audit para(s) are finalized after approval of the Monitoring Committee (or Supervisory Committee), the concerned audit officers/groups shall issue Final Audit Report (FAR), a copy of which shall also be endorsed to the Supervisory Committee for dissemination to Central Tax Audit Commissionerates/State Audit Officers across India for information.

k. The audit paras which have been agreed upon by the taxpayer shall be closed after payment of the due tax amount along with appropriate interest and penalty, if any.

1. As regards unpaid/short paid GST is concerned where the tax payer is not in agreement with the audit para and is not willing to pay outstanding GST along with interest and penalty, the audit group shall prepare demand cum show cause notice to be adjudicated by the appropriate Tax Officer. Before issue of demand cum show cause notice, the taxpayer may be given pre-consultation so as to give him/her one more opportunity to explain his/her point of view to the senior tax officers before a final decision is arrived at. The Tax Authorities may also use this opportunity to explain the department's view point to the taxpayer and encourage him/her for voluntary compliance. This will reduce unnecessary litigation which is good for both the taxpayer as well as the government.

m. After adjudication proceedings, recovery action against the taxpayer shall be taken by the appropriate jurisdictional tax authority (i.e. Central Tax Commission-

erates or State Tax Officers) in accordance with Section 79 of the CGST/SGST Act read along with relevant rules and provisions issued therein.

n. The jurisdictional tax authorities shall upload the audit findings (in a predetermined format), in an Audit Utility which shall be accessible to all the Audit formations across the country. These findings may be helpful in detecting similar types of anomalies in similar cases across the country.

# Annexure-IV

# REPORT ON USING CAPABILITY OF DATA ANALYTIC DEVELOPED BY DGARM FOR IDENTIFICATION OF STATE TAXPAYERS FOR AUDIT

#### TERMS OF REFERENCE OF THE COMMITTEE

The Committee of Officers (CoO) on GST Audit constituted as per decisions taken in1<sup>st</sup> National GST Conference on 25.11.2019 has constituted sub-committees to work in respect of terms of reference of the CoO on GST. This sub-committee has been constituted to study, examine and make suggestions on the issue of 'using capability of Data Analytic developed by DGARM for identification of State Taxpayers for Audit'. Consequently, a meeting of the sub-committee was held on 04.06.2020to deliberate on the issue.

#### **DELIBERATIONS & DECISIONS OF THE COMMITTEE**

2. As mandated by the Committee of Officers (CoO) on GST Audit, Shri Sanjay Gupta, ADG, DGARM provided the perspective of the data analytic task completed by DGARM. He apprised the Committee members about the capabilities of data analytics developed by DGARM in identifying the risky taxpayers for GST Audit.

3. He informed that a high powdered Risk Engine Committee was formed by CBIC to identify the risk parameters. The committee discussed the trends of tax compliance in GST regime and deliberated upon the risk scenarios and risk parameters associated with these scenarios. The broad principles adopted by the Risk Engine Committee for identification of risk parameters were as follows:

- a) Selection of only normal taxpayers, i.e. the taxpayers who are required to file GSTR-1/GSTR- 3B returns.
- b) Selection of only those taxpayers who had filed >04 GSTR-3B returns in the financial year.
- c) Taxpayers divided in to three segments namely Large/Medium/Small for comprehensive coverage based on turnover.

- d) The Committee identified 28 risk parameters to identify risky taxpayers for audit including Entity level risks, risks associated with compliance behavior, various ratios and export details etc.
- e) All risk parameters were based on internal data i.e. GST, customs and erstwhile Central excise and Service tax
- f) The weightage of each parameter varies depending upon its importance in selection of risky taxpayers.
- g) For the purpose of selection, comprehensive risk score, total score emerging from all the risk parameters to be calculated
- h) A taxpayer with higher Risk Score is considered more risky. Within the same risk score, a taxpayer with more Declared Liability is considered riskier.
- The Committee identified 28 risk parameters to identify risky taxpayers for audit including Entity level risks, risks associated with compliance behavior, various ratios, export details
- j) The risk score to be calculated annually for selection of risky taxpayers
- k) 70% of the tax payers are selected for Audit based on risk scores
- 10% of the selection of the tax payer are be done on random, using statistical techniques, out of the remaining taxpayers
- m) The jurisdictional Commissioner may also select 20% of the taxpayers for audit based on local inputs and the criteria suggested by DG (Audit)
- n) The identified taxpayers with complete details of relevant data areshared in the form of a report through on-line portal along with Advisory explaining the reasons for selection of each tax payer

4. Based on these parameters, about 45000 risky taxpayers were identified and shared on online portal with the field formations of CBIC for selection to conduct GST audits for FY 2017-18. An advisory was also issued giving reasons for selected taxpayers. 5. He further informed that for the GST Audit of FY 2018-19, a fresh Committee has been constituted by CBIC to review/re-calibrate the risk parameters view of the relevance of certain risk parameters and availability of comparative GST data for two FYs. The Committee has fine-tuned the earlier parameters on the basis of learning acquired from past experience and availability of external data source now. The present Committee has submitted its recommendations on 23<sup>rd</sup> May 2020. The revised parameters are under consideration of the board and likely to be approved soon.

6. He further informed that DGARM has capabilities of identifying risky taxpayers for GST Audit falling under state jurisdiction; that for GST Audit for FY 2017-18, DGARM identified risky taxpayers for audit for few states on specific request and shared the output with the respective states.

7. Ongoing through the details of the identified risk parameters, the Committee was convinced about the usefulness of risk parameters for Audit identified by DGARM. There was a view to evolve a permanent mechanism by DGARM to identify the risky taxpayers falling in state jurisdiction and share the lists of risky taxpayers for audit with respective states on permanent basis. It was also suggested to share risk parameters with the states.

8. The Committee also discussed the effectiveness of the new product developed by NIC, i.e. 'GST Prime' being used by Karnataka state for risk-based audit selectionand if there will be overlapping of risk parameters being used therein vis-s-vis the risk parameters used by DGARM. States may choose any other risk parameter which they consider appropriate.

9. The Committee also deliberated on the importance of local parameters visà-vis risk parameters selected by CBIC for selection of taxpayers for audit.

10. After detailed discussions & deliberations, the committee recommended the followings: -

a) As informed by ADG, DGARM, there is capability and expertise with them to identify the risky taxpayers for Audit falling in states'

jurisdictionusing approved risk parameters. He also informed that parameters for FY 2017-18 is final and for FY 2018-19, they are in very advanced stage of finalisation. If any State wants DGARM to select the risky taxpayers list for them, the state should make a specific request to DGARM. DGARM will identify risky taxpayersbased on approved parameters for them and share the list with the state along withrisk scores and risk parameters.

- b) For the states who opt, DGARM may evolve and establish permanent mechanism to identify risky tax payers falling under their jurisdiction.
- c) If any state only wants risk parameters to be shared with them and they do not want DGARM to identify risky taxpayers for them, DGARM may share approved risk parameters with them.
- d) Risk parameters keep evolving over a period of time with feedback and detection of newer modus operandi. Further there may be some local risk factors relevant in their jurisdiction. Thus the States must have the authority to select its own additional risk parameters developed from their expertise, experience and knowledgefrom time to time. However, if any State wants to select the taxpayers list for audit by using expertise of DGARM, we have no objection in such matter.

# Annexure-V

#### Agenda of the Sub-Committee

- In pursuance of decision in the 1st National GST Conference held on 25.11.2019 to have joint & collaborative efforts for GST Audit; capacity building for audit as well as to follow uniform practices for GST Audit in Centre and State Tax administration, a committee of Officers (CoO) on GST Audit was constituted vide OM of even no. dated 21.02.2020.The modified Terms of reference (ToR) for Committee of Officers (CoO) on GST Audit was issued vide Office Memorandum F. No. 350/Future Initiative/GSTC/2019 dated 25.06.2021. Vide Office Memorandum F. No. 350/Future Initiative/GSTC/2019 dated 27.07.21 the CoO was reconstituted. This subcommittee has been constituted to suggest measures of capacity building in Services for focused approach on audit of services sector
- 2. The issues to be covered in the above ToR are-
  - Training Capacity and frequency of training to be identified.
  - Nodal officers from States and ZTIs of NACIN to be identified for the training needs
  - Specific service sectors to be identified and its training needs and resources to be finalised.
  - A Committee of officers to be created to prepare training modules for specific identified sectors in consultation with the states
  - Access to relevant training modules in iGOT to be provided to the State
  - Faculty for imparting training needs to be identified
- 3. Above issues are further categorized in two specific areas
  - 1. Training and Capacity building
  - 2. Identification of Specific Service Sectors for focused training

#### **Training and Capacity Building**

The erstwhile VAT did not have service sectors therefore it has been felt that officers of State GST needs to be trained specifically in service sectors which needs to be identified by the states and NACIN will draw a program to train the Master Trainers for each state based on the requirements of those states. NACIN through its Zonal Campus are already conducting bi-monthly training course on GST Audit & Accounting and one training program for Master Trainers of GST Audit has already been conducted.

This training program will identify

- The frequency with which the training program needs to be conducted by NACIN for the master trainers as well as for the other officers.
- Nomination of Nodal officers from States for identification of Training needs
- Training on specific service sector which has been identified by the respective State GST (around top 5 services)
- Identification of officers to create proper training modules for identified specific service sectors.

The above needs shall be identified in coordination with the State GST by the ZTI NACIN. The identification and the program shall be continuous one where the SGST can even rotate the master trainers and officers to create training module on specific sectors based on their requirement.

The frequency of the training program will be shared by State GST based on their requirements and the officers which needs to be trained.

This training program will be in addition to the regular training program on GST Audit.

Since there are multiple type of services being supplied by business entities therefore it is also suggested that the process flow along with the case study of that service sector shall be part of the training program. For eg, banking sector and insurance sector are giving multiple services therefore there is a need to explain and train the officers on the overall work flow of the services so that the holistic picture of the services being supplied is available to the officers.

This work flow of the services needs to align with the GST Act so that the officers shall understand the services which are taxable and which are exempted. They shall also understand the concept of mixed and composite supply in the gamut of services being supplied. NACIN in coordination with the State GST will identify the specific service sectors where there is a need to train the officers for capacity building. It is also suggested that since there are multiple services being offered by the business entities therefore there is a need to understand the supply in accordance with the GST law and procedures. In this regard supply of services needs to understand properly and various concepts like time of supply, place of supply, mixed vs. Composite supply, taxable and exempted supply etc. needs to be focused upon so that the model of the sector along with the taxability is clear to the officers.

For identification of the specific sectors it is recommended that a Committee at the zonal level shall be formed with the following as its Members

- ADG NACIN ZTI
- Commissioners of State GST or his representative

This Committee shall decide the sectors which needs to be focused upon. Further the committee shall meet every quarter to review the specific sector areas.

Some of the sectors which have been identified where there is a need for training are

- 1. Work contract
- 2. E commerce Services
- 3. IT & ITES
- 4. Banking & Insurance
- 5. Hospitality
- 6. Telecom
- 7. Online Information Database access & Retrieval(OIDAR)

It is recommended that the industry experts along with the officers may be involved in the training program to understand the specific sector model.

## Annexure-VI



To Build Knowledge on Financial Accounting and Focused Approach towards Interpreting Business Contract / Agreement and Understanding of Systems Driven Business Process through SAP, Oracle, Tally Etc.

> **REPORT SUBMITTED BY SUB - COMMITTEE ON GST AUDIT**

> > January 2022

SANDEEP PRAKASH & NITISH KUMAR SINHA, PRINCIPAL ADG, DIRECTORATE GENERAL OF GST INTELLIGENCE, CBIC Prasad G. Joshi, JOINT COMMISSIONER, MAHARASHTRA Sanjay Kumar Pathak & Anjani Kumar Agrawal, JOINT COMMISSIONER, UTTAR PRADESH K Sridhar,

DEPUTY COMMISSIONER, PUDUCHERRY

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## A. Agenda of the Sub-Committee

A.1 The Committee of Officers (CoO) on GST Audit constituted as per decisions taken in 1<sup>st</sup> National GST Conference on 25.11.2019 has constituted sub-committees to work in respect of terms of reference of the CoO on GST. This sub-committee has been constituted to study, examine and make suggestions on the issue of 'To build knowledge on financial accounting and focused approach towards interpreting business contract/agreement and understanding of systems driven business process through SAP, Oracle, Tally etc.'

A.2 Above agenda can be subdivided into three issues, namely-

- Building knowledge on financial accounting
- Focused approach towards interpreting business contract / agreement
- Understanding of systems driven business process through SAP, Oracle, Tally etc.

A.3 Above issues are discussed in brief in the ensuing pages. The discussions are based on the knowledge and experience gained over the past few years and are augmented with the various sources from the web.

#### B. Building knowledge on financial accounting

#### B.1 Introduction

B.1.1 Accounting is reporting through financial statements. It is the process of recording, summarizing, and reporting the myriad of transactions resulting from business operations over a period of time and results in the preparation of Financial Statements (including Balance sheet, Profit & Loss account etc.).

B.1.2 Financial of accounting is keeping track а company's financial transactions. Using standardized guidelines, the transactions are recorded, summarized, and presented in a financial report or financial statement such as an income and expenditure statement, trading and P & L account and a balance sheet. GST Audit basically refers to examination of various records, returns and other documents maintained or furnished by the auditee, like

(a) Monthly/ Quarterly/ Annual Return;

(b) Copy of the audited annual financial statements;

(c) Reconciliation statement, reconciling the value of supplies declared in the Annual return furnished for the financial year with the audited annual financial statement in FORM GSTR 9C, etc.;

(d) Such other particulars, as may be prescribed.

#### B.2 Audit in GST

B.2.1 While implementing the GST Law, the GST officers come across the financial accounts of the taxpayer. Taxpayers' business consists of his daily transactions of outward or inward supplies, and each transaction may have GST implications i.e. either levy of GST or the claim of legitimate and eligible ITC or the GST by way of RCM. Hence, the GST officers are required to have a working knowledge of financial accounting, on the basis of which entire business transactions are recorded and compliance is made by the taxpayer.

B.2.2 GST audit casts a huge responsibility on the auditor for detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized etc. Hence, it is very important that the auditor possess a good understanding of accounting fundamentals as well as sufficient accounting skills to read and analyze financial statements. Further, there are several transactions which may not appear in the financial accounts and records maintained by the registered persons such as stock transfers, free samples, services received from outside India from related parties, other supplies made without consideration, etc. Due care must be exercised by the auditor to identify such transactions as there may be no direct reference to these transactions in the financial records. Another skill that is very important is being able to link the 3 financial statements, i.e., income statement, balance sheet, and cash flow statement.

B.2.3 Following are various aspects of financial accounting having impact on GST, which have to be examined and analyzed by the auditor thoroughly:

- Identification of various types of Income (Taxable, Exempt, Export, SEZ supplies, Other Income, Reimbursements etc.) of companies in respect of Supply of Goods and Services.
- Study of various items of balance sheets that impact GST like Capital Account (Withdrawal of assets, Debits/credits in nature of supplies), Loans (Figures in odd amounts, standing for long, No interest, No movement), Current liabilities (Advances, RCM, reversal of ITC), GST paid on RCM, Mismatched Credits, Other credits in dispute, Duty Paid on Exports and so on.
- Understanding of "Notes to Accounts" in financial statements which would help in understanding the business of the entity, Taxes / Contingent Liabilities, Cost or Net Realizable Value (Assistance in valuation provision under GST), Information about related parties & Payments made to Related Party / Key Managerial Personnel, Payments made to Foreign subsidiaries/ Associated concerns, Valuation of Inventory etc.
- Analysis of various accounting ratios (like Net profit ratio, Gross profit ratio, Supplies/Turnover ratio, Creditor Turnover ratio, ITC/ gross tax liability ratio, Non-GST expenses/GST expenses ratio, Addition to fixed assets/Total assets ratio etc., Liquidity/Solvency ratios to indicate areas of probing.
- Indian companies follow Indian Accounting Standards, while the companies operating in the US follow the Generally Accepted Accounting Principles (GAAP) and companies with international exposure follow International Financial Reporting Standards (IFRS). Hence, it is imperative to familiarize the Auditors to these accounting/ reporting Standards.

- Different software tools are available for conducting an audit, and the one appropriate to the financial accounting must be chosen or designed for the auditor.

B.2.4 In this context, it is relevant to note that the importance of evaluating the internal mechanism of the entity under audit cannot be over-emphasised. Evaluation of internal control system is a very important step in the actual conduct of audit as it enables drawing of correct samples for auditing and effective targeting of risk areas. Internal control mechanism is actually the sum total of all policies and procedures which are adopted by the entity in order to achieve the objective of "orderly and efficient conduct of its business", including safeguarding of assets, prevention and timely detection of any fraud/error, ensuring accuracy and completeness of recording, classification and disclosure of transactions.

B.2.5 Essentially, the efficacy and effectiveness of internal control mechanism provides a reasonable assurance to the auditor as to the degree of reliance that can be placed on the accounts and financial statements of the auditee. Based on his assessment of the effectiveness of such mechanism the auditor can draw appropriate samples for subjecting them to detailed scrutiny and verification.

B.2.6 The internal control system with regard to accounting have the following objectives: -

- → that ALL transactions are RECORDED
- $\rightarrow$  that recorded transactions are REAL
- $\rightarrow$  that ALL transactions are RECORDED TIMELY
- $\rightarrow$  that all recorded transactions are PROPERELY VALUED
- $\rightarrow$  that all recorded transactions are PROPERELY CLASSIFIED & POSTED
- $\rightarrow$  that all recorded transactions are PROPERELY DISCLOSED
- → that all recorded transactions are PROPERELY SUMMARISED

B.2.7 Internal control mechanism provides reasonable assurance, not only to the auditor but also the management, that all essential aspects of all transactions have been properly and appropriately recorded and that there are no material errors of omission or commission. Internal control mechanism can be evaluated through appropriate questionnaires, check lists and through a study of the business process adopted by the entity. It is recommended that such an exercise should be undertaken before commencing the audit and verification process and the outcome of the evaluation exercise should be utilized for deciding the scope and extent of audit and also for identifying which areas of the operations the auditor must specially focus on.

## B.3 Understanding the nuance: A perspective through Accounting Standards

B.3.1 The GST Officer, while looking into the financial statements of a Taxpayer/ Company, should first understand the accounting standards applicable to the Taxpayer/company. There could be differences in the manner of the accounting and treatment of certain transactions as per Accounting Standard in the financial statements vis-à-vis the treatment under GST. This can lead to difference in turnover as per GST law and the principles of accounting. This could be better understood through the following example:

### **B.3.2** Time of Supply Recognition from the GST Perspective:

B.3.2.1 As per the provisions of CGST Act, in respect of 'Time of Supply of Goods' revenue shall be recognized as per Section 12 and in respect of 'Time of Supply of Services' as per Section 13 of the said Act. The Value to be considered for such transactions is as per the provisions of Section 15 of the CGST Act. However, primarily GST is triggered when the entity makes supply of goods or services or both. The definition of supply under GST is very comprehensive and includes sale, transfer, barter, exchange, rental, lease, disposal, stock-transfer etc.

B.3.2.2 On the contrary, in 'financials' revenue is recognized when the goods are sold, or services are rendered. No revenue is recognized when the fixed assets are sold / disposed of, except for profit on sale of such assets or when goods are transferred to the branches.

B.3.2.3 For instance, from an accounting standpoint, revenue from sale of goods is recognized when significant risks and rewards in the goods is transferred by the seller to buyer while in case of services revenue is recognised either on proportionate completion method or completed service contract method. These events may not correspond to the time of supply set out in sections 12, 13 and 14 of the Act and, accordingly, revenue as per the books of accounts may differ with that under GST law.

B.3.2.4 This leads to the concept of billed/unbilled revenues and prior period items.

### **B.3.3** Value of Supply recognition from a GST perspective

B.3.3.1 Such transactions would result in difference between the revenue reported under GST when compared to the 'financials'.

B.3.3.2 Value of supply of goods or services or both under Section 15 of GST law is the transaction value i.e. the price actually paid or payable for the said supply and would include any duties and taxes paid under any other law other than GST, incidental expenses incurred to meet such supplies, interest charged, if any, etc.

B.3.3.3 Valuation of contracts under Indian Accounting Standards (Ind AS) might differ on certain aspects from GST Laws. For example, the contract value may not include any duties and taxes paid which is refundable, interest on delayed payment, expenditure incurred by the recipient etc. These differences might lead to differences in valuation of contracts.

B.3.4 Supplies without consideration: As per Schedule I of the CGST Act- GST is leviable on certain transactions even if such transactions are made without consideration – like supply of goods from principal to agent, disposal of business assets, supplies to related parties etc. Under Ind AS transactions without any consideration would not form a part of the financial statements and would be treated as a non-balance sheet item / off- balance sheet item.

B.3.5 Post sales discounts: Usually if the entity has a practice of granting discounts to its customers on post-sale basis, then for providing such discounts the entity may raise a financial credit note which will not be subjected to GST but would be reported as discounts in the financial statements.

B.3.6 Hence, capacity building of tax officials in respect of financial accounting is necessary. This can be done through:

- 1. Imparting Training/capacity building of officers in the field of financial accounting from Institutions like NACIN to:
  - a. Analyze and examine Financial Statements, various accounting ratios etc.;
  - b. Enhance skills of officers for detecting various loopholes in the financial accounting of any company;
  - c. look closely at books of accounts and various returns for detecting tax evasion;
  - d. Learn about different strategies used to detect tax fraud and evasion.
- 2. Utilizing support of seniors and well experienced tax officers from States and Centre. The sharing of knowledge amongst the officers of both the tax administrations is of utmost importance as tax administrations on both the sides have evolved over the years and both of them have certain unique attributes which have to be factored in before devising an

approach to GST audit. The experience of Central Tax officers in the services and manufacturing and that of the State Tax officers in dealing with the traders can be mutually beneficial to improve the overall quality of the Audit systems and procedures.

- 3. Creation of various Checklists to be examined during the audit. The checklists to be prepared should also be able to reflect the industry specific factors and the domain expertise of officers from both the tax administrations can be made use of.
- 4. Creating a strategy that builds the right mix of skills and experience IT, statistical, analytical and tax domain knowledge. Learning and knowing the theoretical aspects of financial accounting albeit important but it has to be backed up with the knowledge of the modern tools of accounting software and systems.

#### **B.4** Cash Flow - The third important financial statement

B.4.1 A cash flow statement is one of three mandatory financial reports generated by every business organization monthly, quarterly, or yearly. It measures the rate at which a business generates its cash so as to operate and pay its debts. The statement of cash flow complements the other two financial statements of the business, i.e. the income statement and the balance sheet.

B.4.2 The cash flow statement summarizes the inflow and outflow of cash and cash equivalents pertaining to a business. Main objective of a cash flow statement is to help a business keep track of its cash inflow and outflow.

B.4.3 As per GST law Cash flow statement is required to be disclosed as per (Part B of GSTR 9C), though for 2017-18 and 2018-19 its optional, its verification will be an integral part of verification by the GST Officer.

B.4.4 Further, it can also help GST officer to understand the working of a business and its operations. It provides them with details about the business' cash flow, from where is it coming and where it is going. Cash flow is the indicator of the Taxpayer's financial well-being, its liquidity, and its operating ability.

B.4.5 The GST officer needs to calculate and reconcile the Receipts disclosed and find out and confirm that they are appropriately disclosed and subjected to tax.

#### **B.5** Sector specific approach

B.5.1 Some sectors involve complex income streams, financial reporting mechanism etc., of which officers may not always be fully conversant. For example, various income/revenue heads often need to be verified by the officers during audit of Banking, Insurance and Non-Banking Financial Companies (NBFC) sectors. The Banking sector generates income among others through interest income, capital markets operations (e.g., sales and trading services, underwriting services, mergers & acquisition advisory), other fee-based income (e.g., credit card fees, savings/ current accounts charges, mutual fund revenue, investment management fees, custodian fees). The revenues could also come through alternative financial services, investment banking and wealth management. Each of these aspects merit close look by the audit officers for possible implications with regard to GST. Similarly, in the insurance sector, various streams exist like premiums earned, reinsurance, income from investments (e.g., interest, profit on sale/redemption of investments, transfer/gain on revaluation/change in fair value). As these are specialised sectors, it is necessary that the audit-related training modules focus on these sector-specific accounting principles, accounting standards etc. for a better appreciation of audit requirements of these sectors.

#### C. Interpreting Business Contracts/Agreements

C.1 A business contract/agreement is the statement, either oral or written, of an exchange of promises in business. It is a negotiated and legally enforceable understanding between two or more legally competent parties

C.2 There are different types of business agreements/contracts. Scrutiny of these contracts or agreements constitutes one of the important functions of audit.

#### C.3 Foreign Technical Collaboration Agreement:

C.3.1 This agreement may be pure technical collaboration agreement or technical-cum-financial collaboration agreement. In the later, there is an equity participation also. Sometimes, collaboration agreements are only financial in nature wherein only equity participation by a foreign company is involved.

#### C.3.2 <u>RELEVANCE</u>:

- Where there is equity participation, imports from the collaborator may be subjected to scrutiny;
- Payment of royalty/technical know-how fee may involve GST liability towards import of services including IPR;
- Whether consideration paid to the collaborator has been taken into account in arriving at cost of production; etc.
- When the supply is from related party (a) with consideration (Sec 7), (b) without consideration (Class-2, Schedule-I)

#### C.4 Joint Venture Agreement:

C.4.1 Many a times, a joint venture company is set up by Indian Companies with equity participation. Generally, there is a joint venture agreement or promoter's agreement which defines various terms and conditions subject to which joint venture has been formed.

#### C.4.2 <u>RELEVANCE:</u>

- Nature of shareholding in the company;
- If there are any clauses regarding pricing pattern for sale to one of the joint venture partners that may have a bearing on related persons sale or sale at arms-length. This may impact valuation;
- The agreement may contain clauses for payment for certain services which may have tax implication;

• There may be provisions for common Managing Director or common Directorship indicating control/management of various companies which may have a bearing on related persons concept; etc.

## C.5 Joint Development Agreement in Real Estate Sector and GST Audit

C.5.1 Joint Development Agreements are common in the real estate industry wherein the Land Owner enters into an agreement with a Builder/Developer for the development of the land in lieu of certain consideration. The consideration in such cases can be varied- ranging from a lumpsum payment by the builder to the land owner to a share in the ultimately constructed flats/property or a combination of both.

C.5.2 Such agreements involve an element of transfer of land for developmental purposes. Transfer of Development Rights (TDR) are covered under the GST and there is no ambiguity in this regard unlike the Service Tax period.

C.5.3 Various transactions in a JDA with concomitant GST implications are as follows:

- (i) Land Owner to Builder/Developer.
- (ii) Builder/Developer to Land Owner.
- (iii) Land Owner to Customers/buyers.
- (iv) Builder/Developer to Customers/buyers.
- (v) Retention of flats/property for own use.

C.5.4 All such transactions have GST implications like the eligibility of ITC, Time of Supply, Rate of Tax, Value of Supply etc. which would require a detailed reading of the various agreements entered between the concerned parties. A case in point is the eligibility of ITC in such cases only for the portion of the flats/property sold before a completion certificate is obtained. The ITC availed and utilized in the flats/property sold after the completion certificate is obtained has to be reversed. The exact liability of the GST on such projects can be arrived at only after the details of the agreements are studied thoroughly in consonance with the provisions of the GST Act and Rules.

#### C.6 Works Contract:

C.6.1 Works contract is an activity wherein supply of both service and goods takes place, for example, construction of building; erection, commissioning, installation of plant and machinery, etc. In common parlance, a works contract relates to both 'movable property' and 'immovable property'. In the Service Tax regime, the service portion in the supply of works contract service for carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any 'moveable property' or 'immoveable property' was subjected to levy of Service Tax. In the GST period, the definition of works contract has been restricted to any work undertaken for an 'immovable property' only. Consequently, any composite supply (comprising supply of goods and supply of service) on movable property (goods), for example, a fabrication work or paint work done in automotive body shop does not fall within the definition of works contract under the GST; and such contracts would be treated as composite supplies and would be taxed accordingly. Under the GST law, works contract has been treated to be supply of services, as per Entry No. 6(a) in Schedule II of the CGST Act.

#### C.6.2 <u>Relevance</u>:

- If a works contractor has his project office in a State, he has to take registration in that State once he crosses the threshold limit of Rs. 20 lakhs (Rs. 10 lakhs in a Special Category State).
- As the works contract has been defined to be a supply of service, the works contractor is not entitled to avail of the Composition Scheme, because it is available only to suppliers of goods and the restaurant industry (not serving alcohol).
- Unlike the Service Tax and VAT regimes, no abatement from the value of service is allowed to the works contractor under the GST law.
- ITC of tax paid on works contract service is not available when such works contract service is supplied for construction of an 'immovable property' (other than plant and machinery) except where works contract service is an input service for a supplier of works contract service. [refer to section 17(5)(c) of the CGST Act]. In other words, ITC of tax paid on the works contract service can be availed only by a recipient of such works contract service (taxable person) who is using these services for further supply of works contract service. For example, a company, not engaged in the supply of works contract service, cannot be entitled to

avail of ITC of GST paid on the works contract service received from a works contractor.

- As the supply of works contract service under the GST laws necessarily involves immovable property, the place of supply of service would normally be the place of where the immovable property is located.
- The value of supply of works contract service, involving transfer of property in land or undivided share of land, as the case may be, shall be equivalent to the 'total amount' ('consideration charged for works contract service *plus* the 'amount charged for transfer of land or undivided share of land', as the case may be) charged for such supply *less* the value of land or undivided share of land, as the case may be. The value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the 'total amount' charged for such supply.

#### C.7 Manufacturing Agreement:

C.7.1 There can be contract / manufacturing agreements which a company might enter into with another company, usually brand owner of repute. Such brand owning companies usually contract out the manufacturing of finished goods to a contract manufacturing facility under certain terms and conditions.

#### C.7.2 <u>RELEVANCE:</u>

- The payment under the contract manufacturing arrangement may be looked into;
- What happens to the waste and scrap generated under the contract;
- If the contract manufacturer is the real manufacturer or the dummy created for the purpose of declaration of lower assessable value;
- Whether the agreement contains any other consideration which can be converted into monetary terms; etc.

#### C.8 Service Agreement:

C.8.1 There may be service agreements/MOUs on various aspects of the business. In some businesses, Purchase Orders constitute the agreement which contains various terms and conditions for supply of services. Specific focus could be sector-wise service agreements in automobile, FMCG and infra projects.

#### C.8.2 <u>RELEVANCE:</u>

- Service given or parts supplied during AMC
- To verify the terms and conditions especially with respect to supply of services;
- Whether the invoice is raised as per the Agreement/contract;
- To compare the total price charged in the Agreement/contract with the GST invoice to ensure that no extra flow back is received outside the invoice through commercial invoice/debit note;
- To study tax structure agreed upon in the Agreement/Contract;
- Any clause regarding Liquidated damages, or Penalties etc.

#### C.9 Job Work Agreement:

C.9.1 Job work agreements would be formal agreements or through letters exchanged between the parties which contain the basic terms and conditions of the job work.

#### C.9.2 <u>RELEVANCE:</u>

- Nature of job work done;
- Time period of returning job worked items as per Section 143;
- What happens to the waste and scrap generated during the job work;
- Whether there is charged an applicable rate of tax; etc.

#### C.10 Dealership/Distribution agreement:

C.10.1 Manufacturers/ suppliers usually market goods through a distributor or dealer network; and enter into dealer/distribution/stockist agreement containing various terms and conditions. Supplies by Principal and Agent as defined in CGST Act 2017 are areas of specific focus.

#### C.10.2 <u>RELEVANCE:</u>

- Whether the agreement contains any condition or terms whereby the dealer/distributor is to advertise on behalf of manufacturer; if so, what are the conditions;
- Post sale discounts
- Warehousing facility
- Whether there is any provision for sharing of expenses;
- Whether the goods under supply require after sale service/warranty;
- Whether there is any separate optional warranty agreement, set to commence immediately after the initial mandatory warranty period;

- Is there any provision in the agreement for delivery of free gift items through dealer;
- What is the discount pattern or incentive offered by manufacturer in the agreement; Is it based on the commercial considerations normally prevailing in the trade or not;
- Whether the agreement provides for any non-refundable security deposit with or without interest; etc.

#### C.11 Purchase Contract:

C.11.1 Purchase of materials/goods are under specific contracts or by tenders floated. These purchase contracts/tenders may also contain information related to audit.

C.11.2 <u>RELEVANCE:</u>

- Who is the supplier; whether he is related person or not;
- Whether the delivery of goods made directly to factory or to job worker; etc.

#### C.12 Lumpsum turn-key contract:

C.12.1 The assessee may have a turn key contract which may involve supply, erection at site and commissioning of the goods.

#### C.12.2 <u>RELEVANCE:</u>

- Whether the price of the goods is inclusive of erection, commissioning at site;
- Whether any attempt has been made to overload the erection and commissioning charges;
- Whether the machinery is supplied by the manufacturer; etc.
- Case study of solar project (70% of value as goods @ 5% and 30% of value as services @ 18%).

C.12.3 Apart from the above there can be many other types of contracts/agreements such as Works Contracts, Constructions contracts, Leasing contracts , Hire purchase agreements, Franchisee agreements, Non-disclosure agreement, Non-Competitive contract , Insurance and reinsurance agreements / contracts, Banking contracts – to the extent of the Banking fees, charges, penalties charged for services rendered to its customers, other banks, etc. and the exact nature and nuances of such contracts/agreements will have

to be understood by the officers conducting audit by factoring in the scope and type of business activity being conducted by the taxpayer.

C.1.2.4 GST officer has to verify and ensure that the results or outcomes of various agreements are accounted for appropriately and the appropriate compliance is made by the taxpayer.

C.1.2.5 It is the duty of GST officer to not only plug the revenue leakages, but to also keep a close watch on systemic tax planning that may adversely affect GST revenues. It should be ensured that while conducting the audit, the terms and conditions of the contracts are gone through and their impact on the value of the supply should be ascertained appropriately so as to point out any duty evasion. For this, conditions of contract, compliance of such terms & conditions, scope of manipulations while performing the contract (e.g. Supplies under Schedule-II of CGST Act, 2017), liquidated damages, penalty clause etc. need to be checked and factored in appropriately.

C.1.2.6 At times this may also require cross-referencing between the contract(s) and the financial statements.

# D. Understanding System Driven Business Process through SAP, Oracle, Tally Etc.

D.1 A process is a series of tasks that are completed in order to accomplish a goal. A business process, therefore, is a process that is focused on achieving a goal for a business. Processes are something that businesses go through every day in order to accomplish their mission. The better their processes, the more effective the business. As processes grow more complex, they need to be documented. For businesses, it is essential to do this, because it allows them to ensure control over how activities are undertaken in their organization. It also allows for standardization. The complex nature of the business transactions these days has made it mandatory to make the business processes and specifically the accounting processes to be automated and system driven.

D.2 With the advent of GST, a lot many GST software have also come to the fore which help organizations simplify the process of GST billing, filing returns, and generating GST invoices. An effective GST software can aid businesses in managing their finances, accounts, inventory, purchase, sales, payroll, taxation, and other processes efficiently.

D.3 Financial Accounting System is an accounting system where the financial data of the organization is maintained. It is important for auditors to be well conversant with various related software like SAP, Oracle, Tally etc.; and alsoto various accounting methods like Cash Accounting and Accrual Accounting methods. Hence, the auditors must be well trained in financial accounting concepts and use of financial accounting systems that would help them examine and analyze the accounting process, various transactions and ledgers of the assessee while correlating the same with various GST Returns, financial statements etc. Therefore, it is necessary to:

- Impart knowledge related to latest financial accounting systems and methods through various training programs;
- Use of Software for identifying risk parameters similar to CAAP used in the Central Excise regime.
- Developing software to collect back up of Financial Accounts maintained by the Tax Payer.

## D.4 <u>Audit in an ERP Environment</u>

D.4.1 The objective of an GST auditor is to identify and assess the risks of material misstatement, whether due to fraud or error, at the financial statement or entry feeding level. The auditor has to understand the nature of

the governance structures of the entity i.e. the business structures as well as the IT structures. The IT team is usually the custodian/owner of the application and the business team is the custodian/owner of the data residing within that application, therefore, it is imperative to segregate and understand the roles of both the structures/team. The GST officer has to understand the IT systems and related procedures within IT and business processes by which the transactions are initiated, recorded, processed, reported in the ERP environment. It will also be desirable for the GST officer to get a grasp of the various access controls and rights like the Administrator role/rights, senior management role/rights and the like so as to access data accessible only to a certain level of officers of an entity. A company may be using a variety of software to carry out its various functions as depicted in the table below:

Information	Purpose	Location	In-house of
System			Packaged
SAP/Tally	Accounting, Supply	USA	Packaged
	Chain, Production		
PayMaster	Pay Roll	India	Packaged
Budgetking	MIS, Budgeting	India	In-house

D.4.2 The GST officer will thus be required to have a good knowledge of the general IT systems and the Automated Application software being used in a business for carrying out the task of audit in an efficient and effective manner.

D.4.3 The modern tools/software like Tally. ERP9 designed specifically for the purpose of preparing and finalizing GST Returns have in-built mechanisms to generate various Reports. For example, the GSTR-1 returns can be generated from Tally. ERP9 in JSON format, compressed in the .zip format and uploaded. An advanced tool such as the Tally.ERP9 not only allows the officers to get a summary of the various reports but also goes a long way in finding out about the mismatches in the data. The knowledge of the ERP software will help the GST officers in reconciling the various figures submitted on the portal with those of the financial statements. Further, the ERP systems are designed to cater to a multitude of taxpayer's needs such as Profit tracking, Fixed Assets Management, Risk Management, Multi- Currency Management and Tax Management and therefore, the GST officer auditing an entity should be able to understand various aspects related to these automated accounts.

D.4.4. The traditional system of bookkeeping mandated the preparation of separate ledgers like the Purchase Ledger, Sales Ledger, Credit Ledger, Bank/Cash Book etc. but the shift to the automated environment has done

away with these requirements and all the transactions are now integrated. An enterprise resource planning system inherently means that all the modules within the system are seamlessly connected with each other and the transactions flow through the relevant modules. Thus, there is one Primary Set of Books and all the transactions reside here. For example, if we take 2 purchase transactions involving 2 Vendors

Purchases Dr -	Purchase Co	ontrol Account
To Ve	ndor 1 A/c -	Creditors Control Account

Purchases Dr - Purchase Control Account

To Vendor 2 A/c - Creditors Control Account

In the above example, the ERP will maintain the details of transactions separately for Vendor 1 and Vendor 2 and also have a Creditors Control Account to capture the total of all Creditors balances.

D.4.5 In such an automated environment, while deciding on the audit procedures the GST officer should consider the risk of material misstatement at the assertion level (at the level of initial entry) for each class of transactions, account balance and disclosure. Thus, the traditional way of conducting audit may not prove to be fruitful for the department because of the inherent risks prevalent due to the complexity of systems, use of sophisticated application software, systems being distributed over geographies, volume of transactions, outsourced processes and the like.

D.4.6 In view of the above cited difficulties, the GST officers will have to mould their thought process and start relying more on what the accountants call the "Controls Based Audit". Some of the basic tenets of conducting audit under systems driven approach are:

- Design of the Audit Team- incorporation of more experts/ specialists who can extract the data from the ERP systems. Obtaining data independently from the software gives the officers more direct audit evidence.
- 2) Use of Computer Assisted Audit techniques;
- 3) Preparation of customised and specialised systems in-house by the department by using the experience of the tax administrations;
- 4) Use of latest technology like cloud computing;
- 5) Develop competence for "forensic audit".

#### E. Conclusion

E.1 For the first time, GST has brought the Central and State Tax administration to work in tandem with each other. This is an opportunity as well as a challenge. On the one hand, the cumulative experience of the state and the central administration can create a vast knowledge base. On the other hand, it may accentuate difference of practices and overlapping in audit functions.

E.2 To overcome this issue, a better coordination and sharing of information between the Centre and the States is required.

E.3 Standardization is the key. Appropriate Standard Operating Procedures need to be put in place for cross-jurisdictional issues. Frequency of audit, selection of taxpayers and number of taxpayers to be audited needs to be decided based on risk parameters.

E.4 As the actual audit needs to be done by the field staff, the officers and staff need to be prepared well with the help of proper training and development. Training of auditors in financial accounting, reading of contracts, use of accounting software etc. is imperative.

E.5 Finally, a specialized software could be developed to cull out the relevant data from various business accounting systems so that the process of audit is made more system oriented.

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Annexure-VII GOODS AND SERVICES TAX COUNCIL 5th Floor, Tower-II, Jeevan Bharati Building Connaught Place, New Delhi-110001 Tel: +91-11-23762656 Fax: +91-11-23738814 Email: gstc.secretariat@gov.in Web: www.gstcouncil.gov.in

#### F. No. 350/Future Initiative/GSTC/2019 / 20 50 21.02.2020

#### **OFFICE MEMORANDUM**

#### Sub: Constitution of Committee of Officer (CoO) on GST Audit- reg.

In pursuance of discussion and decision in the 1<sup>st</sup> National GST Conference on 25.11.2019 to have joint & collaborative efforts for GST Audit; capacity building for audit and to follow uniform practices for GST Audit in Centre and State Tax administration, with the approval of competent authority, a Committee of Offices (CoO) on GST Audit has been constituted, consisting of the following members:

Centre	State/UT	GSTN	GST Council Sectt.
<ol> <li>Addl. DG, DG Audit Headquarters, CBIC - [Convenor]</li> <li>Pr. Commissioner, GST Policy Wing, CBIC</li> <li>Pr. Commissioner, Meerut (Shri S. V. Singh)</li> <li>Principal ADG/ADG, DGGI Headquarters, CBIC</li> <li>Pr. ADG/ADG, DG Analytics &amp; Risk Management</li> <li>Pr. ADG/ADG, NACIN, Faridabad</li> </ol>	<ol> <li>Commissioner of Commercial Taxes, Karnataka (Shri Srikar M. S.) – [Convenor]</li> <li>Special Commissioner of State Tax, NCT of Delhi (Shri Udit Prakash Rai)</li> <li>Special Commissioner, State Tax, Gujarat (Shri Samir Vakil)</li> <li>Additional Secretary, State Tax, Bihar (Shri Arun Kumar Mishra)</li> <li>Joint Commissioner, State Tax, Maharashtra (Shri Prasad Joshi)</li> <li>Joint Commissioner, State Tax, Assam (Shri Gautam Dasgupta)</li> <li>Joint Commissioner, State Tax, West Bengal (Shri Narayan Chandra Guriya)</li> <li>Joint Commissioner (TRU), Commercial Tax HQ, Lucknow, Uttar Pradesh (Shri Sanjay Kumar Pathak)</li> <li>Deputy Commissioner, State Tax, Uttarakhand (Shri Praveen Gupta)</li> <li>Deputy Commissioner (ST), Puducherry (Shri K. Sridhar)</li> </ol>	EVP, GSTN	Joint Secretary, (Shri Dheeraj Rastogi) Director (Ms. Ujjaini Datta) Deputy Commissioner, (Shri Rakesh Agarwal)

2. The terms of reference (ToR) for **CoO on GST Audit** shall be to study, examine and suggest:

- a. to prepare a comprehensive All India GST Manual taking into account procedures
   & practices in vogue in different States and Centre;
- b. to explore having joint and collective GST Audit by Centre & State for the taxpayers in many sectors that have all India presence like Telecom, Airlines, Banking, Railway etc.;





Goods and Services Tax Council Sth Floor, Tower 2, Jeevan Bharati Building Connaught Place, New Delhi - 110001 Office :+91-11-23762656 Fax :+91-11-23738814 Email : gste.secretariat@gov.in Web : www.gsteouncil.gov.in

- b. to explore having joint and collective GST Audit by Centre & State for the taxpayers in many sectors that have all India presence like Telecom, Airlines, Banking, Railway etc.;
- c. to explore conducting thematic audit by both tax administration;
- d. using capability of data analytics developed by DGARM for identification of State taxpayers for audit;
- e. to suggest measures of capacity building in Services for focused approach on audit of Services sector; and
- f. to build knowledge on financial accounting and focused approach towards interpreting business contract/agreement and understanding of system driven business process through SAP, Oracle, Tally etc.;
- 3. The CoO on GST Audit may submit its report within a period of two month.
- 4. This issues with the approval of the Revenue Secretary, Govt. of India.

(Rakesh Agarwal) Deputy Commissioner, GST Council

To,

#### All Members of the CoO of State and Centre on GST Audit under GST

Copy to

- 1) OSD to the Revenue Secretary, North Block, New Delhi
- 2) PPS to the Chairman, CBIC, North Block, New Delhi
- 3) PPS to the Special Secretary, GST Council Secretariat

Deputy Commissioner, GST Council

## **Annexure-VIII**

#### GOVERNMENT OF INDIA GOODS AND SERVICES TAX COUNCIL

F. No.350/Future Initiative/GSTC/2019 5<sup>th</sup> Floor, Tower-II, Jeevan Bharati Building Connaught Place, New Delhi 25/06/2021

#### **OFFICE MEMORANDUM**

## Sub: Modified Terms of Reference (ToR) for Committee of Officers (CoO) on GST Audit -reg.

In pursuance of decision in the 1<sup>st</sup> National GST Conference held on 25.11.2019 to have joint & collaborative efforts for GST Audit; capacity building for audit as well as to follow uniform practices for GST Audit in Centre and State Tax administration, a committee of Officers (CoO) on GST Audit was constituted vide OM of even no. dated 21.02.2020. (copy enclosed)

2. The terms of reference (ToR) for the CoO on GST Audit were also notified vide said OM dated 21.02.2020. The terms of reference are now modified by the competent authority and are as follows:

- **a.** To study audit policy and practices of the Centre and the States which have already implemented certain procedures;
- b. To develop model Audit Manual, taking into account the policies and practices adopted by Centre and States, with essential, preferred and best practices which may be adopted by States as per administrative suitability;
- **c.** To broadly outline the procedural aspects of joint and thematic audit, if and as and when they undertaken with approval of Council;
- **d.** Using capability of data analytics developed by DGARM for identification of State taxpayers for audit;
- e. To suggest measures of capacity building in Services for focussed approach on audit of services sector; and
- f. To build knowledge on financial accounting and focussed approach towards interpreting business contract/agreement and understanding of system driven business process through SAP, Oracle, Tally etc.
- 3. The CoO on GST Audit may submit its report to this office at an early date.
- 4. This issues with the approval of the competent Authority.

Ashima Bansal Joint Secretary

To,

 The Additional DG (Convenor of CoO on GST Audit) Directorate General of Audit, Indirect Taxes, C. R. Building, I.P. Estate, New Delhi-110109.

#### 2. Shri Srikar M. S. (Co-convenor of CoO on GST Audit) The Commissioner of Commercial Taxes, Karnataka.

Copy to:

- 1. OSD to Revenue Secretary ...... for information to the Hon'ble Revenue Secretary
- 2. OSD to the Chairman, CBIC
- 3. The Joint Secretary (Revenue), Department of Revenue
- 4. PPS to Additional Secretary, GSTC