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सत्यमेव जयते

Agenda for

53rd GST Council Meeting

22nd June, 2024

Volume - I

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

GST Council Secretariat New Delhi

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
13th June, 2024

OFFICE MEMORANDUM

Subject: Notice for the 53rd GST Council Meeting to be held on 22nd June, 2024-reg

The undersigned is directed to refer to the above subject and to convey that the 53rd Meeting of the GST Council will be held on 22nd June, 2024 at New Delhi. The schedule of the meeting is as follows:-

Saturday, 22nd June,2024 from 2.00 P.M. onwards

2. In addition, an Officers' Meeting will be held on 21st June, 2024 at New Delhi as per the following schedule:

Friday, 21st June, 2024 from 11.30 A.M. onwards

3. The venue of the meeting, agenda items and other details for the 53rd Meeting of the GST Council and officers' Meeting will be communicated in due course of time.

4. Kindly convey the invitation to the Hon'ble Member of the GST Council to attend the 53rd Meeting of the GST Council.

Sd/-
(Sanjay Malhotra)
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 proceedings of the Council.
5. CEO, GST Network

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Discussion on Agenda Items

Agenda Item 1: Confirmation of Minutes of 52nd GST Council Meeting held on 07th October, 2023

The 52nd meeting of the GST Council was held on 7th October, 2023 under the Chairpersonship of the Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman at Sushma Swaraj Bhawan, New Delhi. 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, States, Union Territories, GST Council Secretariat and GSTN who attended the meeting is at **Annexure-2.**

1.2 The following agenda items were listed for discussion in the 52nd meetingof the GST Council:

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	iv. Law amendment w.r.t. ISD as recommended by the GST Council in its 50th meeting
	v. Clarification regarding restoration of provisionally attached property
	vi. Clarification on various issues related to Place of Supply
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	viii. Amendment in Central Goods and Services Tax Rules, 2017 and GST REG/PCT – FORM(s)
	a. Incorporation of 'One Person Company' in FORM GST REG 01 i.e. Application for Registration
	b. Application for Enrolment as Goods and Services Tax Practitioner- Amendment in FORM GST PCT-01
	c. Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons
	d. Amendment in rule 142 (3) of CGST Rules with respect to FORM GST DRC-05
	e. Amendment in FORM GSTR-8 to include late fee
	ix. Clarification on the scope of the refund on account of invertedduty structure in respect of supplies of certain construction services
4.	Recommendations of the **Fitment Committee** for the considerationof the GST Council
	a) Recommendations made by the Fitment Committee for makingchanges in GST rates or for issuing clarifications in relation to goods – Annexure-I
	b) Issues where no change has been proposed by the Fitment Committee in relation to goods – Annexure-II
	c) Issues deferred by the Fitment Committee for further examination in relation to goods – Annexure-III
	d) Agenda on Extra-Neutral Alcohol (ENA) (Agenda 4 (Part-II) of Agenda Volume-II)
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	e) Issues where no change has been proposed by the FitmentCommittee in relation to services – Annexure-V (Including Agenda 4 (Part-II) of Agenda Volume-II)
	f) Issues deferred by the Fitment Committee for further examinationin relation to services – Annexure-VI (Including Agenda 4 (Part-II) of Agenda Volume-II)
5.	Performance Report of Competition Commission of India (CCI) for 1st quarter of the F.Y 2023-24 along with Performance Reports of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti-Profiteering (DGAP).
6.	Ad-hoc Exemptions Order(s) issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information
7.	Review of revenue position under Goods and Services Tax.
8.	Any other agenda with the permission of the Chair: Table Agenda:- Exemption from 5% IGST levy for foreign flag foreign going vessels being operated by an entity not registered under GST in India when it converts to coastal run.
9.	Agenda Item 9 (Addendum to Agenda Volume-II): Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route.
10.	General discussion with the permission of the Chair.

1.3 The Secretary to the GST Council (hereinafter called 'The Secretary'), welcomed all the Hon'ble Members of the Council and participating officers to the 52nd meeting of the GST Council. He welcomed incoming Chairman of the Central Board of Indirect Taxes and Customs (CBIC), Sh. Sanjay Kumar Agarwal to his first GST Council meeting as Chairman, CBIC.

1.4 The Secretary stated that the important agendas of the day pertained to setting up of GST Tribunals and pending issues like taxability of Extra Neutral alcohol for deliberations besides other Law Committee and Fitment Committee agendas and other routine agenda items.

1.5 The Secretary requested the States who were yet to pass the amendments in SGST/UTGST Acts corresponding to amendments in the CGST Act, 2017, IGST Act, 2017 pertaining to Casinos, Online Gaming and Horse racing to do so on priority as otherwise it would lead to legal difficulties in revenue sharing with these States. He informed that this matter was discussed in the Officers' Meeting also a day before.

1.6 The Secretary sought the permission of the Chair to begin deliberations on each agenda item and invited the Joint Secretary, GST Council Secretariat to take the Council through the agendas.

2. Agenda item 1: Confirmation of the Minutes of 50th meeting of the GST Council held on 11th July, 2023 and 51st meeting of the GST Council held on 2nd August, 2023

2.1 The Joint Secretary, GST Council Secretariat informed the Council that the State of Kerala had requested for changes in in para 6.19 and para 12.12 of the Agenda Item 5 (Second Report of the Group of Ministers (GoM) on Casinos, Race Courses and Online Gaming) of the draft Minutes of the 50th meeting of the GST Council as follows;

2.2 The State of Kerala had requested that para 6.19 and 12.12 of the minutes may be redrafted as below:

6.19: The Hon'ble Member from Kerala raised concerns about the impact of taxing on the basis of GGR mechanism on lotteries as it could lead to litigation. He stated that this approach may affect the taxation of other actionable claims.

12.12 It may be noted that the proposal of Kerala is to set up 3 State Benches with locations at Thiruvananthapuram, Ernakulam and Kozhikode. In the initial phase, as suggested in this meeting, due to lesser pendency of cases, two benches even with half the members may be made functional at Thiruvananthapuram and Ernakulam. Since the other areas in the state are quite far from these two locations, there may be provisions for these benches to conduct sittings in other locations such as Kozhikode also to hear the cases belonging to those locations.

2.3 The Council approved the changes suggested by the State of Kerala in para 6.19 and para 12.12 of the minutes of the 50th meeting of the GST Council.

Decision: The Council adopted the Minutes of the 50th meeting of the GST Council held on 11th July, 2023 and 51st meeting of the GST Council held on 2nd August, 2023 with changes as detailed in para 2.2 above.

3. Agenda Item 2: Ratification by the GST Council of the Notifications, Circulars and Orders issued and decisions of GST Implementation Committee for the information of the Council

3.1 The Joint Secretary, GST Council Secretariat took up the next agenda pertaining to the Ratification of the Notifications, Circulars and Orders issued bythe GST Council and decisions of GST Implementation Committee for the information of the Council (Page 139-151 of the Volume-I). She stated that this agenda was discussed in the officers meeting held yesterday and there was consensus on the same. She requested the Council to ratify the Notifications, Circulars and Orders issued and take note of the decisions of the GST Implementation Committee (GIC).

Decision: The Council ratified the Notifications, Circulars and Orders issuedand took note of the decisions of GST Implementation Committee.

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

4.1 The Secretary took up the next agenda for the consideration of the GST Council. He informed that these agendas were discussed in the Officers' meeting held on 6th of October 2023 and there was an agreement among the officers on most of the issues. The Principal Commissioner, GST Policy Wing made the detailed presentation (attached as **Annexure-3**) giving an over view of the recommendations made by the Law Committee, as well as the gist of the discussions held in the Officers' meeting.

Agenda Item 3(i): Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals.

4.2 The Pr. Commissioner, GST Policy Wing, stated that vide the Finance Act, 2023, amendments to section 109 and 110 of the CGST Act, 2017 were carried out in respect of GST Appellate Tribunal (GSTAT) and the same were notified vide Notification No. 28/2023–Central Tax dated 31st July, 2023. Subsequently, a proposal was sent by the Department of Revenue to the Hon'ble Chief Justice of India with a request to Chair or to nominate a Judge of the Supreme Court to Chair the Search-cum-Selection Committee (ScSC) to make recommendations for appointment of Judicial Members and Technical Member (Centre) of GSTAT and to nominate a retired Judge of Supreme Court or a retired Chief Justice of High Court as a Member of ScSC. In response, the Registrar of Hon'ble Supreme Court of India observed that certain provisions of the GST Appellate Tribunal regarding maximum age limit for the posts of President and Members and the provision relating to eligibility of an Advocate with a standing of 10 years at the Bar for appointment as a Judicial Member need to be aligned with the Tribunal Reforms Act, 2021. Accordingly, the issue of alignment of the provisions of GST Appellate Tribunal with the Tribunal Reforms Act & Tribunal (Condition of Service) Rules, 2021, was placed before the Law Committee. Law Committee approved the following amendments to section 110 of the CGST Act, 2017:

> **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)…*
>
> *(b)…..*
>
> *(i)…..*

(ii)…..

(iii) has been an advocate for ten years with substantial experience inlitigation under indirect tax laws in the Appellate Tribunal, CentralExcise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court;

(c) ……

(d)…

Provided….

Provided that a person who has not completed the age of fifty yearsshall not be eligible for appointment as the President or the Member.

… … …

(9) Notwithstanding anything contained in any judgment, order, or decreeof 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 years from the date on which he enters upon his office, or until he attains the age of ~~sixty-seven~~ seventy years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two year.

(10) Notwithstanding anything contained in any judgment, order, or decreeof any court or any law for the time being in force, the 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~~ sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.

4.3 The Pr. Commissioner, GST Policy Wing, further stated that the issue was discussed in officers' meeting and agreed to. It was also noted in the Officers' meeting that there would not be a need for any amendment in SGST Acts.

4.4 The Hon'ble Member from Delhi agreed to the change in age limit for the posts of President and Members. She enquired about having advocates as Members in GSTAT as earlier it was proposed to have only Judges and not advocates.

4.5 The Pr. Commissioner, GST Policy Wing clarified that Advocates will be eligible for appointment as Judicial Members only and not as Technical Members inGSTAT to align it with other Tribunals as pointed out by the Chief Justice of Hon'ble Supreme Court.

4.6 The Hon'ble Member from Bihar mentioned that even though they havereservations

about having advocates with 10 years of experience as Member, GSTAT, considering the number of pending cases, and the need to establish the Tribunal without delay, they support the proposal.

4.7 The Hon'ble Member from West Bengal supported the proposal pointing out that an Advocate with 10 years of experience can even become Judge of the High Court and so there should be no problem in selecting such Advocates as Judicial Members of the Tribunal.

4.8 The Hon'ble Member from Gujarat suggested that all processes and proceeding in the GST Tribunal should be made online and portal-based including the Tribunal's hearings. These measures will simplify and expedite the process andwill increase the reach of the Tribunal.

4.9 The Hon'ble Member from Tamil Nadu stated that though they agreed with the extension of age limit of the President and Members, however, the Hon'ble Madras High Court has considered exclusion of lawyers for consideration as members of GST Appellate Tribunal is not ultra vires and the issue is before the Supreme Court, so it may be considered by the Council after the final verdict of the Hon'ble Supreme Court.

4.10 The Secretary informed that as per the decision of the Council, a letter was written to the Hon'ble Supreme Court to nominate a Chairperson and a Member for the ScSC for selecting the Technical and Judicial Members. In response to the letter, Office of the Chief Justice of India pointed out that the present law for GSTAT is not aligned with the Tribunal Reforms Act, 2021. Due to this, it could be subject to challenge and the Council may reconsider the said issues. Therefore,the issue was brought before the Council.

4.11 The Hon'ble Chairperson stated that a letter had been received from Hon'ble Supreme Court with regard to issue of selecting Advocates as Members ofthe GSTAT. However, the Council may in future review its decision based on the judgement which would be passed by the Supreme Court. She also welcomed thesuggestion of Gujarat to make the entire process online and portal-based.

Decision: The Council agreed with the said recommendations of the Law Committee alongwith the proposal to make the processes of Tribunal online and portal-based.

Agenda Item 3(ii): Seeking clarity on various issues:

A . Regarding taxability of personal guarantee offered by directors to thebank against the credit limits/loans being sanctioned to the company:

4.12 The Pr. Commissioner, GST Policy Wing stated that the services that are provided by the director to a company by way of providing personal guarantee to banks/ financial institutions in order to secure credit facilities even without any consideration, will fall under the category of

supply of services. Therefore, thesame was taxable under GST. However, as per the mandate of RBI , as per Para 2.2.9 of RBI Master Circular RBI/2021-22/121 dated 9th November, 2021 regarding guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns, no consideration can be charged by the director from the company for providing the bank guarantee for the purpose of sanctioning of credit facilities to the said company and therefore, no transaction value can be attributed to the said service being provided by the Director.

4.13 Accordingly, it appears that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing guarantee to the bank/ financial institutes on their behalf, as per mandate of RBI, the open market value of the said transaction/ supply may be treated as zero. In such a scenario, the taxable value of the said supply as per section 15 of the CGST Act, 2017 read with rule 28 of the CGST Rules, 2017, may be treated as zero, and no tax may be payable on such supply of service by the director to the company. There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In such cases, as per the RBI guidelines provided in Para 2.2.9 (c) of RBI's Circular No. RBI/2021-22/121 dated 9th November, 2021, remuneration can be paid to such directors/ guarantors for providing the bank guarantee.

4.14 In all these cases, the taxable value of such supply of service may be the remuneration/ consideration provided to such a person/ guarantor by the company,directly or indirectly.

4.15 He stated that the Law Committee deliberated on the issue and recommended issuing a circular to clarify the same as above.

B. Regarding taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company.

4.16 The Pr. Commissioner, GST Policy Wing stated that providing corporate guarantee between the related companies, including between 'holding company' and 'subsidiary company', even without any monetary consideration, in the course of furtherance of business, is taxable supply as supply of services provided between related persons, as per Schedule I of the CGST Act 2017. In such casesof supply of services between related persons, the taxable value of the supply has to be determined as per Rule 28 of the CGST Rules, 2017 which is mainly basedon the open market value of such supply or as per value of services of like kindand quality or as per Rule 30 or 31 of CGST Rules, 2017. Field formations as well as the taxpayers are finding it difficult to arrive at the open market value for such supply of services under Rule 28 of CGST Rules, 2017 as corporate guarantees, unlike bank guarantees, are specific and peculiar to a particular corporate group or

company and therefore external third-party comparisons may not be available or relatable. While in cases, where the recipient is eligible for full input tax credit, as per the second proviso to the rule 28 of CGST Rules, 2017, the value declared in the invoice, if any, shall be deemed to be the open market value of the said supply of services, however, in cases, where the recipient is not eligible for full input tax credit, then there was difficulty in determining the open market value.

4.17 The matter was deliberated by the Law Committee and the Law Committee recommended to provide for specific valuation rule for such supply of services by inserting following sub-rule (2) in Rule 28 of CGST Rules, 2017:

> 28. Value of supply of goods or services or both between distinct or relatedpersons, other than through an agent. -
>
> ... ...
>
> *(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providingcorporate guarantee to any banking company or financial institution on behalf ofthe said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.*

4.18 The Law Committee also recommended to clarify the applicability of the proposed sub-rule (2) of the rule 28 of CGST Rules, 2017 vide a circular.

Decision: The Council agreed with the said recommendations of the Law Committee, along with draft Circular

Agenda Item 3(iii): Providing a special procedure for condonation of delay in filing of appeals against demand orders passed until 31st March, 2023.

4.19 The Pr. Commissioner, GST Policy Wing stated during the initial years of implementation of GST, a number of appeals against demand orders could not be filed within the specified time period i.e., within the limitation period of three monthsunder Section 107(1) of the CGST Act, 2017 and the permissible delay condonation period of one month u/s Section 107(4) of the CGST Act, 2017 due to various reasons. The law prescribes the common portal as the valid mode ofservice of notices and orders and no physical service of these notice/orders was made mandatory. In many cases, the common portal was not accessed by the taxpayers and hence taxpayers were not aware of the notices/ orders issued to them through the common portal. In many cases, the email ID or mobile numbers used belonged to CAs or tax practitioners. It had also resulted in losing track of orders/notices served on common portal/email. Many of the taxpayers came to know about demand orders only upon initiation of recovery proceedings under section 79 of the CGST Act, 2017 i.e., after lapse of time prescribed for filing of appeals. Many of these appeals filed beyond the specified time period are either pending with the appellate authorities or were rejected earlier for non-adherence to time period specified under Section 107(1) of the CGST Act,

2017. At the same time, the recovery books of the authorities are bulging without sufficient recovery. As the appeals are likely to be rejected even if they are filed, in view of limited power of the appellate authority to condone any delays, the pre-deposit amount is also not being realized in the books of the government. If such appeals are allowed by condoning the delay, then a large number of such taxpayers are likely to come forward and pay the pre-deposit amount. It is also to be mentioned that due to the non-constitution of GST Appellate Tribunals, the only remedy available to the taxpayers was approaching the Hon'ble High Courts, which might not be always possible for small and medium taxpayers. Law Committee recommended providing a special procedure under section 148 of CGST Act, for taxable persons to file appeal till 31st December 20203, who could not file an appeal under section 107 of the said Act against the order passed on or before the 31st day of March, 2023 by the proper officer under section 73 or 74 of the said Act and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107, subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute by the said person, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. He also informed that this was agreed to in the Officers' meeting held on 6th October 2023, however, it was recommended in the officers' meeting that time for filing may be kept as 31st January 2024, instead of 31st December 2023, in the said special procedure for providing more time to the taxpayers.

4.20 The Hon'ble Member from Uttar Pradesh expressed his agreement with the proposal.

4.21 The Hon'ble Member from Tamil Nadu agreed that the proposal is a welfare measure towards the traders but also raised his concern that it will reopen the cases of the past six years involving arrears. He also informed that Tamil Nadu has taken various measures for collecting GST arrears and if amnesty is given, it will retard their collection drive. He further suggested that the amnesty should be given in such a way that interests of revenue are properly balanced with interestsof taxpayers and for that pre-deposit may be set at 20%.

4.22 The Hon'ble Member from Maharashtra supported the recommendation of the Law Committee stating that Maharashtra has more than 13,900 assessment orders against which recovery is due. This measure will give an opportunity to taxpayers to file appeal while helping in recovery of arrears through pre-deposit.

4.23 The Hon'ble Member from Goa stated that considering the various technical difficulties faced by taxpayers during initial period of GST, one-time amnesty of filing of appeal by condonation of delay for order passed till 31st March, 2023 may be given till 31st March, 2024. The measure will not result in loss of revenue as correct demand will be assessed after the appeal is heard and decided by the appellate authority on merits.

4.24 The Secretary clarified that the amnesty given is one-time measure and moreover, the

taxpayers have to pay an additional amount of 2.5% of the disputed amount as pre-deposit in cash. He further clarified that the time period of condonation of delay for filing appeal of orders passed upto 31st March, 2023 in respect of cases pertaining to 2017-18 may seem long but many States have passed the adjudication orders as late as July 2022 or December 2022 on account of Covid.

Decision: The Council agreed with the said recommendations of the Law Committee, as modified as per discussions in Officers' meeting, along with draft Notification.

Agenda Item 3(iv): Law amendment w.r.t. ISD as recommended by the GST Council in its 50th meeting.

4.25 The Pr. Commissioner, GST Policy Wing, stated that the GST Council in its 50th meeting recommended that ISD procedure as laid down in Section 20 of Central Goods and Services Tax Act, 2017 read with rule 39 of Central Goods and Services Tax Rules, 2017 may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party butattributable to both HO and Branch Office (BO) or exclusively to one or more BOs. Further, ITC on account of input services received from a third party, where such input services are liable to tax on reverse charge basis, should also be required to be distributed through ISD route. Further, the Council authorized the Law Committee to formulate the requisite law amendments. The Council alsorecommended that the manner of distribution of ISD credit as provided in section20 of CGST Act 2017 does not require amendment at present.

4.26 Accordingly, the Law Committee recommended thefollowing amendment in clause (61) of section 2 of the CGST Act, 2017 i.e. definition of ISD:

'(61) "Input Service Distributor" means an office of the supplier of goods or servicesor both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons, as specified in section 25and who is liable to distribute the input tax credit in respect of such invoices interms of section 20.

4.27 Further, Law Committee recommended that section 20 of CGST Act 2017 may be substituted to explicitly mandate distribution of the common credit includingwith credit pertaining to common input services which are liable to tax on reverse charge basis, as under:

"20.(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-sections (3) or (4) of Section 9, for or on behalf ofa distinct person or distinct persons as specified in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 of thisAct and shall distribute the input tax credit in respect of such invoices.

(2) *The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of centralor integrated tax in respect of services subject to levy of tax under sub-section (3) or (4) of Section 9 paid by a distinct person, registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to suchrestrictions and conditions as may be prescribed.*

(3) *The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.*

Pari-materia amendments would also be required in the**SGST Act.**

4.28 In view of the aforesaid amendment in Section 20 of CGST Act 2017, the Law Committee also recommended that the methodology for distribution of credit may be incorporated in rule 39 of the CGST Rules 2017 as follow:

39. Procedure for distribution of input tax credit by Input Service Distributor-

1……..

a. the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR-6** in accordance with the provisions ofChapter VIII of these rules;
b. the amount of the credit distributed shall not exceed the amountof credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevantperiod;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be *pro rata* on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period;

(f) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) to one ofthe recipients "R1", whether registered or not, from amongst the total of all the recipients to

whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula -

$$C_1 = (t_1 / T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t_1 " is the turnover, as referred to in clause (d) and (e),*of person R_1 during the relevant period, and*

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of clause (d) and (e)*;*

(g)) the Input Service Distributor shall, in accordance with the provisions of clause (d) and (e), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

(h) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d) and (e);

(i) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(j) the input tax credit on account of central tax and State tax orUnion territory tax shall-

(i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Unionterritory tax respectively;

(ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient as referred to in clause (d) and (e);

(k) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;

(l) the Input Service Distributor shall issue an Input Service Distributorcredit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;

(m) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (j) and the amount attributable to any recipient shall be calculated in the manner provided in clause (f) and such credit shall be distributed in the month in which the debit note is included in the return in **FORM GSTR-6;**

(n) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (f), and the amount so apportioned shall be-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in **FORM GSTR- 6**; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.

(1A) For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of Section 9, a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of sub-rule(1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, includingthat it was distributed to a wrong recipient by the Input Service Distributor, theprocess specified in clause (n) of sub-

rule (1) shall apply, *mutatis mutandis,* for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (l) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in **FORM GSTR-6** for the month in which such credit note and invoice was issued.

Explanation. — For the purpose of this rule—

(i) the term "relevant period" shall be—

a. if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

b. if some or all recipients of the credit do not have any turnover in their States or Union territories 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;

(ii) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(iii) the term ''turnover'', 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 entries 51 and 54 of List II of the said Schedule."

4.29 Accordingly, the recommendations of the Law Committee for amendments in CGST Act and CGST Rules have been placed before Council for approval.

Decision: The Council agreed with the said recommendations of the Law Committee.

Agenda Item 3(v): Clarification regarding restoration of provisionally attached property.

4.30 The Pr. Commissioner, GST Policy Wing took up the next agenda regarding provisional attachment of the property of the taxpayers. He stated that Section 83(2) of CGST Act, 2017 states that the provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order i.e. provisional attachment order in the form of **FORM GST DRC-22.** However, as per Rule 159(2) of CGST Rules, 2017, provisional attachment of a property shall be removed **only** on the written instructions from the Commissioner to that effect. But, even

after completion of 1 year, the property is not released as the banks and other agencies with which the property is provisionally attached unless they receive written instructions from the Tax Authorities. Therefore, it appeared that the CGST Rules, 2017 were not in alignment with the CGST Act, 2017. This misalignment between Rules and Act was observed by the Hon'ble Delhi Court in the case of M/sBalaji Enterprises vs. Pr. ADG, DGGI and therefore, the Hon'ble Court had ordered to adopt a procedure for defreezing the bank accounts.

4.31 He mentioned that the issue was deliberated by the Law Committee and the Law Committee recommended amendment in sub-rule (2) of rule 159 of CGST Rules and in FORM GST DRC-22, as below to align the provisions of CGST Rules with that of section 83 of CGST Act.:

Amendment in sub-rule (2) of Rule 159:

To insert the words "*or on expiry of a period of one year from the date of issuance of order in FORM GST DRC-22, whichever is earlier* ," after the words "to that effect", to clearly provide that order issued under FORM GST DRC-22 shall cease to have effect after expiry of period of one year from the date of issuance.

Amendment in FORM GST DRC-22:

To insert the words "*This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier*."

4.32 He mentioned that after these amendments, order of provisional attachment would be valid for maximum period of one year and such order shall cease to have effect after expiry of one year from the date of issuance. He also added that these recommendations of Law Committee were discussed and agreed to in the officers' meeting. However, it was also recommended in the officers' meeting that officers may be issued alerts in respect of all such provisionallyattached orders where they are nearing the completion of one year so that if any action needs to be taken by the concerned officer then the same could be donewell before the lapse of the time limit. GSTN was requested to provide the said functionality on the system so that officers could be alerted about the time limit of expiry of one year of provisional attachment order.

Decision: The Council agreed with the recommendations of the Law Committee, including the recommendations of the officers in the officers' meeting, along with proposed amendment in sub-rule (2) of Rule 159 of CGSTRules, 2017 and Form GST DRC-22.

Agenda Item 3(vi): Clarification on various issues related to Place of Supply.

4.33 The Pr. Commissioner, GST Policy Wing informed that the next agenda is regarding issuance of a clarificatory circular on 'Place of Supply' in respect of three kinds of supply of services as discussed below.

A. Clarification regarding place of supply of services of transportation of goods by mail or courier when either supplier or recipient of service islocated outside India

4.34 Law Committee recommended that a Circular may be issued to clarify that in respect of supply of services of for transportation of goods, including by way of mail or courier, in all cases where location of supplier of services or location of recipient of services is outside India, the place of supply is to be determined as per sub-section (2) of section 13 of the IGST Act, i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services. This shall help in aligning the treatment for supplyof services of transportation of goods, other than by way of mail and courier, with that of supply of services of transportation of goods by way of mail or courier services, in cases where supplier or recipient is located outside India and will remove any ambiguities that may arise in interpretation or otherwise.

B. Clarification regarding place of supply for services in respect of advertising sector

4.35 The Pr. Commissioner, GST Policy Wing further explained the two scenarios differentiating the supply of services of advertising through hoarding:

(i) There may be a case wherein there is supply (sale) of space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be thelocation at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.

(ii) There may be cases where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the servicesof a vendor. The responsibility of arranging the hoardings/ bill boards and display ofadvertisement on the said location lies with the vendor and during this entire timeof display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed whereas the advertising company is not occupying the space or the structure. As there is no supply (sale) of space on the hoarding/ structure (immovable property) belonging to vendor to the client for display of their advertisement on the said display board/structure, it does not amount to sale of advertising space. Also, as there is no supply (sale) of rights to use the structure (immovable property) belonging to vendor to the other person to use for any purpose, it does not amount to supply by way of grant of rights to use immovable property. Therefore, such services provided by

the Vendor to Advertiser are purely in the nature of advertisement services in respect of which Place of Supply should be determinedin terms of Section 12(2) of IGST Act, 2017 according to which place of recipient (Advertiser) is the Place of Supply and nature of transaction as to whether inter- state or intra-state shall be decided accordingly.

4.36 The Hon'ble Member from Goa raised his concern that in services connected to 'Immovable Property' like the services of architect and engineer or stay in hotel, the place of supply in such cases is where the land is located and the GST goes to the state where the land property is situated irrespective of B2C or B2B supplies. Similarly, if any GST is collected on advertising through hoarding, then GST should go to the state where the hoarding is located.. Hence for advertising through hoarding, place of location of hoarding should be considered as 'Place of Supply'.

4.37 The Pr. Commissioner GST Policy Wing mentioned that the concern of the Hon'ble Member from Goa has been addressed in the proposed circular, wherein it has been clarified that where the hoarding is taken on rent by the advertiser, the place of supply is the place of location of hoarding.

C. Place of supply in case of supply of the "co-location services"

4.38 Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S. No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of colocation services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various components of 'Hosting and information technology (IT) infrastructure provisioning services' like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by theprovisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-locationservice.

4.39 However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property under provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act.

Decision: The Council agreed with the recommendations of the LawCommittee along with the proposed Circular.

Agenda Item 3(vii): Agenda Note for issuance of clarification relating to export of services- condition (iv) of the Section 2 (6) of the IGST Act 2017.

4.40 The Pr. Commissioner, GST Policy Wing informed that doubts were raised by trade and industry associations on the issue that export remittances realized in INR into Special Vostro accounts are being denied the benefit of exports by some of the tax authorities by taking a view that the remittances received by taxpayer in 'INR' in such Vostro accounts are not permitted by RBI for the purpose of consideration of supply of services as export of services as per provisions of clause (6) of section 2 of IGST Act, 2017. Therefore, the refunds of ITC are being denied to the exporters by such tax authorities claiming that the said exporter has not realized export proceeds in convertible foreign exchange and accordingly, the conditions for qualifying as export under clause (6) of section 2 of IGST Act, 2017 are not fulfilled.

4.41 Sub-clause (iv) of Section 2(6) of the IGST Act, 2017 requires that for a supply of service to qualify as export of service, the payment for such service should be received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India. On perusal of the provisions of RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 & Para 2.52 (d) of the Foreign Trade Policy (FTP) 2023, it appears that the conditions of the said sub-clause are fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 and reiterated further in Foreign Trade Policy, 2023. Law Committee has therefore recommended that it may be clarified through a Circular that the condition of sub-clause (iv) of Section 2(6) of the IGST Act, 2017 will be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account.

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

Agenda 3 (viii). Amendment in Central Goods and Services Tax Rules, 2017 and GST REG/PCT – FORM(s)

4.42 The Principal Commissioner, GST Policy Wing stated that the agenda pertains to few minor procedural changes to align GST REG/PCT-FORMS(s) and amendments in the CGST Rules, 2017, which have been recommended by the Law Committee. The amendments proposed are as follows:

A. Incorporation of 'One Person Company' in FORM GST REG 01 i.e. Application for Registration

4.43 The registration application process for certain business types requires a selection of the 'Constitution of Business' from a dropdown in Part B of FORM GSTREG-01 i.e. Application for Registration. A recent change on the portal made it mandatory for applicants to provide details of at least two Partners/Promoters in certain specific categories of 'Constitution of Business'. However, there was no option for the category of 'One Person Company' applicants in the dropdown. To address this issue, an advisory was issued by GSTN advising 'One Person Company' applicants to select 'Others' in the dropdown and specify 'One Person Company' in a text field to complete the registration process.

4.44 Therefore, it was proposed to make available in Part B of FORM GST REG-01 as well as on portal in the 'Constitution of Business' tab, an option of 'One Person Company', so that one can apply as 'One Person Company'. With this option, the system will allow the applicant to fill in the details of the single member or owner and to submit the application successfully on system.

B. Application for Enrolment as Goods and Services Tax Practitioner-Amendment in Form GST PCT-01.

4.45 Rule 83(1) of the CGST Rules stipulates the conditions for enrolment as Goods and Services Tax practitioner by any person. It was recommended that necessary changes are required to be made on the portal as well as in Part-B of Form GST PCT-01 in line with the rules as below:

a. Certificate of Practitioner is not required for CA/ICWA/CS as per the rules.
b. Option related to Graduate or Post Graduate in Law and Higher Auditing isnot available in notified form and the portal and needs to be inserted.
c. Option related to any other examination notified by Government is also notavailable in notified form and the portal and needs to be inserted.
d. Deleting the option of "Advocate" as it is not aligned with the existing rules.

C. Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons.

4.46 Rule 12(3) of the CGST Rules was amended vide Notification No. 26/2022- CT dated 26.12.2022. This amendment allows tax officers to accept TDS/TCS taxpayers' requests for registration cancellation via email or manual submission and issue cancellation orders in FORM GST REG-08. Presently, the tax officersare issuing Order of cancellation of Registration as Tax Deductor at Source or Tax Collector at Source in FORM GST REG-08 for suo-moto cancellation of registrationalone, with no separate format for self-cancellation applications.

4.47 A recommendation has been made to amend FORM GST REG-08 to specifically provide for cancellation of registration upon request by TCS/TDS taxpayers. Additionally, has been recommended to rephrase and align the cancellation reasons in FORM GST REG-08 with those in FORM GST REG-19, as per the CGST (5th Amendment) Rules, 2022, for improved clarity.

D. Amendment in rule 142 (3) of the CGST Rules with respect to FORMGST DRC-05

4.48 A recommendation has been made to remove the anomaly between rule 142(3) and FORM GST DRC-05, by substitution of the words “intimation” instead of“order” in rule 142(3) with respect to FORM GST DRC-05.

E. Changes in FORM GSTR-8 to include late fee

4.49 Section 47 of the CGST Act has been inter alia amended vide Finance Act, 2022 and the said amendment has been notified w.e.f. 01.10.2022 vide Notification No. 18/2022-Central Tax dated 28.09.2022. The amendment envisages that the late fee on delayed furnishing of return in FORM GSTR-8 under section 52 of the CGST Act, 2017 by e-commerce operators, should also be levied from the date of implementation of the aforesaid amendment. Since, existing FORM GSTR-8 does not contain late fee table, it has been recommended to make requisite changes in FORM GSTR-8 as per the agenda note.

Decision: The Council agreed with the recommendations of the Law Committee in Agenda Item 3(viii) along with the amendments in said rule and said Forms.

Agenda Item 3(ix): Subject: Clarification on the scope of the refund on account of inverted duty structure in respect of supplies of certain construction services.

4.50 The Pr. Commissioner, GST Policy Wing presented the agenda and stated that the issue pertained to Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017, whereby refund of unutilized input tax credit was restricted in respectof supplies specified in item 5(b) of Schedule II of the Act.

4.51 Field formations have sought clarification regarding the applicability of Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017, concerning refund applications for services involving the construction of bridges and roads, among others.

4.52 Some field formations consider roads and bridges as "civil structures" fallingunder item 5(b) of Schedule II of the CGST Act, 2017, and assert that refund of accumulated credit on account of inverted duty structure is restricted by this notification for such services.

4.53 On the contrary, other field formations argue that the construction of roads and bridges is not covered by item 5(b) but rather they fall under works contract services as per Item 6(a) of Schedule II of the CGST Act, 2017 and therefore, there is no restriction on refund of accumulated credit for inverted duty structure in the case of such supply of services under Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017.

4.54 Accordingly, clarification is needed to resolve this interpretation discrepancy.

4.55 The Pr. Commissioner, GST Policy Wing informed that the issue had been thoroughly discussed by the Law Committee in its meeting, wherein two differing views emerged. The first perspective, which was held by the majority of members, posits that the construction of bridges and roads does not fall within the purview of item 5(b) of Schedule II of the CGST Act, 2017. It was argued that constructions of bridges and roads etc. are not intended for the purpose of sale, and item 5(b) of the said Schedule primarily pertains to real estate transactions where the supply includes the value of land and is meant for sale. According to this view, there is no restriction on refund of accumulated credit for inverted duty structure concerning such services under Notification No. 15/2017-Central Tax (Rate) dated 28.06.2017 and the same can be clarified through a circular.

4.56 Conversely, the opposing viewpoint, held by the State of Karnataka, contends that the construction of bridges and roads, among other similar structures, shall be categorized as "civil structures" falling under item 5(b) of Schedule II of the CGST Act, 2017. Accordingly, it is argued that the refund of accumulated credit should be denied for such services.

4.57 He further apprised the Council that during the Officer's meeting held on 06.10.2023, the majority of the States concurred with the first view. However, a few states, including Karnataka, Punjab, Haryana, Tamil Nadu, Uttar Pradesh, Kerala, and Jammu & Kashmir, held a divergent view favoring the second perspective.This situation has necessitated detailed discussions by the Council so as to reconcile these differing interpretations to achieve clarity and uniformity.

4.58 The Hon'ble Member from Maharashtra emphasized the need to distinguish the construction of roads and bridges from the real estate sector, as special concessions had been granted to the real estate sector, which is not the case for the construction of roads and bridges. Therefore, he stated that the refund of accumulated credit should not be restricted for construction of roads and bridges.

4.59 The Hon'ble Member from Karnataka highlighted that Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017, restricted the refund of unutilized input tax credit concerning supplies specified in item 5(b) of Schedule II of the Act. He stated that item 5(b) of Schedule II encompasses 'civil structures,' and the Act does not provide a specific definition for this term. However, he provided a common definition of 'civil structure,' explaining that it refers to engineered constructions that serve various purposes in society. These structures are designed to support infrastructure, transportation, utilities and public services. Examples of civil structures include bridges, dams, highways, tunnels, airports, sewage treatment plants, and water supply

systems. He argued that since all engineered constructions used for public purposes, like bridges and roads, fall under the category of civil structures, they should not be eligible for refund. Furthermore, he informed the Council that the State of Karnataka has been following this practice consistently, with most assesses complying, except for one who is litigating the matter in the High Court. The Member stressed that there have been no significant challenges, and the implementation has been smooth. He asserted that in their interpretation, item 5(b) of Schedule II of the Act encompasses more than just the real estate sector. They contended that the entry comprises independent components and is inclusive in nature. This inclusivityimplies that this entry extends beyond real estate and is not limited to the sector. He stated that it may not be appropriate to dilute the Notification through a clarification and any changes should be made by amending the Notification rather than through a clarification. He cited the Hon'ble Supreme Court ruling, among various others, as held in Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. Parson Tools & Plants Kanpur (1975), highlighting a para from the ruling that:

'the language of which is otherwise plain and unambiguous, the Court is notcompetent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be. A general principle of justice and equity. To do so, would be entrenching upon the preserves of Legislature'.

4.60 The Hon'ble Member from Karnataka stated that all notifications are placed in the Parliament and State Legislatures for approval, and any attempts to modify them through clarifications would constitute an encroachment into the legislature's domain. He also highlighted that issuing a clarification would have revenue implications for the State, though exact calculations had not been performed. He estimated a potential revenue outgo of approximately Rs 1000 crore for the State of Karnataka. He raised the issue whether the State would be compensated for this revenue loss resulting from the refund of accumulated credit as it pertains toprotected revenue era.

4.61 The Hon'ble Chairperson acknowledged the Member's perspective and proposed it for the Council's consideration. She agreed with the Member's argument that there might not be a necessity to define the term "civil structure"used in item 5(b) of Schedule II, to provide clarity as to whether the term "civil structure" in item 5(b) of Schedule II includes bridges or not. However, she pointed out that the Law Committee's intent seemed to be more focused on including only real estate structures in item 5(b) of Schedule II and in the notification by using clarification route. She expressed her concern that if the Law Committee's intention was to exclusively include real estate structures only in item 5(b) or in the restriction in the said Notification, it should have been formulated the Law/ Notification more explicitly, rather than taking a circuitous route through the clarification.

4.62 The Secretary clarified that it appeared that the provisions were made to restrict accumulated credit for the real estate sector. However, the inclusion of the term "civil structure" in item 5(b) of Schedule II apparently was to prevent any inadvertent omissions of other complexes, buildings or structures within real estate. The Secretary acknowledged that the definition of "civil structure" clearlyencompassed bridges and roads, even though that may not be the original intent of Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017 to restrict refund of credit in respect

of construction of bridges and roads. In line with the Hon'ble Member from Karnataka's suggestion, the Secretary proposed that the said notification could be prospectively amended to explicitly state what the entry includes. This would protect the revenue from previous years for the States and provide clarity for future situations. This approach could potentially merge both views and address the grey area in question, particularly since these projects typically involve government contracts where bidders need clear tax regulations.

4.63 The Hon'ble Member from Karnataka extended gratitude to the Chairperson and the Revenue Secretary for their positive response. He noted his reservations regarding the prospective approach but expressed willingness to withdraw them, recognizing that the Council has come two steps forward.

4.64 The Hon'ble Member from West Bengal raised concerns about those States who have already refunded the accumulated credit and have been compensatedby the Centre. She suggested that the principle of 'Ejusdem generis', should be considered for better understanding the intent. She emphasized that taking this aspect into account might help avoid complications and ensure a smoother transition.

4.65 The Hon'ble Member from Kerala expressed agreement with the proposal but sought clarification regarding the contracts under consideration. Specifically, the Member inquired whether the term "prospective" referred to future contractsand agreements and not those already in existence.

4.66 In response, the Secretary clarified that the amendment should be in a manner that addresses both existing and future contracts. Regarding the query from the Hon'ble Member from West Bengal, the Secretary explained that there would be no clarification retroactively for past cases. States would retain the discretion to handle past cases as they see fit, based on their interpretation, as the amendment would be prospective.

4.67 The Hon'ble Member from Bihar requested to clarify the language used inthe subject matter.

Decision: The Council agreed to amend the Notification No. 15/2017-Central Tax (Rate), dated 28.06.2017 prospectively to clearly define the scope of restriction imposed by the said notification so as to provide that refundunder inverted duty structure shall be restricted only in respect of supply of services of construction of a complex, building, structure, etc., which are intended for sale to a buyer, wholly or partly, and not to other construction/ work contract services.

5. Agenda item 4: Recommendations of the Fitment Committee for the consideration of the GST Council

5.1 The Secretary asked the Joint Secretary, TRU to present the agenda relating to the recommendations of the Fitment Committee.

5.2 Joint Secretary, TRU stated that the Fitment Committee agenda was summarized in six Annexures (I to VI). There were a total of 12 agenda items relating to goods out of which the Fitment Committee had recommended making changes in the GST Rate or issue of clarifications in case of 4 items (Annexure-I of the Agenda Volume-I), no change recommended in respect of 6 items (Annexure-II of the Agenda Volume-I) and deferred two issues for further examination (Annexure-III of the Agenda Volume-I). One agenda item was being placed before the Council for information. In the case of services, there were a total of 24 agenda items, of which the Fitment Committee had recommended making changes in the GST Rate or issue of clarifications in case of 10 items (Annexure-IV of the Agenda Volume-I), no change recommended in respect of 5 items (Annexure-V of the Agenda Volume-I) and deferred 9 items for further examination (Annexure-VI of the Agenda Volume-I).

5.3 Thereafter, JS, TRU presented the agendas pertaining to the recommendations of the Fitment Committee. (**Annexure-4)**

5.4 The first item for discussion was concerning "Food preparation of millet flour in powder form, containing at least 70% millets by weight" in respect of which the Fitment Committee had recommended for reduction of GST rate from 18% to *0%* for *food preparation of millet flour, in powder form, containing at least 70% millets by weight (CTH 1901), sold in other than pre-packaged and labelled form and 12% if sold in pre-packaged and labelled form.* She stated that there was also a request for regularising the issue for the past period, but the Fitment Committee had not recommended the same as there was no ambiguity regarding tax rate on flour preparations for the past period. The same had been discussed in the officers' meeting and no objections were raised.

5.5 The Hon'ble Member from Delhi pointed out that currently branded Atta is being charged 5% GST and the rate of GST being proposed on millets is 12%, and if the intention is to promote the use of millets, then the rate of tax should be lesser or same as that of branded atta. Joint Secretary, TRU clarified that millet flour is already at Nil if sold in other than packaged form and at 5% if sold in packaged form. She clarified that the item under discussion is preparations of millet flour and that the proposal was for such value added products only.

5.6 The Hon'ble Member from Karnataka proposed 5% rate for value added products of millets as both the Centre and States were promoting the usage of millets in the International Year of Millets. He reasoned that this will give a fillip to millet consumption. This would lead to better uptake from farmers and better prices for them. He further stated that millets are highly nutritious and governments are spending money on fortifying food through various schemes. Millets on the other hand are naturally fortified food. To benefit the marginal farmers who grow millets, he suggested that processed and packaged foods made out of millets should also be brought to 5%. He stated that India has a lot to gain by promoting millets and might gain some export markets as well.

5.7 The Hon'ble Chairperson clarified that baked items, biscuits etc. referred to by the Hon'ble Member form Karnataka was not part of the agenda to be discussed. She further asked the Council to take a conscious call on the issue under discussion.

5.8 The Secretary clarified that atta whether of wheat or millets, if sold loose is chargeable to Nil GST. However, if sold in packaged form, atta even if it is a mix of millets and wheat, as long as it is flour, attracts 5% GST. However, if the flour has other ingredients added to it, like dry fruits etc. then it will attract higher rate of duty. Proposal is to charge 12% GST on such preparations containing at least 70% millets, packaged and labelled, and nil if sold loose, instead of present rate of 18% GST.

5.9 The Hon'ble Member from Karnataka proposed for bringing the content of millets to two-third and that the rest of one-third could be anything like sugar, dry fruits, nuts, pulses, Jaggery powder etc. That looking at the spirit of the Council, the processed foods based on millets, with higher share of millets could be considered at least in the future as the present agenda was limited to only atta.

5.10 The Hon'ble Member from West Bengal asked for clarification regarding the content in view of the proposal of the Hon'ble Member from Karnataka.

5.11 The Hon'ble Chairperson clarified that the proposal was for 70% and that Council might consider bringing that to two-thirds based on proposal of Hon'ble Member from Karnataka.

5.12 The Hon'ble Member from Meghalaya stated that the idea was to change the food habits by including millets in diets of people which would ultimately benefit the small and marginal farmers and supported the views expressed by the Hon'ble Member from Karnataka.

5.13 The Hon'ble Member from Tamil Nadu stated that millet flour when mixed with other flours should be charged to 5% GST, if mixed with any other valueadded product should be chargeable to 12%.

5.14 The Hon'ble Members from Maharashtra, Andhra Pradesh, Meghalaya, Punjab, West Bengal, Goa, Uttar Pradesh, Assam, Kerala and Odisha supported the proposal for 5% GST rate. However, the Hon'ble Member from Kerala opposed any reduction in GST rate on processed foods like cookies.

5.15 The Hon'ble Chairperson clarified that the proposal was only for raw product and as all have agreed for a rate of 5%, the proposal might be accepted for 5% for pre-packaged and labelled preparations of millet flour containing at least 70% millets and 0% if sold in other than pre-packaged and labelled form.

Decision: The Council approved the proposal for reduction in GST rate to 0% for food preparations of millet flour in powder form, containing at least 70% millets by weight, sold in other than pre-packaged and labelled form, and 5% if sold in pre-packaged and labelled form.

5.16 Joint Secretary, TRU then presented the next agenda item. She stated that the GST Council in its 50th meeting had recommended updating the list of banks/entities eligible for availing IGST exemption on import of gold, silver or platinum in accordance with Appendix 4B of HBP,FTP, 2023 after confirmation by DGFT & DGEP and the same was accordingly done. The current recommendation by the Fitment Committee was to update the list of banks eligible for

availing IGST exemption as authorized by RBI as per the public notice issued by DGFT inAugust, 2023. She stated that the Fitment Committee has also recommended that the GST Council might consider giving approval to update such lists as and when amended by DGFT and thereafter place the same before the Council for information.

Decision: The Council approved the recommendations of the Fitment Committee with regard to updating the list 34A and 34B of Notification No. 50/2017-Cus as per revised appendix 4B issued vide DGFT Public Notice dated 18.08.2023 and to update such lists as and when amended by DGFTand placing before the Council for information thereafter.

5.17 Joint Secretary, TRU then presented the next agenda item pertaining to clarification on imitation *zari* thread or yarn made out of polyester film (metallised) or plastic film. She stated that the GST Council in its 50th meeting had recommended reduction of GST rate to 5% on all imitation *zari* thread or yarn known by any name in trade parlance. She stated that doubts had been raised as to whether imitation *zari* thread also covers metal coated plastic film converted to metallised yarn and twisted with nylon, cotton, polyester or any other yarn to make imitation *zari* thread. She stated that as per the HS Explanatory Notes, the same would be covered under heading 5605 with 5% GST. The Fitment Committee has therefore, recommended issuing a clarification to that effect and in view of the reservations expressed by the state of Gujarat, also recommended to clarify that no refund will be permitted on polyester film (metallised)/ plastic film on account of inversion.

Decision: The Council approved the issue of clarification as recommended by the Fitment Committee that imitation *zari* thread or yarn made from metallised polyester film/plastic film are covered under heading 5605 and levied to 5% GST and recommended that no refund will be permitted on polyester film (metallised)/ plastic film on account of inversion in duty structure.

5.18 Joint Secretary, TRU then presented the Agenda points as mentioned in Annexure-II of the agenda where the Fitment Committee had recommended no change . She stated that a request had been received to clarify that concrete mixers, self-loading concrete mixers and boom pumps i.e. concrete mixers when supplied independently or mounted on a chassis supplied by the customers, would not constitute a body for a motor vehicle and would not be classified under HSN 8707 at 28%. She stated that the Fitment Committee recommended that a specific clarification may not be required in view of the fact that the entries under HS Codesand explanatory notes are clear and there is no ambiguity.

Decision: The Council approved the recommendation of the Fitment Committee in this regard.

5.19 Joint Secretary, TRU then presented the next agenda item pertaining to extending the concessional rate of GST for spare parts of renewable energy devices irrespective of its end-use. She stated that currently concessional GST rateof 12% is provided for parts for manufacture of enlisted devices and not for replacements/ repairs. Fitment Committee had recommended to maintain status

quo. When the issue came up for discussion in the officers' meeting, Punjab had requested for a relook at all end used based exemptions in the notification and it was decided that the Tax Research Unit would examine in totality all end use based exemptions in GST.

Decision: The Council approved the recommendation of Fitment Committee on maintaining status quo with respect to GST on spare parts for enlisted renewable energy devices and directed the TRU to examine all end use basedexemptions.

5.20 Joint Secretary, TRU then presented the next agenda item pertaining to reduction in GST rate on lithium ion batteries from 18% to 5%. She stated that when Fitment Committee examined the issue, it was found that lithium ion batteries have multiple uses and hence recommended to maintain status quo.

Decision: The Council approved the recommendation of the Fitment Committee for maintaining status quo on the GST rate for supply of lithium ion batteries.

5.21 Joint Secretary, TRU then presented the next agenda item pertaining to request for clarification on scope of sugar boiled confectionary. She stated that sugar confectionary currently attracts 18% GST while sugar boiled confectionary attracts 12% GST. Fitment Committee recommended that no clarification is required in this regard as there exists FSSAI standards for the products.

Decision: The Council approved the recommendation of the Fitment Committee that no clarification is required to be issued regarding scope of sugar boiled confectionary.

5.22 Joint Secretary, TRU then presented the next agenda item pertaining to requests from Beverages associations and Ministry of Defence to exempt GST compensation cess on supply of aerated beverages by Unit Run Canteens (URCs) or alternatively, the applicable cess may be collected at the Canteen Stores Department (CSD) depot level for supplies made by URCs. She stated that currently all supplies by URCs to authorised customers is fully exempt from GST, however, a conscious decision was taken in the 15th meeting of the GST Council not to exempt levy of Compensation Cess. She stated that currently Compensation Cess is being levied on two wheelers, four wheelers and aerated beverages. Two wheelers and four wheelers are being supplied through CSD depots only and cess is being duly collected and paid to the government. Aerated beverages were being supplied by URCs and because of the difficulties associated with their registration as they are spread out and located in difficult terrain, they are unable to pay the compensation cess and therefore have stopped procurement and sales of aerated beverages. Fitment Committee recommended no change in rate of compensation cess on aerated beverages supplied by Unit Run Canteens and regarding the option of collecting applicable cess at Depot level for supplies by URCs, it recommended that the matter may be referred to Law Committee for examination.

Decision: The Council approved the recommendations of the Fitment Committee

5.23 Joint Secretary, TRU stated that the next agenda item arose out of a Parliamentary assurance. The issue pertains to requests from some states for levy of uniform additional compensation cess on cigarettes and tobacco products. She stated that the issue was examined by the Fitment Committee and Fitment Committee recommended no change in compensation cess rates on

cigarettes, bidis, smokeless tobacco products in view of the recent changes in the levy of compensation cess on such commodities from ad valorem rate to RSP linked rate and increase in National Calamity Contingent Duty (NCCD) on specified cigarettes.

5.24 The Hon'ble Member from Karnataka stated that the issue pertained to increase in taxation on tobacco products, either GST or cess, and that they preferred the tax route rather than increasing cess. He stated that the incidence of tax on tobacco products in India was about 54% which was way below the global standard of 75%. He further stated that considering the ill health effects of tobacco products, there should be higher tax on those products and therefore, GST rate on tobacco products should be increased and slowly brought on par with global standards which was 75%. He stated that there was a worldwide consensus on limiting the usage of tobacco and that it was the people in middle and lower income level which suffered the most due to the detrimental health effects of the use of tobacco. He reminded the august house that India is a signatory to the Framework Convention on Tobacco Control of WHO wherein parties to the Convention have agreed that price and tax policies are effective measures for controlling consumption of tobacco. He further stated that tobacco companies are now focussing on developing and under developed countries as the developing countries have been very aggressive with their tax policies. He urged the Council to consider increasing the tax on tobacco products to global standards. He stated that the same applied to aerated beverages also as they cause huge health risk and that many countries had moved aggressively in taxing aerated beverages and that the Council should look towards increasing the tax on tobacco products

5.25 The representative from Goa stated that while he agreed with the arguments of Hon'ble Member from Karnataka, and it is the poor who suffer from the ill effects of tobacco use, increase in taxation will promote the grey market where such products are sold without paying any taxes whatsoever. Therefore, there is a need to balance the taxation in such a way that that it did not lead to illegal market in a big way. He stated more data was required to arrive at an appropriate well thought out decision.

5.26 The Hon'ble Member from Maharashtra stated that he supported the view of Goa as it has been their experience in Maharashtra that increase in rates leads to increased black marketing. He stated that while the cause was good, caution needs to be exercised in increasing the GST rate

5.27 The Secretary informed the Council that the Parliamentary Assurance Committee needed to be informed in this regard and whenever more data/information was available, the issue might be revisited again.

Decision: The Council agreed to maintain status quo on levy of compensation cess on cigarettes, bidis and smokeless tobacco products.

5.28 Joint Secretary, TRU informed the Council that 2 issues as mentioned in Annexure-3 were deferred for further examination.

5.29 The Hon'ble Member from Maharashtra stated that khari is not puff and is just a toasted product. It is consumed in few states like Goa, Maharashtra, Gujarat and requested to take the issue

on priority. He stated that all requisite certificates from Institutes had been obtained.

5.30 The Secretary stated that in the officers' meeting he had already mentioned that both the agendas, pertaining to khari and steel scrap, may be expedited and the Council may like to direct the Fitment Committee to bring recommendations on these two issues in the next meeting.

Decision: The Council directed the Fitment Committee to examine the issues pertaining to khari and steel scrap and bring the same before the Council in its next meeting along with its recommendations.

5.31 Joint Secretary, TRU informed the Council that the Hon'ble Madras High Court had directed that the authority concerned shall ensure that necessary orders exempting GST and motor vehicle's tax on Motor Vehicle purchased by the petitioner shall be passed within four weeks from date of receipt of undertaking letter from the petitioner. She stated that this Writ Petition had been filed by a visually impaired person who sought the same concessional rate of GST(18%) which is currently applicable to orthopedically disabled persons. She said that an appeal has been filed against the decision along with stay petition and the issue is being brought for information of the Council.

5.32 The Hon'ble Member from Goa stated that the GST Concession for purchase of motor vehicles available to only Orthopedically disabled persons should also be made available to all Divyangjans. In future, vehicles may also be modified for use by other Divyangjans beyond those orthopedically challenged. Since the concessional rate requires a certificate from Ministry of Heavy Vehicles, there is no scope for misuse of this concession. He reiterated that the facility should be extended to all Divyangjans.

5.33 The Secretary clarified that if any concession had to be given to any person and not to goods, then the same had to be through subsidy or reimbursement route and that the Council had decided the same in its earlier in 47th meeting. He stated that this issue has been brought to notice of the Council that an appeal has been filed in this case before the Hon'ble Court.

<u>Agenda Item 4 (Part-II): (i) Agenda on Extra-Neutral Alcohol (ENA)</u>

5.34 Joint Secretary, TRU then presented the agenda no 4 (Part-II) related to taxation of Extra Neutral Alcohol (ENA). She informed the Council that that issued was first discussed in 20th Meeting of the GST Council and in subsequent meetings but decision could not be arrived except for the fact that 18% GST would be levied on ENA for Industrial Use. Thereafter, there are varying practices across States wherein some States levied VAT and some levied GST and where taxpayers had paid GST they had been issued notices demanding VAT on the same; where assessees had paid VAT, they have been issued notices demanding GST on ENA supplied. This had led to multiple litigations. She stated that over 40 Writ Petitions had been filed in the state of Madhya Pradesh asking the Court to direct the GST Council to settle the issue because of the difficulties

faced by the ENA manufacturers. The proposal was discussed in the officers' meeting and is now presented based on the inputs given by States. She stated that the proposal is to place before the Hon'ble Supreme Court where an appeal by the Uttar Pradesh government is pending that the GST Council has no intention to tax ENA for use in the manufacture of Alcoholic Liquors for Human Consumption and that Law Committee may be asked to carry out suitable amendments for keeping ENA for manufacture of alcoholic liquors for human consumption out of the ambit of the GST; and to notify rate of 18% for new tariff line created for ENA for Industrial use. She stated there is also a proposal to reduce the GST rate on Molasses from 28% to 5%.

5.35 The Hon'ble Member from Goa stated that the present proposal to exempt ENA is good as it will reduce the input cost for the liquor industry. Reduction of tax rate on molasses from 28% to 5% would also reduce the tax burden on the liquor industry. Therefore, states could increase the excise duty on liquor and also VAT on liquor finished product and this would help them to increase their revenue. He stated that it is clear that ENA both for industrial use and for use in manufacture of alcoholic liquors for human consumption is under GST.

5.36 The Hon'ble Member from Tamil Nadu opposed the proposal as the same would go against the very principle of bringing all goods under GST and would not be aligned with the constitutional provisions and various judgements already pronounced in this regard. He mentioned that the Hon'ble Allahabad High Courthad held that imposing VAT on ENA is ultra-vires. Further, administration of two rates on ENA at the hands of supplier, based on end use, would pose implementation problems. It would be difficult to make out whether the ENA is meant for industrial use or for manufacture of alcoholic liquors for human consumption. He also mentioned that in the 47th meeting of the GST Council, the Fitment Committee had not recommended the request for exemption of molasses on the grounds that end use based exemptions are difficult to monitor and need to be discouraged and the Council had accepted the recommendation of the Fitment Committee. Thirdly, net importing states like Tamil Nadu stand to lose if supply of ENA for manufacture of alcoholic liquor is kept outside the ambit of GST. Their study estimates the loss to be of Rs. 35 crore. He requested that ENA may be brought within the ambit of GST. He stated that reduction in rate of GST on molasses from 28% to 5% will have a huge impact on the revenues of the state to the tune of Rs. 92 crore per annum. Therefore, Tamil Nadu was not agreeable to the proposal.

5.37 The Secretary clarified that there was no specific entry for ENA and that currently it is taxed under the residual category. In the pre GST era, there was no excise duty on ENA meant for manufacture of alcohol. He further stated that it is a pro-State measure and the Centre was in fact conceding the revenue arising out of GST on ENA to the states, which would then enable the States to impose higher taxes in the form of excise duty and VAT on alcohol, the end product, as already mentioned by the Hon'ble Member from Goa. The Council is not clarifying whether VAT can be imposed on ENA meant for use in production of alcohol for human consumption as the Council is not empowered to decide the same. The present proposal is to not impose GST on ENA meant for use in manufacture of alcoholic liquor for human consumption which would enable the States to impose higher tax on end product. Further, Molasses is not an end product but an input for

manufacture of alcoholic liquor for human consumption. The reduction of rates on molasses is also a pro-farmer measure. This step will increase liquidity with mills and enable faster clearance of cane dues to sugarcane farmers. This will also lead to reduction in cost for manufacture of cattle feed as molasses is also an ingredient in its manufacture. He stated that only alcohol for human consumption was out of the purview of GST and ENA is not alcohol meant for human consumption. Therefore, although the Council has the power to levy GST on ENA as per theorder of Allahabad High Court which is buttressed by the opinion of the learnedAG, the same would be kept outside the purview of GST by amending the law. He stated that the Constitution gives the Council power to levy GST on ENA, but it isfor the Council to decide whether or not they want to tax it.

5.38 The Hon'ble Member from Karnataka stated that the issue was discussed extensively in the 20th meeting of the GST Council. He welcomed the gesture to keep ENA meant for production of alcoholic liquor for human consumption out of the purview of GST which was the demand of most of the States earlier. It is a pro-State proposal and a step in the right direction.

5.39 The Secretary clarified that while the Council may decide to not levy GST on ENA, it does not mean that they do not have the right so to do and thejudgements of the Courts also are in line with the same. The learned AG had also opined that both the Centre and the States have a right to impose GST on ENA. The current proposal is to cede that right of the Centre when ENA is supplied for manufacture of alcoholic liquor for human consumption. The intent of the Council would be placed before the Hon'ble Supreme Court and other High Courts where the issue is pending. The amendments to law etc. will be examined by the Law Committee.

5.40 The representative of Madhya Pradesh stated that the views of the Hon'ble Member from Madhya Pradesh may be taken on record. He stated that only alcoholic liquor meant for human consumption had been kept out of purview ofGST and the content of alcohol in ENA, which is 95%, makes it clear that it is not alcohol meant for human consumption. He further stated that the Hon'ble High Court of Allahabad had held in the case of M/s Jain Distillery that after the 101st Amendment to the Constitution, the states had no legislative competence to levytax on ENA. He opposed the proposal to tax ENA based on end use and stated that earlier the Council had discouraged the same. He stated that there might be a possibility of tax evasion in case of differential tax structure on ENA.

5.41 The Hon'ble Member from Punjab, while welcoming the proposal to not tax ENA meant for use in production of alcohol for human consumption under GST, observed that it might lead to tax evasion as it would be difficult to differentiateENA which would be put to multiple uses.

5.42 The Hon'ble Members from Goa, Meghalaya, Himachal Pradesh, Chhattisgarh, Maharashtra, Uttar Pradesh and West Bengal supported the proposal. The Hon'ble Member from Himachal Pradesh also recommended exempting ENA from GST irrespective of end use.

Decision: The Council approved the proposal to keep ENA for use in manufacture of alcoholic liquor for human consumption out of the ambit of GST, to place the intent of the Council before the Hon'ble Supreme Court and other Courts, to notify rate of 18% for new tariff line to be created on ENA for industrial use and to reduce the GST rate on molasses from 28% to 5%.

5.43 Joint Secretary, TRU then presented the agenda pertaining to Services as mentioned at Annexure-IV in the agenda Volume-1. She presented the recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services.

5.44 Joint Secretary, TRU informed the Council that a request had beenreceived to notify a mechanism by which ITC flow would not be restricted in case ofthe said supply through electronic commerce operator (ECO) from two Companies supplying passenger transport services by AC buses. She informed that the liabilityto pay tax in respect of passenger transportation services has been shifted from bus operator to the ecommerce operator (ECO) w.e.f 01.01.2022. She further informed that these companies had represented that they supply services through ECO as well as directly through own platform or offline mode. However, due to notification of their service under section 9(5), they were not able to fully utilize their ITC. Accumulation of ITC was more pronounced in case of electric buses which were two or three times costlier than ordinary buses. She explained that the said services were notified under section 9(5) as a trade facilitation measure as most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliance requirements. She stated that to arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, Fitment Committee had recommended that bus operators organized as companies supplying passenger transport services could be excluded from the purview of Section 9(5) of the CGST Act, 2017. She also stated that during the examination of the issue the Fitment Committee had found that GST rate of 5% for the said services with credit of input services in the same line of business was leading to inversion of tax and credit accumulation. She informed the Council that one of the reasons for the same was that input services in the same line ofbusiness attracted GST at rates higher than 5%. She stated that the Fitment committee had further recommended that where GST on input service in the same line of business is payable/paid by the supplier of input service at a rate higherthan 5%, the supplier of passenger transport service by any motor vehicle would beentitled to ITC only to the extent of such amount of GST as would have been payable on the input service in the same line of business at the rate of 5%.

5.45 Further she stated that, presently the same line of business has been described in the entry as "service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle". Fitment Committee recommended that it may be clarified through a circular that inputservices in same line of business include transport of passengers (SAC 9965) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (9973), which attracts GST at the same rate as sale of motor vehicles, that is, 28% plus compensation cess.

Decision: The Council approved the recommendations of the Fitment Committee that,-

a. **Bus operators organised as companies may be excluded from the purview of section 9(5) of the CGST Act, 2017;**

b. **Where GST on input service in the same line of business is payable/paid by the supplier of input service at a rate higher than 5%, the supplier of passenger transport service by any motor vehicle wouldbe entitled to ITC only to the extent of such amount of GST as would have been payable on the input service in the same line of business at the rate of 5%;**

c. **a circular may be issued to clarify the scope of 'input services in thesame line of business' for entities supplying passenger transport service by vehicles as above.**

5.46 Joint Secretary, TRU presented the next item that pertained to clarification as to whether reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants is exempt from GST. She stated that the Fitment Committee had recommended that whenever electricity was supplied bundled with other supplies such as renting of immovable property services, maintenance services, etc. it would be taxed as a composite supply even in cases where electricity bill was shown separately. However where electricity was being supplied by the RWAs or real estate owner asa pure agent, the same would not form a part of the value of supply. She further stated that the issue was discussed in the Officers' meeting and there was arequest that resident welfare associations should be deemed to be pure agents for the said purpose where they charge for electricity on actual basis as they may not be able to comply with all the procedures, condition required to be a pure agent and this was agreed to by all members.

5.47 The Hon'ble Member from Maharashtra suggested that if any other charges were being collected with electricity, only those charges should be taxed and not the electricity charges as it would amount to double taxation.

5.48 The Secretary clarified in respect to agenda regarding reimbursement of electricity charges that the exemption would be available as long as actual charges were being reimbursed to Resident Welfare Association or any other body even in the absence of meters.

Decision: The Council approved the issue of clarification as recommended by the Fitment Committee and that where electricity was being supplied by the RWAs or real estate owner as a pure agent, the same would not form a part of the value of supply. The Council also approved the recommendation that a resident welfare association or real estate owner or developer etc. should be deemed to be pure agent for the said purpose, as long as it charges for electricity on actual basis the amount payable to electricity distribution company or electricity supplier.

5.49 The next item presented by Joint Secretary, TRU was regarding exemption of services provided by District Mineral Foundation (DMF) from GST. She stated that the Fitment Committee had recommended to clarify that DMF is a governmental authority and thus eligible for all exemptions available to governmental authorities. She further informed that the issue was discussed in the Officer's meeting and no objections were raised.

Decision: The Council agreed with the said recommendation of the FitmentCommittee.

5.50 Joint Secretary, TRU then presented the next item which was to clarify whether the job work of converting "Barley" into "Malted Barley" amounts to jobwork services in relation to food and food products which attracts GST at 5% or job work services in relation to manufacture of alcoholic liquor for human consumption which attracts GST at 18%. She stated that Fitment Committee had recommended to clarify that job work services in relation to manufacture of malt are covered bythe entry at Sl. No. 26 (i) (f) which covers job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff.

Decision: The Council agreed with the said recommendation of the Fitment Committee to clarify that job work services in relation to manufacture of malt are covered by entry at S.No.26(i)(f) irrespective of end use of the malt.

5.51 Joint Secretary, TRU informed the Council that the next agenda item wasto specify a positive list of services under Sr. No. 3 & 3A of notification No.12/2017-Central Tax (Rate). She stated that this issue was discussed in earlier Council meetings and Fitment was asked to examine whether there was a need to prune the list of exempt supplies of pure services or composite supplies by way of activity in relation to functions listed in Articles 243G and 243W of the Constitution of India when supplied to Central Government, State Government or Local authority. However, during previous discussions on the same, states had opined that the list should continue as it exists. She stated that the Fitment Committee had recommended to maintain the existing list of services in 3 and 3A of NotificationNo. 12/2017 CTR dated 28.06.2017.

5.52 She further stated that prior to 01.01.2022, the exemption also covered services supplied to Governmental authority and Governmental entities also. The Fitment Committee had also recommended to create a new entry to exempt the following five services supplied to Governmental Authority:

- Water Supply
- Public health
- Sanitation Conservancy
- Solid waste management
- Slum improvement and upgradation

5.53 The Hon'ble Member from Delhi appreciated the recommendation of the Fitment Committee to not prune the list and requested that in addition to the five services recommended by the Fitment Committee, an entry may be made to include services relating to education provided to governmental authorities.

5.54 The Hon'ble Member from Andhra Pradesh stated that the recommendation limited the exemption to the said five services by governmental authorities. He stated that the Urban

Development Authorities also perform the functions of local bodies. He listed out some functions performed by Urban Development Authorities viz., provision of urban amenities and facilities such as parks, gardens, playgrounds, street lighting, parking lots, bus stops etc. that urban development authorities have similar responsibilities as local authorities. He said that the proposal would see the urban bodies being taxed on the same services that the local bodies were being exempted from. He further stated that the tax rate of 18% imposed a huge burden on these bodies which were already reeling under severe dearth of revenues. He requested that the exemptions under the proposal may be broadened to include all governmental authorities other than those providing purely commercial activities.

5.55 The Secretary clarified that the issue of whether an Urban Development Authority is a governmental authority or a local authority is a separate agendawhich had been deferred by the Fitment Committee and the Council may decide the same after the Fitment Committee has examined and given its recommendations on the issue. He stated that there was a difference in the way entities such as government, governmental authorities, public authorities, local bodies, etc. and other entities were taxed and similarly there is a disparity in taxation of goods and services being supplied to such bodies. He stated that this was inherited from the pre-GST era and would have to be looked into.

5.56 The Hon'ble Member from Andhra Pradesh stated that HR cost was high for local bodies and they were mainly recruiting through outsourcing. The purpose of outsourcing was to reduce the burden on the exchequer as compared to regular recruitment. He stated that the same would be defeated if the said exemption is not brought about.

5.57 The Hon'ble Member from Karnataka stated that he welcomed the proposal however he agreed with the Hon'ble Member from Andhra Pradesh. He said thatthe issue of exempting Urban development authorities may be examined by the Fitment committee and discussed in the Council.

5.58 The Secretary agreed to the same and reiterated that the said matter was already before the Fitment Committee and urged the Fitment Committee to expedite examining the same.

5.59 The Hon'ble Member from Andhra Pradesh stated that there are four categories namely Government, Governmental authorities, Local government and Government entities. Pure definition of local government includes only panchayats, Zilla parishads, Municipalities, etc. The Urban Development authorities come under Government authorities therefore this had to be read with separately.

5.60 The Secretary stated that there was a request from Delhi Development Authority to clarify whether they were a governmental authority and once the same is decided the same will be clarified for other bodies of similar nature. He informed that there was an agenda for deciding on the same which had been deferred by the Fitment Committee and once the same was decided the present issues beingraised by the Hon'ble Members would be resolved.

5.61 The Hon'ble Member from Andhra Pradesh quoted 2(69) of the CGST Act 2017, wherein Local authority is defined and stated that the same did not include Urban development authority. He requested that a comprehensive view may be taken on this issue.

5.62 The Hon'ble Chairperson remarked that as pointed out by the Hon'ble Member from Andhra Pradesh the Urban Development Authorities were separate from Local authorities as per the GST Law as well as by common understanding and hence the issue of Urban Development authorities should be examined separately. She urged the Fitment Committee to examine the issue of all similar bodies as early as possible.

5.63 The Hon'ble Member from Delhi stated that there were two issues to be considered; what constituted a governmental authority and whether governmental authority should be treated at par with government and local authority. She further stated that while government and local authority is exempted, in case of governmental authorities a list of exempted services is being specified. She requested that the Fitment Committee may also examine whether governmental authorities can be treated at par with Government and Local authority.

5.64 The Hon'ble Member from Maharashtra stated that the issue in the agenda was pending for long and hence a decision may be taken recommending the same. Any additions could be made later.

5.65 The Hon'ble Chairperson clarified that the agenda would be cleared as all the members were in agreement with the same and the concerns raised by the Hon'ble Members would be examined by the Fitment Committee. She also stated that the Council had taken a position on the matter discussed which was aligned with the legal position in the pre-GST era and expressed hope that the Council would take that into cognizance.

5.66 The Hon'ble Member from Meghalaya requested that since the Fitment Committee was looking into the issue of local authorities, the matter of District Councils which are prevalent in North-east -, may be looked into as well.

5.67 The Hon'ble Chairperson agreed that the same should be examined by the Fitment Committee.

Decision: The Council approved the recommendations of the Fitment Committee to retain the entries at S. Nos. 3 and 3A of notification No.12/2017-CTR and for creation of a new entry to exempt five specified services supplied to Governmental authority.

5.68 Joint Secretary, TRU then presented the next agenda item which was a request to bring supplies made by Indian Railways (IR) under forward charge mechanism from the existing reverse charge mechanism. She informed the Council that presently only the transportation of goods and services provided by Railways is under forward charge and other services such as grant of catering licenses, renting of immovable properties and sale of used and old goods, etc are under reverse charge mechanism. She further informed that this was leading to blockage of ITC and has resulted in Railways accumulating substantial credit. She stated that the Fitment Committee had recommended that all goods and services supplied by Indian Railways may be brought under forward charge. She further stated that certain exemptions on services supplied by government (which included IR) to individuals, unregistered business entities having turnover below the registration threshold, services valued at Rs. 5000 or less (Rs. 5000 in a year in case of continuous supply of service) have been

given so as to ensure that individuals or small unregistered businesses are not required to take registration to pay GST on them under RCM. Similarly, services by Central Government, State Government, Union Territory or local authority to another Central Government, State Government, Union Territory or local authority have been exempted as services supplied by Central Government, State Government, Union Territory or local authority have been exempted as services supplied by Central Government, State Government Union Territory or local authority are generally under Reverse Charge Mechanism (RCM). She stated that if the Council were to decide to tax all goods and services supplied by Indian Railways under forward charge, Indian Railways may be excluded from the above exemptions; otherwise, it would defeat the purpose of bringing all supplies of Indian Railways under forward charge mechanism. Accordingly, it was recommended by the Fitment Committee that

i. All goods and services supplied by Indian Railways may be brought underforward charge.

ii. Indian Railways may be excluded from the aforesaid exemptions.

5.69 She informed that the proposal was discussed in the Officers' meeting and no objections were raised.

Decision: The Council approved the recommendation of the FitmentCommittee to bring the supplies of all goods and services made by Indian Railways under forward charge mechanism from the existing reverse charge mechanism and Indian Railways may be excluded from the exemptions available for services supplied by Central Government as recommended by the Fitment Committee.

5.70 Joint Secretary, TRU informed that the next item was a request received from CAMPCO seeking clarification on entry 54(g) of 12/2017-CT(R) dated 28.06.2017 with regard to the scope of exemption for commission agent in facilitating the sale of agricultural produce. She informed that the Fitment Committee had recommended that since this issue pertained to only a single party and was not a general issue impacting many states, CAMPCO may be advised to approach the Authority for Advance Ruling. She stated that this was discussed in the officers' meeting and concurred with by all the officers.

5.71 Joint Secretary, TRU informed that the next item was issuance of clarification on the applicability of GST on Horticulture Contracts of CPWD. She stated that the Fitment Committee had recommended to clarify that supply of pure services and composite supply of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) *to CP*WD are exempt from GST under Sr. No. 3 and 3A as they exist today. She further stated that the said matter was discussed in the Officers' meeting and there were no objections.

Decision: The Council approved the recommendation of the Fitment Committee regarding the clarification on applicability of GST on Horticultural Contracts supplied to CPWD.

5.72 Joint Secretary, TRU informed that the next agenda item was proposed amendments to notification No. 11/2017-CT(R) dated 28.6.2017 consequent to amendment of CGST Act, 2017. She stated that these were of a technical natureas there were certain entries under services which refer to actionable claims. The GST Council has decided to tax specified actionable claims as goods. She saidthat the recommendation was to revise those entries so that they were in line with the Council's decision to tax the specified actionable claims as goods and also to make consequential changes to entries in the scheme of classification. She stated that the proposal was to amend Sl. No. 34 (iv), (v) of services rate notification No. 11/2017-CT(R) dated 28.06.2017 and to carry out consequential amendments inthe classification of services and explanatory notes.

Decision: The Council approved the recommendation of the Fitment Committee to amend services rate notification No. 11/2017-CT(R) dated 28.06.2017.

5.73 The Joint Secretary, TRU informed that the next agenda pertained to declaring Delhi Development Authority as a Local Authority for the purposes of GST. She stated that the matter was already discussed during the discussion specifying a positive list of services under Sr No. 3 & 3A of notification No. 12/2017- Central Tax (Rate). She informed that the Fitment Committee had recommended for deferring the issue as it required detailed examination.

Decision: The Council approved the Fitment Committee's recommendation. It also directed that the Fitment Committee examine all similarly placed bodies/authorities expeditiously.

5.74 The Joint Secretary, TRU then presented the next agenda pertaining to clarification of whether service by way of hostel accommodation, service apartments /hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017. She stated that the accommodation services under heading 9963 by a hotel, inn, guest house, club or campsite by whatever name called, having declared tariff of a unit below one thousand rupees per day or equivalent were exempt till 17.07.2022 vide entry no. 14 of the notification No. 12/2017-CT(R) dated 28.06.2017. Hostels and hotels were claiming the said exemption. However, vide the amendment notification No. 04/2022- CT(Rate) dated 13.07.2022, the exemption to hotel accommodation having per daycharges below Rs. 1000/- has been withdrawn w.e.f. 18/07/2022 and the said supply is now made taxable at 12% by the notification No. 03/2022-CT (Rate)dated 13.07.2022. Currently, hotel accommodation having value of supply lessthan or equal to Rs. 7500 per unit per day attracts 12% whereas those havingvalue of supply more than Rs. 7500 per unit per day attracts 18%. She further stated that there was a request for GST exemption on hostels for poor and middle- class students run by charitable trusts. She informed that Circular No. 354/17/2018-TRU dated 12.02.2018 at its point no. 1 has considered the hostel accommodation at par with the hotel accommodation. She informed the Councilthat post 17/07/2022, hostels were not eligible to claim exemption under entry no. 14 of the notification No. 12/2017-CT(R) dated 28.06.2017. She stated that hostels were now claiming exemption applicable to renting of residential

dwelling for use asresidence (Sl. No. 12 of notification No. 12/2017 - CTR). She further informed the Council that there had been some litigation on the issue and the decision byHon'ble Karnataka High Court that residential dwelling includes hostels has been appealed against and the matter was pending before the Hon'ble Supreme Court of India. She stated that the recommendation of the Fitment Committee was to clarify that the exemption to renting of residential dwelling for use as residence did not cover hostels or paying guest accommodations and the like.

5.75 The Hon'ble Member from Maharashtra suggested that the matter may be deferred as hostels were mainly meant for students many of whom were poor and coming from rural areas to urban areas for educational purposes. He stated that concessions should be considered in such cases.

5.76 The Hon'ble Members from Goa, Chhattisgarh, Meghalaya and West Bengal supported the suggestion by the Hon'ble Member from Maharashtra.

Decision: The Council decided to defer the issue for further examination.

5.77 Joint Secretary, TRU then presented the issues pertaining to services mentioned in Annexure-V where the Fitment Committee had recommended for no change.

5.78 She stated that the first agenda item in Annexure V pertained to proposal toapply uniform GST rate of 5% on Business Correspondent services provided inboth rural and urban areas. She stated that the issue was examined by the Fitment Committee and it was felt that the specific exemption provided by Business Correspondents to banking companies in respect of rural area branches has been given in line with the objectives of financial inclusion and therefore, the Fitment Committee had recommended to maintain status quo.

Decision: The Council approved the recommendation of the FitmentCommittee for rejecting the proposal for uniform GST rate of 5% on BusinessCorrespondent services provided in both urban and rural areas.

5.79 Joint Secretary, TRU then presented the issue mentioned at Sr. No. 2 of Annexure-V of Agenda No. 4(e) regarding request to bring renting of residential dwellings by registered persons to registered persons under Forward Charge Mechanism where the Fitment Committee had recommended to maintain statusquo as no real life examples or difficulties in implementation of the said notification were brought to notice

Decision: The Council approved the recommendation of the FitmentCommittee.

5.80 Joint Secretary, TRU then presented the issue regarding request to clarify that 'sale of land' includes assignment of leasehold rights in such land and stated that Fitment Committee

examined the issue and recommended that the request be not acceded to because sale of land and assignment of leasehold rights are notone and the same thing and the question of lease of land being covered underentry 5 of Schedule III which deals with sale of land and building does not arise.She stated that the agenda was also discussed in the officers' meeting and no objections were raised.

Decision: The Council approved the recommendation of the Fitment Committee that assignment of leasehold rights in land is not covered under Entry No. 5 of Schedule III of the CGST Act, 2017.

5.81 Joint Secretary, TRU then presented the next agenda pertaining to request to provide exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST. She stated that entry at S.No.41 of notification No.12/2017-CTR exempts long term lease of industrial plots by state government Industrial Development Corporations or Undertakings etc. but does notcover reassignment or sub-leasing of leasehold rights of land by the lessee. She further stated that the Fitment Committee did not recommend any change but recommended referring the issue of whether ITC of lease of land would be available to the Law Committee for examination.

5.82 The Hon'ble Member from Maharashtra stated that plots allotted to industries through MIDC are exempt. However, on further transfer, no exemption was available. He requested for considering exemption as the plots were meant for industrial use only.

5.83 The Hon'ble Member from Goa supported the view of the member from Maharashtra.

5.84 The Secretary stated that presently ITC is not available on reassignment and the officers' view was that ITC should be available in such cases and further stated that the issue regarding availability of ITC would be examined by the Law Committee at the earliest and would be brought before the Council in the next meeting.

Decision: The Council approved the recommendation of Fitment Committee to not exempt reassignment of leasehold rights of land from GST where the initial lease was exempt from GST. It also desired that the admissibility of ITCmay be examined and put up to the Council.

5.85 Joint Secretary, TRU stated that the next agenda was a request from the state of Nagaland to keep rate of GST @ 12% on works contract services which commenced prior to 18.07.2022. She stated that based on the recommendations of the GST Council in its 47th meeting, rate of GST on works contract services supplied to Central and State Governments for specified projects has been increased from 12% to 18% and that the Fitment Committee recommended maintaining status quo as continuing 12% rate for old contracts would lead to complication of tax rate structure.

Decision: The Council approved the recommendations of the Fitment Committee.

5.86 Joint Secretary, TRU then presented the item regarding request to clarify whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the RERA Act, 2016

5.87 The Hon'ble member from Maharashtra suggested that RERA authorities should also be consulted while deciding the issue.

5.88 The Hon'ble Chairperson clarified that the agenda was deferred and RERA authorities would be consulted.

Decision: The Council deferred the agenda item for further examination.

5.89 Joint Secretary, TRU then presented the item regarding the proposal of state of Punjab requested to levy GST on renting of commercial property on RCM basis and stated that the same was agreed to be deferred in the Officers' meeting as Punjab's view was not considered in the Fitment Committee and sought permission of the Council to defer the issue.

Decision: The Council deferred the agenda item for further examination.

5.90 Joint Secretary, TRU then stated that 10 issues as mentioned in Annexure- VI were recommended to be deferred by the Fitment Committee furtherexamination.

Decision: The Council agreed with the recommendations.

6. Agenda Item 5: Performance Report of Competition Commission of India (CCI) along with Performance Reports of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti- Profiteering (DGAP) for 1st quarter of the F.Y 2023-24.

6.1 The Secretary presented the Agenda No. 5 regarding Performance Report of Competition Commission of India (CCI) 1st quarter of the F.Y 2023-24 along with the Performance Report of State Level Screening Committee (SLSC), Standing Committee (SC) and Directorate General of Anti- Profiteering (DGAP) for the information of the Council.

Decision: The Council took note of the same and approved the Agenda

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

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7.1 The Joint Secretary, GST Council Secretariat presented the Agenda No. 6 i.e., Ad-hoc exemption orders issued under Section 25(2) of the Customs Act, 1962 to be placed before GST Council for information. She informed that in the 26th meeting of the GST Council held on 10.03. 2018, it was decided that all the ad-hoc exemption orders issued with the approval of the Hon'ble Finance Minister as per the guidelines contained in Circular No. 09/2014-Customs dated 19.08.2014 as was the case prior to the implementation of GST, shall be placed before the GST Council for information.

7.2 The Joint Secretary, GST Council Secretariat informed the Council that three Ad-hoc exemption orders had been issued since last meeting of the GST Council. The First Order No. 06 of 2023 dated 28/08/2023 pertained to Request from Disaster Management Division (DMD), MHA, for Ad hoc exemption for importof instruments for implementation of pilot project on Glacial Lake Outburst Flood (GLOF) risk in Sikkim. The second Order No. 07 of 2023 dated 29/08/2023 was regarding request from Department of School Education & Literacy, Ministry of Education for Ad hoc exemption for import of 1.15 million footballs for distribution amongst Schools in India and the third Order No 08 of 2023 was regardingrequest from the Ministry of External Affairs for Ad hoc exemption for import of Dornier Engines to be exported to Seychelles.

Decision: The Council took note of the ad-hoc exemption orders issued.

8. Agenda Item 7: Review of revenue position under Goods and ServicesTax

8.1 The Joint Secretary, Department of Revenue presented the Agenda to the Council. He stated that a good growth rate was being seen on the GST front but the growth on IGST on import of goods had been subdued. He informed the Council that there had been an overall growth of 11% in the gross GST revenues. He presented to the Council the details of GST revenue and stated that the GST revenues had been approximately 1.6 lakh crores from April to August in FY 2023- 24. He further informed that the GST revenues for the month of September had also crossed 1.6 lakh crores. He presented to the Council the details of IGST settlement and informed that the IGST settled was slightly more than what was collected. He then presented the details of Compensation Cess collected since the implementation of GST till July 2023 and the compensation released till September 2023. He presented the status of the receipt and processing of AG's certificate from the States for release of compensation.

8.2 The Hon'ble Member from Karnataka requested the Centre to expedite theprocess at the CAG office as well.

8.3 The Hon'ble Chairperson urged the States yet to submit the AG's certificate to expedite the process. She also assured that the process at CAG will be expedited.

8.4 The Joint Secretary, Department of Revenue then presented the data pertaining to the percentage of filing and informed the Council that the filingpercentage was good and there was no concern in the same.

8.5 The Hon'ble Member from Karnataka stated that they had made a written request for a discussion on cess and surcharge collection. He further elaborated that the intent of the request was to understand the repayment schedule of the loans taken to pay compensation to states and the status of Compensation Cess post repayment of the loans. He stated that levy of cesses and surcharges were justified on the basis of need to pay compensation to States for loss of revenue. He informed that Karnataka had a robust collection of cess and surcharges which had seen a growth of around Rs 2000 crores in the current year as compared to the same period in the previous year. He stated that if the trend was the same across the country then the loans may be repaid at an earlier

date and post repayment, the levy of cesses and surcharges would lapse. He expressed that Karnataka's intent was for cesses to continue and requested for a detailed studyon the issue.

8.6 The Secretary agreed to the observations by the Hon'ble Member from Karnataka and stated that there was time till 2026 for repayment of loans.

8.7 The Hon'ble Chairperson clarified that while post March 2026, Compensation cess could not be collected based on the Compensation to States Act, 2017, the Council had the prerogative to devise some mechanism to collect cess.

8.8 The Hon'ble Member from Karnataka sought an initiation of debate and discussion on this for perspective planning. He requested the Secretariat to present details of the borrowings, growth in cess and estimated repayment schedule of loan factoring in the growth in cess in the next meeting.

8.9 The Secretary agreed to provide the same. He brought to the notice of the Council that there was a certain amount of surplus IGST every month / quarter. He informed the Council that presently 50 percent was being allotted to Centre and the remaining was being distributed between the States on the basis of their revenues during 2015-16. He stated that there had been changes in the proportionof revenues of the States and submitted for the consideration of the Council ifthere was a need to revise the base year.

8.10 The Hon'ble Chairperson stated that this was a matter that required extensive study and that the devolution of surplus IGST and levy of cess post March 2026 would be studied in detail and discussed in Council.

8.11 The Hon'ble Member from Kerala stated that the revenue share of Kerala State was not commensurate with its consumption. He further stated that IGST revenue from various sectors like online trading, e-commerce, etc. were not properly accruing to the State. He requested for a detailed examination of the devolution of surplus IGST.

8.12 The Hon'ble Member from Manipur informed the Council that the growth inGST revenues for the State during April, 2023 was 35%, however due to theviolent unrest in the state from 3rd May, 2023 there had been a drastic decline in the growth. He stated that the violence caused several hindrances such as closure of markets, suspension of e- commerce activities, blockage of highways, break down of internet, stoppage of construction activities, etc. He stated that those had resulted in the financial position of the State being very grim. He requested the Hon'ble Chairperson to provide financial assistance for the State.

Decision : It was decided that a complete picture of the compensation cess, the likely time by which loan will be repaid and the proposal for tax/cess in lieu of compensation cess post repayment be presented to the Council.

9. Agenda Item 8: Table Agenda-Exemption from 5% IGST levy for foreign flag foreign going vessels being operated by an entity not registered under GST in India when it converts

to coastal run

9.1 Joint Secretary, TRU sought permission of the Chair to introduce a Table Agenda due to the urgency of the issue. Upon being permitted by the Chair, she stated that the Agenda pertained to a proposal to exempt foreign flag foreign going vessels from IGST levy when they convert to coastal run vessels and operate in coastal waters. She informed the Council that reference had been received from Ministry of Ports, Shipping and Waterways (MoPSW) for granting permission for a cruise ship to remain and sail as a foreign-run vessel and considered as a conveyance during its deployment in Indian waters. She stated that presently all goods, vessels, ships imported under lease attract Nil IGST vide S. No. 557B of 50/2017-Customs, however those foreign vessels that do not enter into a lease arrangement will have to pay 5% IGST on the full value of the vessel. She further informed the Council that since foreign vessels were not registered under GST Law, they were not eligible for input tax credit leading to huge operational cost for them which goes against the idea of promoting tourism. She referred to the specific case of the Cruise ship Costa Serena as received from Ministry of Shipping which would have to convert to coastal run for operating the cruises in coastal waters (Mumbai -Goa- Mumbai and Mumbai-Kochi-Lakshadweep- Mumbai) and they would be operating in coastal waters for two months. She further stated that since the cruise ship operator did not intend to enter into a lease arrangement, they would be liable to pay IGST of 5% on the value of the vessel upon conversion to coastal run. The proposal was to exempt foreign flag foreign going vessels from levy of IGST subject to the condition that they reconvert to foreign going vessel within a period of 6 months.

9.2 The Secretary stated that the agenda was received only a few days ago and is being put up as a table agenda in view of the urgency. It was discussed in Officers' meeting.

9.3 The Hon'ble Member from Goa welcomed the proposal.

The Council agreed to the said recommendation of the Fitment Committee to exempt foreign flag, foreign going vessels from 5% IGST levy upon conversion to coastal run subject to the condition that it reconverts to foreign going vessel within a period of 6 months. However, applicable duties on stores, fuel etc. will continue to be paid.

10. Agenda Item 9: Agenda Note for notifying supplies and class of registered person eligible for refund under IGST route.

10.1 The Principal Commissioner, GST Policy Wing stated that the agenda was regarding amendment of Notification no 1/2023- IGST, dated 31st July, 2023 issued as per the recommendations of the 50th Council meeting to restrict IGST refund on certain evasion prone commodities such as Pan masala, Gutkha, etc. based on the report of the Group of Ministers on capacity-based taxation. He stated that in the 50th Council meeting, it was also recommended

to notify amendments in section 16(3) and 16(4) of the IGST Act, 2017 made through the Finance Act, 2021 with effect from 1.10.2023. The amendments provided that the default route of refunds of unutilised input tax credit in respect of zero rated supply would be LUT mode and IGST refund would be permitted only for the class of persons or class of goods or services as may be notified by the Government.

10.2 He informed the Council that the said Notification was issued with effect from 01.10.2023 in accordance with the recommendations of Council which allowed export of all goods and services as the goods and services on supply of which IGST could be paid and refund obtained except those export of those goods which had been recommended by the Group of Ministers. He stated that since supplies to SEZ units or developers were not exports but zero-rated supplies, thus they were not covered by the said Notification and hence, such supplies are no more eligible with effect from 01.10.2023 to be made on payment of IGST and subsequent refund of IGST thus paid. to claim IGST refund. He stated that the only mode of refund available for zero rated supplies to SEZ units and developers has become the refund of accumulated ITC after issuance of Notification 1/2023 IGST. He informed the council that this was never the intention of the Council and had also not been recommended by the Group of Ministers. Hence, to remove this anomaly, an amendment has been proposed in the said notification with effect from 01.10. 2023 to allow IGST refund in case of zero rated supplies to SEZ units and developers through IGST route. He informed the Council that in the Officers' meeting held on 06.10.2023, it was suggested that the goods prone to evasion, which have been excluded from claiming IGST refund on export, should also be excluded from IGST refund route for zero rated supplies made to SEZ.

10.3 Accordingly, it was proposed to amend Notification No 01/2023 -IGST, dated 31st July 2023, w.e.f. 01.10.2023 as-

"In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the "said Act"), the Central Government on the recommendations of the Council, hereby notifies

(i) all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and

(ii) all suppliers (other than suppliers of goods specified in column (3) of the TABLE below) to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services (except the goods specified in column (3) of the TABLE below) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid:"

Decision: The Council agreed with the said proposal and the recommendation made in the Officers' meeting on the draft notification.

11. Agenda Item 10: General Discussion with the permission of the Chair

11.1 The Hon'ble Member from Bihar during the discussion of Agenda Item pertaining to clarification on issues related to Place of Supply raised the issue regarding Place of supply for Online services. He stated that the recent amendment in rule 46(f) of the CGST Rules, 2017 on 'Online Gaming' should be made applicable to 'other Online Services' as well. He further proposed that so far as 'Online Gaming' was concerned, a proper mechanism be designed so as to capture the place of residence of a user/player. He raised his concern over the place of supply in such cases where user/player of 'online games' goes out of the State and plays online games then the State to which a user/player belongs to loses the revenue while the other State gets the benefit. He therefore suggested that the mechanism should ascertain/ verify the actual permanent place of residence of the user/player. He stated that small and underdeveloped states couldbe losing revenue.

11.2 The Secretary informed that the issue raised by the Hon'ble Member of Bihar was discussed in the previous Council meeting and based on the recommendation, necessary changes have been made in the CGST Rules and the requisite notification has been issued. He further emphasized that necessary changes in the Rules have been made both in respect of 'Online Games' as well as 'Other online Services'. However, ascertaining/verification of the address of consumer/user/player was the work of enforcement agencies. It was informed that whatever address has been mentioned by the consumer/user/player, the same address is considered as place of supply and any stringent measure for providing the proof would be against the interest of consumer convenience and ease.

11.3 The Hon'ble Chairperson said that it was not legal to consider the consumer /user /player's original place of residence if they have provided a different address. Moreover, it could not be the job of the Secretariat to trace the original place of residence of every consumer/user/player.

11.4 The Hon'ble Member from Delhi sought the permission of the Hon'ble Chairperson to place an agenda before the Council. She stated that the Council had deliberated much on the issue of taxing online gaming and had arrived at the decision to tax it at 28% from the 1st of October, 2023. However, she expressed concern on the matter that the Directorate General of GST Intelligence (DGGI) had sent demand notices of about Rs. 1.5 lakh crore to 80 online gaming companies, even before the implementation of the decision by the Council. She further stated that while it could be claimed that the Council decision was a clarification and not a retrospective taxation, demanding tax for the past years appeared to be in badfaith. She stated that this affects industry, discourages young entrepreneurs as well as foreign investors. She also stated that the demand made by DGGI was on every game as opposed to the decision of the Council to tax the deposit in case of online gaming. She requested that the Council may take a decision that DGGI should withdraw the said notices issued by them.

11.5 The Hon'ble Member from Goa stated that while they had accepted the decision of the Council to tax the casinos at 28% and review the decision after six months, it was a matter of concern to the State of Goa. He stated that DGGI had been conducting raids and issuing notices demanding tax which was much more than the worth of the casinos. He stated that demanding tax for the past period amounted to retrospective taxation and would be detrimental to the industry. He

submitted that the casinos had collected tax at 18% as was the practice in the pre- GST era and paid the same and the said notices demanded tax that they had not collected. He also stated that as the State of Goa was heavily dependent on the casino and allied industries, decline in revenue from them would affect the prosperity of the State. He requested the Council to take measures to withdraw the notices issued by DGGI and stop demanding tax on past period.

11.6 The Hon'ble Member from West Bengal stated that the matter of retrospective taxation should be looked into. She stated that it had to be decided whether the industry should be made to pay what they had not collected. She further requested the Hon'ble Chairperson to allow her to bring another aspect to the Hon'ble Chairperson's notice. She pointed out that Bengal had always tried to contribute towards the growth of GST and also added that she believed that the interest of the people had always been the foremost while taking any decision in the Council. She requested the Hon'ble Chairperson to kindly take necessary steps for disbursal of the funds allotted to the State of West Bengal with respect to MGNREGA and PM Awaas Yojana.

11.7 The Hon'ble Member from Maharashtra agreed with the concerns raised by Goa. He submitted that taxation should not be retrospective and tax at 28% on online gaming and casinos should be implemented from this year onwards.

11.8 The Hon'ble Member from Meghalaya agreed with the statements made by Delhi and Goa. He stated that it was improper to make the industry pay tax which was not collected by them. He urged the Council to take a decision to stop such retrospective taxation.

11.9 The Hon'ble Chairperson replied that the concern expressed by the Members regarding retrospective taxation was legitimate and well taken. However, she clarified that the DGGI was an independent regulatory body. She assured the Council that the concerns of the Council could be conveyed to DGGI.

11.10 The Hon'ble Member from Delhi requested the Council to take a decision that the amendment to taxation of online gaming would not be retrospective assuch taxation would kill the industry.

11.11 The Secretary clarified that the amendment was prospective coming into force from 1st of October 2023. The notices issued by DGGI for the past period were under the law as it existed prior to 1st of October 2023 and not a retrospective application of the Council's decision.

11.12 The Hon'ble Chairperson stated that the Council represented the country and wanted investment for the country as well as opportunities for the youth. She stated that it is never the intent of the Council to kill an industry. However, all industries are to be regulated. She further stated that the Council shall take decisions to generate income from industries including sunrise industries.

11.13 The Secretary thanked the Hon'ble Chairperson and the Members of the Council for their contribution in the meeting.

Annexure-1

List of Hon'ble Members/Ministers from the States/UTs who participated in the 52nd Meeting of the GST Council held on 07.10.2023

S. No.	Name of States	Name of Hon'ble Ministers/Member of GST Council	Designation
1	GOI	Smt. Nirmala Sitharaman	Union Finance Minister
2	GOI	Shri Pankaj Chaudhary	Minister of State for Finance
3	Andhra Pradesh	Shri Buggana Rajendranath	Minister for Finance, Planning, Legislative Affairs, Commercial Taxes and Skill Development & Training
4	Assam	Smt. Ajanta Neog	Finance Minister
5	Bihar	Shri Vijay Kumar Chaudhary	Minister for Commercial Tax
6	Chhattisgarh	Shri T.S.Singh Deo	Deputy Chief Minister
7	Delhi	Smt. Atishi Marlena	Finance Minister
8	Goa	Dr. Pramod Sawant	Chief Minister/Finance Minister
9	Goa	Shri Mauvin Godinho	Minister for Industries, Transport, Panchayati Raj and Protocol
10	Gujarat	Shri Kanubhai Desai	Minister for Finance
11	Himachal Pradesh	Shri Harshwardhan Chauhan	Industries Minister
12	Jammu and Kashmir	Shri Rajeev Rai Bhatnagar	Advisor to Hon'ble Lieutenant Governor, UT of J&K
13	Karnataka	Shri Krishna Byre Gowda	Minister for Revenue Department
14	Kerala	Shri K. N. Balagopal	Finance Minister

15	Maharashtra	Shri Deepak Vasant Kesarkar	Cabinet Minister for Ministry of Education and Ministry of Marathi Language
16	Manipur	Dr. Sapam Ranjan Singh	Minister for Medical, Health & Family Welfare Department and Publicity & Information Department
17	Meghalaya	Shri Conrad K. Sangma	Chief Minister
18	Odisha	Shri Bikram Keshari Arukha	Minister for Finance
19	Punjab	Shri Harpal Singh Cheema	Finance Minister
20	Tamil Nadu	Shri Thangam Thennarasu	Minister for Finance and Human Resources Management
21	Uttar Pradesh	Shri Suresh Kumar Khanna	Minister of Finance, Parliamentary Affairs
22	West Bengal	Smt. Chandrima Bhattacharya	Minister of State for Finance

Annexure-2

List of officers from the Centre and the States/UTs who attended the 52nd Meeting of the GST Council held on 07.10.2023

S.No.	Name of State/CBIC/GSTC/GOI/ GSTN/DoR/TRU/POLICY WING	Guest's Name	Designation
1	DoR	Shri Sanjay Malhotra	Revenue Secretary
2	CBIC	Shri Sanjay Kumar Agarwal	Chairman CBIC
3	CBIC	Shri Rajiv Talwar	Member(Compliance Management)
4	CBIC	Shri Shashank Priya	Member (GST)
5	CBIC	Shri Vivek Ranjan	Member (Tax Policy and Legal)
6	DOR	Shri Vivek Aggarwal	Additional Secretary (Revenue)
7	DOR	Shri Ritvik Pandey	Joint Secretary (Revenue)
8	DG Systems (CBIC)	Yogendra Garg	Director General Systems CBIC
9	GST POLICY WING	Shri Sanjay Mangal	Principal Commissioner
10	GST Council Secretariat	Shri Pankaj Kumar Singh	Additional Secretary (GST Council Secretariat)
11	GST Council Secretariat	Ms. Ashima Bansal	Joint Secretary
12	GSTN	Shri Manish Kumar Sinha	CEO
13	GSTN	Shri Dheeraj Rastogi	EVP

14	TRU	Ms. Limatula Yaden	Joint Secretrary
15	DoR	Dr. N Gandhi Kumar	Director (State Taxes)
16	TRU	Shri. Pramod Kumar	OSD Commissioner in-situ
17	DoR	Shri Deepak Kapoor	OSD to Revenue Secretary
18	CBIC	Shri Aditya Bhardwaj	OSD to Chairman
19	Government of India	Shri S.S. Nakul, IAS	PS to FM
20	Government of India	Shri Vishnu Singh	PA to FM
21	Government of India	Shri Ankit Jalan	Additional PS to FM
22	Government of India	Shri Alkesh Uttam	OSD to MoS
23	Government of India	Shri Dhruv Narayan Srivastava	1ST PA to MoS
24	DoR	Shri Vikas Kumar	OSD (State Taxes)
25	DoR	Ms. Mamta Yadav	Assistant Secretary
26	DoR	Shri Ravi Kumar Meena	Assistant Secretary
27	DoR	Shri Rinku	Assistant Secretary
28	GST POLICY WING	Shri Raghavendra Pal Singh	Additional Commissioner
29	GST POLICY WING	Dr. Gurbaz Sandhu	Additional Commissioner
30	GST POLICY WING	Shrunkhala Kangale	Additional Commissioner

31	TRU	Rakesh Dahiya	DS, TRU-I
32	TRU	Ms Amreeta Titus	DS, TRU-I
33	TRU	Ms. Puneeta Bedi	OSD
34	GSTN	Siddharth Jain	Joint Commissioner
35	GSTN	Shri Naveen Agrawal	OSD to CEO
36	TRU	Shri Vikram Wanere	Under Secretary, TRU-I
37	TRU	Ms. Smita Roy	Technical Officer, TRU-II
38	MoS Finance	Shri Gaurav Shukla	Under Secretary
39	GST POLICY WING	Neha Yadav	Deputy Commissioner
40	GST POLICY WING	Amit Samdariya	Deputy Commissioner
41	GST POLICY WING	Soumya	Deputy Commissioner
42	TRU	Ms. Anna Sosa Thomas	Technical Officer, TRU-II
43	NACIN	Shri Vivek Jain	Director
44	NACIN	Shri Harsh Parashar	Officer on Training
45	NACIN	Shri Saahil Khare	Officer on Training
46	NACIN	Ms. Akshita Srivastava	Officer on Training
47	NACIN	Shri Vishal Chaudhary	Officer on Training

48	NACIN	Shri Shreyansh Surana	Officer on Training
49	PIB	Ms. Nanu Bhasin	ADG (M&C), MoF
50	PIB	Shri. Virat Majboor	JD, MoF
51	PIB	Shri. Kush Mohan Nahar	M&CO, MoF
52	GST Council Secretariat	Shri Kshitendra Verma	Director
53	GST Council Secretariat	Shri S.S.Shardool	Director
54	GST Council Secretariat	Shri Joginder Singh Mor	Under Secretary
55	GST Council Secretariat	Ms. Subhaga Ann Varghese	Under Secretary
56	GST Council Secretariat	Ms. Sonia	Superintendent
57	GST Council Secretariat	Shri Dharambir	Superintendent
58	GST Council Secretariat	Shri Vineet Kumar	Superintendent
59	GST Council Secretariat	Shri Naveen Kumar	Superintendent
60	GST Council Secretariat	Shri Mohan Lal	Superintendent
61	GST Council Secretariat	Ms. Ambika Rani	Superintendent
62	GST Council Secretariat	Shri Niranjan Kishore	Superintendent
63	GST Council Secretariat	Shri Om Ram Meena	Section Officer
64	GST Council Secretariat	Shri Sandeep Kumar	Superintendent

65	GST Council Secretariat	Shri Khupmang Neihsial	Superintendent
66	GST Council Secretariat	Shri Himanshu Bhardwaj	Superintendent
67	GST Council Secretariat	Shri Sudhir Kumar	Section Officer
68	GST Council Secretariat	Shri L. Seikholen Haokip	Section Officer
69	GST Council Secretariat	Shri Vijay Malik	Inspector
70	GST Council Secretariat	Shri Padam Singh	Inspector
71	GST Council Secretariat	Shri Ashwani Sharma	Inspector
72	GST Council Secretariat	Shri Anand Singh	Inspector
73	GST Council Secretariat	Shri Karan Arora	Inspector
74	GST Council Secretariat	Shri Tarun	Inspector
75	GST Council Secretariat	Shri Pankaj Dhaka	Tax Assistant
76	GST Council Secretariat	Shri Paresh Garg	Tax Assistant
77	GST Council Secretariat	Shri Shyam Bihari Meena	Tax Assistant
78	GST Council Secretariat	Shri Vikas Kumar	Tax Assistant
80	Andhra Pradesh	Shri N. Gulzar	Secretary Finance(CT)
81	Andhra Pradesh	Sri JVM. Sarma	Additional Commissioner (ST), Appellate Tribunal
82	Arunachal Pradesh	Shri Lobsang Tsering	Commissioner (Tax, Excise & Narcotics)

83	Arunachal Pradesh	Shri Nakut Padung	Superintendent (Tax, Excise & Narcotics)
84	Assam	Shri Rakesh Agarwalla	Principal Commissioner of State Tax
85	Assam	Shri Brinchi Das	PS to Hon'ble Minister
86	Bihar	Dr. Pratima	Commissioner cum Secretary Commercial Taxes
87	Bihar	Shri Krishna Kumar	Joint Secretary, Commercial Taxes
88	Bihar	Shri Binod Kumar Jha	Additional Commissioner State Tax
89	Bihar	Shri Kunal Kashyap	Treasury Officer Bihar Bhawan
90	Chandigarh	Sh. Vinay Pratap Singh	Deputy Commissioner-cum-Excise and Taxation Commissioner
91	Chandigarh	Sh. Alok Passi	Asstt. Excise and Taxation Commissioner
92	Chhattisgarh	Shri Himshikhar Gupta	Secretary, Commercial Tax (State Tax)
93	Chhattisgarh	Shri Ritesh Kumar Agrawal	Commissionerof State Tax
94	Chhattisgarh	Shri Tarun Kiran	Deputy Commissioner, State Tax
95	Delhi	Shri A Anbarasu	Principal Commissioner (State Tax)
96	Delhi	Shri Awanish Kumar	Special Commissioner (State Tax)
97	Goa	Shri S.S.Gill	Commissioner of State Tax
98	Goa	Shri Vishant S.N.Gaunekar	Additional Commissioner of State Tax

99	Goa	Shri Gaurish Kalangutkar	OSD to CM
100	Gujarat	Shri J.P. Gupta	Additional Chief Secretary, Finance Department
101	Gujarat	Shri Samir Vakil	Chief Commissioner of State Tax (I/c)
102	Haryana	Shri Devinder Singh Kalyan	Principal Secretary to Government Haryana, Excise and Taxation Department.
103	Haryana	Shri Ashok Kumar Meena	Excise & Taxation Commissioner-cum-Secretary to Government
104	Haryana	Dr. Hemant Kumar, IRS	Additional Commissioner, GST, Excise and taxation Department
105	Himachal Pradesh	Shri Bharat Harbans Lal Khera	Principal Secretary (ST&E)
106	Himachal Pradesh	Dr. Yunus	Commissioner State Taxes and Excise
107	Himachal Pradesh	Shri Rakesh Sharma	Additional Commissioner State Taxes and Excise
108	Jammu and Kashmir	Dr. Rashmi Singh	Commissioner, State Taxes
109	Jammu and Kashmir	Ms. Namrita Dogra	Additional Commissioner, State Taxes (Admn & Enft)
110	Jharkhand	Ms. Vipra Bhal	Secretary, Commercial Taxes
111	Jharkhand	Shri Santosh Kumar Vatsa	Commissioner, Commercial Taxes
112	Jharkhand	Shri Brajesh Kumar	Assistant Commissioner of State Taxes
113	Karnataka	Ms. C. Shikha	Commissioner Commercial Tax
114	Karnataka	Dr. Ravi Prasad	Additional Commissioner CT

115	Kerala	Shri Patil Ajit Bhagwatrao	Commissioner, State GST Department
116	Kerala	Shri Abraham Renn S	Additional Commissioner-1, GST Department
117	Kerala	Dr. Shyjan D	PS to Hon'ble Minister (Finance)
118	Madhya Pradesh	Shri Lokesh Kumar Jatav	Commissioner, Commercial Tax
119	Madhya Pradesh	Shri Manoj Kumar Choubey	Additional Commissioner, Commercial Tax
120	Maharashtra	Ms Shaila A	Principal Secretary (Financial Reforms)
121	Maharashtra	Shri Rajeev Kumar Mital	Commissioner SGST
122	Maharashtra	Shri Anil Bhosle	OSD to Hon'ble Minister
123	Maharashtra	Shri Manojkumar Narayanwal	Deputy Commissioner
124	Manipur	Ms. Mercina R. Panmei	Commissioner of Taxes
125	Manipur	Shri Y. Indrakumar Singh	Joint Commissioner of Taxes
126	Meghalaya	Shri Sanjay Goyal	Commissioner & Secretary,Taxation
127	Meghalaya	Shri Ramakrishna Chitturi	Commissioner of Taxes
128	Meghalaya	Shri L Khongsit	Additional Commissioner of Taxes
129	Meghalaya	Shri V R Challam	Deputy Commissioner of Taxes
130	Meghalaya	Shri Mukesh Kumar	OSD to Hon’ble Minister
131	Mizoram	Shri R. Zosiamliana	Commissioner of State Tax

132	Mizoram	HK Lalhawngliana	Additional Commissioner of State Tax
133	Nagaland	Shri C Lima Imsong	Additional Commissioner of State Taxes
134	Odisha	Shri Vishal Kumar Dev	Principal Secretary, Finance
135	Odisha	Shri Sanjay Kumar Singh	Chief Commissioner of Commercial Taxes & GST
136	Odisha	Shri Kunu Padhi	Joint Commissioner of CT & GST (Policy)
137	Odisha	Shri Dinakrushna Kar	PS to FM
138	Odisha	B. Ganesh	Liaison Officer
139	Puducherry	Shri L. Mohamed Mansoor	Commissioner of State Tax
140	Puducherry	S. Rewathi	Assistant Commissioner of State Tax (A&I)
141	Punjab	Shri. Arshdeep Singh Thind	Commissioner of State Tax
142	Punjab	Shri Ravneet Khurana	Additional Commissioner of State Taxes (Audit)
143	Rajasthan	Shri Ravi Kumar Surpur	Chief Commissioner of State Tax
144	Rajasthan	Shri Arvind Mishra	Advisor (Additional Commissioner GST)
145	Tamil Nadu	Shri Dheeraj Kumar	Principal Secretary/Commissioner of Commercial Taxes
146	Tamil Nadu	Thiru G. Nanakumar	Additional Commissioner (Policy & Public Relations)(FAC)

147	Tamil Nadu	S. Subhash Chandra Bose	Joint Commissioner (Policy)
148	Telangana	Smt T.K Sreedevi, I.A.S	Commissioner of Commercial Taxes
149	Telangana	Sri G. Phaneendra Reddy	Additional Commissioner(ST) (Policy)
150	Telangana	Ms. K Rupa Sowmya	Deputy Commissioner State Tax, Policy
151	Tripura	Ms. Rakhi Biswas	TCS-SSG, Chief Commissioner of State Tax,
152	Tripura	Shri Ashin Barman	Assistant Commissioner of Taxes
153	Uttar Pradesh	Shri Nitin Ramesh Gokarn	Principal Secretary, State Tax
154	Uttar Pradesh	Ms. Ministhy S	Commissioner, State Tax
155	Uttar Pradesh	Shri Paritosh Kumar Mishra	Deputy Commissioner, State Tax HQ, Lucknow
156	Uttar Pradesh	Shri Amit Pandey	PS to Honourable Minister
157	Uttarakhand	Dr. Ahmad Iqbal	Commissioner of State Tax
158	Uttarakhand	Shri Anil Singh	Additional Commissioner
159	Uttarakhand	Shri Anurag Mishra	Joint Commissioner
160	West Bengal	Dr. Manoj Pant	Additional Chief Secretary, Finance Department
161	West Bengal	Shri Khalid Aizaz Anwar	Commissioner of State Tax
162	West Bengal	Shri Rajib Sankar Sengupta	Senior Joint Commissioner of Revenue
163	West Bengal	Shantanu Naha	OSD to Minister

Annexure-3

Summary of discussions in Officers' Meeting held on 6th October 2023

Agenda No	Issue/Proposal	Status during Officers Meeting
3(i) [Vol 1-Pg. 243-245]	**Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals** ▪ to make an amendment to section 110 of the CGST Act, 2017 : ▪ to insert provision relating to eligibility of an Advocate with a standing of 10 years at the Bar with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court for the appointment as judicial member ▪ Minimum age for appointment of member or president of Tribunal to be specified as 50 years; ▪ Tenure of president and members to be upto a maximum age of 70 years and 67 years respectively.	Agreed. It was also discussed that there will be no need for amendment in SGST Acts.

Agenda No	Issue/Proposal	Status during Officers Meeting
3(ii) [Vol 1-Pg. 246-257]	**Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person** ▪ Issue 1: Taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company ▪ It may be clarified through a circular that in cases where no consideration is paid by the company to the director in any form, directly or indirectly, for providing guarantee to the bank/ financial institutes on their behalf, as per mandate of RBI, the open market value of the said transaction/ supply may be treated as zero and accordingly taxable value of the said supply will be considered as zero. ▪ It may be clarified through a circular that in cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate or there may be other exceptional cases where remuneration/ consideration is paid to the director in any manner, directly or indirectly, the taxable value of such supply of service may be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(ii) [Vol 1-Pg. 246-257]	▪ Issue 2: Taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company ▪ to insert sub-rule (2) in Rule 28 of CGST Rules, 2017, providing that "Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher." ▪ to clarify through the Circular that after the insertion of the said sub-rule, the value of such supply of services would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017 irrespective of whether full ITC is available to the recipient of services or not.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(iii) [Vol 1-Pg. 258-262]	**Issue of delay (beyond condonation) in filing Appeals against demand orders raised under GST till a specified period** ▪ To provide one time amnesty for filing appeals in such cases through a special procedure under section 148 of CGST Act. ▪ The special procedure for filing appeal to be applicable for the taxable persons: ▪ who could not file an appeal under section 107 of the said Act, against the order passed by the proper officer under section 73 or 74 of the said Act on or before the 31st day of March, 2023; or ▪ whose appeal against the such order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107. ▪ The filing of appeal in such cases to be allowed subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute by the said person, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. ▪ The time limit for filing appeals under this amnesty/ special procedure may be kept up to 31st December 2023.	Agreed However, it was recommended that the time limit for filing of the appeals may be kept upto **31st January 2024**

Agenda No	Issue/Proposal	Status during Officers Meeting
3(iv) [Vol 1-Pg. 263-267]	**Law amendment w.r.t. ISD as recommended by the GST Council in its 50th meeting** ▪ amendment in definition of "input service distributor" under clause (61) of section 2 of CGST Act to define it as such office of supplier of goods or services or both which receives tax invoices including invoices in respect of services liable to tax under reverse charge basis as per sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons, as specified in section 25 and who is liable to distribute the input tax credit in respect of such invoices in terms of section 20. ▪ amendment in section 20 of CGST Act, to explicitly mandate distribution of the common credit including with credit pertaining to common input services which are liable to tax on reverse charge basis. ▪ substitution of provisions of rule 39 of the CGST Rules by incorporating methodology for distribution of credit in rule 39.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(v) [Vol 1-Pg. 268-272]	**Clarification regarding restoration of provisionally attached property** ▪ an amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017, to insert the words "*or on expiry of a period of one year from the date of issuance of order in FORM GST DRC-22, whichever is earlier*," after the words "to that effect", to clearly provide that order issued under FORM GST DRC-22 shall cease to have effect after expiry of period of one year from the date of issuance. ▪ an amendment in FORM GST DRC-22 inserting the words "*This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier.*"	Agreed. However, it was recommended in the Officers' meeting that GSTN may show alert to the tax officer on the system when the period of 1 year since provisional attachment of property is about to get over.

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vi) [Vol 1-Pg. 273-282]	**Clarification on various issues related to Place of Supply** ▪ To clarify through a Circular that in case of service of transportation of goods, including by mail or courier: ▪ place of supply will be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services. ▪ To clarify through a Circular that in case of services in respect of advertising: ▪ In case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure, the place of supply of services provided by the vendor to the advertising company in such case shall be governed by the provisions of section 12(3)(a) of IGST Act.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vi) [Vol 1-Pg. 273-282]	▪ In case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor and the responsibility of arranging the hoardings/ bill boards and display of advertisement on the said location lies with the vendor and during this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed whereas the advertising company is not occupying the space or the structure, the place of supply shall be determined in terms of Section 12(2) of IGST Act. ▪ To clarify through a Circular that in case of "co-location services": ▪ Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services", and the said services do not merely involve providing of a physical space, but also involve the supply of various components of 'Hosting and information technology (IT) infrastructure provisioning services' like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. Accordingly, the place of supply of the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vi) [Vol 1-Pg. 273-282]	▪ However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(vii) [Vol 1-Pg. 283-288]	**Clarification related to export of services** ▪ to clarify through a Circular that the condition of sub-clause (iv) of Section 2(6) of the IGST Act, 2017 will be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.	Agreed
3(viii) [Vol 1-Pg. 289-302]	**Amendment in CGST Rules, 2017 and GST REG/PCT-FORMS** ▪ Incorporation of 'One Person Company' in FORM GST REG 01 i.e. Application for Registration ▪ to incorporate 'One Person Company' as a Constitution of Business in Part-B of FORM GST REG-01 the applicant to fill only the details of the single member or owner and to submit the application successfully on system.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(viii) [Vol 1-Pg. 289-302]	▪ Application for Enrolment as Goods and Services Tax Practitioner-Amendment in Form GST PCT-01 ▪ to amend the S. No. 4 of Part-B of Form GST PCT-01 in line with rule 83(1) of the CGST Rules. ▪ Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons ▪ to substitute FORM GST REG-08 to provide for cancellation of registration against the request made by the TDS and TCS registered persons and to rephrase and re-align the reasons for cancellation in FORM GST REG-08 on the lines of those notified in respect of FORM GST REG-19. ▪ Amendment in FORM GSTR-8 to include late fee ▪ to make changes in FORM GSTR-08 : ▪ By substituting new Table 7 on "Interest, late fee payable and paid" in place of existing Table 6 and Table 7 to include interest on delayed submission of returns by tax payers under section 52 of the CGST Act. ▪ By inserting column for late fee as well in Table 9 on Debit entries in cash ledger for TCS, interest and late fee payment. ▪ Amendment in rule 142 (3) of the CGST Rules with respect to FORM GST DRC-05: ▪ rule 142 (3) may be amended so that words "intimation" shall be used instead of "order" with respect to FORM GST DRC-05.	Agreed

Agenda No	Issue/Proposal	Status during Officers Meeting
3(ix) [Vol 1-Pg. 303-308]	**Clarification eligibility of construction of roads, bridges for inverted duty structure refund** ▪ **View 1**: All LC members (except member from Karnataka) opined that construction of only such civil structures including a complex or building, which are intended for sale to a buyer along with land or undivided share of land, are covered under Entry 5(b) of Schedule II of CGST Act, 2017 and accordingly refund is not restricted in such cases as per the above mentioned Notification. (View I) ▪ **View 2**: LC member from Karnataka opined that construction of all kinds of civil structures, including bridges, falls under Entry 5(b) of Schedule II of CGST Act, 2017 and accordingly, refund should not be admissible in respect of construction of bridges. (View 2)	Most of the states agreed with View 1. However, Karnataka, Punjab, Haryana, Uttar Pradesh, Kerala, Tamil Nadu and Jammu and Kashmir agreed with View 2.

Agenda No	Issue/Proposal	Status during Officers Meeting
9. [Addendum to Vol 2-Pg. XX-YY]	**Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route** ▪ To amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 so as to include all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.	Agreed. Further, it was recommended in the Officers' Meeting that the IGST refund route for supplies to SEZ be restricted for commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax dated 31.07.2023. Notification to be amended accordingly.

Agenda 9: Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route

Formulation for Amendment in Notification 1/2023-IT dated 31.07.2023 recommended by the Officers in Officers' meeting held on 06.10.2023

"In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the "said Act"), the Central Government on the recommendations of the Council, hereby notifies

(i) all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and

(ii) all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services (except the goods specified in column (3) of the TABLE below) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid:"

Ratification of Notifications and Circulars

Agenda 2: Ratification of Notifications, Circulars etc.

[Vol 1- Pg. 220-242]

Act/ Rules	Notifications/Circulars Nos.	Description/Remarks
CGST Act/ CGST Rules	**Twenty two (22) Central Tax Notifications** issued (No. 27/2023 to 51/2023) & **One (01) Central Tax (rate) Notification** issued (No. 11/2023)	Notifications to implement various decisions of GST Council taken in 50th & 51st meeting & to implement other GIC decisions. Some of the important decisions are: i. Notifying some provisions of Finance Act, 2021 & Finance Act, 2023 ii. Notifying special procedures to be followed by a registered person pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India v/s Filco Trade Centre Pvt. Ltd., SLP(C) No.32709-32710/2018 iii. Exempting the registered person whose aggregate turnover in the financial year 2022-23 is up to two crore rupees, from filing annual return for the said financial year iv. Notifying "Account Aggregator" as the systems with which information may be shared by the common portal under section 158A of the CGST Act, 2017. v. Waiving the requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions vi. Notifying special procedure to be followed by the electronic commerce operators in respect of supplies of goods through them by composition taxpayers and unregistered persons vii. Making amendments (Second Amendment, 2023) & (Third Amendment, 2023) to the CGST Rules, 2017. viii. Extension of the due date for furnishing FORM GSTR-1, GSTR-3B, GSTR-7 for April, May, June and July, 2023 for registered persons whose principal place of business is in the State of Manipur ix. Notifying supply of online money gaming, supply of online gaming other than online money gaming and supply of actionable claims in casinos under section 15(5) of CGST Act and the provisions of the Central Goods and Services Tax (Amendment) Act, 2023 x. Amendment of Notification No 01/2017- Central Tax (Rate) dated 28.06.2017.

Agenda 2: Ratification of Notifications, Circulars etc.

[Vol 1- Pg. 220-242]

Act/ Rules	Notifications/ Circulars Nos.	Description/Remarks
UTGST Act/ UTGST Rules	**One (01) Union Territory Tax (rate) Notification** issued (No. 11/2023)	To amend Notification No 01/2017- Union territory Tax (Rate) dated 28.06.2017.
IGST Act/ IGST Rules	**Four (04) Integrated Tax Notifications** issued (No. 1/2023 to 4/2023) & Four **(04)** Integrated Tax (rate) **Notifications** issued (No. 11/2023 to 14/2023)	Notifications to implement various decisions of GST Council taken in its 50th & 51st meeting and to implement other GIC decisions: 1. Seeks to notify all goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid. 2. Seeks to notify the provisions of the Integrated Goods and Services Tax (Amendment) Act, 2023 3. Seeks to notify the supply of online money gaming as the supply of goods on import of which, integrated tax shall be levied and collected under sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 4. Seeks to provide Simplified registration Scheme for overseas supplier of online money gaming 5. Seeks to amend notification No. 8/2017- Integrated Tax (Rate) dated 28.06.2017 to implement decisions of the 50th GST Council 6. Seeks to amend notification No. 09/2017- Integrated Tax (Rate) dated 28.06.2017 to implement decisions of the 50th GST Council 7. Seeks to amend notification No. 10/2017- Integrated Tax (Rate) dated 28.06.2017 to implement decisions of the 50th GST Council 8. Seeks to amend Notification No 01/2017- Integrated Tax (Rate) dated 28.06.2017.

Agenda 2: Ratification of Notifications and Circulars

[Vol 1- Pg. 220-242]

Act/ Rules	Notifications/Circulars Nos.	Description/Remarks
Circulars	**Two (02) Circulars** issued (Circular No. 200/12/2023-GST dated 01.08.2023 to Circular No. 201/13/2023-GST dated 01.08.2023)	Circulars to implement various decisions of GST Council in its 50th meeting & to implement other GIC decisions. **The issues covered in these circulars are** (i) Clarification regarding GST rates and classification of certain goods based on the recommendations of the GST Council in its 50th meeting held on 11th July, 2023. (ii) Clarifications regarding applicability of GST on certain services

Agenda 2: Ratification of notifications and circulars

[Vol 1- Pg. 220-242]

- Some of these notifications and circulars have been issued **based of decisions of GST Implementation Committee (GIC)** taken during the period from 26.07.2023 to 29.09.2023**.**
- The important decisions **taken by GIC** are as below :
  - Extension of due dates in filing of GSTR-1, GSTR-3B & GSTR-7 till 25.08.2023 in the state of Manipur
  - Extension of time till 01.01.2024 for implementation of Notification No. 30/2023-CT dated 31.07.2023
  - Approval of amendments in Rule 8(1), 14(1), 46(f), 64 & 87(3) of CGST Rules in respect of CGST Amendment Act, 2023 & IGST Amendment Act, 2023 regarding online money gaming
  - Approval of amendments in FORM GST REG-10 and FORM GSTR-5A
  - Issuance of Notification for levy and collection in case of import of online money gaming
  - Issuance of Notification for simplified registration for supply of online money gaming from a place outside India to a person in India under IGST Act
  - Amendment to Notification No. 1/2017-CT (rate) dated 28.06.2017

Recommendations of the Law Committee

Law Committee Recommendations for Trade facilitation and Reducing litigation

Agenda 3(ii): Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person (1/4)

[Vol 1- Pg. 246-257]

Issue 1: Taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company

- Clarification has been was sought regarding the taxability and valuation of the supply of personal guarantee offered by the Directors to the banks on behalf of the company.
- The activity of providing personal guarantee by the Directors to the banks on behalf of the company (related person), even without any monetary consideration, is taxable as services provided between related persons, as per Schedule I of the CGST Act.
- In cases of supplies to related persons, the taxable value of the supply is to be determined as per Rule 28 of the CGST Rules, 2017 i.e. mainly as per the open market value of such supply.
- As per the mandate of RBI, as per Para 2.2.9 of RBI Master Circular RBI/2021-22/121 dated 9th November, 2021 regarding guidelines relating to obtaining of personal guarantees of promoters, directors, other managerial personnel, and shareholders of borrowing concerns, no consideration can be charged by the director from the company for providing the bank guarantee for the purpose of sanctioning of credit facilities to the said company.

Agenda 3(ii): Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person (2/4)

[Vol 1- Pg. 246-257]

Proposal:

- LC has recommended that it **may be clarified through a circular** that
  - In cases where no consideration is paid by the company to the director in any form, directly or indirectly, for providing guarantee to the bank/ financial institutes on their behalf, as per mandate of RBI, the open market value of the said transaction/ supply may be treated as zero and accordingly taxable value of the said supply will be considered as zero.
  - in cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate or there may be other exceptional cases where remuneration/ consideration is paid to the director in any manner, directly or indirectly, the taxable value of such supply of service may be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.

Agenda 3(ii): Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person (3/4)

[Vol 1- Pg. 246-257]

Issue 2: Taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company

- The activity of providing corporate guarantee between the related companies, even without any monetary consideration, is taxable as services provided between related persons, as per Schedule I of the CGST Act.
- In such cases, the taxable value of the supply is to be determined as per Rule 28 of the CGST Rules, 2017 i.e. the open market value of such supply or as per value of services of like kind and quality or as per Rule 30 or 31 of CGST Rules, 2017.
- However, corporate guarantees, unlike bank guarantees, are specific and peculiar to a particular corporate group or company and therefore external third-party comparisons may not be available or relatable.
- Field formations as well as the taxpayers are finding it difficult to arrive at the open market value for such supply of services under Rule 28 of CGST Rules, 2017.

Agenda 3(ii): Issuance of clarification on taxability and valuation of Personal Guarantee by Directors for companies and Corporate Guarantee by companies for related person (4/4)

[Vol 1- Pg. 246-257]

Proposal:

- LC has recommended:
  - to **insert sub-rule (2) in Rule 28 of CGST Rules, 2017**, providing that "Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be **one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher**."
  - to clarify **through the Circular** that after the insertion of the said sub-rule, the value of such supply of services would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017 irrespective of whether full ITC is available to the recipient of services or not.

Agenda 3(iii): Issue of delay (beyond condonation) in filing Appeals against demand orders raised under GST till a specified period (1/2)

[Vol 1- Pg. 258-262]

Issue:

- During the initial years of implementation of GST, a number of appeals against demand orders could not be filed within the specified time period i.e., within the limitation period of three months as mentioned in Section 107(1) of the CGST Act, 2017 and the permissible delay condonation period of one month as provided in, Section 107(4) of the CGST Act, 2017, due to various reasons.
- In a lot of cases, in cases where no physical service of these notice/orders were made, the taxpayers were not aware of the notices/ orders issued to them through the common portal. Many taxpayers came to know about demand orders only upon initiation of recovery proceedings under section 79 of the CGST Act, 2017 i.e., after lapse of time prescribed for filing of appeals.
- Thus, the taxpayers are stuck in a situation where they can neither file an appeal against the demand order nor are in position to pay the demand raised by the tax authorities.

Agenda 3(iii): Issue of delay (beyond condonation) in filing Appeals against demand orders raised under GST till a specified period (2/2)

[Vol 1- Pg. 258-262]

Proposal:

Law Committee recommended:

- To provide **one time amnesty** for filing appeals in such cases through a **special procedure under section 148 of CGST Act**.
- The special procedure for filing appeal to be applicable for the taxable persons:
  - who could not file an appeal under section 107 of the said Act, **against the order passed by the proper officer under section 73 or 74 of the said Act on or before the 31st day of March, 2023;** or
  - whose appeal against the such order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107.
- The filing of appeal in such cases to be allowed **subject to the condition of payment of an amount of pre-deposit** of 12.5% of the tax under dispute by the said person, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger.
- The **time limit** for filing appeals under this amnesty/ special procedure may be kept up to 31st December 2023.

Agenda 3(v): Clarification regarding restoration of provisionally attached property(1/2)

Issue:

[Vol 1- Pg. 268-272]

- **Section 83(2)** of CGST Act, 2017 mentions that the provisional attachment shall **cease to have effect after the expiry of a period of one year from the date of the order** i.e. provisional attachment order in the form of FORM GST DRC-22, there is no mention of need for issuance of any order to release/ restore the provisionally attached property after expiry of this time period of one year.
- At the same time, **Rule 159(2)** of CGST Rules, 2017 mentions that the provisional attachment of a property shall be removed only on the written instructions from the Commissioner to that effect.
- It has been brought to notice that there is a confusion among the concerned revenue authorities, transport authorities, bankers and other such authorities as to whether the said encumbrance placed on the said movable or immovable property **automatically expires after a period of one year from the date of FORM GST DRC – 22**, or the said authorities have to **wait for a written instructions from the Commissioner** to that effect.

Agenda 3(v): Clarification regarding restoration of provisionally attached property(2/2)

[Vol 1- Pg. 268-272]

Proposal

- **LC has recommended**
  - an **amendment in sub-rule (2) of Rule 159** of CGST Rules, 2017, to insert the words "*or on expiry of a period of one year from the date of issuance of order in FORM GST DRC-22, whichever is earlier*," after the words "to that effect", to clearly provide that order issued under FORM GST DRC-22 shall cease to have effect after expiry of period of one year from the date of issuance.
  - an **amendment in FORM GST DRC-22** inserting the words "*This order shall cease to have effect, on the date of issuance of order in FORM GST DRC-23 by the Commissioner, or on the expiry of a period of one year from the date of issuance of this order, whichever is earlier.*"

Agenda 3(vi): Clarification on various issues related to Place of Supply(1/3)

Issue: [Vol 1- Pg. 273-282]

- Representations have been received seeking clarification regarding the place of supply in respect of:

  (i) services of transportation of goods, including by mail or courier, when either supplier or recipient of service is located outside India

  (ii) services in respect of advertising

  (iii) "co-location services"

Proposal:

- **LC has recommended to issue a Circular to clarify that:**
  - **In case of service of transportation of goods, including by mail or courier**:
    - ✓ place of supply will be **determined by the default rule under section 13(2) of IGST Act** i.e. in cases where location of recipient of services is available, the place of supply of such services shall be **the location of recipient of services** and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the **location of supplier of services**.

Agenda 3(vi): Clarification on various issues related to Place of Supply(2/3)

[Vol 1- Pg. 273-282]

- **In case of services in respect of advertising:**
  - ✓ In case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure, the place of supply of services provided by the vendor to the advertising company in such case shall be governed **by the provisions of section 12(3)(a) of IGST Act**.
  - ✓ In case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor and the responsibility of arranging the hoardings/ bill boards and display of advertisement on the said location lies with the vendor and during this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed whereas the advertising company is not occupying the space or the structure, the place of supply shall be determined **in terms of Section 12(2) of IGST Act**.

Agenda 3(vi): Clarification on various issues related to Place of Supply(3/3)

[Vol 1- Pg. 273-282]

- **In case of "co-location services"**
  - ✓ Co-location services are in the nature of **"Hosting and information technology (IT) infrastructure provisioning services"**, and the said services do not merely involve providing of a physical space, but also involve the supply of various components of 'Hosting and information technology (IT) infrastructure provisioning services' like network connectivity, backup facility, firewall services, and monitoring and surveillance service **for ensuring continuous operations of the servers and related hardware**, etc. Accordingly, the place of supply of the same shall be determined by **the default place of supply provision under sub-section (2) of Section 12 of the IGST Act** i.e. location of recipient of co-location service.
  - ✓ However, **in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services** and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the **supply of the service of renting of immovable property**. Accordingly, the place of supply of these services shall be determined by the **provisions of clause (a) of sub-section (3) of Section 12** of the IGST Act which is the location where the immovable property is located.

Agenda 3(vii): Clarification related to export of services

[Vol 1- Pg. 283-288]

Issue:

- Representations have been received for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017.

Proposal:

- Law Committee recommended **to clarify through a Circular** that:
  - the condition of sub-clause (iv) of Section 2(6) of the IGST Act, 2017 will be considered to be fulfilled when the Indian exporters, undertaking exports of services, are paid the **export proceeds in INR** from the balances in the **designated Special Vostro Account** of the correspondent bank of the partner trading country in terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, as mandated by RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022 and reiterated further in Foreign Trade Policy, 2023.

Agenda 3(ix): Clarification regarding eligibility of construction of roads, bridges for inverted duty structure refund

Issue:

[Vol 1- Pg. 303-308]

- References have been received from field formations requesting for clarification regarding applicability of Notification number 15/2017-Central Tax (Rate), dated 28.06.2017 (which restricts refund of accumulated credit on account of inverted duty structure in respect of supplies covered under Entry 5(b) of Schedule II of CGST Act, 2017) in respect of refund on account of inverted duty structure in the case of supply of certain services like **construction of bridges and roads** etc.
- If the said services are construed as civil structure under Entry 5(b) of Schedule II of CGST Act, 2017, then refund will be not admissible but if they are construed as under works contract services under Entry 6(a) of Schedule II, then refund would be admissible.

Proposal:

- All LC members (except member from Karnataka) opined that construction of only such civil structures including a complex or building, which are intended for sale to a buyer along with land or undivided share of land, are covered under Entry 5(b) of Schedule II of CGST Act, 2017 and accordingly refund is not restricted in such cases as per the above mentioned Notification.
- LC member from Karnataka opined that construction of all kinds of civil structures, including bridges, falls under Entry 5(b) of Schedule II of CGST Act, 2017 and accordingly, refund should not be admissible in respect of construction of bridges.
- Matter placed before the Council for deliberation.

Law Committee Recommendations relating to Compliance and Administrative measures under GST

Agenda 3(i): Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals

[Vol 1- Pg. 243-245]

Issue:

- Vide the Finance Act, 2023, amendments to section 109 and 110 of the CGST Act, 2017 were carried out and the same were notified vide notification No. 28/2023–Central Tax dated 31st July, 2023.
- In response to a request for nominations for the Search-cum-Selection Committee (ScSC) for appointment of Judicial Members and Technical Member (Centre) of GSTAT, the registrar of Supreme Court of India emphasized that certain provisions of the CGST Act, 2017 relating to GSTAT need to be aligned with the Tribunal Reforms Act, 2021.

Proposal

- **LC recommended the following:**
  - To make **an amendment to section 110** of the CGST Act, 2017 :
    - ✓ to insert **provision relating to eligibility of an Advocate with a standing of 10 years at the Bar** with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court for the appointment as judicial member
    - ✓ **Minimum age** for appointment of member or president of Tribunal to be specified as **50 years**;
    - ✓ Tenure of president and members to be upto a **maximum age of 70 years and 67 years** respectively.
- **This would help in aligning the provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021.**

Agenda 3(iv): Law amendment with respect to ISD as recommended by the GST Council in its 50th meeting

[Vol 1- Pg. 263-267]

Issue:

- GST Council in its 50th meeting recommended that ISD (Input Service Distributor) procedure, as laid down in Section 20 of the CGST Act, 2017 read with rule 39 of CGST Rules, 2017 may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs.
- Further, ITC on account of input services received from a third party, where such input services are liable to tax on reverse charge basis, should also be required to be distributed through ISD route. The Council authorized Law Committee (LC) to make requisite law amendments.

Proposal:

- **LC has recommended:**
  - **amendment in definition of "input service distributor" under clause (61) of section 2 of CGST** Act to define it as such office of supplier of goods or services or both which receives tax invoices including invoices in respect of services liable to tax under reverse charge basis as per sub-sections (3) or (4) of Section 9, for or on behalf of a distinct person or distinct persons, as specified in section 25 and who is liable to distribute the input tax credit in respect of such invoices in terms of section 20.
  - **amendment in section 20 of CGST Act,** to explicitly mandate distribution of the common credit including with credit pertaining to common input services which are liable to tax on reverse charge basis.
  - **substitution of provisions of rule 39 of the CGST Rules** by incorporating methodology for distribution of credit in rule 39.

Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (1/5):

[Vol 1- Pg. 289-302]

Issue:

(i) Incorporation of 'One Person Company' in FORM GST REG 01 i.e. Application for Registration

- While applying for Registration, an applicant is required to select one of the categories mentioned in 'Constitution of Business' from dropdown in Part B of FORM GST REG-01 i.e. Application for Registration.
- In the existing system, it is mandatory for applicant to update minimum two Partners/Promoters, if he selects any of the categories of "Constitution of Business". In case where an applicant tries to proceed with less than two Promoters and Partners, an error message is being displayed on the portal and he is not able to submit the application for registration.
- The option of choosing 'One Person Company' is not available among different categories of 'Constitution of Business' in notified FORM REG-01 and hence there is a need to make this option available in the FORM and on GST portal as well.

Proposal:

- Law Committee recommended to **incorporate 'One Person Company' as a Constitution of Business in Part-B of FORM GST REG-01** the applicant to fill only the details of the single member or owner and to submit the application successfully on system.

Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (2/5)

[Vol 1- Pg. 289-302]

Issue: Application for Enrolment as Goods and Services Tax Practitioner-Amendment in Form GST PCT-01

- Rule 83(1) of the CGST Rules, 2017 stipulates certain conditions for enrolment as Goods and Services Tax practitioner some of which are not available in the notified FORM GST PCT-01 and on the portal.
- Hence, necessary changes mentioned below are required to be made on the portal as well as in Part-B of Form GST PCT-01 in line with the rules.
  - Certificate of Practice (COP) is not required for CA/ICWA/CS as per the rules.
  - Option related to Graduate or Post Graduate in Law and Higher Auditing is not available in notified form and existing implementation
  - Option related to any other examination notified by Government is also not there.
  - Deleting the option of "Advocate" as it is not aligned with the existing rules.

Proposal:

- Law Committee recommended to **amend the S. No. 4 of Part-B of Form GST PCT-01 in line with rule 83(1)** of the CGST Rules.

Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (3/5)

[Vol 1- Pg. 289-302]

Issue: Application for cancellation of TCS and TDS registration- Enhancement in Form GST REG-08 format for having options for cancellation of registration against the request made by the TDS and TCS registered persons

- Notification no. 26/2022-CT dated 26.12.2022 amended rule 12(3) of the CGST Rules to provide for facility to TDS and TCS registered person for cancellation of their registration on their request.
- Presently, the tax officers are issuing Order of cancellation of Registration as Tax Deductor at Source or Tax Collector at Source in FORM GST REG-08 for suo-moto cancellation of registration alone as there is no separate format for issuing order of cancellation of registration for those persons against self-cancellation application.
- Hence, there is a need to amend FORM GST REG-08 to specifically provide for cancellation of registration against the request made by the TDS and TCS registered persons and also to rephrase and re-align the reasons for cancellation in FORM GST REG-08 on the lines of those notified in respect of FORM GST REG-19 vide CGST (5th Amendment) Rules, 2022 for better clarity.

Proposal:

- Law Committee recommended **to substitute FORM GST REG-08** to provide for cancellation of registration against the request made by the TDS and TCS registered persons and to rephrase and re-align the reasons for cancellation in FORM GST REG-08 on the lines of those notified in respect of FORM GST REG-19.

Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (4/5)

[Vol 1- Pg. 289-302]

Issue: Amendment in FORM GSTR-8 to include late fee

- Section 47 of the CGST Act has been inter alia amended vide Finance Act, 2022 which envisages that the late fee on delayed furnishing of return in FORM GSTR-8 under section 52 of the CGST Act, 2017 by e-commerce operators, should also be levied from the date of implementation of the aforesaid amendment.
- Since, existing FORM GSTR-8 does not contain late fee table, certain changes were proposed by GSTN in the said Form.

Proposal:

- Law Committee recommended to **make changes in FORM GSTR-08** :
  - By substituting new Table 7 on "Interest, late fee payable and paid" in place of existing Table 6 and Table 7 to include interest on delayed submission of returns by tax payers under section 52 of the CGST Act.
  - By inserting column for late fee as well in Table 9 on Debit entries in cash ledger for TCS, interest and late fee payment.

Agenda 3(viii): Amendment in CGST Rules and GST/PCT Form(s) (5/5)

[Vol 1- Pg. 297-302]

Issue: Amendment in rule 142 (3) of the CGST Rules with respect to FORM GST DRC-05

- FORM GST DRC-05 uses the word intimation to denote the format in which the proper officer intimates the taxpayer regarding the conclusion of proceedings initiated against him. However, rule 142 (3) of the CGST Rules states that "…and the proper officer shall issue an **order** in FORM GST DRC-05 concluding the proceedings in respect of the said notice." i.e. the word used in rule 142(3) is 'order' and not 'intimation'. This created an anomaly as the intention behind FORM GST DRC-05 was to intimate the taxpayer about the proceedings and not to issue an order which is appealable.

Proposal:

- Law Committee recommended that rule 142 (3) may be amended so that words "intimation" shall be used instead of "order" with respect to FORM GST DRC-05.

Other Proposals pertaining to Law and Procedures

Agenda 9: Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route

[Addendum to Vol 2- Pg. 01-03]

Issue:

- Vide Notification 01/2023-Integrated Tax dated 31.07.2023, all goods and services (except those specified in Table of the notification) were notified as class of goods or services which can be exported on payment of IGST under IGST route. This notification is effective from 01.10.2023.
- As supplies to SEZ unit/ developer are zero rated supplies but not considered as exports, the supplies to a SEZ developer or a SEZ unit for authorized operations on payment of integrated tax have not been covered in the said Notification for payment of IGST and subsequent refund of the same, meaning that only LUT route is available for such supplies to SEZ unit/ developer.
- This was not the intention of the Council as well as GoM on capacity based taxation, while recommending the issuance of said Notification.

Proposal: To amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 **w.e.f. 01.10.2023** by including all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.

Agenda 9: Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route

[Addendum to Vol 2- Pg. 01-03]

Proposed Amendment in Notification 1/2023-Integrated Tax dated 31.07.2023

"In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the "said Act"), the Central Government on the recommendations of the Council, hereby notifies

(i) all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and

(ii) all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid:"

Agenda 9: Amendment in Notification 1/2023-Integrated Tax to include supplies to SEZ units/ developers under IGST route

Alternate formulation for Amendment in Notification 1/2023-IT dated 31.07.2023

"In exercise of the powers conferred by sub-section (4) of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter referred to as the "said Act"), the Central Government on the recommendations of the Council, hereby notifies

(i) all goods or services (except the goods specified in column (3) of the TABLE below) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and

(i) all suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations as the class of persons who may make supply of goods or services (except the goods specified in column (3) of the TABLE below) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid:"

Annexure-4

52nd GST Council Meeting

Agenda Item 4

Recommendations of Fitment Committee on Goods and Services

7th October, 2023

Summary of Discussion in Officers' meeting on Recommendations of Fitment Committee

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Goods

- **Total 12 issues examined**

  - Recommendations for making changes in GST rates/ issuing clarifications- **4**
    [Vol. I-Agenda Item 4(a), Annexure-I :pages 310 to 314 ; Volume –II-Agenda 4 (i) -pages 8-9]

  - Recommendations for making no change - **6** [Vol. I, Agenda Item 4, Annexure-II :pages 315 to 319]

  - Issues deferred for further examination – **2**
    [Vol. I, Agenda Item 4, Annexure-III :pages 320 to 323]

  - Issue for information of GST Council **-1** [Vol. I, Agenda Item 4, Annexure-III :pages 311 to 313]

Services

- **Total 24 issues examined**

  - Recommendations for making changes in GST rates/ issuing clarifications- **10**
    [Vol. I, Agenda Item 4, Annexure-IV :pages 324 to 339]
    [Vol. II, Agenda Item 4 (Part-II)(ii) :pages 10 to 15]

  - Recommendations for making no change - **5** [Vol. I, Agenda Item 4, Annexure-V :pages 340 to 350]

  - Issues deferred for further examination – **9** [Vol. I, Agenda Item 4, Annexure-VI :pages 351 to 364]
    [Vol. II, Agenda Item 4 (Part-II)(ii) :pages 10, 15 to 19]

Goods-Changes Recommended:

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S. No. 1 Vol-I: Page No. 310	➢ Reduction in GST rate on food preparation of millet flour, in powder form, containing at least 70% millets by weight (HS 1901) from 18% to- a. 0% if sold in other than pre-packaged and labelled form b. 12% if sold in pre-packaged and labelled form ➢ Since there was no ambiguity in the past, there appears no merit in regularising the issue for past period.	No objection
4(a) (Annexure-I) S. No. 2 Vol-I: Page Nos. 310-311	➢ Update List 34A & 34B of Notification No. 50/2017 – Customs as per revised appendix 4B issued vide DGFT Public Notice dated 18.08.2023 ➢ seek general approval from GST Council to update the lists as and when Appendix 4B is amended by DGFT and thereafter placing before Council for information as the changes are technical in nature.	No objection

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Goods-Changes Recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(a) (Annexure-I) S. No. 4 Vol-I: Page Nos. 313-314	➢ Clarification may be issued that imitation zari thread or yarn made out of metallised polyester film/ plastic film falling under HS 5605 are covered by the entry for imitation zari thread or yarn attracting 5% GST rate. ➢ No refund will be permitted on polyester film (metallised) /plastic film on account of inversion.	No objection

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Goods-No change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S. No. 1 Vol-I: Page Nos. 315-316	➢ Concrete mixers are classified under HS Code 8474 and attract 18% GST rate. Boom pumps i.e., concrete pumps are classified under HS Code 8413 and attract 18% GST rate. ➢ Concrete mixer lorries are classified under HS Code 8705 (SPV) and attract 18% GST rate. Body parts of motor vehicle (8707) attract 28%. ➢ Entries are clear, specific clarification may not be required. Status quo may be maintained	**No objection**
4(b) (Annexure-II) S. No. 2 Vol-I: Page Nos. 316-317	➢ Concessional rate of 12 % has been provided to various renewable energy devices and parts for their **manufacture** ➢ Concessional GST rate would not apply in case parts are purchased for replacing the parts on existing devices. ➢ Request is to clarify that GST rate on the spare parts of renewable energy devices is 12%, irrespective of the end-use. ➢ Fitment Committee recommended to maintain *status quo.*	• Punjab suggested that to avoid end use exemptions, the benefit of concessional rate may be extended to supply of parts for use other than manufacturing of such devices as well. • It was opined that TRU may examine in totality with all other end use exemptions entries

Goods-No change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (b) (Annexure-II) S.No. 3 Vol-I: Page No. 317	➢ Request is for reduction in GST rate on Electric Vehicle Battery from 18% to 5%. ➢ Lithium ion batteries have multiple uses i.e. cellular mobile phones, portable electronics, electric vehicles etc. Accordingly, Status quo may be maintained.	No objection
4 (b) (Annexure-II) S.No. 4 Vol-I: Page Nos 317-18	➢ Request is to seek clarification regarding the scope of sugar boiled confectionery. ➢ Sugar boiled confectionary is distinguishable from sugar confectionary. No clarification is required in view of the existing BIS/FSSAI standards.	No objection

Goods-No change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S.No. 5 Vol-I: Page No. 318	➢ Request is to ➢ Exempt cess payable by Canteen Store Depots (CSDs) on outward supply of aerated beverages and energy drinks OR ➢ Collect the applicable cess at the Depot level for supplies made by Unit Run Canteens (URCs) ➢ It was decided in the 15th GST Council meeting that no concession is to be given from levy of Compensation Cess to URCs. ➢ No change in rate is recommended. ➢ Regarding the suggestion to collect applicable cess at the Depot level for supplies made by URCs, the matter may be referred to the Law Committee for consideration.	No objection

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Goods-No change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(b) (Annexure-II) S.No. 6 Vol-I: Page Nos. 318-319	➢ Request is for uniform additional compensation cess on cigarettes/ compensation cess on bidis/ additional compensation cess on smokeless tobacco products/ or lower compensation cess on cigarettes sticks up to 70 mm. ➢ Fitment Committee recommended to maintain *status quo*.	No objection

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Goods- Deferred

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure-III) S.No. 1 Vol-I: Page No. 320	➢ Request is to clarify that khari and crème roll are covered under "similar toasted products" and attract 5% GST rate ➢ The issue was examined in 47th, 48th & 50th GST Council meetings and it was observed that further details regarding the nature of product, process of preparation is required before making any suggestions. ➢ Maharashtra suggested to get the same examined by Food Research Institutes. ➢ The issue may be deferred.	No objection

Goods- Deferred

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure-III) S. No. 2 Vol-I: Page Nos. 320-323	➢ GST Council in its 47th meeting referred the issue of levy of GST on steel scrap on RCM basis to Fitment Committee. ➢ State of Karnataka: ❖ Such proposal may not be feasible as it breaks the ITC chain, leads to cascading of taxes and breakage of audit trail. ❖ Suggested measures such as introduction of trace and track mechanism, better registration procedures, registration of e-way bills if that commodity is registered to be supplied, ITC only if invoice is registered etc. ➢ State of Punjab : ❖ Tax iron and scrap on RCM and exempt supply of scrap in the hands of traders ❖ Make e-way bill mandatory for all transactions in scrap irrespective of value. ➢ Fitment Committee recommended to defer the issue to create a Committee of officers to study the issue holistically and to come up with workable solutions. ➢ Sub-committee has submitted its report on 02.10.2023 . The issue may be deferred pending examination of the report of committee.	No objection

Carunia Seelavathi Vs UOI (High Court) For Information of the Council

Agenda No.	Issue/Proposal	Relevant extract of the order
4(a) (Annexure-I) S. No. 3 Vol-I: Page Nos. 311-313	➢ Presently, concessional GST rate of 18% is available only to orthopaedic physical disabled person ➢ Hon'ble High Court passed a judgement dated 26.06.2023 asking authorities to issue necessary orders for providing GST concession to the petitioner (visually impaired person). ➢ Appeal with stay application has been filed before Madurai bench ➢ Fitment committee recommended to place the order of Hon'ble High Court before the Council for information.	*" Considering the recommendation of the Commission which is a commission specifically established for the disabled and taking into consideration the fact that today the visually challenged persons are having more opportunities of employment in the government sector and their commuting to the place of work becomes challenging , this court is of the opinion that the exemption has to be granted to the petitioner and accordingly, the writ petitions are allowed.* ***The authority concerned shall ensure that necessary orders exempting the petitioner from the Motor Vehicle's Tax as well as GST are passed within a period of four weeks from the date of receipt of a undertaking letter by the petitioner."***

Goods-Changes Recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (Part-II) (i) Vol-II: Page Nos 8-9	a. To place before Hon'ble Supreme Court that the GST Council has no intent to subject Extra-Neutral Alcohol (ENA) for use in manufacture of alcoholic liquors for human consumption. b. To make suitable amendment in law to exclude ENA supplied for manufacture of alcoholic liquors for human consumption from the ambit of GST c. To reduce GST on Molasses from 28% to 5%. d. To notify rate of 18% for new tariff line created for 'ENA for industrial use' (HS 22071012).	▪ No objection on proposed agenda. ▪ However, for past period, JS (TRU) and committee of officers from following states will study the implication : (i) Karnataka (ii) Uttar Pradesh (iii) West Bengal (iv) Rajasthan (v) Maharashtra (vi) Madhya Pradesh (vii) Punjab (viii) Andhra Pradesh JS(TRU) will convene the meeting

Tabled Agenda

Agenda No.	Issue/Proposal	Status after officers' meeting
4(c) (Annexure -III) S. No. 2 Vol-I: Page Nos. 320-323	➢ All foreign going vessels upon conversion to Coastal run/coastal trade are required to file Bill of entry/IGM at the time of its conversion to coastal run and pay applicable duties on the vessel , stores and fuel. In the instant case, the Cruise ship Costa Serena will have to convert to coastal run for operating the cruises in coastal waters (Mumbai - Goa- Mumbai and Mumbai-Kochi-Lakshadweep- Mumbai) for their voyage from **02.11.2023 to 10.01.2024** ➢ Further, the cruise ship operator does not intend to enter into a lease arrangement and consequently, they will be liable to pay IGST of 5% on the value of the vessel on conversion to coastal. ➢ In the pre-GST regime, they were exempted from CVD levied in lieu of central excise duty. ➢ The proposed operation of cruise ship Costa Serena is beyond the scope of the definition of "foreign going vessel". Therefore acceding to the request is not feasible as the same would require amendment of the Act. ➢ The only option that can be considered is providing exemption from 5% IGST levy for foreign flag foreign going vessels being operated by an entity not registered under GST in India when it converts to coastal run subject to the condition that it reconverts to foreign going vessel with a period of 6 months.	No objection

Services- Change recommended :

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 1(a) Vol-I: Page No. 324-326	➢ Request is to notify a mechanism for utilization of ITC in cases where passenger transportation services by AC buses are supplied through an e-commerce operator (ECO) and to shift the onus of discharging GST on registered bus operators providing passenger transportation service through ECOs.	No objection
4(d) (Annexure-IV) S.No. 1(b) Vol-I: Page No. 324-326	➢ To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, Companies supplying passenger transport services by a motor vehicle may be excluded from the purview of section 9(5) of CGST Act, 2017. ➢ It may be clarified that input services in same line of business include transport of passengers or renting of motor vehicle with operator and to limit ITC on services in the same line of business to 5%.	

Services- Change recommended :

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 2 Vol-I: Page No. 326-327	➢ Request to clarify whether GST is applicable on reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants . ➢ It may be clarified that whenever electricity is being supplied with renting of immovable property and/or maintenance of premises etc. it forms a part of composite supply and taxes as applicable will be charged . In such cases even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise etc. would be applicable. ➢ Where real estate owner supplies electricity as pure agent, it will not form part of value of his supply. ➢ Further, where they charge for electricity on actual basis, they will be deemed to be acting as pure agent for this supply.	No objection

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 3 Vol-I: Page No. 327-330	➢ Request is to exempt services provided by District Mineral Foundations from GST. ➢ It may be clarified that DMFT is a governmental authority and thus eligible for the same exemptions as available to any other Governmental Authority.	No objection
4(d) (Annexure-IV) S.No. 4 Vol-I: Page No. 330-332	➢ Request is to clarify whether services by way of jobwork for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption". ➢ It may be clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) "which covers job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.	No objection

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 5 Vol-I: Page No. 332-333	➢ Request to specify a positive list of services under Sr. No. 3 & 3A of notification No. 12/2017-Central Tax (Rate) which exempts pure and composite services provided to Central/State/UT governments and local authorities in relation to any function entrusted to Panchayat/ Municipality under Article 243G and 243W of the Constitution of India. ➢ Existing entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 may be retained. ➢ A new entry may be created in the notification No. 12/2017-CTR dated 28.06.2017 to exempt following five services supplied to Governmental Authority: (1) Water Supply, (2) Public health, (3) Sanitation Conservancy, (4) Solid Waste Management, and (5) Slum improvement and upgradation.	No objection

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Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 6 Vol-I: Page No. 333-335	➢ Request is to bring supplies made by Indian Railways under forward charge mechanism. Currently, only transport of passenger service is charged on forward charge. ➢ All goods and services supplied by Indian Railways may be brought under forward charge by amending Notification no 13/2017-CTR . ➢ Consequently Indian Railways may be excluded from the exemptions given to services supplied by Government to individuals, unregistered business entities or to Central, State Governments, local authorities by amending Notification no 12/2017-CTR .	No objection

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Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (d) (Annexure-IV) S.No. 7 Vol-I: Page No. 335-337	➢ Clarification requested by CAMPCO on entry 54(g) of 12/2017-CT(R) dated 28.06.2017 with regard to the scope of exemption for commission agent in facilitating the sale of agricultural produce. ➢ CAMPCO may be advised to approach Authority for Advance Ruling.	No objection
4(d) (Annexure-IV) S.No. 8 Vol-I: Page No. 337-338	➢ Request is to clarify applicability of GST on Horticulture Contracts supplied to CPWD. ➢ It may be clarified that supply of pure services and/or composite supply by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) to CPWD are exempt from GST under Sr. No. 3 and 3A of the notification No.12/2-17-CTR dated 28.06.2017.	No objection

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (d) (Annexure-IV) S.No. 9 Vol-I: Page No. 338-339	➢ Entry at Sr. No. 34(iv) of the services rate notification No. 11/2017-CTR dated 28.06.2017 which specifies 28% GST for "services provided by a race club by way of totalizator or a license to bookmaker in such club" may be rationalized as "services provided by a race club by way of licensing a bookmaker in such club" as supply by a race club by way of a totalizator is supply of actionable claims and not services. ➢ Further entry at Sr. No. 34(v) of the services rate notification No. 11/2017- CTR dated 28.06.2017 which specifies GST rate of 28% on "gambling" may be omitted as gambling is already included under Sl. No. 227A of the goods rate schedule under "Specified Actionable Claim" . ➢ In addition to above, entry 999692 and 999694 may be deleted from the scheme of classification of services (Annexure to the notification No. 11/2017-CTR dated 28.06.2017).	No objection

Services- Change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(d) (Annexure-IV) S.No. 10 Vol-II: Page No.10-15	➢ Request is to clarify whether service by way of hostel accommodation, service apartments /hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017 and for GST exemption on hostels for poor and middle-class students run by charitable trusts. ➢ Chapter heading 9963 may be deleted from Column No. 2 in the notification No. 12/2017- CT(R). ➢ Further, an Explanation may be inserted in Sl. No. 12 of Notification No. 12/2017-CT(R) dated 28.06.2017 stating that nothing contained in this entry shall apply to: (i) accommodation services for students in student residences; and (ii) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.	No objection

Services-No change

Agenda No.	Issue/Proposal	Status after officers' meeting
4 (e) (Annexure-V) S.No. 1 Vol-I: Page No. 340-341	➢ Request is to apply uniform GST rate of 5% on Business Correspondent services provided in both rural/urban areas. ➢ Presently, 18% GST is applicable on the entire chain of banking services irrespective of the fact that services are being offered by the banking company or their banking correspondent. ➢ Specific exemption for services provided by BC/BF to banking companies in respect of rural area branches has been given in line with the objectives of financial inclusion. ➢ Fitment Committee recommended to maintain *status quo*.	No objection
4(e) (Annexure-V) S.No. 2 Vol-I: Page No. 341-342	➢ Request is to bring renting of residential dwellings by registered persons to registered persons under Forward Charge Mechanism. ➢ No real life examples or difficulties in implementation of the said notification were brought to notice. ➢ Fitment Committee recommended to maintain *status quo.*	No objection

Services-No change recommended

Agenda No.	Issue/Proposal	Status after officers' meeting
4(e) (Annexure-V) S.No. 3 Vol-I: Page No. 342-344	➢ To clarify that 'sale of land' at Entry No. 5 of Schedule III of the CGST Act includes assignment of leasehold rights in such land. ➢ Sale of land and lease of land are not the same thing. While sale of land results in transfer of title to land along with all the benefits arising out of it, the lease of land does not result in transfer of title to that land or all rights/benefits arising out of it. ➢ Fitment Committee recommended to maintain status quo.	No objection
4(e) (Annexure-V) S.No. 4 Vol-I: Page No. 344	➢ Request is for exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST. ➢ Exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST will encourage hoarding of industrial plots for the purpose of re-sale and defeat the objective of promoting and setting up of industrial units. ➢ Fitment Committee recommended to maintain status quo. ➢ On a related issue of whether ITC of lease of industrial plots is available or blocked by Section 17(5) of CGST Act, 2017, the Fitment Committee recommended to refer the matter to the Law Committee.	No objection

Services-No change recommended :

Agenda No.	Issue/Proposal	Status after officers' meeting
4(e) (Annexure-V) S.No. 5 Vol-I: Page No. 345-346	➢ Request from State of Nagaland to keep the rate of GST @ 12% on works contract services which commenced prior to 18.07.2022. ➢ Similar issue was examined and not acceded to by the GST Council in 47th meeting of GST Council held on 28-29 June, 2022. ➢ If 12% rate is continued for old contracts, multiple rates of 12% and 18% would be there for many years in future leading to complex rate structure. ➢ Fitment Committee recommended to maintain status quo.	No objection

Services- Deferred Issue

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 5 Vol-I: Page No. 355-357	➢ Request to exempt Services provided by Central Government or State Government or Governmental Authority or local authority by way of granting long term lease (exceeding 30 years) of land of industrial plots for development for infrastructure for financial business. ➢ The matter was deferred in the 43rd GST Council held on 28th May, 2021. ➢ The matter was examined in the Fitment Committee and it was recommended that the matter may be referred to the GoM on real estate for examination, as it is closely related to the issues already before the GoM. ➢ Fitment Committee recommended that the matter may be deferred.	No objection
4(f) (Annexure-VI) S.No. 6 Vol-I: Page No. 357	➢ Request to clarify the nature and taxability of various supplies in relation to crypto eco-system ➢ GST Council in its 47th meeting held on 28-29 June 2022 and in its 48th meeting held on 17 December 2022, has deferred the issues regarding the nature and taxability of various supplies in relation to the crypto eco-system. ➢ It was decided that Haryana and Karnataka shall study all aspects and submit a paper before the Fitment Committee in due course. Both Haryana and Karnataka expressed their inability to submit the paper. ➢ The matter was deliberated in the Fitment Committee. It was agreed that a study should be got done from some technical institutions. ➢ Matter may be deferred.	No objection

Services- Deferred Issue

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 7 Vol-I: Page No. 357-359	➢ Harmonisation of GST Rate Schedule on Services and the Classification of Services adopted for GST ➢ Currently the GST rate schedule for services does not mention the classification of services at the 6-digit level. The sub-categorization of services beyond the 4-digit level has been carried out only for those services, on which a rate lower or higher than the standard rate of 18% was to be prescribed. ➢ This data – the value of services, GST collected, GST paid in cash and through credit –is very important for policy formulation. ➢ Fitment Committee recommended that the draft revised rate schedule of services at 6-digit level of classification may be circulated to all states for comments, after which the same may be examined by Fitment Committee/sub-committee. ➢ The same shall then be placed before the GST Council for approval. Once approved, it shall be placed in the public domain and implemented after incorporating any changes required therein in view of the feedback received and after a drop-down mechanism for selecting 6-digit classification of services is made available in GSTN portal. ➢ May be deferred.	No objection

Services- Deferred Issue

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 8 Vol-I: Page No. 359-364	➢ To clarify whether GST is applicable on charges/ fees like FSI paid by builders to local authorities under RCM. ➢ During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination. ➢ The Fitment Committee recommended that the issue may be deferred.	No objection
4(f) (Annexure-VI) S.No.9 Vol-II: Page No. 10	➢ Request to declare Delhi Development Authority as a Local Authority for the purposes of GST. ➢ As per section 2(1)(d) of National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, DDA is "a local authority" established under the Delhi Development Act 1957. ➢ Section 3(31) of General Clauses Act 1897 defines a local authority as "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund. Supreme Court in the R.C Jain case (1981 AIR 951) has held DDA to be a Local Authority. ➢ During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination and may be deferred.	No objection

Services- Deferred Issue

Agenda No.	Issue/Proposal	Status after officers' meeting
4(f) (Annexure-VI) S.No. 10 Vol:II Page No. 15-18	➢ Request to clarify whether GST is leviable on the incentive amount that is shared by acquirer bank with other stakeholders in the digital payment ecosystem . ➢ The issue was discussed in the Fitment Committee. Karnataka stated that it shall send a note on the issue and the matter may be deferred.	No objection
4(f) (Annexure-VI) S.No. 11 Vol:II Page No. 18-19	➢ Request to clarify regarding ascertaining value of land for deciding value of construction services in case of sale of commercial / residential apartments. ➢ The issue was discussed in the Fitment Committee and since the matter required detailed examination, the matter may be deferred.	No objection

Services- Deferred Issue

Agenda No.	Issue/Proposal	Status after officers' meeting
4(e) (Annexure-V) S.No. 6 Vol-I: Page No. 346-348	➢ Request to clarify whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the RERA Act, 2016. ➢ RERA has claimed that their statutory function of regulating the real estate development and construction of the building entrusted to the RERA falls squarely under Entry No.1 and 2 of the Twelfth Schedule of the Indian constitution. ➢ The issue was discussed in the Fitment Committee and since the matter required detailed examination, the matter may be deferred.	No objection

Services- Deferred Issue

Agenda No.	Issue/Proposal	Status after officers' meeting
4(e) (Annexure-V) S.No. 7 Vol-I: Page No. 348-350	➢ Request is to levy GST on renting of commercial property on RCM basis ➢ In case of renting of commercial property, only registered person is subject to payment of tax. However, where the person providing service of renting of commercial property is unregistered (on account of threshold for registration) no GST is applicable. ➢ This is dissimilar to renting of residential dwelling to a registered person which has been brought under reverse charge. ➢ The issue was discussed in the Fitment Committee and since the matter required detailed examination, the matter may be deferred.	No objection

THANK YOU

Goods

- **Total 12 issues examined**

  - Recommendations for making changes in GST rates/ issuing clarifications- **4**
    [Vol. I-Agenda Item 4(a), Annexure-I :pages 310 to 314 ; Volume –II-Agenda 4 (i) -pages 8-9]

  - Recommendations for making no change - **6** [Vol. I, Agenda Item 4, Annexure-II :pages 315 to 319]

  - Issues deferred for further examination – **2**
    [Vol. I, Agenda Item 4, Annexure-III :pages 320 to 323]

  - Issue for information of GST Council **-1** [Vol. I, Agenda Item 4, Annexure-III :pages 311 to 313]

Services

- **Total 24 issues examined**

  - Recommendations for making changes in GST rates/ issuing clarifications- **10**

    [Vol. I, Agenda Item 4, Annexure-IV :pages 324 to 339]

    [Vol. II, Agenda Item 4 (part II)(ii): pages 10 to 15]

  - Recommendations for making no change - **5**

    [Vol. I, Agenda Item 4, Annexure-V :pages 340 to 350]

  - Issues deferred for further examination – **9**

    [Vol. I, Agenda Item 4, Annexure-VI :pages 351 to 364 & Vol. II, Agenda Item 4 (ii), pages 10-19]

Recommendations of the Fitment Committee:
Goods

Agenda 4(a) (Annexure-I): Changes in GST rates/ issuing clarification (pages-310-314)

1. Food preparation of millet flour in powder form, containing at least 70% millets: (page 310)

- Currently, food preparations of flour classified under CTH 1901 attract 18% GST.
- In the 49th & 50th GST Council Meetings, Council deferred the proposal for further examination
- Representation received:
  - to exempt/reduce rate for the preparation of flour of millets
- Fitment Committee recommendations:-
  - GST rate on food preparation of millet flour, in powder form, containing at least 70% millets by weight (CTH 1901), sold in other than pre-packaged and labelled form may be reduced to Nil and if sold in pre-packaged and labelled form, may be reduced to 12%.
  - Considering that there was no ambiguity in law or in practice regarding prepared flour preparations there appears no merit in regularising the issue for past period.

Agenda 4(a) (Annexure-I)

2. Gold and Silver imported by specified banks: (pages 310-311)

- IGST exemption is available on imports of gold, silver or platinum by specified banks & other entities mentioned in list 34A, 34B & 34C of Sr. No. 359A of Notification No. 50/2017 – Customs dated 30.06.2017 in line with Appendix 4B of HBP, FTP, 2023.
- GST Council, in its 50th meeting, recommended to update the said list in accordance with the Appendix 4B of HBP, FTP, 2023, after confirmation by DGFT and DGEP. Accordingly, the list of banks and other entities have been updated.
- Representation received:
  - Karur Vysya Bank has requested to add its name in the said list in accordance with the DGFT public notice 28/2023 dated 18.08.2023
- Fitment Committee recommendations:
  - Update List 34A & 34B of Notification No. 50/2017 – Customs as per revised appendix 4B of HBP (FTP 2023) issued vide DGFT public notice 28/2023 dated 18.08.2023
  - Seek general approval from GST Council to update the lists as and when Appendix 4B is amended by DGFT and place the same for information of Council as the changes are technical in nature.

Agenda 4(a) (Annexure-I)

3. Motor Vehicles (8703) purchased by Divyangjan.: (page 311-312)

- Presently, GST concessional rate of 18% for purchase of vehicles (HSN 8703) is available only to orthopaedic physical disabled persons.
- Hon'ble Madras High Court in writ petition by Ms. Carunia Seelavathi (visually impaired person) passed a judgement dated 26.06.23 asking authorities to issue necessary orders for providing GST concession to the petitioner, currently available to orthopedically disabled persons.
- Appeal with stay application has been filed before Madurai bench, against the said judgement mainly on the grounds that decision to provide exemption is to be determined by the GST Council and is a policy decision.
- The GST Council in its 47th Meeting deliberated on the issue and opined that the benefit/concession to Divyangjan on purchase of vehicle should be in the form of reimbursement of GST by the Department of Empowerment of Persons with Disabilities (DEPwD), considering that end use based GST rates creates distortion.
- Fitment Committee recommendations:
  - ➢ Fitment committee recommended to place the order of Hon'ble High Court before the Council for information and suitable recommendation.

Agenda 4(a) (Annexure-I)

4. Clarification on imitation Zari thread or yarn made out of polyester film (metallised) /plastic film: (pages 313-314)

- The GST Council in its 50th meeting had recommended reduction of GST rate to 5% on all imitation zari thread or yarn known by any name in trade parlance.
- Explanatory notes to HSN provides that heading 5605 also covers products consisting of a core of metal foil (generally of aluminium) or of a core of plastic film coated with metal dust, sandwiched by means of an adhesive between two layers of plastic film
- Representation received:
  - ➢ Clarify whether metal coated plastic film converted to metallised yarn & twisted with nylon, cotton, polyester or any other yarn to make imitation zari thread is covered under imitation zari thread or yarn notified at 5% or under the other metallised yarn category at 12%.
- Fitment Committee recommendation:
  - ➢ Clarification may be issued that the entry covering imitation zari with 5% GST covers zari thread or yarn made from metal coated plastic film converted to metallised yarn & twisted or gimped with nylon, cotton, polyester or any other yarn.
  - ➢ No refund may be permitted on polyester film (metallised) /plastic film on account of inversion.

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5. Taxation of ENA under GST: *(page 8-9)*

- **Fitment Committee recommendation**

1. To place before Hon'ble Supreme Court that the GST Council has no intent to subject ENA for use in manufacture of alcoholic liquors for human consumption.
2. To make suitable amendment in law to exclude ENA (both grain-based and molasses-based) from ambit of GST when supplied for manufacture of alcoholic liquors.
3. To reduce GST on Molasses from 28% to 5%.
4. To notify rate of 18% for new tariff line at 8 digit level created for ENA for industrial use (HS 22071012).

Tabled Agenda :

6. IGST on cruise ship for coastal run:

- Cruise ships (HSN 8901) attract Nil BCD vide Sl. No. 551 of notification No. 50/2017-Customs and IGST at a rate of 5% vide Sl. No. 246 of IGST notification No.2/2017-IT(Rate). However, all goods, vessels, ships imported under lease attract Nil IGST vide S. No. 557B of 50/2017-Customs.
- All foreign going vessels upon conversion to Coastal run/coastal trade are required to file Bill of entry/IGM at the time of its conversion to coastal run and pay applicable duties on the vessel , stores and fuel. In the instant case, the Cruise ship Costa Serena will have to convert to coastal run for operating the cruises in coastal waters (Mumbai -Goa- Mumbai and Mumbai-Kochi-Lakshadweep- Mumbai) for their voyage from **02.11.2023 to 10.01.2024**
- Further, the cruise ship operator does not intend to enter into a lease arrangement and consequently, they will be liable to pay IGST of 5% on conversion to coastal.
- In the pre-GST regime, they were exempted from CVD levied in lieu of central excise duty.

Representation :

- Min of Ports requested that the permission may be granted to Cruise Ship Costa Serena (foreign flag) to remain and sail as a foreign -run vessel and considered as conveyance during its coastal run in India.

Recommendations:

- The proposed operation of cruise ship Costa Serena is beyond the scope of the definition of foreign going vessel. Therefore acceding to the request is not feasible as the same would require amendment of the Act.
- The only option that can be considered is providing exemption from 5% IGST levy for foreign flag foreign going vessels being operated by an entity not registered under GST in India when it converts to coastal run subject to the condition that it reconverts to foreign going vessel with a period of 6 months.

Agenda 4(b) (Annexure-II): Recommendations for no change (pages 315-319)

1. Concrete mixers, Self-loading concrete mixers (SLCM) and boom pumps: (pages 315-316)

S.No	Goods	HS Code	GST Rate
1	Concrete mixers	8474	18%
2	Boom pumps i.e., concrete pumps	8413	18%
3	Concrete mixer lorries	8705	18%
4	Body parts of motor vehicle	8707	28%

- Explanatory notes for HS code 8474 clearly mentions that concrete mixers permanently mounted on a railway wagon or a lorry chassis are, however, excluded from 8474 and will be covered under heading 86.04 or 87.05 respectively.
- Representation received:
  - To clarify that Concrete mixer, SLCM and boom pump supplied independently, or mounted on a chassis is not a body for motor vehicle and not to be classified under HSN 8707 (28%) and would be classified under Tariff Heading 8474 and 8413 respectively.
- Fitment Committee Recommendation:
  - Status quo may be maintained. Since the entries are clear, specific clarification may not be required.

Agenda 4(b) (Annexure-II)

2. Spare Parts of Renewable Energy Devices irrespective of the end use: (page 316-317)

- Presently, concessional rate of 12 % (wef 01.10.2021) has been provided to various renewable energy devices and parts for their manufacture based on the recommendations of 45th meeting. (Bio-gas plant; solar power generators; wind mills etc). Prior to 01.10.21, these goods attracted a concessional GST rate of 5%
- However, where these parts are supplied for replacing the parts on existing devices, the concessional GST rate would not apply as the parts are not being used in the manufacture. In such cases, the standard GST rate is applicable.
- Representation received:
  - To clarify that GST rate on the spare parts of renewable energy devices is 12%, irrespective of the end-use.
- Fitment Committee Recommendation:
  - Status quo may be maintained.

Agenda 4(b) (Annexure-II)

3. Electric Vehicle Battery: (page 317)

- Lithium ion batteries attract a GST rate of 18% (S.*N. 376 AA-Sch -III, Notification 1/2017-CTR),* which is already lower than the 28% GST rate ((S.N. 139 , Sch -IV, Notfn 1/2017-CTR) charged on other electric accumulators/batteries falling under HSN 8507

- Representation received:
  - To reduce rate to 5%

- Fitment Committee Recommendation:
  - Lithium ion batteries have multiple uses i.e. cellular mobile phones, portable electronics, electric vehicles etc. Status quo may be maintained.

Agenda 4(b) (Annexure-II)

4. Sugar boiled Confectionary: (pages 317-18)

- Sugar boiled confectionary attract GST at the rate of 12% and Sugar confectionary attract GST at the rate of 18%.
- Sugar boiled confectionary refers to boiled sweets which has a dedicated 8-digit HS Code 1704 90 20.

- Representation received:
  - Issue clarification regarding the scope of 'Sugar Boiled Confectionery'.

- Fitment Committee Recommendation:

  - Sugar boiled confectionary is distinguishable from sugar confectionary. No clarification required in view of existing BIS/FSSAI standards.

Agenda 4(b) (Annexure-II)

5. Aerated beverages and energy drinks: (page 318)

- Aerated beverages and energy drinks, falling under HS 2202 attract GST compensation cess @12%.
- Supply of goods, under any Chapter, by the Unit Run Canteens (URCs) to the authorized customers is fully exempt from GST based on recommendation of the GST Council in the 15th Meeting.
- However conscious policy decision taken that no concession is to be given on levy of Compensation Cess.
- Representation received:
  - Cess payable by CSD on outward supply of good may be fully exempted or
  - applicable cess may be collected at the Depot level for supplies made by URCs
- Fitment Committee Recommendation:
  - No change recommended in rate.
  - Suggestion of collection of applicable cess at the Depot level for supplies made by URCs may be referred to the Law Committee for consideration.

Agenda 4(b) (Annexure-II)

6. Tobacco products: (pages 318-319)

- In its 15th meeting, GST Council recommended 28% GST on bidis but decided not to levy any Compensation cess on bidis as it a household industry in certain parts of India.
- On the basis of the recommendation of the GST Council in its 49th and 50th meetings, the Compensation Cess rate levied on products such as pan masala, chewing tobacco with declared retail sale price has been linked to retail sale price and is leviable at a rate ranging from 8% to 69% of retail sale price.
- In the Union Budget 2023-24, the National Calamity Contingent Duty (NCCD) rate on specified cigarettes has been revised upwards by about 16 percent with effect from 02.02.2023. This change is expected to lead to increased collections of GST.

Representation received:

- Uniform additional compensation cess on cigarettes/ compensation cess on bidis/ additional compensation cess on smokeless tobacco products/ or lower compensation cess on cigarettes sticks up to 70 mm.

- Fitment Committee Recommendation:
  - Status quo may be maintained.

Agenda 4(c) (Annexure-III): Issue deferred for further examination (pages-320 - 323)

1. Khari, Cream Rolls [Bakery products]: (pages 320)

- Currently, concessional GST rate of 5% is applicable on Rusks, toasted bread and other toasted products.
- 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], attract GST rate of 18%
- The issue was examined in 47th, 48th & 50th GST Council Meetings and it was observed that further details regarding the nature of product, process of preparation is required before making any suggestions. Maharashtra suggested to get the same examined by Foods Research Institutes.
- Representation received:
  - Request is to clarify that Khari and crème roll are covered under "similar toasted products", and attracts 5% GST rate
- Fitment Committee Recommendations:
  - Deferred for in-depth study

Agenda 4(c) (Annexure-III)

2. Steel Scrap (page 320-323)

- Request to reduce GST rate from 18 % has not been accepted by GST Council in its 47th meeting. The only issue referred to Fitment committee for deliberations is regarding levy of GST **on RCM basis.**
- During deliberations in 47th meeting, member from Karnataka suggested for detailed study and member from Punjab suggested for deferment for want of detailed consultation.
- After consultation with stakeholders and industry, State of **Karnataka** suggested, inter alia that :
  - the proposal of levy of GST on reverse charge mechanism may not be feasible as the same breaks the chain of input tax credit and also leads to cascading of taxes and also breakage of audit trail.
  - to prevent the evasion and to create conducive business atmosphere, few measures were recommended such as: introduction of trace and track mechanism, better registration procedures, registration of e-way bills if that commodity is registered to be supplied, ITC only if invoice is registered etc.
- **Punjab** has *inter alia*, suggested:
  - to tax iron and scrap on RCM and exempt supply of scrap in the hands of traders
  - e-way bill should be mandatory for all transactions in scrap irrespective of value.
- Fitment Committee Recommendations:
  - **A Committee of officers was constituted** to study the issue holistically and to come up with workable solutions.
  - The Sub Committee has met on two occasion and has submitted its report on this 02.10.2023, will be examined in next fitment committee. The issue may be deferred pending examination of the report of the Committee .

Recommendations of the Fitment Committee:
Services

Agenda 4 (d) (Annexure-IV): Changes in GST rates/ issue clarification (pages 324-339)

1. (a) To notify a mechanism for utilization of ITC in cases where passenger transportation services by AC buses are supplied through an e-commerce operator (ECO).

   (b) To shift the onus of discharging GST on registered bus operators providing passenger transportation service through ECOs. *(page 324-326)*

- Passenger transport services attract 5% GST with ITC of input services in the same line of business or 12% with full ITC. With effect from 1st January 2022, liability to pay GST on bus transportation services supplied through electronic commerce operators (ECOs) has been placed on the ECO under section 9(5) of CGST Act, 2017. This trade facilitation measure was taken on the representation of industry association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances.

- So far, representations against this trade facilitation measure have been received only from two bus operators, both of which are organised as companies. They have informed that as a result of their measure they are not able to fully utilize their ITC. This accumulation of ITC is more pronounced in case of electric buses which are 2-3 times costlier than ordinary buses.

- Recommendations of Fitment Committee
- To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, Fitment committee recommended that companies supplying passenger transport services by a motor vehicle may be excluded from the purview of section 9(5) of CGST Act, 2017.
- It may be clarified that input services in same line of business include transport of passengers (SAC 9965) or renting of motor vehicle with operator (SAC 9966) and not leasing of motor vehicles without operator (9973), which attracts GST at the same rate as sale of motor vehicles, that is, 28% plus compensation cess.
- Fitment Committee also recommended to limit ITC on services in the same line of business to 5%.

Agenda 4(d) (Annexure-IV)

2. Clarify whether GST is applicable on reimbursement of electricity charges received by the Real estate companies, malls, airport operators etc. from their lessees/occupants *(pages 326-327)*

- Real estate companies supply electricity to their short term and long-term lessees. These companies take High Tension line from Electricity Distribution Companies (DISCOMs) and convert the same into Low Tension line in transformers and through panels the same is being distributed to the sub lessees/occupants for their consumption.
- DISCOMs bill directly to the real estate companies, who in turn bill to the end consumers on the basis of actual units consumed by the property occupants within their offices/units as per the reading recorded in the sub meters installed at their premises.
- Real Estate Companies also supply electricity for common areas along with renting and/or maintenance.
- Doubts are being raised on the applicability of GST on the aforesaid further supply of electricity by the real estate companies to their lessee or occupants on whose inward supply no GST was leviable.

Recommendations of Fitment Committee

- It may be clarified that whenever electricity is being supplied with renting of immovable property and/or maintenance of premises etc. it forms a part of composite supply where the principal supply is renting of immovable property or maintenance of premise as the case may be and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise etc. would be applicable.
- Where real estate owner supplies electricity as pure agent, it will not form part of value of his supply.
- In case of RWAs, where they supply electricity to the residents through sub-meters on actual basis, they will be deemed to be pure agent for this supply

Agenda 4(d) (Annexure-IV)

3. Exempt services provided by District Mineral Foundations from GST *(pages 327-330)*

- A District Mineral Foundation (DMF) Trust is established by the State Government under section 9B of the MMDR Act,1957, with an objective to work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district.
- They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children etc.
- DMF's activities are similar to activities that are entrusted to local authority as specified in Eleventh Schedule and Twelfth Schedule of the Constitution.

Recommendations of Fitment Committee

- It may be clarified that DMFT is a governmental authority and thus eligible for the same exemptions as available to any other Governmental Authority.

Agenda 4(d) (Annexure-IV)

4. To clarify that job work services for processing of "Barley" into "Malted Barley" attracts GST @5%*(pages 330-332)*

- Malt is a food product. It can be directly consumed as part of food preparations or can be used as an ingredient in food products such as biscuits, health and nutritional beverages etc. However, a large part of malt produced in the country is used for manufacture of beer and alcoholic liquor for human consumption
- The issue involved is whether services by way of jobwork for conversion of barley into malt attracts GST at 5% prescribed for "job work in relation to all food and food products falling under Chapter 1 to 22 of the customs tariff" or at the rate of 18% prescribed for "services by way of job work in relation to manufacture of alcoholic liquor for human consumption".

Recommendations of Fitment Committee

- It may be clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) "which covers job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.
- Past assessments of job work services in relation to manufacture of malt may be regularized on as is basis.

Agenda 4(d) (Annexure-IV)

5. To specify a positive list of services under Sr. No. 3 & 3A of notification No. 12/2017-Central Tax (Rate) *(pages 332-333)*

- This issue has been discussed in the 45th, 47th and 48th GST Council meetings held on 17.09.2021, 28&29.06.2022 and 17.12.2022 respectively.
- Existing entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 may be retained.
- Prior to January, 2022 this exemption was also available to governmental authority or governmental entity.

Recommendations of Fitment Committee

- Entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 may be retained as they are with no change.
- A new entry may be created to exempt following five services supplied to Governmental Authority:

i. Water Supply
ii. Public health
iii. Sanitation Conservancy
iv. Solid waste management
v. Slum improvement and upgradation

Agenda 4(d) (Annexure-IV)

6. To bring supplies made by Indian Railways under forward charge mechanism *(pages 333-335)*

- Indian Railways (IR), in addition to transportation services also provides various other services such as issue of licenses for catering, renting of immovable property, sale of old and used goods etc., GST on which is payable under reverse charge basis.
- Inability of Indian Railways to avail ITC on account of RCM along with other reasons such as exempt supplies has led to blockage of huge amount of ITC.(As informed by IR , Rs. 1300 crores approx. have been blocked).
- Recently, services by Department of Post have also been brought under forward charge on recommendations of the 47th GST Council.

Recommendations of Fitment Committee

- All goods and services supplied by Indian Railways may be brought under forward charge.
- Indian Railways may be excluded from the exemptions given to services supplied by Government to individuals, unregistered business entities or to Central or State Governments, local authorities as services by IR will now be taxable under Forward Charge Mechanism.

Agenda 4(d) (Annexure-IV)

7. Clarification on entry 54(g) of 12/2017-CT(R) dated 28.06.2017 with regard to the scope of exemption for commission agent in facilitating the sale of agricultural produce.*(pages 335-337)*

- CAMPCO is a multi-state cooperative of Karnataka and Kerala. It purchases arecanut directly from agriculturists and sells it to buyers in northern parts of India through its Selling Representatives (SRs).
- According to CAMPCO, they do grading and packaging of arecanut in standard bags before supplying it to buyers without altering its essential characteristics.
- Show cause notices have been issued to the SRs of CAMPCO demanding GST on the commission charged by the SRs from CAMPCO.

Recommendations of Fitment Committee

- CAMPCO may be advised to approach Authority for Advance Ruling.

Agenda 4(d) (Annexure-IV)

8. To clarify applicability of GST on Horticulture Contracts supplied to CPWD *(pages 337-338)*

- Public parks in government residential colonies, government offices and other public areas such as India Gate lawns, Raj Ghat and other Samidhi Sthals are developed and maintained by CPWD.
- Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.
- Sr. No. 3 and 3A of notification No. 12/2017-CTR exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 75%, 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.

Recommendations of Fitment Committee

- It may be clarified to CPWD that supply of pure services and/or composite supply by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) to CPWD are exempt from GST under Sr. No. 3 and 3A of the notification No.12/2-17-CTR dated 28.06.2017.

Agenda 4(d) (Annexure-IV)

9. Amendments to notification No. 11/2017-CT(R) dated 28.06.2017 consequent to amendment of CGST Act, 2017 *(pages 338-339)*

- In GST, 'goods' by definition include actionable claims. Therefore, supply of actionable claims by way of lottery, betting and gambling is a supply of goods.
- The rate for "Specified Actionable Claim" is prescribed in Sr. No.227A of Schedule IV of the goods rate notification No. 1/2017-CT (R) dated 28.06.2017. Specified Actionable Claim includes actionable claims involved in or by way of race clubs and gambling.
- Therefore, entry at Sr. No. 34(iv) of the services rate notification No. 11/2017- CTR dated 28.06.2017 which specifies 28% GST for "*services provided by a race club by way of totalizator or a license to bookmaker in such club"* may be rationalized as *"services provided by a race club by way of licensing a bookmaker in such club"* as supply by a race club by way of a totalizator is supply of actionable claims and not services.
- Further entry at Sr. No. 34(v) of the services rate notification No. 11/2017- CTR dated 28.06.2017 which specifies GST rate of 28% on "gambling*"* may be omitted as gambling is already included under Sl. No. 227A of the goods rate schedule under "Specified Actionable Claim"

Recommendations of Fitment Committee

- It was recommended that the entries in the service rate notification be suitably amended/rationalized.
- In addition to above, entry 999692 and 999694 may be deleted from the scheme of classification of services (Annexure to the notification No. 11/2017-CTR dated 28.06.2017).

Agenda 4 (Part II) (ii) -Volume II

10. (a) To clarify whether service by way of hostel accommodation, service apartments /hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017.

(b) Request for GST exemption on hostels for poor and middle-class students run by charitable trusts. *(pages 10-15)*

- There is no GST on hostel fee or rent collected by educational institutions whether private or Government including schools, colleges, and universities, from students living in their hostels. (Sl. No. 66 of notification No. 12/2017 - CTR).
- Hostels run privately which do not belong to any educational institutions have to pay GST as applicable. They are exempt upto threshold turnover of Rs. 20 lakh. Earlier, hotel accommodation having tariff of Rs. 1000 per day or less was exempt from GST. Private hostels charging Rs. 30000 or less per month were taking benefit of this exemption.
- This exemption in respect of hotel accommodation having tariff of Rs. 1000 or less per day has been withdrawn with effect from July, 2022 based on the recommendations of GoM on rate rationalization. (47th GST Council meeting).
- Now private hostels are claiming exemption applicable to renting of residential dwelling for use as residence. (Sl. No. 12 of notification No. 12/2017 - CTR).

Recommendations of Fitment Committee

- Chapter heading 9963 may be deleted from Column No. 2 in the notification No. 12/2017- CT(R), to remove ambiguity. By doing so only the entry of residential dwelling falling under 9972 will be exempted.
- Further, an Explanation may be inserted in Sl. No. 12 of Notification No. 12/2017-CT(R) dated 28.06.2017 stating that nothing contained in this entry shall apply to:
  (i) accommodation services for students in student residences; and
  (ii) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.

Agenda 4 (e)(Annexure-V): Recommendations for no change (pages 340-350)

1. To apply uniform GST rate of 5% on Business Correspondent services provided in both rural/urban areas. *(pages 340-341)*

- Presently, 18% GST is applicable on the entire chain of banking services irrespective of the fact that services are being offered by the banking company or their banking correspondent.
- Sl. No. 39 of notification No. 12/2017- CTR dated 28.06.2017 provides a specific exemption for services provided by Banking Correspondent(BC)/ Banking Facilitator(BF) to banking companies in respect of rural area branches.
- Specific exemption for services provided by BC/BF to banking companies in respect of rural area branches has been given in line with the objectives of financial inclusion.
- Fitment Committee examined the issue and found no merit in the request to apply uniform rate of 5% on BC/BF services provided in both rural/urban areas.

Recommendations of Fitment Committee

- Status Quo to be maintained

Agenda 4 (e)(Annexure-V): Recommendations for no change (pages 340-350)

2. To bring renting of residential dwellings by registered persons to registered persons under Forward Charge Mechanism. *(pages 341-342)*

- Various registered persons like body corporates are engaged in the business of renting of residential dwellings to other registered persons who further give these dwellings on rent to their employees for residence.
- Such transactions of renting of residential dwelling by registered person to a registered person are liable to GST under reverse charge vide notification No. 05/2022 CTR dated 13.07.2022 and accordingly, these transactions are exempt supply for the service provider i.e. a registered person.
- Fitment Committee examined the issue and found no real life examples or difficulties in implementation of the said notification were brought to notice by representing association.

Recommendations of Fitment Committee

- Status Quo to be maintained

Agenda 4 (e)(Annexure-V): Recommendations for no change (pages 340-350)

3. To clarify that 'sale of land' at Entry No. 5 of Schedule III of the CGST Act includes assignment of leasehold rights in such land *(pages 342-344)*

- It has been represented that "assignment of leasehold rights in land" is akin to "sale of land" and covered by Entry No. 5 of Schedule III of the Central Goods and Services Tax, Act 2017
- The activity of assigning leasehold rights in land is also a beneficial interest in land and should also qualify as "land". Accordingly, the transaction of assignment of leasehold rights in land should qualify as 'sale of land' and GST should not be leviable as per Entry No. 5 of the Schedule III of the CGST Act, 2017.
- Fitment Committee examined the issue. Sale of land and lease of land are not the same thing. While sale of land results in transfer of title to land along with all the benefits arising out of it, the lease of land does not result in transfer of title to that land or all rights/benefits arising out of it.
- The actual control to dispose of or sell the immovable property lies with the owner of the land. The lessee cannot sell the land.
- Therefore, the question of lease of land being covered under entry 5 of Schedule III, which deals with sale of land and building does not arise.

Recommendations of Fitment Committee

- Status Quo to be maintained

Agenda 4 (e)(Annexure-V): Recommendations for no change (pages 340-350)

4. Exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST *(page 344)*

- It has been submitted that the members had obtained land on long-term lease for industrial purpose from various State Government Industrial Development Corporations for conducting its business operations. Such members have assigned the right in land to various parties for consideration.
- While the initial lease is exempt from GST, if the lessor further assigns the leasehold rights in the land and collects consideration equal to the proportionate amount of lease premium for the remaining lease, the same is currently not exempt from payment of GST.
- Fitment Committee examined the issue. Exemption from GST on the reassignment of leasehold rights of land where the initial lease was exempt from GST will encourage hoarding of industrial plots for the purpose of re-sale and defeat the objective of promoting and setting up of industrial units.
- During the discussion on the issue a query arose whether ITC of lease of industrial plots is available or blocked by Section 17(5)(d) of CGST Act, 2017. Fitment Committee recommended to refer this issue to Law Committee.

Recommendations of Fitment Committee

- Status Quo to be maintained

Agenda 4 (e)(Annexure-V): Recommendations for no change (pages 340-350)

5. Request from State of Nagaland to keep the rate of GST @ 12% on works contract services which commenced prior to 18.07.2022. *(pages 345-346)*

- Enhanced rate of GST @ 18% should not be levied for works contract started prior to 18.07.2022 in the State of Nagaland.
- Working season in state like Nagaland is short due to rains and due to resource constrains these works spill over one financial year to another.
- Therefore, increased rate of GST will cost 6% more on the budgeted amount for large number of ongoing works as order were issued prior to 18.07.2022.
- Fitment Committee examined the issue. Similar issue was examined and not acceded to by the GST Council in 47th meeting of GST Council held on 28-29 June, 2022. The Council did not agree to the proposal due to following reasons:
  - There are clear provisions for the manner in which continuous supply is subject to GST. The standard rate of 18% will apply only to the invoices issued for such construction on or after 18.07.2022.
  - Any request if agreed for one sector would invite similar request from other sectors.
- If 12% rate is continued for old contracts, multiple rates of 12% and 18% would be there for many years in future leading to complex rate structure.

Recommendations of Fitment Committee

- Status Quo to be maintained

Agenda 4(f) (Annexure-VI)

1. Services provided by Central Government or State Government or Governmental Authority by way of granting of long term lease *(pages 355-357)*

- Services provided by Central Government or State Government or Governmental Authority or local authority by way of granting long term lease (exceeding 30 years) of land of industrial plots for development for infrastructure for financial business should be exempted from GST.
- One of the Authority for Advance Ruling held that one time long term lease premium payable/paid by the Corporation to Urban Development Authority is taxable supply.
- Request is to clarify the said issue.
- The matter was deferred in the 43rd GST Council held on 28th May, 2021.
- The matter was examined in the Fitment Committee and it was recommended that the matter may be referred to the GoM on real estate for examination, as it is closely related to the issues already before the GoM.

Recommendations of Fitment Committee

- The matter may be deferred.

Agenda 4(f) (Annexure-VI)

2. To clarify the nature and taxability of various supplies in relation to crypto eco-system *(page 357)*

- GST Council in its 47th meeting held on 28-29 June 2022 and in its 48th meeting held on 17 December 2022, has deferred the issues regarding the nature and taxability of various supplies in relation to the crypto eco-system.
- It was felt that the issues involved in crypto ecosystem need deeper study. It was decided that Haryana and Karnataka shall study all aspects and submit a paper before the Fitment Committee in due course. Both Haryana and Karnataka expressed their inability to submit the paper.
- The matter was deliberated in the Fitment Committee. It was agreed that TRU may study the issue and submit a paper.

Recommendations of Fitment Committee

- The matter may be deferred.

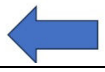
Agenda 4(f) (Annexure-VI)

3. Harmonisation of GST Rate Schedule on Services and the Classification of Services adopted for GST *(pages 357-359)*

- Currently the GST rate schedule for services does not mention the classification of services at the 6-digit level. The sub-categorization of services beyond the 4-digit level has been carried out only for those services, on which a rate lower or higher than the standard rate of 18% was to be prescribed.
- The taxpayers are required to declare in the invoice/GST returns not the Sl. No. of GST Rate Schedule under which they have paid GST but the 6-digit classification of services in the Scheme of Classification annexed to the Rate Schedule. As a result, data of services for which a concessional rate of 5% or 12% or a higher rate of 28% has been notified is not captured.
- This data – the value of services, GST collected, GST paid in cash and through credit –is very important for policy formulation.

Recommendations of Fitment Committee

- The draft revised rate schedule of services at 6-digit level of classification may be circulated to all states for comments, after which the same may be examined by Fitment Committee/sub-committee.
- The same shall then be placed before the GST Council for approval. Once approved, it shall be placed in the public domain and implemented after incorporating any changes required therein in view of the feedback received and after a drop-down mechanism for selecting 6-digit classification of services is made available in GSTN portal.
- May be deferred.



Agenda 4(f) (Annexure-VI)

4. Clarify whether GST is applicable on charges/ fees like FSI paid by builders to local authorities under RCM. *(pages 359-364)*

- In construction industry, all builders & developers pay various charges to local municipal authorities in the form of FSI premium, road permission charges, scrutiny fees, liasoning fees, staircase premium, water charges, sewerage charges etc.
- One view is that GST is not payable on supply of FSI by municipal corporation to the registered person, since these services are in relation to "Urban planning including town planning" and "Planning of land-use and construction of buildings" listed in XIIth Schedule
- The other view is that supply of FSI is not an integral part of town-planning.
- During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination.

Recommendations of Fitment Committee

- The matter may be deferred.

Agenda 4(Part II) (ii) -Volume -II

5. To declare Delhi Development Authority as a Local Authority for the purposes of GST. *(page 10)*

- As per section 2(1)(d) of National Capital Territory of Delhi Laws (Special Provisions) Act, 2011, DDA is "a local authority" established under the Delhi Development Act 1957.
- Section 3(31) of General Clauses Act 1897 defines a local authority as "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund. Supreme Court in the R.C Jain case (1981 AIR 951) has held DDA to be a Local Authority.
- During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination.

Recommendations of Fitment Committee

- The matter may be deferred.

Agenda 4 (part II) (ii) Volume II

6. Ascertaining value of land for deciding value of construction services in case of sale of commercial /residential apartments. *(pages 15-18)*

- Section 15(5) of CGST Act, 2017 empowers Government to notify supplies the value of which will be determined in the manner as prescribed. Accordingly, modalities of valuation have been prescribed, exercising this power, on the recommendations of the Council.
- A similar request on valuation of land based on pin code, area, etc. was placed before 47th meeting of GST Council held in June, 2022, however no action was recommended by the Council because the matter has been litigated in the courts and is sub-judice at present.
- Gujarat High Court has not only directed to deduct value of land on actual basis where it is ascertainable, but has also ordered to refund the excess amount of tax paid on this count in the past. The said order of the Hon'ble High Court has been contested before the Supreme Court. An appeal filed against the Gujarat High Court order is pending in the Hon'ble Supreme Court.

Recommendations of Fitment Committee

- The matter may be deferred.

Agenda 4 (part II) (ii) –Volume II

7. To clarify whether GST is leviable on the incentive amount that is shared by acquirer bank with other stakeholders in the digital payment ecosystem . *(pages 18-19)*

- Applicability of GST on incentive paid by MeitY to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions was examined in the 48th GST Council meeting held on 17th December, 2022 and Circular 190/02/2023- GST dated 13.01.2023 was issued clarifying that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.
- Clarification now being sought by MeitY is regarding incentive amount that is further shared by acquiring bank with other stakeholders in the digital payment ecosystem.
- In the Gazette Notification dated 17th December 2021, it was mentioned that '*The incentive will be shared by the acquiring banks with other stakeholders. The distribution of the incentive amongst the stakeholder will be decided by NPI in consultation with the Banks'.*
- Further, vide Gazette Notification dated 14th January 2023, it was stated that '*The incentive will be shared by the acquiring banks with other payment system participants and the payment system operator, in the proportion and manner decided by NPCI in consultation with the participating banks'.*
- The issue was discussed in the Fitment Committee. Karnataka stated that it shall send a note on the issue and the matter may be deferred.

Recommendations of Fitment Committee

- The matter may be deferred.

Agenda 4 (e)(Annexure-V):

8. Whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the RERA Act, 2016. *(pages 346-348)*

- Real estate projects and real estate agents have to get themselves registered with the (RERA) for which they get a registration/renewal fee. They also collect penalty in case of failure to register or acting in contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016.
- RERA has claimed that their statutory function of regulating the real estate development and construction of the building entrusted to the RERA falls squarely under Entry No.1 and 2 of the Twelfth Schedule of the Indian constitution.
- During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination.

Recommendations of Fitment Committee

- The matter may be deferred.

Agenda 4 (e)(Annexure-V):

9. Levy of GST on renting of commercial property on RCM basis *(pages 348-350)*

- Vide notification No. 05/2022- Central Tax (Rate) dated 13th July 2022, service by way of renting of residential dwelling to a registered person has been brought under reverse charge and tax is to be paid by the registered person who is taking the said dwelling on rent.
- This implies that even if the rent of the said property is less than Rs. 20 lakhs (threshold for registration) it would be subject to GST.
- Where the person providing service of renting of commercial property is unregistered (on account of threshold for registration), no GST is applicable.
- A number of instances have been noticed where the rent or lease deed of value less than Rs 20 lakhs is prepared or the service is artificially split to remain below the registration threshold. Thus where the service by way of renting of commercial property is provided to a registered person the same should be subject to RCM.
- During the discussions held on the issue in the Fitment Committee, it was felt that the issue needs more detailed examination.

Recommendations of Fitment Committee

- The matter may be deferred.

Agenda Item 2: Deemed ratification of the Notifications, Circulars and Orders issued by the GST Council and decisions of GST Implementation Committee for the information of the Council.

In the 22nd meeting of the GST Council held at New Delhi on 6th October, 2017, it was decided that the notifications, circulars and orders, which are being issued by the Central Government with the approval of the competent authority, shall be forwarded to the GST Council Secretariat, through email, for information and deemed ratification by the GST Council. Accordingly, in the 52nd meeting held on 7th October, 2023, the GST Council had ratified all the notifications, circulars, and orders issued up to 29.09.2023.

2. In this respect, the following notifications and circulars issued after 29.09.2023 till 14.06.2024 under the GST laws by the Central Government, as available on **www.cbic.gov.in**, are placed before the Council for information and ratification: -

Act/Rules	Type	Notification / Circular / Order Nos.	Description/Subject
Notifications under CGST Act / CGST Rules	Central Tax	1. Notification No. 52/2023-Central Tax dated 26.10.2023	Seeks to make amendments (Fourth Amendment, 2023) to the CGST Rules, 2017
		2. Notification No. 53/2023-Central Tax dated 02.11.2023	Seeks to notify a special procedure for condonation of delay in filing of appeals against demand orders passed until 31st March, 2023.
		3. Notification No. 54/2023-Central Tax dated 17.11.2023	Seeks to amend Notification No. 27/2022 dated 26.12.2022 to notify biometric-based Aadhaar authentication for GST registration in the State of Andhra Pradesh.
		4. Notification No. 55/2023-Central Tax dated 20.12.2023	Extension of due date for filing of return in FORM GSTR-3B for the month of November, 2023 for the persons registered in certain districts of Tamil Nadu.
		5. Notification No. 56/2023-Central Tax dated 28.12.2023	Seeks to extend dates of specified compliances in exercise of powers under section 168A of CGST Act

		6. Notification No. 01/2024-Central Tax dated 05.01.2024	Extension of due date for filing of return in FORM GSTR-3B for the month of November, 2023 for the persons registered in certain districts of Tamil Nadu.
		7. Notification No. 02/2024-Central Tax dated 05.01.2024	Extension of due date for filing FORM GSTR-9 and FORM GSTR-9C for the Financial Year 2022-23 for the persons registered in certain districts of Tamil Nadu.
		8. Notification No. 03/2024-Central Tax dated 05.01.2024	Seeks to rescind Notification No. 30/2023-CT dated 31st July, 2023
		9. Notification No. 04/2024-Central Tax dated 05.01.2024	Seeks to notify special procedure to be followed by a registered person engaged in manufacturing of certain goods.
		10. Notification No. 06/2024-Central Tax dated 22.02.2024	Seeks to notify "Public Tech Platform for Frictionless Credit" as the system with which information may be shared by the common portal based on consent under sub-section (2) of Section 158A of the Central Goods and Services Tax Act, 2017.
		11. Notification No. 07/2024-Central Tax dated 08.04.2024	Seeks to provide waiver of interest for specified registered persons for specified tax periods
		12. Notification No. 08/2024-Central Tax dated 10.04.2024	Seeks to extend the timeline for implementation of Notification No. 04/2024-CT dated 05.01.2024 from 1st April, 2024 to 15th May, 2024
		13. Notification No. 09/2024-Central Tax dated 12.04.2024	Seeks to extend the due date for filing of FORM GSTR-1, for the month of March 2024

	Central Tax (Rate)	1. Notification No. 12/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 11/2017- Central Tax (Rate) dated 28.06.2017.
		2. Notification No. 13/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 12/2017- Central Tax (Rate) dated 28.06.2017.
		3. Notification No. 14/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 13/2017- Central Tax (Rate) dated 28.06.2017
		4. Notification No. 15/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 15/2017- Central Tax (Rate) dated 28.06.2017.
		5. Notification No. 16/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 17/2017- Central Tax (Rate) dated 28.06.2017.
		6. Notification No. 17/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 01/2017- Central Tax (Rate) dated 28.06.2017.
		7. Notification No. 18/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 02/2017- Central Tax (Rate) dated 28.06.2017.
		8. Notification No. 19/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 04/2017- Central Tax (Rate) dated 28.06.2017.
		9. Notification No. 20/2023-Central Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 05/2017- Central Tax (Rate) dated 28.06.2017.
		10. Notification No. 01/2024-Central Tax (Rate), dated 03.01.2024	Seeks to amend Notification No 01/2017- Central Tax (Rate) dated 28.06.2017

Notifications under IGST Act / IGST Rules	Integrated Tax	1. Notification No. 05/2023- Integrated Tax, dated 26.10.2023	Seeks to notify supplies and class of registered person eligible for refund under IGST Route
	Integrated Tax (Rate)	1. Notification No. 15/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 8/2017- Integrated Tax (Rate) dated 28.06.2017.
		2. Notification No. 16/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 9/2017- Integrated Tax (Rate) dated 28.06.2017.
		3. Notification No. 17/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 10/2017- Integrated Tax (Rate) dated 28.06.2017.
		4. Notification No. 18/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 12/2017- Integrated Tax (Rate) dated 28.06.2017.
		5. Notification No. 19/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 14/2017- Integrated Tax (Rate) dated 28.06.2017.
		6. Notification No. 20/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 01/2017- Integrated Tax (Rate) dated 28.06.2017
		7. Notification No. 21/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 02/2017- Integrated Tax (Rate) dated 28.06.2017.
		8. Notification No. 22/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 04/2017- Integrated Tax (Rate) dated 28.06.2017.
		9. Notification No. 23/2023-Integrated Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 05/2017- Integrated Tax (Rate) dated 28.06.2017

		10. Notification No. 01/2024-Integrated Tax (Rate), dated 03.01.2024	Seeks to amend Notification No 05/2017- Integrated Tax (Rate) dated 28.06.2017
		Corrigendum dated 05.01.2024	Corrigendum to Notification no 01/2024-Integrated Tax (Rate) dated 03.1.2024
Notifications under UTGST Act / UTGST Rules	Union Territory Tax (Rate)	1. Notification No. 12/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 11/2017- Union territory Tax (Rate) dated 28.06.2017.
		2. Notification No. 13/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 12/2017- Union territory Tax (Rate) dated 28.06.2017.
		3. Notification No. 14/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 13/2017- Union territory Tax (Rate) dated 28.06.2017.
		4. Notification No. 15/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 15/2017- Union territory Tax (Rate) dated 28.06.2017.
		5. Notification No. 16/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 17/2017- Union territory Tax (Rate) dated 28.06.2017.
		6. Notification No. 17/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 01/2017- Union Territory Tax (Rate) dated 28.06.2017.
		7. Notification No. 18/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 02/2017- Union Territory Tax (Rate) dated 28.06.2017.

		8. Notification No. 19/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 04/2017- Union Territory Tax (Rate) dated 28.06.2017.
		9. Notification No. 20/2023- Union Territory Tax (Rate), dated 19.10.2023	Seeks to amend Notification No 05/2017- Union Territory Tax (Rate) dated 28.06.2017.
		10. Notification No. 01/2024-Union Territory Tax (Rate), dated 03.01.2024	Seeks to amend Notification No 05/2017- Union Territory Tax (Rate) dated 28.06.2017
		Corrigendum dated 05.01.2024	Corrigendum to Notification no 01/2024- Union Territory Tax (Rate) dated 03.1.2024
Circulars under CGST Act		1. Circular No. 202/14/2023-GST dated 27.10.2023	Clarification relating to export of services – sub-clause (iv) of the Section 2(6) of the IGST Act 2017
		2. Circular No. 203/15/2023-GST dated 27.10.2023	Clarification regarding determination of place of supply in various cases
		3. Circular No. 204/16/2023-GST dated 27.10.2023	Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST
		4. Circular No. 205/17/2023-GST dated 31.10.2023	Clarification regarding GST rate on imitation zari thread or yarn based on the recommendation of the GST Council in its 52nd meeting held on 7th October, 2023.

	5. Circular No. 206/18/2023-GST dated 31.10.2023	Clarifications regarding applicability of GST on certain services.

3. It is mentioned that some of the notifications referred in Para 2 above have been issued as per the recommendations of GST Implementation Committee (GIC). 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.

4. The GST Council may grant ratification to the notifications and circulars as detailed in para 2 above.

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Annexure- 2A

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

The GST implementation Committee (GIC) took certain decisions after the 52nd GST Council meeting which are placed before the Council for information. The details of the decisions taken are given below:

1. Decision by circulation on 18.12.2023 on GST data sharing request received from Ministry of Consumer Affairs, Food & Public Distribution

a. In the agenda note, it was stated that a request had been received from the Department of Food and Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution seeking actual sales data (monthly summary) of sugar in the domestic market as per GSTR1 (raw, white, refined, packaged sugar etc) HSN code-wise for sugar mills for the month of June 2023 and onwards. The data was being sought in respect of 536 GSTINs as per list furnished by the Department of Food & Public Distribution.

b. It is further stated that the data was being sought in order to enhance the level of data accuracy and to ensure that there is sufficient availability of sugar in the market.

c. Accordingly, approval was sought for GST data sharing with the Department of Food and Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution.

d. **Decision**: The GIC approved the agenda relating to GST data sharing request received from the Department of Food and Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution.

2. Decision of GIC by circulation on 30.12.2023 regarding seeking clarification on various challenges being faced by trade and extension of time for implementation of Notification No. 30/2023 - Central Tax

a. In the agenda note it was mentioned that based on the recommendation of the GST Council in its 50th meeting, Central Government has notified the special procedure vide Notification No 30/2023-Central Tax dated 31.07.2023 to be followed by the registered persons of the goods mentioned in the schedule to the said notification, including pan masala, chewing tobacco, gutkha, etc. The said special procedure envisages the monthly statement (SRM- IV) and various other details to be submitted by the concerned registered taxpayer through online mode for which various FORMS such as SRM-I, SRM-IA, SRM-II A, SRM-IIB, etc. need to be made available on the portal. The agenda note further states that such online FORMS were not available on the portal at this juncture.

b. It is further mentioned that representations were received from various trade associations and industry representatives requesting for postponement/ extension of time limit for implementation of said special procedure notified vide Notification No 30/2023 Central Tax dated 31.07.2023, due to the unavailability of said FORMs on the portal and also considering numerous other practical challenges faced by the industry such as unavailability of model number/manufacturer of old and used packing machines and time required to obtain the said information, segregation of consumption of electricity between that used for manufacturing of specified goods and that used for other purposes,

measurement of waste on daily basis, need for clarification about various issues pertaining to implementation of special procedure etc.

c. It is stated that the above mentioned difficulties were deliberated by the Law Committee in its meeting dated 31.08.2023/01.09.2023 and the Law Committee recommended that the implementation of the scheme may be deferred till 1st January 2024 as no functionality had yet been made available on the portal. The recommendations of the Law Committee were deliberated by the GST Council in its 52nd meeting and as per recommendations of the Council, Notification No.47/2023-CT dated 25.09.2023 was issued vide which the implementation of the said special procedure was deferred till 1st January, 2024.

d. The agenda note further states that the Law Committee had constituted a sub-committee, consisting of the States of Uttar Pradesh, Odisha and Madhya Pradesh, GSTN and GST Policy Wing for examination of the issues raised by the trade in various representations. The sub-committee felt that to simplify the special procedure, instead of asking the taxpayer to file information through a number of forms (FORM SRM-I, SRM-IA, SRM-II, SRM-IIA, SRM-IIB, SRM-IIIA & SRM-IV in the existing Notification No. 30/2023-CT dated 30th July, 2023) only two FORMs may be enough viz. one for registration and disposal of the machines i.e. FORM SRM-I and the second for filing monthly details of inputs and outputs i.e. Form SRM-II. Besides, format for Chartered Engineer Certificate was also suggested as per FORM SRM-III.

e. Subsequently, amended forms FORM SRM-I, SRM-II and SRM-III were finalized by the sub- committee incorporating various concerns/changes raised by the trade. Also, it was decided that even after amendment of forms certain issues require further clarification and the same may be done by issuing a circular. The summary of the issues raised by Trade, the recommendations of the sub-committee along with proposed amendments carried in the FORMs and issues proposed to be clarified through circular were placed before the GIC.

f. It is stated that the Law Committee in its meeting dated 08.11.2023 deliberated on the draft notification prepared by the sub-committee and recommended for issuance of the same. Law Committee also noted that GSTN will need time to develop the online functionality to make the said forms available on the portal as per the said special procedure. Law Committee also took note of the recommendations of the Group of Ministers (GoM) on Capacity Based Taxation that these special procedures may be implemented through system-based measures without requiring manual interface. Therefore, the Law Committee recommended that while the said revised notification, may be issued at the earliest, so that GSTN can start development of the requisite functionality and trade is also made aware of the revised special procedure and forms, the said notification may be brought into effect from a date to be notified later depending on the readiness of the portal for the said functionality.

g. In view of the above, following proposals were placed before the GIC for approval:

i. issues proposed to be clarified through circular
ii. existing Notification No. 30/2023-Central Tax dated 31.07.2023, may be rescinded
iii. draft notification to rescind the Notification No. 30/2023-Central Tax dated 31.07.2023
iv. the fresh notification prescribing the revised special procedure which may come into effect from 1st July, 2024 may be issued so that the special procedure can be implemented through system based functionality to be developed by GSTN on the portal.

h. **Decision**: The GIC approved the agenda with the proposed date of notification coming into effect being revised to 1st April, 2024

i. **Implementation Status**: In pursuance of GIC decision dated 30.12.2023, Notification No. 03/2024-Central Tax dated 5th January, 2024 and Notification No. 04/2024- Central Tax dated 5th January, 2024 was issued.

3. **Decision of GIC by circulation on 18.12.2023 regarding extension of due date for furnishing of Form GSTR-3B for the month of November 2023 by taxpayers in certain districts of the state of Tamil Nadu**.

a. The agenda note stated that the landfall of Michaung Cyclone on December 4th and 5th, 2023, has significantly affected essential services in the districts of Chennai, Tiruvallur, Chengalpattu, and Kancheepuram in Tamil Nadu. As a result, transportation, electricity supply, and broadband connectivity in these areas have been disrupted. Consequently, taxpayers in these districts are encountering difficulties in filing FORM GSTR-3B for November 2023 within the stipulated due date.

b. In view of the above, following proposal was made in the Agenda Note :-

To mitigate the difficulties faced by taxpayers in these districts in filing FORM GSTR-3B for November 2023, it is proposed that the due date for furnishing the return be extended to December 27, 2023.

c. The agenda note was circulated among Members of the GIC for decision.

d. **Decision:** The GIC approved the above proposal.

e. **Implementation Status:** In pursuance of GIC decision dated 30.12.2023, Notification No. 55/2023-Central Tax dated 20th December,2023 was issued.

4. Decision of GIC by circulation on 28.12.2023 regarding extension of limitation by issue of notification under Section 168A of the CGST Act, 2017

a. The agenda note states that Section 73 of the CGST Act, 2017 provides that the proper officer shall issue the order demanding any tax that 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 wilful misstatement or suppression of facts to evade tax, within three 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 three years from the date of erroneous refund.

b. It further states that as per Notification No. 09/2023-Central Tax dated 31.03.2023, the time limit specified under sub-section (10) of section 73 of CGST Act, 2017 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, relating to Financial Years 2017-18, 2018-19 and 2019-20 has been extended. This was done on recommendation of 49th GST Council meeting held on 18th February, 2023 wherein it was deliberated that due to delay in scrutiny, assessment and audit work due to

Covid-19 restrictions, additional time was needed for the officers to issue notices and pass orders. The said timelines were extended as given below:

i. for the financial year 2017-18, up to the 31st day of December, 2023;
ii. for the financial year 2018-19, up to the 31st day of March, 2024;
iii. for the financial year 2019-20, up to the 30th day of June, 2024;

c. Additionally, it is stated that on the recommendations of the GST Council in its 49th meeting, various amnesty schemes were launched by the government for the benefit of taxpayers viz. reduction in late fees for furnishing the returns in FORM GSTR-4, allowing filing of revocation of cancellation of registration applications, waiver of amount of late fees for registered person who fail to furnish the returns under Section 44 by the due dates for various Financial Years. All these amnesty schemes were later extended up to 31st August 2023. Due to the same, new cases for issuance of demand notices and adjudications have come up before the proper officers and as such, some tax administrations have requested for extension of time lines as mentioned above by another 3 months.

d. It is further mentioned that the issue was deliberated in the 2nd National Coordination Meeting of Central and State Tax authorities under the chairmanship of Revenue Secretary on 14.12.2023. In the said meeting, various states raised the issue that due to COVID-19 restrictions, assessment, scrutiny and audit could not be taken up by the tax administrations in time, which has led to bunching/ clubbing of such assessments/ scrutiny/ audit for FY 2017-18, FY 2018-19 and FY 2019-20. Besides, due to various amnesty schemes provided by the Government in form of waiver of late fee for delayed filing of returns, allowing filing applications for revocation of cancellation of the registration, etc. (the last date of such amnesty schemes was upto 31st August 2023), a number of returns have been filed during the period of amnesty, followed by assessment and scrutiny of such returns, which may require issuance of demand notices and subsequent adjudication orders. All this is not only causing unnecessary strain on the tax officers for issuance of demand notices and adjudication order within the specified time limit, but is also resulting in hardship to taxpayers in providing reply of demand notices in time for timely completion of adjudication process. It was requested by tax administrations in the 2nd National Coordination Meeting that there is an imminent requirement of extension of the time limit specified under sub-section (10) of section 73 of CGST Act, 2017 for issuance of order under sub-section (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilised, for Financial Years 2017-18, 2018-19 and 2019-20 by some more time. Besides, request has also been received from trade and industry that more time be given to them for filing replies to demand notices, due to bunching of notices for FY 2017-18, FY 2018-19 and FY 2019-20. It was decided that the issue will be deliberated by the Law Committee.

e. The agenda note informs that the matter was deliberated by the Law Committee in its meeting held on 20.12.2023. The Law Committee recommended that limitation under Section 73 of CGST Act for issuance of order, may be extended till 30th April, 2024 (from 31st March 2023 at present) for FY 2018-19 and may be extended till 31st August, 2024 (from 30th June 2024 at present) for the FY 2019-20 under the powers available under section 168A of CGST Act. Law Committee further took a view that no such extension may be allowed for timelines under section 73(10) of the Act, for the FY 2017-18, as the time limit for issuance of demand notices under section 73 of CGST Act for FY 2017-18 has already expired on 30th September 2023. The demand notice is required to be issued at least 3 months prior to the time limit for issuance of order under sub-section (10) of section 73 of CGST Act, 2017.

f. Lastly, the agenda note states that as the time limit for issuance of demand notices under Section 73 of CGST Act, 2017 for FY 2018-19 is going to expire on 31st December 2023 as per the present timelines, the said proposed notification for extension of timelines is required to be issued before 31st December 2023.

g. Accordingly, approval of the GIC was sought for issue of notification under Section 168A of CGST Act, as per the above recommendations of the Law Committee

h. **Decision:** The GIC approved the agenda relating to extension of limitation by issue of notification under Section 168A of CGST Act

i. **Implementation Status:** In pursuance of GIC decision dated 28.12.2023, Notification No. 56/2023-Central Tax dated 28th December,2023 was issued.

5. Decision of GIC by Circulation on 5th January, 2024 regarding extension of due date for furnishing of Form GSTR-3B for the month of November 2023, Form GSTR-9 and Form GSTR-9C for FY 2022-23 in certain districts of the state of Tamil Nadu

a. The agenda note stated that the revenue districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi, and Virudhunagar in the state of Tamil Nadu experienced unprecedented heavy rainfall on December 17 and 18, 2023. Due to the heavy rainfall, normal life in these districts has been severely impacted, disrupting transportation, electricity supply, and internet connectivity. As a result, taxpayers in these districts faced difficulties in submitting Form GSTR-3B for November 2023 and Forms GSTR-9 and GSTR-9C for the financial year 2022-23 within the due dates.

b. The agenda note further stated that the due date for furnishing GSTR-3B for November 2023 had previously been extended to December 27, 2023, for registered persons whose principal place of business was in the cyclone-affected districts of Chennai, Tiruvallur, Chengalpattu, and Kanchipuram in Tamil Nadu. This extension was notified via Notification No. 55/2023, Central Tax, dated December 20, 2023.

c. The agenda note further stated that due dates for furnishing GSTR-3B for the month of November 2023 had been earlier extended till 27th December, 2023 for the registered persons whose principal place of business fell the cyclone affected districts of Chennai, Tiruvallur, Chengalpattu and Kanchipuram in the state of Tamil Nadu and the same had been notified vide Notification No. 55/2023, Central tax dated 20.12.2023. In these cyclone-affected districts, the due dates for furnishing GSTR-9 and GSTR-9C also needed to be extended as a measure of relief for trade and industry.

d. In view of the above, following proposals were made in the Agenda note:

i. Extension of due dates for the filing of monthly return in Form GSTR-3B for the month November 2023 is upto and inclusive of 10th January, 2024, for the revenue districts of Tirunelveli, Tenkasi, Kanyakumari, Thoothukudi and Virudhunagar, in the State of Tamil Nadu, without payment of late fee and interest.

ii. Extension of due dates for filing of Annual return in GSTR-9 and GSTR-9C upto 10th January, 2024 (inclusive of 10th January) for registered persons whose principal place of business fell the cyclone affected districts of Chennai, Tiruvallur, Chengalpattu and Kanchipuram in the state of Tamil Nadu, without payment of late fee.

e. The agenda note was circulated among Members of the GIC for decision.

f. **Decision:** The Members of the GIC approved the above proposal.

g. **Implementation Status:** In pursuance of GIC decision dated 5.1.2024, Notification No. 01/2024-CT dated 05.01.2024 and Notification No. 02/2024-Central Tax dated 5th January,2024 was issued.

6. Decision by circulation on 19.2.2024 regarding integration of Goods and Services Tax Network (GSTN) with Tech Platform of the Reserve Bank of India (RBI)

a. The Agenda Note states that the Reserve Bank of India (RBI) has requested Integration of GSTN with Tech Platform of RBI. It is stated that RBI has developed a 'Tech Platform' to which all the financial ecosystem players could connect. It would enable delivery of the frictionless credit by facilitating seamless flow of all required digital information to lenders. The platform would bring in efficiency to the lending process in terms of reduction of costs, improving Turn Around Time, greater scalability, and expanding the reach of financial services.

b. It is further mentioned that GST payment related data available with GSTN has a crucial role in facilitating credit appraisal by lender and its efficient delivery. The integration of GSTN with multiple financial institutions and banks enables them to access crucial GST-related information of MSMEs, which significantly aids in credit appraisal and efficient credit delivery. By minimizing the 'information asymmetry' in the system, GSTN can play a central role in facilitating cash flow-based lending to MSMEs. Further, the integration of GSTN with the Platform replaces the need to build costly and complex APIs by each lender, with a single easy to use and manage standard protocol for connecting to the Platform.

c. It is further observed in the Agenda Note that Section 158A of the CGST Act, 2017 provides for consent-based sharing of data. The section allows sharing of data with such platforms as may be notified. Earlier, the GST Council had approved notification of "Account Aggregators", as defined in Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016 issued by the Reserve Bank of India under Reserve Bank of India Act, 1943, as a platform with which data from GSTN can be shared. The same was notified vide notification No. 33/2023-Central Tax dated 31st July, 2023.

d. The Agenda Note further informs that the issue of notification of "Tech Platform" of RBI as a platform, with which data of GSTN can be shared, under Section 158A of CGST Act, 2017 was deliberated by the Law Committee in its meeting held on 27th December 2023, along with the draft notification for the same. The Law Committee recommended that the issue of the said notification.

e. In view of the above, following proposal was made in the Agenda Note along with the draft notification: -

Issue of notification of "Tech Platform" of RBI as a platform with which data of GSTN can be shared

f. **Decision:** The Members of the GIC approved the above proposal

Implementation Status: In pursuance of GIC decision dated 30.12.2023, Notification No. 06/2024-Central Tax dated 22.02.2024 was issued.

7. Decision by circulation on 21.02.2024 regarding furnishing of GST trade data of chemicals for real time monitoring of dual use chemicals under the Chemical Weapons Convention

a. The Agenda Note states that the National Authority Chemical Weapons Convention (NACWC) has requested aggregated GST trade data for specific chemicals identified by HSNs (29211200, 29211300, 29306000, 29307000) starting from January 1, 2021 along with the CAS numbers and HS Codes of the most frequently traded chemicals that require monitoring.

b. The GST Council in its 48th meeting has approved the policy for sharing of GST data with other Ministries. It was agreed that any agency that intends to access summary data pertaining to GST should give the details in the approved format to DoR and thereafter DoR shall process the request and place it before the GST Implementation Committee. In the Agenda Item 12, data which could be shared was broadly classified into four categories. The present request for sharing aggregated HSN wise data falls under the second category i.e. Aggregated GST data which does not involve disclosure of any personally identifiable information of a taxpayer etc.

c. In view of the above, following proposal was made in the Agenda note :-

Approve sharing of aggregated GST trade data of chemicals identified by HSNs (29211200, 29211300, 29306000, 29307000) from 1st January, 2021 onwards along with the details of CAS numbers and HS Codes with the National Authority Chemical Weapons Convention

d. The agenda note was circulated among Members of the GIC for decision.

e. **Decision:** The Members of the GIC approved the above proposal

8. Decision by circulation on 15.3.2024 regarding relaxation in the eligibility criteria for selection to the post of Technical Member (State) of Goods and Services Tax Appellate Tribunal (GSTAT) - States of Gujarat and Maharashtra

a. The Agenda Note states that representations had been received from the states of Gujarat and Maharashtra for relaxation in the eligibility criteria for selection to the post of Technical Member (State) of GSTAT.

b. The Agenda Note further states that the search for the Technical Member (State) of the respective State Benches is to be carried out by the concerned State. The eligibility for the Technical Member (State) is governed by section 110(1)(d) of the CGST Act which states as follows:-

A person shall not be qualified for appointment as —

> a. Technical Member (State), unless he is or has been an officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, not lower than that of 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, or equivalent, 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 in the State Government:

Provided that the State Government may, on the recommendations of the Council, by notification, relax the requirement of completion of twenty-five years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty-five years of service in the Government, subject to such conditions, and till such period, as may be specified in the notification.

c. In view of the above, following proposal was made in the Agenda note :-

a. Proposal of State of Maharashtra for notifying the rank of not below the rank of "Joint Commissioner of Sales Tax or Joint Commissioner of State Tax" as a minimum qualifying rank of the officer for functioning as the First Appellate Authority in the State;

b. Proposal of State of Gujarat for notifying an officer not below the rank of "Joint Commissioner of Gujarat Value Added Tax or Gujarat Goods and Services Tax" as the minimum qualifying rank of officer for functioning as the First Appellate Authority in the State.

d. The agenda note was circulated among Members of the GIC for decision.

e. **Decision:** The Members of the GIC approved the above proposal

9. Decision by circulation on 26.3.2024 regarding relaxation in the eligibility criteria for selection to the post of Technical Member (State) of Goods and Services Tax Appellate Tribunal (GSTAT) in respect of the States of Uttar Pradesh and Bihar

a. The Agenda Note states that representations had been received from the states of Gujarat and Maharashtra for relaxation in the eligibility criteria for selection to the post of Technical Member (State) of GSTAT

b. The Agenda Note further states that the search for the Technical Member (State) of the respective State Benches is to be carried out by the concerned State. The eligibility for the Technical Member (State) is governed by section 110(1)(d) of the CGST Act which states as follows:-

A person shall not be qualified for appointment as—

a. Technical Member (State), unless he is or has been an officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, not lower than that of 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, or equivalent, 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 in the State Government:

Provided that the State Government may, on the recommendations of the Council, by notification, relax the requirement of completion of twenty-five years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty-five years of service in the Government, subject to such conditions, and till such period, as may be specified in the notification

c. The Agenda Note further states that in this context it is to be mentioned that a State Government, on the recommendation of the GST Council, may relax the requirement of completion of twenty five

years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty five years of service in Group A, or equivalent, but has completed twenty five years of service in the Government, subject to such conditions, and till such period, as may be specified in the notification. Accordingly, it may be seen that for the issuance of the said notification, the following is required:

i. no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty five years of service in the Government,

ii. the relaxation sought,

iii. such conditions subject to which the exemption is to be granted, and

iv. such period upto which the exemption is to be granted

d. In view of the above, following proposal was made for a period of 10 years in the Agenda note:

a. Proposal of the State of Bihar for notifying an officer of the Commercial Tax Department of Bihar, who has completed at least twenty five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State).

b. Proposal of the State of Uttar Pradesh for notifying an officer of the State Tax Department of Uttar Pradesh, who has completed at least twenty-five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State)

e. The agenda note was circulated among Members of the GIC for decision.

f. **Decision:** The Members of the GIC approved the above proposal.

10. Decision of GIC by Circulation on 03.04.2024 regarding extension of time for implementation of Notification No. 04/2024-CT dated 05.01.2024

a. The Agenda Note mentions that that GSTN vide its email dated 13.03.2024 has communicated that the said Forms, FORM GST SRM-1 AND FORM GST SRM-II would not be able to be developed by 31st March, 2024. It has also been stated by the GSTN that while FORM GST SRM-I is expected to be developed by 31st May, 2024 Form GST SRM-II may take one more month. Accordingly, they have requested to defer the implementation of the Notification No. 04/2024-CT dated 05.01.2024.

b. In view of the above, following proposal was made in the Agenda note:-

Extend the date for implementation of Notification No. 04/2024-CT dated 05.01.2024

c. The agenda note was circulated among Members of the GIC for decision.

d. **Decision:** The Members of the GIC approved the above proposal with the observation that both the forms be implemented by 15th May 2024 (instead of proposed 1st June 2024)

e. **Implementation Status:** In pursuance of GIC decision dated 5.1.2024, Notification No. 08/2024-CT dated 10th April,2024 was issued

11. Decision of GIC by Circulation on 15.04.2024 regarding extension of the due date for furnishing return in FORM GSTR-1 for the month of March 2024 up to 12.04.2024 to provide the taxpayers sufficient time in furnishing their FORM GSTR-1

a. The Agenda Note mentions that the Trade and Industry have reported difficulties in submitting FORM GSTR-1 returns for March 2024 on time. Additionally, it notes that GSTN, through their email dated April 11, 2024, requested an extension of the due date for filing FORM GSTR-1 for March 2024 until April 12, 2024.

b. It is further stated that according to GSTN, the filing of FORM GSTR-1 in April 2024 has been lower compared to January 2023, particularly from the afternoon of April 11, 2024. It is projected that by the end of the day, around 7 to 8 lakh returns would still be pending. GSTN suspects this disruption is linked to a functionality issue with Table 14 & 15 and the corresponding APIs implemented for marketplace players like Flipkart and Amazon. These functionalities involve the verification of the GSTIN of their suppliers through the Manage API and the GSP route of Flipkart and Amazon. GSTN has stated they will thoroughly understand this workflow and decide on future actions accordingly. However, due to the technical glitch experienced since the afternoon of April 11, 2024, GSTN suggests that it would be prudent to extend the GSTR-1 filing deadline by one day for monthly taxpayers.

c. The Agenda Note further mentions that GSTN has conveyed that, in line with the extension of the filing deadline for FORM GSTR-1, the generation of FORM GSTR-2B would be adjusted. This adjustment aims to incorporate the credit from FORM GSTR-1s filed during the extended period, ensuring that the flow of credit remains uninterrupted.

d. In view of the above, following proposal was made in the Agenda note :-

Extend the deadline for filing the return in FORM GSTR-1 for March 2024 until April 12, 2024, to give taxpayers sufficient time to complete their FORM GSTR-1 submissions

e. The agenda note was circulated among Members of the GIC for decision.

f. **Decision:** The Members of the GIC approved the above proposal

g. **Implementation Status:** In pursuance of GIC decision, Notification No. 09/2024-CT dated 12th April,2024 was issued

12. Decision by circulation on 2.5.2024 on relaxation in the eligibility criteria for selection to the post of Technical Member (State) of GSTAT in various states and notifying the rank of the officer who is the first Appellate Authority in the State of Mizoram

a. The Agenda Note states that representations have been received from -

(i) the states of Gujarat, Himachal Pradesh, Rajasthan, Odisha, Goa, Andhra Pradesh, Tamil Nadu, Uttarakhand and Haryana for consideration and approval of the GST Council to relax the requirement of completion of twenty five years of service in Group-A or equivalent.

(ii) the state of Mizoram to notify the rank of officer as the First Appellate Authority.

b. The Agenda Note further states that the search for the Technical Member (State) of the respective State Benches is to be carried out by the concerned State. The eligibility for the Technical Member (State) is governed by section 110(1)(d) of the CGST Act which states as follows:-

A person shall not be qualified for appointment as—

a. Technical Member (State), unless he is or has been an officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, not lower than that of 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, or equivalent, 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 in the State Government:

Provided that the State Government may, on the recommendations of the Council, by notification, relax the requirement of completion of twenty-five years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty-five years of service in the Government, subject to such conditions, and till such period, as may be specified in the notification

c. The Agenda Note further states that in this context it is to be mentioned that a State Government, on the recommendation of the GST Council, may relax the requirement of completion of twenty five years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty five years of service in Group A, or equivalent, but has completed twenty five years of service in the Government, subject to such conditions, and till such period, as may be specified in the notification. Accordingly, it may be seen that for the issuance of the said notification, the following is required:

i. no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty five years of service in the Government,

ii. the relaxation sought,

iii. such conditions subject to which the exemption is to be granted, and

iv. such period upto which the exemption is to be granted

d. In view of the above, following proposals were made in the Agenda note:

A. Relaxation allowing 25 years of service in the Government as Gazetted Officer (irrespective of whether or not in Group A or equivalent) for a period of 10 years from the date of notification as per the:

1. Proposal of State of Gujarat for notifying an officer of the Commercial Tax Department of Gujarat, who has completed at least twenty-five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State) in the State Bench.

2. Proposal of State of Goa for notifying an officer of the Commercial Tax Department of Goa, who has completed at least twenty-five years of service in the Government, as Gazetted Officer. to be eligible for the appointment as Technical Member (State) in the State Bench.

3. Proposal of State of Himachal Pradesh for notifying an officer of the Commercial Tax Department of Himachal Pradesh, who has completed at least twenty-five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State) in the State Bench.

4. Proposal of State of Odisha for notifying an officer of the Commercial Tax Department of Odisha, who has completed fifteen years of service as Group A or equivalent subject to overall twenty-five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State) in the State Bench.

5. Proposal of State of Rajasthan for notifying an officer of the Commercial Tax Department of Rajasthan, who has completed at least fifteen years as Group A or equivalent subject to overall twenty-five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State) in the State Bench.

6. Proposal of State of Uttarakhand for notifying an officer of the Commercial Tax Department of Uttarakhand, who has completed at least twenty-five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State) in the State Bench.

7. Proposal of State of Haryana for notifying an officer of the Commercial Tax Department of Haryana, who has completed at least twenty-five years of service in the Government, as Gazetted Officer. to be eligible for the appointment as Technical Member (State) in the State Bench.

8. Proposal of State of Tamil Nadu for notifying an officer of the Commercial Tax Department of Tamil Nadu, who has completed at least fifteen years as Group A or equivalent subject to overall twenty-five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State) in the State Bench.

9. Proposal of State of Andhra Pradesh for notifying an officer of the Commercial Tax Department of Andhra Pradesh, who has completed at least twenty years as Group A or equivalent subject to overall twenty-five years of service in the Government, as Gazetted Officer, to be eligible for the appointment as Technical Member (State) in the State Bench.

B. Relaxation by altering the rank of the First Appellate Authority

1. Proposal of the State of Mizoram to notify the Joint Commissioner as the rank of officer who shall be the First Appellate Authority in the State Bench.

e. The agenda note was circulated among Members of the GIC for decision.

f. **Decision:** The Members of the GIC approved the above proposal

13. Decision by circulation on 27.5.2024 on sharing of GSTN data with the Centre of WTO Studies, Department of Commerce, Ministry of Commerce & Industry

a. The Agenda Note states that a request was received from Department of Commerce, Ministry of Commerce & Industry regrading sharing of GSTN data at HSN 6 level of total supply for last three years to Centre for WTO studies, Ministry of Commerce & Industry on one-time basis. It is stated that

the purpose for which data is being sought is to carry out an analysis to identify product level vulnerabilities from a supply chain angle.

b. The Agenda Note further notes that the GST Council in its 48th Meeting has already approved the GST data sharing with other Ministries/Departments.

c. In view of the above, following proposal was made in the Agenda note:-

Approve sharing of GSTN data at HSN 6 level of total supply for last three years to Centre for WTO studies, Ministry of Commerce & Industry on one-time basis

d. The agenda note was circulated among Members of the GIC for decision.

e. **Decision:** The Members of the GIC approved the above proposal

14. Decision by circulation on 31.5.2024 on sharing of GSTIN based registration details through API with Ministry of Information and Broadcasting

a. The Agenda Note states that a request was received from the Ministry of Information & Broadcasting regarding sharing of GSTIN based registration details through API. The data was being sought on a recurring basis to develop an online facility for granting registrations to the Local Cable Operators. The agenda also states that data related to turnover field will be shared with Ministry of Information and Broadcasting only, if required, for enforcement of any law or regulation.

b. In the Agenda Note, D.O. letter dated 14.11.2023 of the Joint Secretary (Broadcasting) of the Ministry of Information & Broadcasting addressed to the CEO, GSTN was attached wherein it is mentioned that the Ministry was in the process of developing an online facility/module for granting registrations to the Local Cable Operators (LCOs). This module was being developed as an extension to the Broadcast Seva portal and was aimed at minimizing human intervention and reducing the time required for the registration procedure. The portal is being designed to automatically verify the details of the applicants. It is further stated that in view of the above, GST Registration Number information-related services through an API based integration approach for the LCO registration module may be allowed.

c. In view of the above, following proposal was made in the Agenda note:-

Approve sharing of GSTIN based registration details through API with the Ministry of Information and Broadcasting

d. The agenda note was circulated among Members of the GIC for decision.

e. **Decision:** The Members of the GIC approved the above proposal

Agenda item 3: Issued recommended by the Law Committee for the consideration of the GST Council.

Agenda Item 3(i): Law amendment proposals to amend the CGST Act, 2017 and IGST Act, 2017.

Law Committee in its various meetings has recommended various amendments in the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") and Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") to streamline the said provisions as well as to provide clarity with regard to various provisions of GST Law, to augment revenue, to facilitate the taxpayers and to promote ease of doing business.

2. The details of the proposed amendments are as given below:

I. Amendment to Section 9 of CGST Act regarding non-applicability of GST on Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption.

An Agenda on "Taxation of rectified spirit/Extra Neutral Alcohol (ENA) under GST" was considered in the 20th Meeting of GST Council held on 05.08.2017, wherein the Council, had recommended for the time being, status quo should be maintained regarding taxation of ENA for manufacture of alcoholic liquor for human consumption and Extra Neutral Alcohol supplied for industrial purpose shall attract GST at the rate of 18%. Further, legal opinion of the Attorney General of India may be sought regarding whether within the prevailing constitutional provisions, GST can be levied on supply of ENA for manufacture of alcoholic liquor for human consumption.

2. The issue was also placed before the 26th GST Council meeting held on 10.03.2018. However, the same could not be discussed due to the paucity of time. Thereafter, the issue was placed before the 31st and 37th GST Council meeting and the Council approved the Fitment Committee recommendation to maintain status quo and it recommended that in the interim period, the States may go by the decision of GST Council as recorded in the Minutes of the Council Meeting dated 5th August, 2017. Thereafter, the matter of applicability of GST on ENA was placed before the GST Council in its 43rd GST Council meeting held on 28th May, 2021, along with the opinion of Ld. AG. The Learned Attorney General opined that the judgment of the Court in *Bihar Distillery* does not denude the Centre or the States of the power to levy GST on ENA that is used to manufacture 'alcoholic liquor for human consumption'. In the said meeting, in view of the comments of the States on the issue, the agenda was again deferred.

3. The matter of taxability of rectified spirit/ Extra Neutral Alcohol (ENA) under GST was discussed by the GST Council in its 52nd meeting, wherein the following recommendations were made by the Council:

i. To place before Supreme Court that GST Council has no intention to levy GST on ENA for manufacture of alcoholic liquors for human consumption.
ii. To make suitable amendment in law to exclude ENA (both grain-based and molasses-based) from ambit of GST when supplied for manufacture of alcoholic liquors for human consumption.
iii. To reduce GST on Molasses from 28% to 5%.
iv. To notify GST rate of 18% for new tariff item at 8 digit level created for Rectified spirits (ENA) for industrial use (HS 2207 10 12).

2. Accordingly, the issue of making requisite amendment in GST law was deliberated by the Law Committee in its meeting held on 18.10.2023. The Law Committee recommended amendment in sub-section (1) of Section 9 of the CGST Act, 2017 for not levying GST on Extra Neutral Alcohol used for manufacture of alcoholic liquor for human consumption. The said amendment, as recommended by the Law Committee, is as under:

> *"(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit which is used for manufacture of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person."*

3. The Law Committee also recommended that similar amendments may be carried out in the SGST Act, the UTGST Act and the IGST Act.

II. Insertion of Section 11A in CGST Act for granting power not to recover duties not levied or short-levied as a result of general practice under GST Acts.

GST Council has, in the past, recommended regularization of certain assessments on as is basis. The regularization was necessitated due to reasons such as ambiguity in provisions of law, overlapping entries of notifications, divergent practices being followed in the field, etc.

2. The various recommendations of the GST Council to regularize past assessments on ***as is basis*** were implemented by Central and State governments through circulars. It is mentioned that there is no specific provision under GST law which empowers the Central /State Governments to not recover GST not levied or short-levied as a result of any ambiguity or general practice.

3. However, such powers existed in the Customs Act, 1962 and Central Excise Act, 1944 which also applied to Service Tax. Section 28A under Customs Act, 1962 and section 11C of Central Excise Act, 1944 provided for the same.

3.1 The Customs Act and Central Excise Act also provided for refund of any duty paid in excess of what was paid as a matter of general practice where a notification was issued under the above provisions.

4. It is felt that waiver of non–levy or short levy of GST on any supply, in absence of any specific power empowering the Central / State Governments to do so, however necessary or expedient, may not be appropriate. Accordingly, there may be a need for incorporation of suitable provisions in GST laws also to empower the Government for such regularization in cases where such non levy or short levy was a result of general practice in the trade or a section of trade.

5. The issue was deliberated by the Law Committee in its meeting held on 30.05.2024, The Law Committee recommended that a provision may be incorporated in GST laws (CGST Act, SGST Act, IGST Act, UTGST Act and Compensation Cess Act) empowering the Central and State Governments to regularize, on the basis of the recommendations of the GST Council, non –levy or short levy of GST or Compensation Cess where it is found that such non levy or short levy was a result of general practice in the trade or a section of trade. Law Committee also recommended that no refund of GST or Compensation Cess may be allowed on account of any notification issued in this regard.

5.1 Accordingly, Law Committee proposed inserting a new section 11A in the CGST Act, 2017, as below:

> "**Section 11A. Power not to recover GST not levied or short-levied as a result of general practice.**
>
> (1). Notwithstanding anything contained in this Act, if it is found -
>
> a) that a practice was, or is, generally prevalent regarding levy of central tax (including non-levy thereof) on any supply of goods or services or both and
>
> (b) that such supplies were, or are, liable –
>
> (i) to central tax, in cases where according to the said practice, central tax was not, or is not being, levied, or
>
> (ii) to a higher amount of central tax than what was, or is being, levied, according to the said practice,
>
> then, the Central Government may, on the recommendation of the Council, by notification in the Official Gazette, direct that the whole of the central tax payable on such supplies, or, as the case may be, the central tax in excess of that payable on such supplies, but for the said practice, shall not be required to be paid in respect of the supplies on which the central tax was not, or is not being, levied, or was, or is being, short-levied, in accordance with the said practice.
>
> (2) No refund shall be made of all such central tax which has been collected, but which would not have been so collected, had the notification referred to in sub-section (1) been in force at all material times."

5.2 Further, it is to be mentioned that similar provision will also be needed to be inserted in other GST Acts as detailed below:

- Section 6A in Integrated Goods And Services Tax Act, 2017. In this Act, references to "central tax" in the proposed section will have to be replaced with "integrated tax".
- Section 8A in Union Territory Goods And Services Tax Act, 2017. In this Act, references to "central tax" in the proposed section will have to be replaced with "Union territory tax".
- Section 8A in Goods And Services Tax (Compensation to States) Act, 2017. In this Act, references to "central tax" in the proposed section will have to be replaced with "cess".

5.3 Also, *pari-materia* amendments need to be made in State GST Acts also.

III. Amendment in Section 13 and Section 31 of the CGST Act, 2017 regarding time of supply and issuance of invoices in respect of RCM supplies.

Section 13 of CGST Act, 2017 provides for determination of time of supply of services. Sub-section (3) of section 13 of CGST Act provides for determination of time of supply of services in cases where the tax is paid or liable to be paid on reverse charge basis by the recipient of the services. Clause (b) of section 13(3) of CGST Act links time of supply with the date of issue of invoice, or any other document in lieu thereof, by the supplier. However, as per clause (f) of section 31(3) of CGST

Act, in cases of supplies received from the unregistered persons, where tax is to be paid on reverse charge basis by the recipient, the invoice is to be issued by the recipient. Clause (b) of section 13(3) of CGST Act does not cover the scenarios where invoice is required to be issued by the recipient in case of RCM supplies as per section 31(3)(f) of CGST Act, which is creating ambiguity regarding interpretation of time of supply in such cases.

2.1 Law Committee in its meetings held on 31.01.2024 and 25.04.2024 recommended that suitable amendment may be done in Section 13(3) of CGST Act to provide for a specific provision in section 13(3) for covering the cases where the invoice is required to be issued by the recipient of services in case of RCM supplies. Law Committee recommended that amendments may be made in clause (b) of sub-section (3) of section 13 of the CGST Act and a separate clause (c) may be inserted in the said sub-section to cover the said scenario. Further, amendment may also be required in the proviso to the said sub-section. The amendment as recommended by the Law Committee is given below:

> *(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:, in cases where invoice is required to be issued by the supplier; or*
>
> (c) *the date of issue of invoice by the recipient, in cases where invoice is required to be issued by the recipient:*
>
> ***Provided** that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.*

2.2 Further, Law Committee also observed that there is a lack of clarity in clause (f) of sub-section (3) of section 31 of the CGST Act, read with rule 47 of CGST Rules, 2017, regarding the time period within which the invoice is required to be issued by the recipient in case of RCM supplies. Therefore, Law Committee in its meeting held on 25.04.2024 and 02.05.2024 recommended that amendment as below may be made in section 31(3) (f) of the CGST Act, 2017 to specifically provide for the same:

> **"Section 31. Tax invoice.-**
>
> *(3) Notwithstanding anything contained in sub-sections (1) and (2)-*
>
> *(f) a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall, within the period as may be prescribed, issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;*"

2.3 Further, Law Committee also recommended that such time period for issuance of invoice by the recipient in case of RCM supplies may be prescribed in the CGST Rules, 2017. Accordingly, Law Committee in its meeting held on 02.05.2024 recommended for insertion of Rule 47A in CGST Rules, 2017 providing for the same. **Also, it was recommended that the second proviso to Rule 46 of CGST Rules, 2017 may be omitted as the same is not relevant**

now, as very few supplies have been notified under section 9(4) of CGST Act, 2017. The amendments recommended by the Law Committee are as below:

A. **"Rule 46. Tax invoice.-**

……

~~Provided further that where an invoice is required to be issued under clause (f) of sub-section (3) of section 31, a registered person may issue a consolidated invoice at the end of a month for supplies covered under sub-section (4) of section 9, the aggregate value of such supplies exceeds rupees five thousand in a day from any or all the suppliers:"~~

B. Insertion of Rule 47A after Rule 47 of CGST Rules, 2017:

"Rule 47A. Time limit for issuing tax invoice in cases where recipient is required to issue the invoice:-

47A. Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, he shall issue the said invoice within a period of thirty days from the receipt of the said supply of goods or services or both."

3. Also, Law Committee observed that since in case of RCM supplies, the liability to issue invoice is on the registered recipient of supplies, therefore a doubt emerges as to whether a supplier who is registered solely for the purposes of TDS deduction under Section 51 of CGST Act, is to be considered as a registered person for the purpose of clause (f) of sub-section (3) of section 31 of the CGST Act and whether he may be required to issue the tax invoice in respect of any supply made by him which is liable to tax in the hand of registered recipient under sub-section (3) or sub-section (4) of section 9 of the CGST Act.

3.1 Clause (f) of sub-section (3) of section 31 of the CGST Act provides for issuance of invoice by the registered recipient in such RCM supplies only if the supplier is not registered. If a view is taken that a supplier who is registered solely for the purposes of TDS deduction under Section 51 of CGST Act, is to be considered as a registered person for the purpose of section 31(3)(f) of the CGST Act, then a government department registered solely for the purposes of TDS deduction under Section 51 of CGST Act, who is providing a supply covered under sub-section (3) or sub-section (4) of section 9 of the CGST Act, may be required to issue the invoice in terms of section 31 of the CGST Act which may not be intended.

3.2 In order to clarify the same, the Law Committee in its meeting held on 25.04.2024 recommended that an explanation may be inserted in sub-section (3) of Section 31 of CGST Act so as to clearly provide that a supplier who is registered solely for the purposes of TDS deduction under Section 51 of CGST Act, 2017 shall not be considered as a registered person for the purpose of clause (f) of sub-section (3) of section 31 of the CGST Act. The Explanation, clarifying that the person registered solely for the purpose of deduction of TDS are covered under the phrase 'supplier who is not registered', as recommended by the Law Committee, to be inserted after clause (g) of sub-section (3) of section 31 of the CGST Act is as below:

"Explanation.-For the purpose of clause (f), the expression "supplier who is not registered" shall include the supplier who is registered solely for the purpose of deduction of tax under Section 51."

IV. Amendment in Section 16 of IGST Act, 2017 along with corresponding provisions in Section 54 of CGST Act, 2017, to curtail refund of IGST in cases where export duty is payable, and also to rationalise the said provisions.

Issue I : Amendment pertaining to the issue of restriction on refund claim on goods on which export duty is payable

The provisions of the IGST Act were amended to make the zero rated supply of goods and services without payment of integrated tax as the default route for claiming refund in respect of accumulated input tax credit under sub-section (3) of section 16 of IGST Act, 2017, in accordance with provisions of Section 54 of CGST Act. Vide sub-section (4) of section 16 of IGST Act, 2017, the Government has been empowered to notify a class of persons, who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid, and to notify a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim refund of tax so paid. Reference is also drawn to first proviso to Section 54 of CGST Act, 2017 which provides that a registered person may claim refund of any unutilised input tax credit at the end of any tax period in respect of zero rated supplies made without payment of tax. However, vide second proviso to Section 54 of CGST Act, a restriction has been provided that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.

2. In this regard, doubts have been raised by some field formations that whether this restriction under second proviso to Section 54 of CGST Act on grant of refund of unutilised input tax credit in cases where the goods exported out of India are subjected to export duty, is also applicable in respect of grant of refund of integrated tax paid on goods exported out of India, where such goods exported out of India are subject to export duty.

3. It is also mentioned that as per fifth proviso to Rule 27 (1) of SEZ Rules, 2006, supplies from Domestic Tariff Area to Special Economic Zones also attract export duty if such goods are subjected to export duty. The same is reproduced as under:

"Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract export duty, in case, export duty is leviable on items attracting export duty"

4.1 On perusal of the above, it is worthwhile to mention that as per sub-section (3) of Section 16 of IGST Act, a registered person making a zero rated supply may claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act. Further, as per second proviso to sub-section (3) of section 54 of CGST Act, there is a specific restriction on grant of refund of unutilised input tax credit in cases where the goods exported out of India are subjected to

export duty. As the restriction provided by second proviso to section 54 of CGST Act is specifically provided only in respect of refund of unutilised input tax credit in cases where the goods are exported out of India under bond or Letter of Undertaking route, this restriction on grant of refund does not appear to be applicable on refund of integrated tax in respect of goods exported out of India on payment of integrated tax or on goods supplied to a Special Economic Zone developer or a Special economic Zone unit for authorized operations.

4.2 In this regard, it is relevant to mention here that export duty on any goods is imposed by the Government to ensure domestic availability of the said goods to meet the domestic demand and to ensure that price is stable/ retained in domestic economy i.e. to curb inflationary tendency. However, a bare perusal of the extant provisions implies that as per second proviso to Section 54 (3) of CGST Act, refund of unutilized input tax credit is prohibited on account of export duty only for the goods exported out of India without payment of tax, but no such restriction has been provided in respect of refund of integrated tax paid on export of goods, or in respect of goods supplied to a Special Economic Zone developer or a Special economic Zone unit for authorized operations, either under other sub-sections of section 54 of CGST Act or under Section 16(4) of IGST Act (or the earlier section 16(3) of IGST Act before the amendment w.e.f. 01.10.2023).

4.3 Since the purpose of imposing export duty is to ensure that domestic availability of goods is met and price of such goods are stable/ retained in domestic economy i.e. curb on inflationary tendency, therefore, it naturally follows that refund in respect of goods, which are subjected to export duty, should be prohibited, irrespective of the fact that whether the said goods are exported without payment of taxes or with payment of taxes, and such prohibition should also be applicable if such goods are supplied to a Special Economic Zone developer or a Special economic Zone unit for authorized operations, otherwise export duty cannot be considered to have served its true policy objective. However, the same appears to an omission while introducing the second proviso to Section 54 of CGST Act, restricting the refund of tax only in respect of refund of unutilised input tax credit, where the goods exported out of India are subject to export duty and are exported without payment of taxes.

4.4 Accordingly, Law Committee in its meeting dated 01.12.2023 recommended that second proviso to Section 54 (3) of CGST Act may be omitted and sub-section (15) may be inserted in the said section, along with the insertion of sub-section (5) in Section 16 of IGST Act, 2017 to provide that no refund of unutilized input tax credit or integrated tax shall be allowed in cases where the zero rated supply of goods are subjected to export duty. The draft amendment in section (in red) is as follows:

Section 54 of CGST Act: Refund of tax

(1) Any person claiming refund of any tax and interest, if any, paid on…

(2) ….

(3) Subject to the provisions…

Provided that…

~~***Provided** further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:~~

(15) Notwithstanding anything contained in this section, no refund of unutilized input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty.

Section 16 of IGST Act: Zero rated supply

....

"(5) Notwithstanding anything contained in sub-section (3) and sub-section (4), no refund of unutilized input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty."

Issue 2**:** **Amendment to rationalise the provisions to notify class of goods or services in respect of which IGST refund route is available.**

5.1 While clause (i) of sub-section (4) of section 16 of IGST Act, 2017, refers to the class of persons who may make zero rated supplies on payment of integrated tax, clause (ii) of sub-section (4) of section 16 of IGST Act, 2017 only refers to the phrase "a class of goods or services which may be exported on payment of integrated tax". It gives an indication that under sub-section (4) of section 16 of IGST Act, while Government can notify class of persons who may make zero rated supplies on payment of IGST and claim refund of the tax so paid (i.e. including exports and supplies to Special Economic Zones units or Special Economic Zones developers for authorized operations) but it appears that the Government can notify only the class of goods or services which may be exported on payment of IGST and claim refund of the tax so paid and cannot notify the class of goods or services which are supplied to Special Economic Zones units or Special Economic Zones developers for authorized operations, on payment of IGST.

5.2 Further, while sub-section (3) of section 16 of IGST Act mentions that refund of unutilised input tax credit in respect of zero rated supply of goods or services without payment of tax can be claimed in accordance with provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed, no such specific reference to section 54 of CGST Act has been made in sub-section (4) of section 16 of IGST Act. To harmonise these two sub-sections and to remove any doubts, Law Committee in its meeting held on 01.12.2023 recommended that sub-section (4) of section 16 of IGST Act may also specifically provide for claim of refund on payment of IGST in respect of zero rated supplies of notified goods or services in accordance with provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

5.3 Accordingly, to ensure uniformity in implementation of the said sub-section (4), Law Committee recommended that clause (i) and clause (ii) of sub-section (4) of Section 16 of the IGST Act, 2017 may be amended to provide for notification of class of goods or services which may be supplied on zero rated basis. The draft amendment in section (in red) is as follows:

Section 16 of IGST Act: Zero rated supply

(1)…

….

(4) The Government may, on the recommendation of the Council, by notification, specify-

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

(ii) a class of goods or services or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

V. Amendment in section 70 of the CGST Act, to provide clarity regarding appearance by authorised representative in response to summons.

Reference has been received regarding need of amendment in section 70 of the CGST Act to include reference of 'Authorised representative' in the said section. It has been submitted that section 70 of the CGST Act does not mention the words 'authorised representative'. However, section 116 of the CGST Act dealing with 'Appearance by Authorised Representative' allows appearances by the authorised representative. On combined reading of section 70 and section 116 of the CGST Act, it appears that the summoned person may appear either in person or through an authorised representative. However, the current format of summons issued under section 70 of the CGST Act does not provide the option to appear by an authorised representative.

2.1 Ministry of Law & Justice (MoLD) has given the following opinion on the interplay between section 70 and section 116 of the CGST Act:

- Every statute is to be interpreted in accordance with the intention of the legislature. The language employed in a statute or any statutory provision is the determinative factor of the legislative intent of the policy matters.

- Under section 70 of the CGST Act, the Commissioner or the officer of central tax is empowered to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in the inquiry.

- There is no whisper about 'authorised representative' or 'an oath' in section 70. Such words are referred only in section 116 of the CGST Act.

- To expand the provisions of section 70 of CGST Act to include 'authorised representative' or 'oath' by placing reliance on provisions of section 116 of the CGST Act may tantamount to rewriting the provisions of section 70 and may not withstand judicial scrutiny.

2.2 The Central Excise Act, 1944 and Customs Act, 1962, provide in the section itself for an option for the appearance through authorised agent against the summons issued to the person. Therefore, keeping in consideration the legal opinion offered by MoLD and the existing provisions in Central Excise Act, 1944 and Customs Act, 1962, there may be a need for suitable legislative amendment in section 70 of the CGST Act to provide for appearance on summons by the authorised representative of the summoned person. This will promote ease of doing business especially in matter of production of documents and the like, into the conduct of enquiry by the officer.

3. The issue was deliberated by the Law Committee in its meeting held on 07.06.2024. The Law Committee felt that although a harmonious reading of both the sections, section 70 and section 116 of CGST Act, leads to an interpretation that a summoned person may be represented by an authorised representative to give evidence or to produce a document or any other thing in the inquiry in response to summons under section 70 of the CGST Act, except in cases where the concerned person is required to appear personally for examination on oath or affirmation. However, considering the opinion of Ministry of Law & Justice (MoLD) discussed above, it may be appropriate that a specific provision is inserted in section 70 of the CGST Act to provide an explicit reference to 'authorised representative'.

3.1 Accordingly, Law Committee recommended insertion of a sub-section (1A) in section 70 of CGST Act as proposed below:

Insertion of sub-section (1A) in section 70

"(1A) All persons summoned under sub-section (1) shall be bound to attend, either in person or by an authorised representative, as such officer may direct, and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements or to produce such documents and other things as may be required."

VI. Amendment in sub-section (1B) of section 122 of the CGST Act, 2017 with respect to penalty provisions for non-compliant electronic commerce operators.

The GST Council, in its 47th meeting held on 28th and 29th June 2022, approved waiver from requirement of mandatory registration under section 24(ix) of CGST Act for unregistered person supplying goods through Electronic Commerce Operator ("ECO") upto threshold turnover for registration, subject to certain conditions, and also allowed composition taxpayers to make supply of goods through ECOs subject to certain conditions. Accordingly, Notification No. 34/2023–Central Tax dated 31.07.2023, Notification No. 37/2023-Central Tax dated 04.08.2023 and Notification No. 28/2023 – Central Tax dated 31.07.2023 were issued providing a special procedure to be followed by ECOs and the conditions to be fulfilled by the ECOs and such unregistered person for availing the benefit of such waiver from requirement of mandatory registration.

2. In order to ensure due compliance of the conditions as laid down through the said Notifications, the GST Council also recommended to introduce penal provisions under sub-section (1B) of Section 122 of CGST Act for contraventions by ECOs related to supply of goods made through ECOs by unregistered persons and composition taxpayers. The said penal provisions on ECOs have been introduced in CGST Act by inserting sub-section (1B) in section 122 of the CGST Act vide section 155 of the Finance Act, 2023 (No. 8 of 2023). The said penal provision has been brought in force with effect from 01.10.2023 vide Notification no. 28/2023-Central Tax dated 31.07.2023.

3. In this regard, various references and representations have been received from trade seeking clarification on the applicability of these penal provisions under section 122(1B) of CGST Act in respect of ECOs who are not required to collect tax at source from suppliers under section 52 of the CGST Act.

3.1 In view of the provisions of section 52 of the CGST Act, read with section 2(45) of the said Act, the ECOs can be categorised into two categories:

(i) ECOs who are required to collect tax at source under section 52 of CGST Act, i.e. those ECOs who collect consideration in respect of a taxable supply being made through them by other suppliers.
(ii) ECOs who do not collect consideration in respect of a taxable supply being made through them by other suppliers and thus, are not required to collect tax at source under section 52 of CGST Act.

3.2 It may be noted that benefit of exemption from registration upto threshold turnover for making intra-State supplies of goods through ECOs, who are required to collect tax at source under section 52, has been provided to unregistered persons. Also, the restriction on composition taxpayers has also been lifted by allowing them to make intra-State supply of goods through ECOs, who are required to collect tax at source under section 52. Further, special procedure has been provided for such ECOs, who are required to collect tax at source under section 52, in respect of supply of goods through them by such unregistered suppliers or composition taxpayers.

4. As regards, the issue of applicability of penal provisions introduced for ensuring compliances by unregistered persons and composition taxpayers as mandated vide various notifications detailed above, it is observed that such suppliers have been facilitated by extending certain benefits subject to specified conditions to make their supplies through ECOs who are required to collect taxes at source under section 52 of the CGST Act. Accordingly, the penal provisions under section 122 (1B) of the CGST Act has been provided in respect of ECOs, who are required to ensure compliance with the conditions of supply of goods by unregistered suppliers and compositions taxpayers through them, as provided vide the said concerned notifications, as discussed in above paras. It may be noted that such compliance is required from the ECOs, who are required to collect tax at source under section 52 of the CGST Act, in respect of supplies of goods being made by unregistered persons and composition taxpayers through them and **not from other category of ECOs**, who are **not** required to collect tax at source under section 52 of the CGST Act

4.1 However, plain reading of the provisions of Section 122 (1B) of the CGST Act indicates that **any electronic commerce operator,** regardless of whether he is liable to collect tax at source under section 52 of the CGST Act or not, shall be liable for penal actions under sub-section (1B) of section 122 of the CGST Act for non-compliance of the provisions mentioned therein which was never intended by the Council and which can be clearly seen from the above mentioned notifications, wherein responsibilities have been given to the ECOs who are required to collect tax at source under section 52 of the CGST Act. Making penal provisions of section 122 (1B) of CGST Act applicable on ECOs, who are not required to collect consideration in respect of a taxable supply being made through them by other suppliers, and thus are not required to collect tax at source under section 52 of CGST Act, will make them liable for penal action in respect of actions of un-registered persons and composition taxpayers, in respect of supplies made through their platform, whereas such ECOs are otherwise not obliged for compliances in respect of unregistered persons and composition taxpayers, as required vide the above mentioned notifications. Making them liable to such penal action, without any obligation for the said activities mentioned in section 122(1B) of CGST Act, will put unnecessary burden on such ECOs who are not obliged to collect tax at source in the first place. This was not intended at the time of providing for such penal provision.

5. Accordingly, to redress the issue raised by the trade, Law Committee in its meeting held on 01.12.2023 deliberated on the issue and recommended that the applicability of sub-section (1B) of

section 122 of CGST Act may be restricted to ECOs, who are required to collect tax at source under section 52 of CGST Act, by making the following amendment **retrospectively with effect from 01.10.2023** (i.e. date from which section 122(1B) of CGST Act has come into effect):

"(1B) Any electronic commerce operator, who is liable to collect tax at source under Section 52, who —

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(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 sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.".

6. The aforesaid proposed amendment in Section 122(1B) of CGST Act will ensure that compliances/ restrictions are mandated only for ECOs, who are actually liable to collect tax at source under section 52 from a supplier.

VII. Amendment in section 140(7) of the CGST Act, to provide for transitional credit in respect of invoices pertaining to services provided before appointed date and where invoices were received by ISD before the appointed date.

Hon'ble High Court of Bombay in its order dated 29.02.2024 in the case of Siemens Ltd Vs Union of India relating to the eligibility of transition credit in the case of an Input Service Distributor (ISD) has mentioned the following:

"…before we proceed to adjudicate such issues, it would be appropriate that the GST Council considers the issues inter alia the effect that Sub-Section (7) of Section 140 would bring about, on the transition of the input tax credit, being permitted under such provision. More particularly, as it is urged on behalf of the Petitioners, that it is ill-conceivable that the input tax credit which was legitimately available with the petitioners before the appointed day, cannot be permanently lost or lapsed, merely because the GST, machinery does not create an effective procedural mechanism, for such credit to be transferred to the Electronic Credit Ledger (ECL) to be utilized, thereby, creating a situation of such credit being permanently lost. It is also their submission that this can never be the intention of the legislation even on a plain reading of sub-section (7) of Section 140.

We are thus of the considered opinion that, an appropriate examination of such issues by the GST Council shall assist the Court in taking an appropriate view of the matter.

We accordingly adjourn these proceedings to 9th August 2024."

2.1 After this order, a reference has been received from Additional Solicitor General of India (ASG), where he has mentioned that the High Court expects the government to carry out an

amendment in the provisions of Section 140(7) of CGST Act, 2017, in the interest of the trade, subject to legitimate conditions including proper scrutiny and verification.

2.2 ASG has also mentioned that an amendment may be made in Section 140(7) of CGST Act, 2017, so that the current expression "received on or after the appointed day" should be amended to read "received before, on or after the appointed day", prescribing some time limit for transition.

3. Analysis:

3.1 Section 140 through various sub-sections permit transitioning of credit from the erstwhile CENVAT regime into GST. But all these provisions apply only when the supplier has paid output tax and seeks a transition of the input tax credit (under the erstwhile regime as CENVAT credit). As Input Service Distributor (ISD) is only required to distribute the input tax credit in respect of invoices received for common services, he is not required to pay the output tax liability and therefore, cannot transition the CENVAT credit on his own into the GST regime. An ISD can only distribute the ITC within the PAN registration of the same entity/ group entities who may be suppliers paying output tax liability.

3.2 Since, ISDs in the GST regime were required to take compulsory fresh registration by virtue of Section 24(viii) of the CGST Act, 2017 and the Finance Act, 1994 was repealed with effect from 1st July, 2017, a way-out was required for distribution of credit of Service Tax, on account of services received prior to the appointed day by an ISD and where the invoices relating to such services were received after the appointed day. The transitional provision under sub-section (7) of Section 140 of the CGST Act, specifically deals with this situation. It provides that, even after repealing of the Finance Act, 1994, an ISD (registered under pre-GST regime) could distribute the Service Tax credit, pertaining to services received prior to 1st July, 2017, **even if** the invoices were received on or after the appointed day.

3.3 An Input Service Distributor (ISD) in the existing law, was required to distribute the remaining credit on 30.06.2017 to its branch offices / units, who could have claimed the transitional credit as carried forward CENVAT credit in their Electronic Credit Ledger as per sub-section (1) of Section 140 of CGST Act by filing FORM GST TRAN-1. Further, in respect of services which were received prior to the appointed day by the ISD, but invoices in respect of which were received on or after the appointed day, ISD could distribute the credit in respect of such invoices to its branch offices / units and thereafter, the branch offices could have claimed the said credit as transitional credit, as per the provisions of sub-section (7) of Section 140 of the CGST Act through Table 7(b) of FORM GST TRAN 1.

3.4 In some cases, ISDs have claimed the transitional credit through the modalities prescribed in Section 140(7) of the CGST Act, 2017 and the rules made thereunder in respect of the invoices which were received before the appointed date. In such cases, ISD (registered under pre-GST regime) should have distributed the credit pertaining to services received prior to 1st July, 2017, where the invoices were also received on or before the appointed day, to its branch offices/ units through the service tax return under the existing law. Accordingly, demands have been raised by some tax authorities against such ISDs based on the interpretation that the credit pertaining to invoices which were received before the appointed date cannot be transitioned using sub-section (7) of section 140 of CGST Act, and hence, cannot be claimed in Table 7(b) of FORM GST TRAN-1. This has caused different interpretations being taken by different field formations, resulting in denial of transition of credit.

3.5 It is mentioned that merely because of not distributing the credit under service tax return in respect of such invoices received prior to the appointed date, the transitional credit is being denied on such invoices, which otherwise were eligible for availing credit under the existing law.

4. Law Committee in its meeting held on 30.05.24 deliberated on the issue and felt that transitional credit should be available to ISDs even for such cases where inputs and input services have been received along with invoices prior to 30.06.2017. Law Committee felt that as recommended by ASG, an amendment is required to be made in section 140(7) of CGST Act so as to enable the taxpayers to avail transitional credit of eligible CENVAT credit on account of input services received by an ISD prior to the appointed day, for which invoices were also received prior to the appointed date. Accordingly, the Law Committee recommended that the following amendment may be made in Section 140(7) of CGST Act, 2017 **retrospectively**, **with effect from 01st July 2017**:

Amendment in Section 140 of CGST Act, 2017:

Section 140 of CGST Act, 2017:

…

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act, within such time and in such manner as may be prescribed, even if the invoices relating to such services are received before, on or after the appointed day.

4.1. This amendment is required only in CGST Act, 2017 and no corresponding amendment is required in SGST Act/ UTGST Act.

5. Accordingly, the Agenda Note for various law amendments in CGST Act and IGST Act, as detailed above, is placed before the GST Council for deliberation and approval.

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Agenda Item 3(ii) : Law Amendment regarding time of filing appeal in GST Appellate Tribunal.

Section 109 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') provides for constitution of Appellate Tribunal and its Benches thereof. The Goods and Service Tax Appellate Tribunal (GSTAT) is the second appellate authority within the GST framework and all the appeals against the orders of the appellate/ revisional authorities under Central as well as State GST Act lie with the GST Appellate Tribunal constituted under the CGST Act. The Council in its 49th and 52nd meetings had recommended that the GST Appellate Tribunal shall be constituted at the earliest and had also recommended various amendments in CGST Act for its implementation.

2.1 Accordingly, sections 109, 110 and 114 of the CGST Act, 2017 were substituted vide Finance Act, 2023 and brought into force with effect from 01.08.2023. Further amendments were also made in section 110 of CGST Act, 2017 vide CGST (Second Amendment) Act, 2023 with effect from 28.12.2023 to amend some of the qualifications and conditions of the services in respect of the Members of the Tribunal. Further, vide Statutory Order No. 4073(E) dated 14th September 2023; Government has constituted State Benches of the GST Appellate Tribunal in various states. Also, vide Notification No. 793(E) dated 25th October, 2023, Government has notified the Goods and Services Tax Appellate Tribunal (GSTAT) Rules 2023, as per the recommendations of the Council. These rules are aimed at governing the appointment, qualifications, salary, and other conditions of service for the President and Members of the GSTAT. Further, vide Notification No. S.O. 1(E). dated 1st January, 2024, the Government has notified the constitution of the Principal Bench of the GSTAT at New Delhi.

2.2 It is worthwhile to mention that as per sub-section (1) of section 112 of the CGST Act, any person aggrieved by an order passed against him under section 107 or section 108 of the said Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal. Further, sub-section (3) of section 112 of the CGST Act provides that the Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under the CGST Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for determination

of such points arising out of the said order as may be specified by the Commissioner in his order.

2.3 Since the GST Appellate Tribunals could not be operationalized earlier due to various issues, including the court cases, therefore, in order to remove difficulty arising in giving effect to the above provision of the Act and to ensure that such appeals before GST Appellate Tribunal under section 112 of CGST Act do not get time barred on account of non-operationalization of the Tribunal, the Government, on the recommendations of the Council issued the **Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019**. It has been provided vide the said Order that appeal to tribunal can be made within three months from the date of communication of order which is appealed against or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later. Hence, it was assumed that there will be no difficulty faced by the aggrieved registered person or the Government as appeal to the tribunal in terms of section 112 of the CGST Act would not get time barred and will be valid if filed within three months (six months in case of appeal by the Government) from the date on which President or the State President of the Appellate Tribunal enters office.

3. It is mentioned that the President of the Principal Bench has been appointed by the Government and the President of the Principal Bench has entered office on 6th May, 2024.. Further, as per the revised provisions of section 109 and 110 of CGST Act, there is no provision for State President for the State Benches. Accordingly, it is imperative that as the President of the Principal Bench has entered office, then as per the **Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 3.12.2019,** the period of 3 months for the taxpayer (and 6 months for the department) will start from the date on which the President of the Principal Bench has entered office (i.e. from 06.05.2024) or the date of communication of order sought to be appealed against, whichever is later, for the purpose of filing the appeal before the Appellate Tribunal. However, as appointment of other Judicial and Technical Members of the Principal Bench as well as Judicial and Technical Members of various State Benches may take further time, these benches will actually start functioning only when the required Members of the Bench are appointed and enter office.

3.1 Further, there may be variation in the time by which Principal Bench and various State Benches come into operation as there may be variation between various states in appointment of Members and operationalization of their respective State Benches.

4. Accordingly, there may be a need to revise the time limit for filing appeal in the Appellate Tribunal in terms of section 112 of the CGST Act. As per section 172 of CGST Act, any removal of difficulty order can be issued only under the said section only within a period of five years from the date of commencement of CGST Act, i.e. within 5 years from 01.07.2017. Accordingly, no new removal of difficulty order or any amendment in an order for removal of difficulty can be issued after

30.06.2022. Accordingly, any further amendment in the provision for time limit for filing appeal in GST Appellate Tribunal against an order of the appellate/ revisional authority requires amendment in section 112 of CGST Act. While making such amendment, a provision is required to be incorporated in section 112 of CGST Act for counting of three months for filing appeals in Tribunal from a date to be notified by the Government, in respect of orders of appellate authority passed before such notification.

4.1 The said issue was deliberated by the Law Committee in its meeting held on 25.04.2024 and the Law Committee recommended the following amendment in sub-section (1) of section 112:

"Section 112. Appeals to Appellate Tribunal.-

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from ~~the date on which the order sought to be appealed against is communicated to the person preferring the appeal.~~:-

i. the date on which the order sought to be appealed against is communicated to the person preferring the appeal; or

ii. the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing appeal before the Appellate Tribunal under this Act,

whichever is later.

4.2 Further, Law Committee in its meeting held on 25.04.2024 recommended the following amendment in sub-section (3) of section 112:

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from ~~the date on which the said order has been passed.~~:-

i. the date on which the said order has been passed; or

ii. the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act,

whichever is later, for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

5. Also, Law Committee in its meeting held on 25.04.2024 discussed that a separate notification will be required to be issued on the recommendations of the GST Council for notifying the date for the purpose of filing appeals or applications before the Appellate Tribunal. This date can be decided based on the readiness of the functionality in respect of Tribunal on the portal as well as based on the status of appointment of Members of various Benches as well as operational readiness of the Benches of the Tribunal.

6. Further, it was also recommended by the Law Committee in its meeting held on 25.04.2024 that once the said law amendments are done and made operative, the **Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019,** may be rescinded. It was also recommended by the Law Committee that the amendments proposed in Para 4.1 and 4.2 above in sub-section (1) and sub-section (3) of section 112 of CGST Act, may be brought into effect before the completion of three months from the date on which the President of the Appellate Tribunal has entered into office.

7. Also, as per sub-section (6) of section 112 of the CGST Act, the Tribunal is given the power to admit the appeal within three months after the expiry of the appeal filing period of 3 months by the taxpayer as provided in sub-section (1) of the said section. However, similar provision is not provided for allowing the appeals to be filed by the department in the Tribunal under sub-section (3) of section 112 of CGST Act beyond the period of six months specified therein. Therefore, Law Committee in its meeting held on 25.04.2024 recommended that the Tribunal may be empowered to entertain appeals from the department also for a further period of 3 months after expiry of the period of 6 months as provided in sub-section (3) of the section 112 of CGST Act, in case the Tribunal is satisfied that there was a sufficient cause for such delay. Accordingly, following amendment in sub-section (6) of section 112 was recommended by the Law Committee:

> "(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period."

8. The Agenda Note is placed before the GST Council for deliberation and approval.

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Agenda Item 3 (iii) : Law Amendment regarding GST Appellate Tribunal.

(a) providing for sunset clause for Anti-Profiteering provisions under the GST laws and the handling of Anti-Profiteering cases under Section 171 of the Central Goods and Services Act, 2017 by Appellate Tribunal.

(b) providing for enabling provision for notifying the scope of cases that can be heard by the Principal Bench of GSTAT only.

The Central Government had constituted the National Anti-Profiteering Authority (NAA) to handle the cases relating to anti-profiteering. NAA was operational until November 2022. Vide Notification dated 23rd November, 2022, the Competition Commission of India (CCI) was empowered to examine the anti-profiteering cases w.e.f. 01.12.2022. Since December 2022, CCI has disposed-of 27 cases (as on 29th February 2024) and total of 140 cases are pending adjudication. 184 cases are pending in various judicial fora where the orders of CCI/NAA have been challenged.

2.1. Anti-profiteering provisions in Section 171 of the CGST Act were meant to be transitional provision post the implementation of GST regime in 2017. It was intended to ensure that the benefits of reduction in tax rates due to implementation of GST would get passed on to the ultimate customers and the businesses do not profit from such statutory exercise.

2.2. GST is in the seventh year of its implementation. Number of complaints being initiated in the last 12 months is 10 (on an average less than 1 per month). Transition to GST regime has more or less stabilized. Moreover, the price reductions as the means to pass on benefits of any changes in GST may also be dependent on other market forces.

2.3 Law Committee in its meeting held on 07.06.2024 deliberated on the issue and observed that since substantial time-period has passed since the introduction of the GST law, it may be prudent to re-assess the relevance of the Anti-profiteering provisions.

3. In the above context, the Law Committee felt that there is a need to introduce a sunset date in Section 171 of the CGST Act, which deals with the anti-profiteering measures, so as to allow filing of any application under anti-profiteering provisions only upto the said date. The Law Committee, accordingly, recommended the following:

- To amend the Section 171 of the CGST Act by inserting a proviso to sub-section (2) of the said section to provide for power to the Government to notify the date from which the Authority under section 171 of the CGST Act will not accept any **request for examination** as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
- To insert an Explanation in the said sub-section that "request for examination" in the said proviso means the written application filed by an applicant for such examination
- To issue a notification specifying 1st April 2025 as the said date under proviso to the said sub-section.

4. Further, **Law Committee also took note of the inability expressed by CCI to handle anti-profiteering cases** as that is not their core function and accordingly, CCI has requested the mandate for adjudication of anti-profiteering matters may be given to an appropriate GST authority. In order to ensure that there is expeditious disposal of pending cases, Law Committee recommended that the

Principal Bench of GST Appellate Tribunal may be given the mandate to adjudicate anti-profiteering cases under section 171 of the CGST Act. For doing the same, Law Committee recommended:

- Amendment of sub-section (2) of section 171 of the CGST Act to provide for enabling power to notify Principal Bench of GST Appellate Tribunal as an Authority to examine anti-profiteering cases.
- Amendment of section 109 of CGST Act (**insertion of sub-section 5A in section 109**) to provide the power to notify the Principal Bench of GST Appellate Tribunal as an Authority to examine anti-profiteering cases.
- Notification to notify Principal Bench of GST Appellate Tribunal to act as an Authority to handle anti-profiteering cases.

5. It was further observed that as per proviso to section 109(5) of CGST Act, cases in which one of the issues relates to place of supply, then the said case would be heard only by the Principal Bench of GSTAT. As per section 109(6) of the CGST Act, the President has the power to distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another. Law Committee felt that it may be desiarable to have an enabling provision in section 109 of the CGST Act so as to notify the class of cases which would be heard only by the Principal Bench, so that there is uniformity in the implementation of GST Law across the Country.

5.1 Accordingly, Law Committee recommended that a proviso may be inserted in sub-section (5) of section 109 of the CGST Act to enable the Government to notify, as per the recommendations of the Council, other cases or class of cases which shall be heard only by the Principal Bench of the Appellate Tribunal.

6. Accordingly, as per discussions in Para 3, 4 and 5 above, the following recommendations were made by the Law Committee:

(i) Amendment in Section 171 of CGST Act:

"171. Antiprofiteering measure.— (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, or empower the Appellate Tribunal constituted under this Act, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Provided that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority will not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Explanation. - For the purpose of proviso to this sub-section, 'request for examination' shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3)…….

Explanation 1.-……..

Explanation 2.- For the purpose of this section, the reference to the expression — "Authority" shall include reference to the "Appellate Tribunal" if so empowered under the sub-section (2).

(ii) Notification under Section 171 of CGST Act to provide for the sunset date:

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

NOTIFICATION No. xx/202x

New Delhi, the xx xxxxxxx, 202x

S.O…..(E).- In exercise of the powers conferred by sub-section (2) of section 171 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, hereby specifies 1st day of April, 2025 as the date from which the Authority referred to in the said section will not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

2. This notification shall come into force with effect from its publication in the Official Gazette.

(iii) Amendment in Section 109 of CGST Act:

"Section 109. Constitution of Appellate Tribunal and Benches thereof.- (1) The Government shall, on the recommendations of the Council, by notification, establish 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, or for adjudicating or examining such other matters as may be notified by the Government on the recommendations of the Council.

….

(5) The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority:

Provided that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench:

Provided further that the Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench.

(5A) The Principal Bench shall also adjudicate or examine such other matters as may be notified by the Government on the recommendations of the Council.

(6) Subject to the provisions of sub-section (5) and (5A), the ~~The~~ President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.

……..”

(iv) Notification to notify Principal Bench of GST Appellate Tribunal:

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

NOTIFICATION No. xx/202x

New Delhi, the xx xxxxxxx, 202x

S.O…...(E).- In exercise of the powers conferred by sub-section (2) of section 171 read with sub-sections (1) and (5A) of section 109 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Goods and Services Tax Council, hereby empowers the Principal Bench of the Appellate Tribunal constituted under sub-section (3) of section 109 of the said Act, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

2. This notification shall come into force with effect from xx day of xxxxx, 202x.

7. Accordingly, the Agenda Note is placed before the GST Council for deliberation.

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Agenda Item 3 (iv): Amendments in Section 73 and Section 74 of CGST Act, 2017 and insertion of a new Section 74A in CGST Act, to provide for common time limit for issuance of demand notices and orders irrespective of whether case involves fraud, suppression, wilful misstatement etc., or not.

1. **Background:**

1.1 Section 73 of the Central Goods and Services Tax Act (hereinafter referred to as the 'CGST Act') deals with the determination of tax not paid, short paid, erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason other than fraud, suppression of facts or wilful misstatement. Under this section, the time limit for issuance of demand order is specified (i.e., three years from the due date for filing of annual returns or from the date of erroneous refund) and the time limit for issuance of demand notice is at least three months prior to the time limit specified for issuing an order.

1.2 Unlike Section 73, Section 74 specifically deals with cases involving fraud, suppression of facts or wilful misstatement with the intention to evade tax. Under this Section, the time limit for issuance of the order is within five years from the due date for filing of annual returns or from the date of erroneous refund, and the time limit for issuance of demand notice is at least six months prior to the time limit specified for issuing the order under this section.

2. The said provisions are reproduced below, for ease of reference:

2.1 **Section 73 of the CGST Act, 2017:**

Section 73. 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 wilful-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 leviable under the provisions of this Act or the rules made thereunder.

(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 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 sub-section (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 sub-section (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.

(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 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.

2.2 **Section 74 of the CGST Act, 2017:**

Section 74. 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.-

(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 wilful-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.

(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 wilful-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 sub-section (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 sub-section (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 refund.

(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 and 125 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.*

3.1 It can be seen that sub-section (2) read with sub-section (10) of section 73 of the CGST Act defines the period for issuance of demand notice under the said section. Similarly, sub-section (2) read with sub-section (10) of section 74 of the CGST Act defines the period for issuance of demand notice under the said section. This is to say that the sections 73 and 74 of CGST Act prescribe the time limit for issuance of demand order, and the time limit for issuance of demand notice is counted backward from the same, unlike earlier laws like Central Excise Act, Service Tax etc.

3.2 Feedback was received from the field formations that the time available for issuance of adjudication order under sections 73 and 74 of the CGST Act is not sufficient to complete the process in a sound legal way. It was submitted that the process of adjudication is a bilateral exercise which involves the involvement and inclination of both the taxpayer as well as the tax authority to dispose of the same in a time bound manner. During the adjudication process, the respondent is required to be provided with an opportunity to explain his stand and present evidence of the same. This is also a time- consuming process since the taxpayer ma need ample time and opportunity to present his case. Furthermore, the evidence presented in the hearing process at times needs to be verified and some additional evidence is also required to be presented. At times, the adjudicating authority needs to verify the submissions from a third party which requires additional time.

3.3 The matter was examined by the Law Committee in its meetings held on 18.03.2024 and 16.05.2024. It was observed that as per the existing provisions, where the demand notice is issued on the last date permissible as per the above sections, then the time period for issuance of order for the same is only three months and six months form the said date of issuance of the said demand notice under section 73 and 74 respectively.

3.4 Further, it was noted that sub-section (10) of section 75 of the CGST Act mentions that the proceedings shall be deemed to be concluded where the order is not issued within the time period specified under section 73 or 74 respectively. The relevant extract of the said sub-section is reproduced hereunder:

> *"(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."*

3.5 It was felt that this creates a heavy burden on the officers as the amount of time required to dispose of the cases by issuing demand order does not take into account the complexity of the cases, as well as the time which may be required or sought by the noticee to reply to the demand notice and to present his case along with required documents/ evidences.

3.6 It was also noted that even though an adjudication order can be issued any time before the period mentioned in Section 73(10) and Section 74(10) of CGST Act, the general tendency of the proper officers in the field is to issue the demand notice just before the deadline, i.e. just 3 months or 6 months prior to the last date mentioned in Section 73(10) and Section 74(10), respectively. This only gives them a period of 3 months and 6 months respectively, to adjudicate all the demand notices as per the time limit mentioned in Section 73(2) and Section 74(2) of the CGST Act. Therefore, it was felt that there may be a need to amend Sections 73 and 74 of the CGST Act, 2017, in order to provide for specific time limit for issuance of demand notice based on the due date for filing of Annual returns, and to determine the time limit for issuance of demand order relative to the date of issue of the SCN, by giving **six months** and **twelve months** respectively for adjudication of orders under Section 73 and 74 respectively.

3.7 At the same time, the time period available for adjudication process in specific cases based on certain circumstances (like in case of adjudicating officers appointed to election duty, cases where the taxpayer requests for additional time to submit documents, cases involving cross-examination, cases where a new officer has taken charge as the adjudicating authority and the opportunity for personal hearing needs to be provided again, etc.,) was required to be flexible and therefore, it was felt that there may also be a need to have the enabling provision for increasing the time period available for adjudication process in such circumstances, by providing powers to the Commissioner, or an officer authorised by the Commissioner sufficiently senior in rank, for extension of time limit for adjudication, in those specific cases, similar to that provided in Customs Act, 1962.

4. As the time period of issuance of order is proposed to be increased to six months and twelve months from the date of demand notices issued under Section 73 and Section 74 respectively, there also arose a need to have a relook at the time period provided for payment of entire tax demanded along with interest and reduced penalty by the taxpayer for concluding the proceedings under the said sections.

4.1 In this regard, it is to be mentioned that sub-section (8) Section 73 states that the person chargeable with tax may pay the tax along with interest within thirty days of issue of demand notice, no penalty shall be payable and all proceedings in respect of said notice shall be deemed to be concluded. Similar provisions are present in sub-section (8) of Section 74 which states that the person chargeable with tax may pay the tax along with interest and a penalty of twenty five per cent of such tax within thirty days of issue of SCN, all proceedings in respect of said notice shall be deemed to be concluded.

4.2 The Law Committee felt that the time period of **thirty days** is too short in order for the taxpayers to analyse the said notice, and take a decision for payment of full amount of tax demanded, along with interest, and reduced penalty, as applicable. After expiry of the said time period of thirty days, even if the taxpayer is willing to comply with the demand notice and pay the full amount of tax demanded, along with interest and reduced penalty, for conclusion of the proceedings, he is not able to avail the benefit of the same. In view of above, the Law Committee recommended to increase the said time limit from '30 days' to '60 days' under the sub-section (8) of Section 73 and sub-section (8) of Section 74.

5.1 During the above discussions, it also emerged that there may be a case for providing same time limit under Section 73 and Section 74 of the CGST Act for issuance of demand notices/ demand orders. As discussed above, as per the present formulation of Sections 73 and 74 of CGST Act, the orders are to be issued within the period of three years and five years, respectively, from the due date for furnishing annual returns for the relevant financial year. It has been found with the past experience in Central Excise and Service Tax that, in a large number of the cases where the officers have issued demand notices invoking reasons of fraud, suppression or willful misstatement, such demands get dropped in higher appellate/ judicial fora, as they are held non sustainable solely for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued.

5.2 It is to be noted that in GST regime, Section 75(2) of CGST Act, 2017 provides that if the notice is issued under section 74(1) of CGST Act, but if concluded in the appeal proceedings/ court proceedings 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 the notice was issued, then the tax payable needs to be redetermined as if notice were issued under Section 73(1). In such cases, the demand for the tax periods which are beyond the limitation period prescribed by Section 73 would have to be dropped, thus losing out on a portion of revenue.

5.3 Therefore, Law Committee felt that it may be desirable that to avoid such revenue loses on account that show cause notices are issued under Section 74(1) could not be established on account of fraud, suppression or willful misstatement, there may be a need to have the same the limitation period for issuing demand notices and orders under Section 73 and Section 74 of CGST Act, 2017, while

keeping a higher penalty for cases involving fraud, willful misstatement, or suppression of facts, at the levels as they are currently. This will aid in safeguarding at least the tax demand, as in such cases only the penalty amounts need to get re-determined based on whether the case involves fraud, willful misstatement, or suppression of facts, or not.

5.4 In this regard, Law Committee recommended that the limitation period for issuing demand notices, may be made **forty-two months from the relevant date**, and the time limit for issuance of demand orders may be kept at **twelve months from the date of issuance of the demand notice**, irrespective of whether the charges of fraud, suppression or willful misstatement of facts are invoked or not. It was also recommended that the flexibility of time limit for issuance of demand order as proposed earlier may also be kept, i.e., in cases where the proper officer is not able to issue the order within the period specified above, the Commissioner, or an officer authorized by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, extend the said period further by a **maximum of six months.** This may be done by the Commissioner or an officer authorized by him, having regard to the circumstances to be recorded in writing, under which the proper officer is prevented from issuing the order under sub-section (6), before the expiry of the specified period.

5.5 As the due date for filing of annual returns for the FY 2023-24 falls on 31st December 2024, Law Committee recommended that these amendments may be made prospective, in respect of demands for the period FY 2023-24 onwards. Therefore, Law Committee, after due deliberations in its meetings held on 18.03.2024 and 16.05.2024, recommended the insertion of a new section, Section 74A to the CGST Act, 2017, as detailed below. The Law Committee also recommended amendments in Sections 73 and 74 of the CGST Act, to restrict its applicability up to FY 2022-23.

6. The proposed amendments, for achieving the above, are as detailed below:

Section 73 of CGST Act:

Determination of tax pertaining to the period upto financial year 2022-23, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful 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 wilful-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 leviable under the provisions of this Act or the rules made thereunder.

(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.

……

(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 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.

Section 74 of CGST Act:

Determination of tax pertaining to the period upto financial year 2022-23, not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-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 by reason of fraud, or any wilful-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.

(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.

…….

(10) The proper officer shall issue the order under sub-section (9) within 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 refund.

Section 74A of CGST Act:

Section 74A. Determination of tax pertaining to financial year 2023-24 onwards not paid or short paid or erroneously refunded or input tax credit pertaining to financial year 2023-24 onwards wrongly availed or utilized, for any reason.-

(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, 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 leviable under the provisions of this Act or the rules made thereunder:

Provided that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized in a financial year is less than one thousand rupees .

(2) The proper officer shall issue the notice under sub-section (1) within forty-two months 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 forty-two months from the date of erroneous refund.

(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 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 penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized,

(i) for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person.

(ii) for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to the tax specified in the notice.

(6) 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;

(7) The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2):
Provided *that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the circumstances to be recorded in writing, under which the proper officer was prevented from issuing the order under sub-section (6), before the expiry of the specified period, extend the said period further by a maximum of six months.*

(8) The person chargeable with tax where any tax which 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 wilful-misstatement or suppression of facts to evade tax, may,

(i) before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 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, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;

(ii) pay the said tax along with interest payable under section 50 within sixty 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 person chargeable with tax, where 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 wilful-misstatement or suppression of facts to evade tax, may,

(i) before service of notice under sub-section (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, and 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;

(ii) pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded;

(iii) pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) 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.

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under sub-section (5) 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.

Explanation 1.- For the purposes of 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 this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 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.

7.1 It may be noted that consequential amendments may also need to be done in multiple sections of CGST Act, 2017. Consequential amendments to Section 17(5) of the CGST Act were deliberated in the Law Committee, and it was recommended that clause (*i*) of Section 17(5) may be omitted in

respect of tax paid for FY 2023-24 onwards, as section 129 and section 130 mentioned in the said clause pertain to detention, seizure and release of goods and conveyances in transit and confiscation of goods or conveyances and levy of penalty, the same are no more relevant for the purpose of the said clause. Further, after insertion of proposed section 74A in CGST Act for determination of tax demands for FY 2023-24 onwards, there shall be no distinction between the tax demanded and paid in terms of section 73 and section 74, and therefore there is no need to block input tax credit on the tax paid in accordance with section 74 in the said clause for FY 2023-24 onwards. Besides, it was felt that, that this will help in recovery of taxes demanded under Section 74A of the CGST Act, 2017.

7.3 The Law Committee also recommended other consequential amendments as detailed in **Annexure-A**.

8. The recommendations of the Law Committee as detailed above are placed before the GST Council for approval.

Consequential Amendments in CGST Act, 2017

1. Section 10(5):

Section 10. Composition levy.-

(5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 or section 74 A shall, mutatis mutandis, apply for determination of tax and penalty.

2. Section 21:

Section 21. Manner of recovery of credit distributed in excess.-

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74 or section 74A, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

3. Section 35(6):

Section 35. Accounts and other records.-

(6) *Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74 or section 74A, as the case may be, shall, mutatis mutandis, apply for determination of such tax.*

4. Section 49 (8)(c):

Section 49. Payment of tax, interest, penalty and other amounts.-

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:-

...

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74 or section 74A.

5. Section 50:

Section 50. 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 or section 74A in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.

6. Section 51(7):

Section 51(7). Tax deduction at source.-

(7) The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74 or section 74A.

7. Section 61(3):

Section 61. Scrutiny of returns.-

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74 or section 74A.

8. Section 62 (1):

Section 62. Assessment of non-filers of returns.—

(1) Notwithstanding anything to the contrary contained in section 73 or section 74 or section 74A, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

9. Section 63:

Section 63. Assessment of unregistered persons.—

Notwithstanding anything to the contrary contained in section 73 or section 74 or section 74A, where a taxable person fails to obtain registration even though liable to do so or whose

registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

10. Section 64 (2):

Section 64. Summary assessment in certain special cases.-

(2) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74 or section 74A.

11. Section 65(7):

Section 65. Audit by tax authorities.—

(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 or section 74A.

12. Section 66(6):

Section 66. Special audit.-

(6) Where the special 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 or section 74A.

13. Section 75(1):

Section 75. 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 or sub-sections (2) and (7) of section 74A, 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 wilful-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.

(2A) Where any Appellate Authority or Appellate Tribunal or court concludes that the penalty demanded under clause (ii) of sub-section (5) of section 74A is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the penalty shall be payable by such person, under clause (i) of sub-section (5) of section 74A.

...

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within ~~three years~~ the period as provided for in sub-section (10) of section 73 or ~~within five years as provided for~~ in sub-section (10) of section 74 or in sub-section (7) of section 74A.

(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 High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 or sub-section (7) of section 74A 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 or section 74A, 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.

(13) Where any penalty is imposed under section 73 or section 74 or section 74A, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

14. Section 104(1):

Section 104. Advance ruling to be void in certain circumstances.—

(1) Advance ruling to be void in certain circumstances.— *(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:*

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 or sub-sections (2) and (7) of section 74A.

15. Section 107 (11):

Section 107 . Appeals to Appellate Authority.-

(11) *The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision*

or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 or section 74A.

16. Section 127:

Section 127. Power to impose penalty in certain cases.—

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under section 62 or section 63 or section 64 or section 73 or section 74 or section 74A or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

17. Section 17(5):

Section 17. Apportionment of credit and blocked credits.-

(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:-*

...

(i) any tax paid in accordance with the provisions of sections 74~~, 129 and 130~~ in respect of any financial year upto FY 2022-23.

Agenda Item 3(v): Amendment in section 39 of CGST Act and rule 66 of CGST Rules, 2017 for mandating NIL returns by TDS deductors and waiver of late fee for late filing of NIL FORM GSTR-7 along with changes in FORM GSTR 07 for inserting invoice/document wise details of tax deducted at source.

As per the provisions of sub-section (3) of Section 39 of CGST Act, 2017 read with Rule 66 of CGST Rules, 2017, a registered person required to deduct tax at source under section 51 of CGST Act is required to furnish a return in FORM GSTR-7 for the month in which such deductions have been made. It has been brought to the notice by some tax administrations that as FORM GSTR-7 is only required to be filed for the months in which deductions have been made, it is difficult to monitor the filing of the same by the TDS deductors. Accordingly, requests have been made for providing a mechanism to allow the tax administrations to track non-filing of returns by TDS deductors and take timely remedial action to ensure compliance by such registered persons.

2. Further, representatives of trade have also brought to notice that the extant format of FORM GSTR-7 requires only GSTIN wise details of the tax deducted at source to be furnished in the said form, due to which a deductee has to accept/reject the entire amount passed by a particular deductor. Accordingly, requests have been made to make changes in FORM GSTR-7, so that invoice level information is furnished by the deductors.

3. The matter has been examined. A combined reading of sub-section (3) of Section 39 of CGST Act 2017 and Rule 66 of CGST Rules (reproduced below) indicates that TDS deductors are required to furnish return in FORM GSTR-7 'for the months in which such deductions have been made'. Therefore, it is clear that FORM GSTR-7 is not required to be filed for the months in which no deduction has been made.

Section 39. Furnishing of returns.-

….
(3)Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.
….

Rule 66. Form and manner of submission of return by a person required to deduct tax at source.-

(1) Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in FORM GSTR-7 electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.
(2) The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the deductees on the common portal after filing of FORM GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.
(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in FORM GSTR-7A on the basis of the return furnished under sub-rule (1).

4. The matter was deliberated by the Law Committee in its meeting held on 16.05.2024. It was recommended by the Law Committee that in order to have better monitoring of filing of FORM GSTR-7 by TDS deductors, filing of return in FORM GSTR-7 may be made mandatory for each month irrespective of whether any deductions have been made by the TDS deductors in the said month or not. It was also felt by Law committee that no late fee should be payable in respect of delayed filing of such nil FORM GSTR-7 returns. Further, it was recommended that the time

limitation to furnish the return within 10 days of the end of such month may be brought under the Rule 66(1) of CGST Rules instead of Section 39(3) of CGST Act.

5. Further, as per rule 66(2) of CGST Rules, on filing of FORM GSTR-7 by the deductors, the details of the tax deducted at source are made available to the deductees for claiming the amount of tax deducted in his electronic cash ledger after validation. As the format of FORM GSTR-7 requires only GSTIN wise details of the tax deducted at source to be furnished in the said form, a deductee has no option but to either accept or reject the entire amount passed by a particular deductor**.**

6. The Law committee in its meeting held on 25.04.2024 deliberated on the above matter. It was felt that invoice wise details of tax deducted at source in FORM GSTR-7 is desirable as it would enable the deductees to accept/reject the TDS deducted at invoice level, rather than having to accept/reject the entire amount passed by a particular deductor. Further, the same would also help the tax authorities in better reconciliation of FORM GSTR -7 returns of the deductors with FORM GSTR-1 returns of the deductees.

7. In view of the above, Law committee recommended the following:-

a) sub section 3 of section 39 of CGST Act may be amended as below:

Section 39. Furnishing of returns.-

(3)Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, for every calendar month, ~~in such form and manner as may be prescribed,~~ a return, electronically, of the ~~for the month in which such~~ deductions ~~have been~~ made during the month ~~within ten days after the end of such month.~~, in such form and manner and within such time, as may be prescribed.

Provided that the said registered person shall furnish a return for every calendar month whether or not any deductions have been made during the said month.

b) Rule 66(1) of CGST Rules may be amended as below:

Rule 66. Form and manner of submission of return by a person required to deduct tax at source.-

Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in FORM GSTR-7, on or before the tenth day of the month succeeding the calendar month, electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.

c) no late fee should be leviable for delayed filing of a nil return in FORM GSTR-7. The draft notification, in this regard, as recommended by the Law Committee is enclosed as **Annexure X** to this agenda note.

d) for the ease of the registered persons, GSTN may provide a functionality for single click filing of a nil return in FORM GSTR-7 on the common portal and/ or a mobile application.

e) Table 3 and Table 4 of FORM GSTR-7 may be suitably amended to provide for invoice wise details, amount of tax involved in the invoice, payment made and amount of tax deducted at source. The proposed changes in FORM GSTR-7, as recommended by the Law Committee are enclosed as **Annexure Y** to this agenda note.

8. Accordingly, the agenda is placed before GST Council for approval.

Annexure X

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

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

Notification
No. XX/2024 – Central Tax

New Delhi, dated the XX May, 2024

G.S.R.....(E).— In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 22/2021– Central Tax, dated the 1st June, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 366(E), dated the 1st June, 2021, namely:—

In the said notification, after the first proviso, the following proviso shall be inserted, namely: —

"Provided further that the total amount of late fee payable under section 47 of the said Act by the registered persons who fail to furnish the return in **FORM GSTR-7** for a month by the due date, shall stand waived, where the total amount of central tax deducted at source in the said month is nil."

[F. No. CBIC-20001/5/2024]

(Raghavendra Pal Singh)

Director

Note: The principal notification No. 22/2021– Central Tax, dated the 1st June, 2021 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 366(E), dated the 1st June, 2021.

Annexure Y

FORM GSTR-7

[See rule 66 (1)]

Return for Tax Deducted at Source

Year				
Month				

1.	GSTIN	
2.	(a) Legal name of the Deductor	Auto Populated
	(b) Trade name, if any	Auto Populated

3. Details of the tax deducted at source

(Amount in Rs. for all Tables)

~~GSTIN of deductee~~	~~Amount paid to deductee on which tax is deducted~~	~~Amount of tax deducted at source~~		
		~~Integrated Tax~~	~~Central Tax~~	~~State/UT Tax~~
~~1~~	~~2~~	~~3~~	~~4~~	~~5~~

GSTIN of deductee	Invoice/ document details			Amount paid to deductee liable for TDS	Amount of tax deducted at source		
	No.	Date	Value		Integrated tax	Central tax	State/UT tax
1	2	3	4	5	6	7	8

4. Amendments to details of tax deducted at source in respect of any earlier tax period

~~Original details~~			~~Revised details~~				
~~Month~~	~~GSTIN of deductee~~	~~Amount paid to deductee on which tax is deducted~~	~~GSTIN of deductee~~	~~Amount paid to deductee on which taxis deducted~~	~~Amount of tax deducted at source~~		
					~~Integrated Tax~~	~~Central Tax~~	~~State/UT Tax~~
~~1~~	~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~

Original details						Revised details							
Month	GSTIN of deductee	Invoice/ document details			Amount paid to deductee liable for TDS	GSTIN of deductee	Invoice/ document details			Amount paid to deductee liable for TDS	Amount of tax deducted at source		
		No.	Date	value			No.	Date	value		Integrated tax	Central tax	State/ UT tax
1	2	3	4	5	6	7	8	9	10	11	12	13	14

5. Tax deduction at source and paid

Description	Amount of tax deducted	Amount paid
1	2	3
(a) Integrated Tax		
(b) Central Tax		
(c) State/UT Tax		

6. Interest, late Fee payable and paid

Description	Amount payable	Amount paid
1	2	3
(I) Interest on account of TDS in respect of		
(a) Integrated tax		
(b) Central Tax		
(c) State/UT Tax		
(II) Late fee		
(a) Central tax		
(b) State / UT tax		

7. Refund claimed from electronic cash ledger

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

8. Debit entries in electronic cash ledger for TDS/interest payment [to be populated after payment of tax and submissions of return]

Description	Tax paid in cash	Interest	Late fee
1	2	3	4
(a) Integrated tax			
(b) Central tax			
(c) State/UT tax			

9. 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

Place: Name of Authorised Signatory

Date: Designation /Status

Instructions –

1. Terms used:
   a) GSTIN: Goods and Services Tax Identification Number
   b) TDS: Tax Deducted at Source
2. Table 3 to capture invoice/ document wise details of tax deducted.
3. Table 4 will contain amendment of information provided in earlier tax periods.
4. Return cannot be filed without full payment of liability.
5. The amount liable for TDS in column 5 of Table 3 and column 6 and column 11 of Table 4, shall be the amount excluding the Central tax, State tax/ Union territory tax, Integrated tax and cess, indicated in the invoice.

Agenda Item 3(vi): Relaxation in condition of section 16(4) of the CGST Act with respect to cases where returns have been filed after revocation for initial years of implementation of GST.

Several representations have been received from the trade and industry, requesting for relaxation of the timelines stipulated in section 16(4) of CGST Act, 2017 for availment of input tax credit in respect of:-

a) initial years of GST and years which were adversely affected by COVID 19 i.e. FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21; and
b) cases where the returns for the period from date of cancellation of registration/effective date of cancellation of registration till the date of revocation of cancellation of registration are filed after revocation of cancellation of registration.

2. Section 16(4) of CGST Act provides the time limit within which input tax credit in respect of any invoice or debit note can be availed. The same is reproduced below:

Section 16. Eligibility and conditions for taking input tax credit.

...

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the *[thirtieth day of November] following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.*

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

* substituted vide Notification No. 18/2022 – CT dated 28.09.2022 w.e.f. 01.10.2022, Prior to its substitution, it was read as: "due date of furnishing of the return under section 39 for the month of September.

3. Accordingly, as per Section 16(4) of CGST Act, the due date to take input tax credit in respect of an invoice or debit pertaining to different Financial Years, are as tabled below:

Financial Year	**Time limit to take ITC in terms of Section 16(4)**
2017-18	25/10/2018 23/04/2019**
2018-19	20/10/2019
2019-20	(20/22/24)/10/2020
2020-21	(20/22/24)/10/2021
2021-22	30/11/2022
2022-23	30/11/2023

**Conditional extension as per proviso to Section 16(4) of CGST Act inserted vide Order No. 02/2018 -Central Tax dated 31st December 2018

3. From a combined reading of Section 16(1), section 49(2), section 41(1), section 39(1) of the CGST Act 2017 and Rule 86(1) of the CGST Rules 2017, it emerges that a registered taxpayer is entitled to take self-assessed, eligible input tax credit through a return to be filed and the same shall be credited to his electronic credit ledger. Such return in the Act has been prescribed to be the return which is filed under Section 39 of CGST Act i.e. return to be furnished in FORM GSTR-3B.

A. Relaxation of the conditions stipulated in section 16(4) of CGST Act in respect of initial years of GST and years which were adversely affected by COVID 19 i.e. FYs 2017-18, 2018-19, 2019-20 and 2020-21

4. It has been represented that during the initial years of GST, the taxpayers were unaware that delay in filing of return i.e. FORM GSTR-3B beyond the due date under Section 16(4) could lead to denial of input tax credit, which had been availed in such delayed filed returns. It has further been represented that several late fee amnesty schemes were notified regarding FORM GSTR 3B for the initial years, however, as no parallel relaxation of conditions under section 16(4) of CGST Act were extended in respect of returns which were filed in pursuance of such schemes, all the input tax credit, which was availed in such delayed filed returns, is being denied and is being demanded as irregularly availed input tax credit, on the grounds that as such input tax credit has been taken in the returns which have been filed after the due date to avail input tax credit in terms of section 16(4) of CGST Act, the said input tax credit is not available as per conditions of section 16(4) of CGST Act. It has been represented that his is causing huge difficulty to the taxpayers, particularly the smaller taxpayers.

5. It has also been represented that during Covid-19 period, economic activities and business at large were adversely impacted and it resulted in delay in filing of returns. It has further been represented that during initial period of implementation of GST also, returns could not be filed by the taxpayers in time due to lack of knowledge about need of filing for each tax period, even in the cases where there was no supply, or where the net cash liability to be paid in a return was nil. Further, the Government had provided conditional waiver/ relaxation in respect of late fee for delayed filing of GSTR 3B returns for initial years through various amnesty schemes by notifications; however, no parallel relief was extended in respect of compliance of section 16(4) of CGST Act. Therefore, it has been represented that some form of relaxation of the timelines stipulated in section 16(4) of CGST Act may be granted to the taxpayers to regularize the input tax credit which had been availed in such delayed filed returns for the initial years of GST i.e. for FY 2017-18, 2018-19, 2019-20 and 2020-21.

6. The details of various amnesty schemes, which were brought out for providing relaxation in late fee for delayed filing of GSTR 3B returns to clean up pendency in return filing in GST regime, are as follows:

Amnesty Scheme in GST				
S. No	**Period**	**Notification**	**Filling Period**	**Conditions**
i	July 2017	Notification No.	between	late fee shall stand waived for the registered persons who failed to furnish

	to September 2018	76/2018 – Central Tax dated 31.12.2018	22.12.2018 to 31.03.2019	the return in FORM GSTR-3B for the months of July 2017 to September 2018 by the due date but furnishes the said return between the period from 22.12.2018 to 31.03.2019
ii	July 2017 to January 2020	Notification No. 52/2020 – Central Tax dated 24.06.2020	between 01.07.2020 to 30.09.2020	1. If GSTR-3B returns are furnished during the period between 01.07.2020 to 30.09.2020 2. Late fee capped to a maximum of ` 500/- (`. 250/- each for CGST & SGST) per return having tax liability 3. No Late fee, if Tax payable is NIL
iii	July 2017 to April 2021	Notification No. 19/2021 – Central Tax dated 01.06.2021	between 01.06.2021 to 31.08.2021	(a) If GSTR-3B returns are furnished during the period between 01.06.2021 to 31.08.2021; (b) Late fee capped to a maximum of (i) ` 500/- (` 250/- each for CGST & SGST) per return if Tax payable is NIL; (ii) ` 1000/- (` 500/- each for CGST & SGST) per return for other taxpayers (having any Tax Liability).
		Notification No. 33/2021 – Central Tax dated 31.08.2021 amended the Notification No. 19/2021 Central Tax date 01.06.2021	between 01/06/2021 to 30/11/2021	(a) If GSTR-3B returns are furnished during the period between 01.06.2021 to 30.11.2021; (b) Late fee capped to a maximum of (i) ` 500/- (` 250/- each for CGST & SGST) per return for NIL tax liability; (ii) ` 1000/- (` 500/- each for CGST & SGST) per return for other taxpayers (having Any Tax Liability).

7. It is observed that in respect of the schemes mentioned at Sr. No. ii and iii in the table above, the last date mentioned for availing the benefit of such schemes, for the returns pertaining to financial year 2017-18 to 2020-21 was beyond the due date under Section 16(4) of CGST Act

2017 for some financial years. Although the taxpayers, on availing the benefits of these schemes were able to file their pending returns with relaxation in late fee, however, due to expiry of due date under Section 16(4) of CGST Act, they were not eligible to take input tax credit in the returns filed beyond the due date under Section 16(4) of the CGST Act 2017. Besides, these amnesty schemes failed to provide any specific relief to the taxpayers regarding waiver/extension of the time limit under Section 16(4) of CGST Act. Accordingly, the intended relief to the taxpayers for delayed filing of the said returns does not appear to be made fully available to the said taxpayers if availment of ITC through the said returns is not allowed to them because of the conditions of section 16(4) of CGST Act, as no waiver from the conditions of section 16(4) of CGST Act was provided along with the said amnesty schemes.

8. As per the data made available by GSTN in respect of the input tax credit availed in the FORM GSTR 3Bs pertaining to the FYs 2017-18 to 2020-21, which had been filed beyond the due date specified in Section 16(4) of the CGST Act 2017, but where such returns have been filed upto 30.11.2021 (i.e. the last date for filing return as per the last amnesty scheme for late fee relaxation for delayed filing of the returns), it is seen that about 5 Lakh GSTINs have filed FORM GSTR 3B returns for the said financial years, beyond the time limit specified in section 16(4) of CGST Act, and accordingly whole of input tax credit availed in such returns is in contravention to section 16(4) of CGST Act. It is possible that in large number of such cases, demand notices would have already been issued or would be issued in future, demanding the entire input tax credit availed through such returns. The same would not only impose a huge financial burden on the taxpayers but also lead to higher work load on the tax authorities for adjudication/ appeal of such cases.

9. Therefore, in order to provide relief to taxpayers and to reduce large scale litigation, the following options were proposed:

- **Option 1:** The time limit to avail input tax credit under Section 16(4) of CGST Act**, through any FORM GSTR 3B filed till 30/11/2021** for the financial years **2017-18, 2018-19, 2019-20 and 2020-21**, may be deemed to be **30.11.2021**.

  This can be done by inserting a proviso in section 16(4) of CGST Act retrospectively with effect from 01.07.2017:
  Provided further that in respect of an invoice or debit note for supply of goods or services or both pertaining to financial year 2017-18,2018-19,2019-20 and 2020-21, the registered person shall be entitled to take input tax credit, till the thirtieth day of November, 2021

- **Option 2:** The time limit to avail input tax credit under Section 16(4) of the CGST Act f**or the financial years 2017-18, 2018-19, 2019-20 and 2020-21**, in any **FORM GSTR 3B return of the month upto september following the financial year to which such invoice or debit note pertains,** which is filed upto 30.11.2021, may be extended upto 30.11.2021.

  It is to be mentioned that as per the extant provisions of section 16(4) of CGST Act, input tax credit in respect of an invoice or debit note pertaining to the said financial years could be taken upto the due date of filing of return under section 39 of CGST Act for the month of September following the financial year to which such invoice or debit note pertains. The same implies that input tax credit in respect of an invoice or debit note pertaining to a financial year can be taken in any return under section 39 of CGST Act, filed for any tax period upto the month of September following the financial year to which such invoice or

debit note pertains and filed upto the due date of filing of return for the month of September of the following financial year.

Accordingly, this option can be implemented by inserting a proviso in section 16(4) of CGST Act retrospectively with effect from 01.07.2017:
Provided further that in respect of an invoice or debit note for supply of goods or services or both pertaining to financial year 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit, in any return under section 39 for a tax period upto the month of September following the end of the financial year to which such invoice or debit note pertains, which is filed upto thirtieth day of November, 2021.

- **Option 3:** The time limit to avail input tax credit under Section 16(4) of the CGST Act may be extended to the actual date of filing of FORM GSTR 3B or the date specified in Section 16(4) of the Act, whichever is later, in respect of returns **in FORM GSTR 3B filed within the time period specified in the Late fee Amnesty schemes,** as under:

  i. GSTR 3Bs pertaining to July 2017 to January 2020, filed between 01.07.2020 to 30.09.2020, in pursuance to Notification No. 52/2020 – Central Tax dated 24.06.2020.

  ii. GSTR 3Bs pertaining to July 2017 to March 2021, filed between 01.06.2021 to 30.11.2021, in pursuance to Notification No. 19/2021 – Central Tax dated 01.06.2021 as amended by Notification No. 33/2021 – Central Tax dated 31.08.2021.

  This can be done by inserting a proviso in section 16(4) of CGST Act retrospectively with effect from 01.07.2017:

  Provided further that the registered person shall be entitled to take input tax credit in respect of an invoice or debit note for supply of goods or services or both pertaining to:

  a) the period from July 2017 to January 2020, in any return under section 39 for a tax period upto the month of September following the end of the financial year to which such invoice or debit note pertains, which is filed in between first day of July,2020 till thirtieth day of September, 2020;

  b) the period from July 2017 to March 2021, in any return under section 39 for a tax period upto the month of September following the end of the financial year to which such invoice or debit note pertains, which is filed in between first day of June,2021 till thirtieth day of November, 2021.

  In this option, the extension of time limit under section 16(4) for the said financial years is being provided only in respect of returns filed under the above two late fee amnesty schemes.

9.1 **It was also proposed that a clause may be inserted in the Finance Act, to the effect that no refund shall be admissible on account of the said retrospective amendment in cases**

where such amount had already been paid or reversed on account of contravention of section 16(4) of the Act.

10. **The Law committee in its meeting held on 18.03.2024, 25.04.2024, 02.05.2024 and 16.05.2024 deliberated on the matter. However, no consensus could be achieved in the Law Committee on this matter**.

B. Relaxation of the conditions stipulated in section 16(4) of CGST Act in respect of revocation of cancellation of registration

11. It has been represented that relaxation in respect of availment of input tax credit under section 16(4) of CGST Act is warranted in cases where the returns for the period from date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of registration are filed after revocation of cancellation of registration, but are filed beyond the due date to avail input tax credit under section 16(4) of CGST Act.

12. It is mentioned that as per section 29 of CGST Act, proper officer may cancel the registration of a registered person for various reasons listed therein and as per section 30 of CGST Act read with rule 23 of CGST Rules, the cancellation of registration may be revoked by the proper officer, subject to certain conditions which have been prescribed. The relevant provisions are reproduced below:

Section 29. Cancellation or suspension of registration.-

(1) 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:
Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
(b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or
(c) any registered person, other than a person specified in clause (b), has not furnished returns for a 16[such continuous tax period as may be prescribed; or
(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:
Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

(3) the cancellation of registration under this section shall not affect the liability of the person 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.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and 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 under section 15, whichever is higher.
(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

Section 30. Revocation of cancellation of registration. *–*

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in such manner, within such time and subject to such conditions and restrictions, as may be prescribed

(2) The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

Rule 23. Revocation of cancellation of registration. –

(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may subject to the provisions of rule 10B submit an application for revocation of cancellation of registration, in FORM GST REG-21, to such proper officer, within a period of

ninety days from the date of the service of the order of cancellation of registration] at the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding one hundred and eighty days:

Provided further that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns:

Provided also that all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration:

Provided also that where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of thirty days from the date of order of revocation of cancellation of registration.

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

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG-23 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within a period of seven working days from the date of the service of the notice in FORM GST REG-24 .

(4) Upon receipt of the information or clarification in FORM GST REG-24, the proper officer shall proceed to dispose of the application in the manner specified in sub-rule (2) within a period of thirty days from the date of the receipt of such information or clarification from the applicant.

13. On a combined reading of section 30 of CGST Act with third and fourth proviso to rule 23(1) of CGST Rules, it can be seen that a taxpayer, whose registration is restored by the proper officer, can file the returns due for the period from the date of order of cancellation of registration or effective date of cancellation of registration (in case the registration was cancelled retrospectively) till the date of order of revocation of cancellation of registration, only after the application for revocation of cancellation of registration is approved by the tax authorities.

Further, such returns are required to be filed within thirty days of the date of order of revocation of cancellation of registration.

14. On juxtaposition of the above-mentioned provisions alongside the provisions of section 16(4) of CGST Act, it is observed that even when the returns due for the period from the date of order of cancellation of registration or effective date of cancellation of registration (in case the registration was cancelled retrospectively) till the date of order of revocation of cancellation of registration are filed within 30 days of date of order of revocation of cancellation of registration, in case the time period specified in the section 16(4) of the CGST Act has already been over at the time when the said returns are filed, the input tax credit availed through such returns becomes ineligible under Section 16(4) of the CGST Act 2017.

15. In light of the above, Law committee felt that there is a need to allow for relaxation of conditions under Section 16(4) of the Act, in cases where the returns for the period from date of cancellation of registration/effective date of cancellation of registration till the date of revocation of cancellation of registration are filed after revocation of cancellation of registration.

16. **Further, it was also seen that as per third and fourth proviso to rule 23(1) of the CGST Rules, returns pertaining to the period from date of cancellation of registration /effective date of cancellation of registration till the date of revocation of cancellation of registration are required to be filed within 30 days of revocation.** Law committee felt that there may be a need to provide specific provision in CGST Act to provide for prescribing conditions and restrictions for revocation of cancellation of registration by inserting a proviso in section 30(2) of CGST Act.

17. It was also observed that as per clause (a) of section 29(2) of CGST Act, the proper officer may cancel the registration of a person in cases where he has contravened such provisions of the Act or the rules made thereunder as may be prescribed. Such provisions of the Act or the rules, the contravention of which may invoke cancellation of registration under clause (a) of section 29(2) of CGST Act are prescribed in rule 21 of CGST Rules. Law committee felt that there may be need to insert a specific clause in rule 21 of CGST Rules in respect of contravention of provisions of third and fourth proviso to rule 23(1) of CGST Rules i.e. if the taxpayer fails to file returns pertaining to the period from date of cancellation of registration/ effective date of cancellation of registration till the date of revocation of cancellation of registration, within 30 days of revocation of cancellation of registration.

18. The Law Committee accordingly in its meeting held on 16.05.2024 recommended that:-

i. following proviso may be inserted in the section 16(4) of CGST Act **retrospectively w.e.f. 1st July 2017:**

"Provided further that where any registration is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30, or in pursuance to any order made by Appellate Authority or Appellate Tribunal or court, such registered person shall be entitled to take the input tax credit in respect of any invoice or debit note for supply of goods or services or both in a return for the period between the effective date of cancellation of registration and the date of revocation of cancellation of registration, filed within thirty days from the revocation of cancellation of registration, subject to the condition that input tax credit in respect of such

invoice or debit note was not restricted as per provisions of sub-section (4), or the first proviso thereof, on the date of order of cancellation of registration."

ii. **a clause may be inserted in the Finance Act, to the effect that no refund shall be admissible on account of the said retrospective amendment in cases where such amount had already been paid or reversed on account of contravention of section 16(4) of the Act**.

iii. a second proviso, as below, may be inserted in section 30(2) of the CGST Act, to provide for enabling clause to prescribe conditions and restrictions for revocation of cancellation of registration:

"Provided further that such revocation of cancellation of registration shall be subject to such conditions and restrictions, as may be prescribed."

iv. a clause may be inserted in Rule 21 as below:

"(ga) violates the provisions of third or fourth proviso to sub-rule (1) of Rule 23."

19. Accordingly, the agenda is placed before GST Council for deliberation of the proposal in Para 9 and 9.1 above and approval of the recommendations of the Law Committee detailed in Para 18 above.

Agenda Item 3(vii): Insertion of Section 128A in CGST Act, to provide for conditional waiver of interest or penalty or both relating to demands raised under Section 73, for FY 2017-18 to FY 2019-20.

1. Background:

1.1 Various representations have been received from trade and industry requesting to provide relief with respect to the demands raised for tax periods during the initial years of implementation of GST. It has been represented that the initial years of implementation were marked by significant changes, frequent amendments, and evolving compliance mechanisms, and during such initial period, taxpayers were not adept with the new laws and procedures.

1.2 It has also been represented that during the initial years, audits and assessments could not be done due to various factors, including the pandemic, and could be done later on, due to which the demands are getting finalised only recently. A large number of demand notices and orders have been issued. Therefore, it has been requested that a relief or waiver of interest and penalty may be provided, considering the above factors, for the initial years of implementation of GST.

2. Relevant provisions:

2.1 Section 73 of CGST Act, 2017:

Section 73. 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 wilful-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 leviable under the provisions of this Act or the rules made thereunder.

...

(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.

2.2 Section 50 of CGST Act, 2017:

Section 50. 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:

....

(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.

3. Analysis:

3.1 Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), provides for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for reasons other than fraud or any wilful-misstatement or suppression of facts, whereas Section 74 provides for determination of tax in cases involving fraud or any wilful-misstatement or suppression of facts.

3.2 It is to be noted that under Section 73 of the CGST Act, penalty payable is ten per cent of the tax demanded, and as per Section 50 of the CGST Act, interest at the rate of eighteen per cent per annum becomes payable from the due date of payment of said tax demanded. While such interest and penalty serve the purpose of ensuring tax compliance, their application during the initial implementation phase has been seen as burdensome, by the taxpayers, especially when the system was still evolving. Small and medium-sized enterprises (SMEs) have represented that they made genuine errors during the initial period due to the complexity of GST and ignorance of law/ procedures.

3.3 The last date for issuing demand notices for the FY 2019-20 under Section 73 of the CGST Act was 31.05.2024. A large number of demand notices and demand orders pertaining to the FYs 2017-18, 2018-19 and 2019-20 have been issued/ are in process of being issued. In a large number of such cases, appeals may be filed, thereby increasing the burden of the appellate authorities. It is important to note that once GST Appellate Tribunal becomes operational, many of these appeals will go to the Tribunal as well. Tax officers have also expressed that the chances of recovery diminish with the passage of time as number of taxpayers shut down their shops and become untraceable due to various reasons like change in market behaviour, technological changes, migration and death. In very likelihood, large number of appeals as envisaged above will take its own

time to get disposed-of leaving the tax administration with considerable volume of possible non-recoverable demand.

3.4 The issue was deliberated in detail by the Law Committee in its meetings dated 09.02.2024 and 02.05.2024. Considering the challenges faced by taxpayers during the early GST years, relief from interest and penalties is essential to encourage compliance and support businesses to move forward. Therefore, Law Committee recommended providing a waiver of interest and penalty to all type of demand notices issued under Section 73 of the CGST Act, 2017, for FY 2017-18, FY 2018-19 and FY 2019-20, subject to the condition that the said taxpayer pays the full amount of tax demanded upto a date as may be notified on the recommendations of the Council Law Committee felt that such waiver may not be extended in respect of cases involving charges of fraud or wilful misstatement or suppression of facts to evade tax, where demand notices have been issued under section 74 of CGST Act.

3.5 Law Committee also recommended that in cases, where demand notice has been issued under section 74 of CGST Act, but during the appellate or court proceedings, it is concluded that charges of fraud or wilful misstatement or suppression of facts to evade tax are not established against the noticee, and the tax is required to be determined by proper officer under section 73 of CGST Act as per section 75(2) of CGST Act, the benefit of such waiver of interest and penalty may be made available in such cases, as well.

3.6 Further, it was recommended that such waiver may not be extended to cases involving erroneous refund. Law Committee further recommended that in cases where interest and penalty have already been paid in respect of any demand/ proceedings for the said financial years, no refund shall be admissible for the same.

3.7 To implement the said recommendations for waiver of interest and penalty, the Law Committee in its meeting dated 07.06.2024, recommended the insertion of a new section, Section 128A in the CGST Act as below:

Section 128A of CGST Act, 2017:

128A. One-time waiver of interest or penalty or both relating to demands raised under Section 73, for certain tax periods.

(1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax as per,

a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, where no order under sub-section (9) of section 73 has been issued; or

b) an order issued under sub-section (9) of section 73, where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been issued; or

c) an order issued under sub-section (11) of section 107 or sub-section (1) of section 108, where no order under sub-section (1) of section 113 has been issued;

pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred in clause (a), clause (b) or clause (c), as the case

may be, on or before the date, as may be notified by the Government, on the recommendations of the Council, no interest under Section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:

Provided that where a notice has been issued under sub-section (1) of section 74, and an order is issued or required to be issued by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court as per provisions of sub-section (2) of section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:

Provided further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, as per the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:

Provided also that where such interest and penalty has already been paid, no refund of the same shall be available.

(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said person on or before the date notified under sub-section (1) .

(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred in clause (b) or clause (c) of sub-section (1), as the case may be.

4. Accordingly, the agenda s placed before the GST Council for approval.

Agenda Item 3(viii) : Reduction of Government Litigation – fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court.

Reference is invited to Section 120 of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "the CGST Act") which provides for fixing monetary limit to regulate the filing of appeal by the tax authorities and is reproduced here under:

120. Appeal not to be filed in certain cases. —

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

2. Government of India has formulated a National Litigation Policy with an aim to reduce Government litigation so that the Government ceases to be a compulsive litigant. The purpose underlying this Policy is to ensure that valuable time of the Courts is spent in resolving pending cases of significant nature and in bringing down the average pendency time in the Courts.

2.1 It is pertinent to mention that in order to reduce Government litigation, necessary guidelines in the legacy matters relating to Central Excise and Service Tax had been issued by the Central Board of Indirect Taxes and Customs (CBIC) for fixing the monetary limits below which appeal shall not be filed by the Department in the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), High Court and Supreme Court vide instruction F.No. 390/Misc./163/2010-JC dated 20.10.2010 and these monetary limits were further raised vide instruction **F.No. 390/Misc./163/2010-JC** dated 17.08.2011, instruction F. No. 390/Misc./116/2017-JC dated 22.08.2019 and instruction F. No. 390/Misc./30/2023-JC dated 02.11.2023. Similarly, instructions in the matters relating to Customs had been issued fixing monetary limits vide instruction **F.No.390/Misc./163/2010-JC** dated 17.08.2011 and the same were revised vide instruction **F.No.390/Misc./163/2010-JC** dated 17.12.2015 and F. No. 390/Misc./30/2023-JC dated 02.11.2023. The said monetary limits as per the latest instruction are as follows:

Appellate Forum	**Monetary limit (Tax Amount involved)**
	Central Excise/Service Tax/Customs
CESTAT	Rs. 50 lakhs
High Court	Rs. 1 Crore
Supreme Court	Rs. 2 Crore

2.2. Further, CBDT has also prescribed monetary limits for filing appeals by the Department before Income Tax Appellate Tribunal, High Court & Supreme Court. The said monetary limits have recently been revised vide Circular No. 5/2024 dated 15th March 2024, as below:

Appellate Forum	Monetary limit (Tax effect)
Income Tax Appellate Tribunal	Rs. 50 lakhs
High Court	Rs.1 Crore
Supreme Court	Rs. 2 Crore

3. No such monetary limits for filing appeals by the tax authorities have yet been specified in GST. As the time limit for issuing orders under section 73 of CGST Act for financial year 2017-18, 2018-19 & 2019-20 have recently expired/ going to expire shortly, there may be large number of adjudication orders against which appeal may be filed before the appellate authority. Besides, Appellate authorities have already passed orders/ may be passing orders in future in these cases, out of which department may be required to file appeal against such appellate orders. In order to ensure that appeals are filed by the Government in GST Appellate Tribunal (GSTAT), High Court and Supreme Court only in cases involving significant revenue/ important policy matters, it would be prudent to prescribe monetary limits for filing appeals by the department in GSTAT, High Court and Supreme Court. While fixing such monetary limits in GST, it would be desirable to make a comparison with those set under Central Excise, Service Tax, Customs and Income Tax Act.

4. Besides, while fixing any threshold monetary limit for filing appeals in GSTAT, High Court and Supreme Court, it may also be desirable to specify certain exclusions in respect of which the said monetary limits may not apply. Such exclusions may be in respect of categories such as, cases where any provision of Act/ Rules has been set aside/ held to be ultra vires the Constitution, where any circular/ notification/ order/ instruction issued by the Government/ Department has been set aside, cases involving classification and valuation etc.

5. The matter was deliberated by the Law Committee in its meeting held on 25.04.2024. The Law Committee recommended the following monetary limits for filing appeal by the Department:

Appellate Forum	Monetary Limit (Rs.)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

5.1 Law Committee also recommended that the following principles may be considered to determine as to whether a case falls within the above monetary limits or not:

i. Where the dispute pertains to demand of tax (with or without penalty and/ or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/ UTGST, IGST and Compensation Cess) only should be considered while applying the monetary limit for filing appeal.

ii. Where the dispute pertains to demand of interest only, the amount of interest should be considered for applying the monetary limit for filing appeal.

iii. Where the dispute pertains to imposition of penalty only, the amount of penalty should be considered for applying the monetary limit for filing appeal.

iv. Where the dispute pertains to imposition of late fee only, the amount of late fee should be considered for applying the monetary limit for filing appeal.

v. Where the dispute pertains to demand of interest, penalty and/ or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee should be considered for applying the monetary limit for filing appeal.

vi. Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/ UTGST, IGST and Compensation Cess) should be considered for deciding whether appeal needs to be filed or not.

vii. Monetary limit shall be applied on the disputed amount of tax/ interest/ penalty/ late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.

viii. In a composite order which disposes more than one appeal/ demand notice, the monetary limits shall be applicable on the total amount of tax/ interest/ penalty/ late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

6. Law Committee further recommended that the monetary limits mentioned in above para with regard to filing appeals by department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court should not be applicable in the following circumstances, and in such cases, the decision to file appeal should be taken on merits irrespective of the said monetary limits:

i. Where any provision of the CGST Act or SGST/ UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be *ultra vires* to the Constitution of India; or

ii. Where any Rules or regulations made under CGST Act or SGST/ UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be *ultra vires* the parent Act; or

iii. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be *ultra vires* of the CGST Act or SGST/ UTGST Act or IGST Act or GST (Compensation to States) Act or the Rules made thereunder*;* or

iv. Where the matter is related to -

a. Valuation of goods or services; or

b. Classification of goods or services; or

c. Refunds; or

d. Place of supply; or

e. Any other issue,

which is recurring in nature and/ or involves interpretation of the provisions of the Act / the Rules/ notification/ circular/ order/ instruction etc; or

v. Where strictures/ adverse comments have been passed and/ or cost has been imposed against the Government/Department or their officers.

vi. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

7. Law Committee also observed that sub-sections (2), (3) & (4) of section 120 of the CGST Act 2017 provide that in cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. Accordingly, law Committee recommended that in such cases, the Reviewing Authorities should specifically record that "*even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board*." Also, non-filing of appeal based on these monetary limits should not preclude the tax officer from filing appeal or application in any other case involving the same or

similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

7.2 Law Committee also observed that in such cases where appeal is not filed solely on the basis of monetary limits fixed by the Board, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers. Accordingly, in case any prior order is being cited or relied upon by the taxpayer, claiming that the same has been accepted by the Department, it must be checked as to whether such order was accepted only on account of the monetary limit before following them in the name of judicial discipline. Also, in respect of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/counsels must make every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of sub-section (4) of section 120 of the CGST Act, 2017 which reads as under:

"(4) *The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1)."*

8. Law Committee recommended that a circular may be issued under the power given by sub-section (1) of section 120 of CGST Act read with section 168 of the CGST Act to fix the monetary limit for filing appeal or applications before the GSTAT or High Court or Supreme Court as per discussions above. Draft Circular as recommended by the Law Committee is enclosed as **Annexure-A.**

9. Law Committee also recommended that it will be desirable to keep a centralised database on the portal regarding all such cases which have been accepted and no appeal has been filed against them in GSTAT or High Court or Supreme Court, purely on the basis of monetary limit fixed as per the recommendations of the Council so that the same is accessible to all departmental officers and taxpayers to find out that these cases have been accepted only on monetary ground and shall not have precedence value as per

sub-section (3) & (4) of section 120 of CGST Act, 2017. For this purpose, GSTN may be requested to develop a functionality on the portal to enable tax authorities to enter the details of such cases accepted on monetary grounds and to make available the details of such cases to the departmental officers as well as taxpayers.

10. Therefore, Agenda along with draft circular is placed before the GST Council for approval.

Annexure-A

Circular No. xx/2024-GST

F. No. CBIC-200xx/xx/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, dated the xxst March 2024

To,
All the Principal Chief Commissioners / Chief Commissioners /
Principal Commissioners /Commissioners of Central Tax
All the Principal Directors General/ Directors General of Central Tax

Madam/Sir,

Subject: Reduction of Government Litigation – fixing monetary limits for filing appeals or applications by the Department before GSTAT, High Courts and Supreme Court -reg.

Reference is invited to the National Litigation Policy which was conceived with the aim of optimizing the utilization of judicial resources and expediting the resolution of pending cases. It underscores the importance of prudent litigation practices by establishing thresholds for filing appeals in Revenue matters. Specifically, the Policy mandates that appeals should not be pursued when the amount involved is below a specified monetary limit set by Revenue authorities. Furthermore, it discourages filing appeals in cases where established precedents from Tribunals and High Courts have settled the matter and have not been contested in the Supreme Court.

1.1 Section 120 of the Central Goods and Services Tax Act, 2017 (hereinafter referred as "the CGST Act") provides for power to the the Central Board of Indirect Taxes & Customs (hereinafter referred to as "the Board") for fixing the monetary limits for filing of appeal or application by the tax authorities as below:

"120. Appeal not to be filed in certain cases. —

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as

it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).”

2. Accordingly, in exercise of the powers conferred by Section 120 of the CGST Act read with section 168 of the CGST Act, the Board, on the recommendations of the GST Council, fixes the following monetary limits below which appeal or application or Special Leave Petition, as the case may be, shall not be filed by the Central Tax officers before Goods and Service Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provisions of CGST Act, subject to the exclusions mentioned in para 4 below:

Appellate Forum	**Monetary Limit (amount involved in Rs.)**
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

3. While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

i. Where the dispute pertains to demand of tax (with or without penalty and interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal.

ii. Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.

iii. Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.

iv. Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.

v. Where the dispute pertains to demand of interest, penalty and/ or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing appeal.

vi. Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not.

vii. Monetary limit shall be applied on the disputed amount of tax/ interest/ penalty/ late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.

viii. In a composite order which disposes more than one appeal/ demand notice, the monetary limits shall be applicable on the total amount of tax/ interest/ penalty/ late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

4. EXCLUSIONS

Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

i. Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be *ultra vires* to the Constitution of India; or

ii. Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be *ultra vires* the parent Act; or

iii. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be *ultra vires* of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the Rules made thereunder*;* or

iv. Where the matter is related to -

a. Valuation of goods or services; or
b. Classification of goods or services; or
c. Refunds; or
d. Place of Supply; or
e. Any other issue,

which is recurring in nature and/ or involves interpretation of the provisions of the Act / the Rules/ notification/ circular/ order/ instruction etc; or

v. Where strictures/ adverse comments have been passed and/ or cost has been imposed against the Government/Department or their officers; or

vi. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

5. It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.

6. Attention is drawn to sub-sections (2), (3) & (4) of section 120 of the CGST Act, which provide that in cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specifically record that "*even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board."*

6.1 Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

6.2 Further, it is re-iterated that in such cases where appeal is not filed solely on the basis of the above monetary limits, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers. Accordingly, in case any prior order is being cited or relied upon by the taxpayer, claiming that the same has been accepted by the Department, it must be checked as to whether such order was accepted only on account of the monetary limit before following them in the name of judicial discipline.

6.3 Also, in respect of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/counsels must make every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference shall be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of sub-section (4) of section 120 of the CGST Act, 2017 as reproduced in para 1.1 above.

7. The above may be brought to the notice of all concerned.

8. Difficulties, if any, in implementation of this circular may be informed to the Board (gst-cbec@gov.in).

9. Hindi version will follow.

Principal Commissioner (GST)

Agenda Item 3 (ix): Insertion of new forms FORM GSTR-1A for the amendment and declaring additional details to FORM GSTR-01, for enabling locking of FORM GSTR-3B based on FORM GSTR-01.

A proposal has been received from GSTN for the introduction of a new FORM GSTR-1A, which would allow a taxpayer to add any particulars of current tax period missed out in reporting in FORM GSTR-1 of current tax period or amend any particulars already declared in FORM GSTR-1 of current tax period.

Backdrop for the introduction of the proposed FORM GSTR-1A

2. Various efforts are underway to streamline the returns being filed by the taxpayers vis –a vis FORM GSTR 3B. Currently, tax liability in FORM GSTR 3B is being auto populated from FORM GSTR 1, however, the auto populated figures can be edited by the taxpayer. It results in allowing a taxpayer to file his FORM GSTR-3B with tax liability which is different from that which has been declared in his corresponding FORM GSTR-1, triggering issuance of Form DRC-01B under Rule 88C of CGST Rules 2017, if such a difference exceeds the specified amount and specified percentage as may be recommended by the GST Council.

3. In order to minimize manual interference in filing of FORM GSTR 3B, which results in unintended errors, it has been envisaged that in the future, the tax liabilities in FORM GSTR-3B would be auto populated from that declared in FORM GSTR-1 and the same would not be editable i.e. tax liability in FORM GSTR-3B shall be locked on the basis of the tax liability which has been declared by the taxpayer in his FORM GSTR-1. However, in such a scenario, there may be cases where a taxpayer, after having filed FORM GSTR-1, realizes that some amendment (downward or upward) is required to be made in his tax liability in FORM GSTR-1, failing which he would have no option but to a pay tax liability in corresponding FORM GSTR-3B which is either more or less than his actual tax liability. To address the same, an optional FORM GSTR-1A has been proposed, for either amending the details declared in FORM GSTR-1 for the said tax period, or to declare new details.

Key features of the proposed FORM GSTR-1A

4. FORM GSTR-1A is an optional facility provided to add any particulars of supply of the current tax period missed out in reporting in FORM GSTR-1 of the said tax period or to amend any particulars already declared in FORM GSTR-1 of the current tax period (including those declared in IFF, for the first and second months of a quarter, if any, for quarterly taxpayers). Its key features are as follows:

- FORM GSTR-1A shall be an optional facility without levy of late fees. This can be filed only once for a return period.

- FORM GSTR 1A will be available on the portal after the due date of filing of FORM GSTR -1 or the actual date of filing of FORM GSTR -1, whichever is later, till filing of corresponding FORM GSTR-3B of the same tax period.
- Similarly, for quarterly taxpayers, the FORM GSTR-1A shall be available quarterly after filing of FORM GSTR-1 (Quarterly) or the due date of filing of FORM GSTR -1 (Quarterly), whichever is later, till filing of FORM GSTR-3B of the same tax period.
- The tax liabilities in respect of supplies declared in FORM GSTR-1A and GSTR-1 for a tax period shall be auto-populated in FORM GSTR-3B for that tax period.

- In the case of taxpayers who have opted for QRMP scheme, the tax liability is respect of supplies declared in FORM GSTR-1A, along with the details furnished in FORM GSTR-1 and IFF of Month M1 and M2 (if filed), shall be made available in FORM GSTR-3B (Quarterly). However, there will be no facility of FORM IFFA or IFF-1A.
- Amendment of a document which is related to change of Recipient's GSTIN shall not be allowed in FORM GSTR-1A.
- Supplies declared or amended in FORM GSTR-1A shall be made available to the recipient in the next open FORM GSTR-2B. For example,

i. a supplier issues two invoices INV1 and INV2 in the month of January 2023. Then, he furnished the details of the invoice INV1 on 8th Feb 2023 in FORM GSTR-1. However, he misses one invoice INV2 and furnishes the details of the same in FORM GSTR-1A on 15th Feb 2023. In this case, INV1 will go to the FORM

GSTR-2B of the recipient for the month of January made available on 14th Feb 2023. Further, INV2 will be made available in FORM GSTR-2B of the recipient for the month of February made available on 14th March 2023.

ii. a supplier issues two invoices INV3 and INV4 in the month of January 2023. Then he furnished the details of the invoice INV3 on 15th Feb 2023 in FORM GSTR-1. However, he declared INV 4 in FORM GSTR-1A on 16th Feb 2023. In this case, both INV3 and INV4 will be made available in FORM GSTR-2B of the recipient for the month of February made available on 14th March 2023.

5. Law Committee, in its meeting held on **24.01.2024, 31.01.2024 and 09.02.2024 and 18.03.2024** deliberated on the matter and recommended introduction of proposed FORM GSTR-1A to facilitate the taxpayers to correct errors which have been made in the FORM GSTR-1, before having to pay incorrect liability in auto-populated FORM GSTR 3B. Law committee also recommended consequential amendments in FORM DRC-01B, FORM RFD-01, FORM GSTR-2A, FORM GSTR-2B, FORM GSTR-4A, FORM GSTR-6A, FORM GSTR-8, FORM GSTR-9. Apart from consequential changes due to the proposed FORM GSTR-1A, Law committee also recommended changes in FORM GSTR-2B on account of:

a. introduction of a table to provide details (on annual basis) of invoice or debit note against which ITC is required to be reversed in terms of Rule 37A of CGST Rules;
b. Furnishing the details of section 9(5) supplies in FORM GSTR-1 by E-commerce operators; and
c. amendment in advisory/instructions in the FORM GSTR-2B to the effect that negative credit (on account of invoice or debit note amendment or due to a credit note) is to be netted off in respective rows in Table 4(A) of FORM GSTR-3B instead of Table 4(B)(2) of the same.

Draft of FORM GSTR-1A, along with amendments in other FORMS, as approved by Law committee are enclosed as **Annexure B** to this agenda.

6. Law committee also recommended that rule 59, 60 and 88C of CGST Rules 2017 need to be amended accordingly. Besides, consequential amendment will also be required in rules 21, 21A, 36, 37A, 40, 48, 78, 96, 96A and 163 of the CGST Rules 2017. Amendments in CGST Rules, as recommended by Law committee, are enclosed as **Annexure A** to this agenda**.**

7. Accordingly, the agenda is placed before the Council for approval.

Annexure A

Rule 21.Registration to be cancelled in certain cases.-The registration granted to a person is liable to be cancelled, if the said person,-

....

*(f) furnishes the details of outward supplies in FORM GSTR-1 as amended in **FORM GSTR-1A**, if any, 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*

....

***R**ule 21A Suspension of registration.-*

....

(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

*the details of outward supplies furnished in **FORM GSTR-1** as amended in **FORM GSTR-1A**, if any; or*

*the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their **FORM GSTR-1** or in **FORM GSTR-1A** of the previous tax period, if any,*

*or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in **FORM GST REG-31**, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.*

...

*Rule 36. **Documentary requirements and conditions for claiming input tax credit**.-*

....

(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 subsection (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 as amended in **FORM GSTR-1A**, if any, 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.*

Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

....

Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment 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** as amended in **FORM GSTR-1A**, if any, 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 30th 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 30th 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 30th 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.*

Rule 40. Manner of claiming credit in special circumstances.-*(1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely,-*

...

(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in ***FORM GSTR-1*** *and in* ***FORM GSTR-1A****, if any, or as the case may be, in* ***FORM GSTR- 4****, on the common portal.*

...

Rule 48. Manner of issuing invoice.-

...

(3) The serial number of invoices issued during a tax period shall be furnished electronically through the common portal in FORM GSTR-1 or FORM GSTR-1A, if any.

...

Rule 59. Form and manner of furnishing details of outward supplies. -

(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in ***FORM GSTR-1*** *for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.*

Provided that the said person may, after furnishing the details of outward supplies of goods or service or both in FORM GSTR-1 for a tax period but before filing of return in FORM GSTR-3B for the said tax period, at his own option, amend or furnish additional details of outward supplies of goods or services or both in FORM GSTR-1A for the said tax period electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.

(2) The registered persons required to furnish return for every quarter under proviso to subsection (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this notification referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.

Provided that a registered person may furnish such details, for the month of April, 2021, using IFF from the 1st day of May, 2021 till the 28th day of May, 2021.

Provided further that a registered person may furnish such details, for the month of May, 2021, using IFF from the 1st day of June, 2021 till the 28th day of June, 2021.

(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in ***FORM GSTR-1*** *or* ***FORM GSTR-1A*** *for the said quarter.*

(4) The details of outward supplies of goods or services or both furnished in ***FORM GSTR-1*** *shall include the-*

(a) invoice wise details of all -

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than one lakh rupees made to the unregistered persons;*

(b) consolidated details of all -

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto one lakh rupees made to unregistered persons for each rate of tax;*

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

*(4A) The additional details or the amendments of the details of outward supplies of goods or services or both furnished in **FORM GSTR-1A** may, as per the requirement of the registered person, include the-*

(a) invoice wise details of -

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than one lakh rupees made to the unregistered persons;*

(b) consolidated details of -

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto one lakh rupees made to unregistered persons for each rate of tax;*

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the -

(a) invoice wise details of inter-State and intra-State supplies made to the registered persons;

(b) debit and credit notes, if any, issued during the month for such invoices issued previously.]

(6) Notwithstanding anything contained in this rule, -

*(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for the preceding month*

*(b) a registered person, required to furnish return for every quarter under the proviso to subsection (1) of section 39, 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, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;*

*(c) ****.*

*(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.*

……..

(Note: * The said amendments are is in line with the proposal in another agenda note to reduce the threshold from the present Rs 2.5 Lakh to Rs 1 Lakh for invoice-wise reporting of B2C inter-State supplies in FORM GSTR-1.)

Rule 60. Form and manner of ascertaining details of inward supplies.-

*(1) The details of outward supplies furnished by the supplier in **FORM GSTR-1** or **FORM GSTR-1A** or using the IFF shall be made available electronically to the concerned registered persons (recipients) in Part A of **FORM GSTR-2A**, in **FORM GSTR-4A** and in **FORM GSTR-6A** through the common portal, as the case may be .*

*(2) The details of invoices furnished by an non-resident taxable person in his return in **FORM GSTR-5** under rule 63 shall be made available to the recipient of credit in Part A of **FORM GSTR 2A** electronically through the common portal.*

*(3) The details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** under rule 65 shall be made available to the recipient of credit in Part B of **FORM GSTR 2A** electronically through the common portal.*

*(4) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in **FORM GSTR-7** shall be made available to*

*the deductee in Part C of **FORM GSTR-2A** electronically through the common portal*

*(5) The details of tax collected at source furnished by an e-commerce operator under section 52 in **FORM GSTR-8** shall be made available to the concerned person in Part C of **FORM GSTR 2A** electronically through the common portal.*

*(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of **FORM GSTR-2A** electronically through the common portal.*

*(7) An 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 -*

*(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;*

*(ii) the details of invoices furnished by a non-resident taxable person in **FORM GSTR-5** and details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in **FORM GSTR-1** or using the IFF, as the case may be, -*

*(a) for the first month of the quarter, between the day immediately after the due date of furnishing of **FORM GSTR-1** for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter ;*

(b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;

*(c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of **FORM GSTR-1** for the quarter;*

*(iia) the additional details or amendments in details of outward supplies furnished by his supplier in **FORM GSTR-1A** filed between the day immediately after the due date of furnishing of **FORM GSTR-1** for the previous tax period to the due date of furnishing of **FORM GSTR-1** for the current tax period.*

(iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

*(8) The Statement in **FORM GSTR-2B** for every month shall be made available to the registered person,-*

*(i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in **FORM GSTR-1** by a registered person, other than those required to furnish return for every quarter under proviso to sub-section (1) of section 39, whichever is later;*

*(ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in **FORM GSTR-1** by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.*

***Rule 78. Matching of details furnished by the e-Commerce operator with the details furnished by the supplier**.-The following details relating to the supplies made through an e-Commerce operator, as declared in **FORM GSTR-8**, shall be matched with the corresponding details declared by the supplier in **FORM GSTR-1** as amended in **FORM GSTR-1A**, if any,*

(a) *State of place of supply; and*

(b) *net taxable value:*

*Provided that where the time limit for furnishing **FORM GSTR-1** under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.*

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

Rule 88 C. 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*** *as amended in* ***FORM GSTR-1A****, if any,* *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,-

(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.

Rule 96. Refund of integrated tax paid on goods or services exported out of India.-*(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-*

(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in ***FORM GSTR-3B****:*

Provided that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in ***FORM GSTR-1*** *as amended in* ***FORM GSTR-1A****, if any, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;*

(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;

(2) The details of the relevant export invoices in respect of export of goods contained in ***FORM GSTR-1*** *as amended in* ***FORM GSTR-1A****, if any, shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.*

Provided that where the date for furnishing the details of outward supplies in ***FORM GSTR-1*** *for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of* ***FORM GSTR-1*** *after the return in* ***FORM GSTR-3B*** *has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:*

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in ***FORM GSTR-1*** *for the said tax period.*

....

Rule 96A. Export of goods or services under bond or Letter of Undertaking.-

...

*(2) The details of the export invoices contained in **FORM GSTR-1** as amended in **FORM GSTR-1A**, if any, **furnished** on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.*

*Provided that where the date for furnishing the details of outward supplies in **FORM GSTR-1** for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of **FORM GSTR-1** after the return in **FORM GSTR-3B** has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:*

*Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in **FORM GSTR-1** for the said tax period.*

...

Rule 163. Consent based sharing of information.-

...

(1) Where a registered person opts to share the information furnished in—

*(a) **FORM GST REG-01** as amended from time to time;*

*(b) return in **FORM GSTR-3B** for certain tax periods;*

*(c) **FORM GSTR-1** as amended in **FORM GSTR-1A**, if any, for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time,*

with a system referred to in sub-section (1) of section 158A (hereinafter referred to as "requesting system"), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

...

Annexure B

FORM GSTR-1A

Amendment of outward supplies of goods or services for current tax period

[Financial Year]					
[Tax Period]					

1.		GSTIN															
2.	(a)	Legal name of the registered person															
	(b)	Trade name, if any															
3.	(a)	ARN	<Auto>														
	(b)	Date of ARN	<Auto>														

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 / UIN	Invoice details			Rate	Taxable value	Amount				Place of Supply (Name of State/UT)
	No.	Date	Value			Integrated Tax	Central Tax	State / UT Tax	Cess	
1	2	3	4	5	6	7	8	9	10	11
4A. Supplies other than those [attracting reverse charge (including supplies made through e-commerce operator attracting TCS)]										
4B. Supplies attracting tax on reverse charge basis										

5. Taxable outward inter-State supplies to un-registered persons where the invoice value is more than Rs 1 lakh*

Place of Supply (State/UT)	Invoice details			Rate	Taxable Value	Amount	
	No.	Date	Value			Integrated Tax	Cess
1	2	3	4	5	6	7	8
5. Outward supplies (including supplies made through e-commerce operator, rate wise)							

(Note: * This is in line with the proposal in another agenda note to reduce the threshold from the present Rs 2.5 Lakh to Rs 1 Lakh for invoice-wise reporting of B2C inter-State supplies in FORM GSTR-1.)

6. Zero rated supplies and Deemed Exports

GSTIN of recipient	Invoice details			Shipping bill/ Bill of export		Integrated Tax			Central Tax			State / UT Tax			Cess
	No.	Date	Value	No.	Date	Rate	Taxable value	Amt	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															
6B. Supplies made to SEZ unit or SEZ Developer															
6C. Deemed exports															

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	State Tax/UT Tax	Cess
1	2	3	4	5	6
7A. Intra-State supplies					
Consolidated rate wise outward supplies [including supplies made through e-commerce operator attracting TCS]					
7B. Inter-State Supplies where invoice value is upto Rs 1 Lakh* [Rate wise]–Consolidated rate wise outward supplies [including supplies made through e-commerce operator attracting TCS]					
Place of Supply (Name of State)					

8. Nil rated, exempted and non-GST outward supplies

Description	Nil Rated Supplies	Exempted (Other than Nil rated/non-GST supply)	Non-GST supplies
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 FORM- GSTR-1 for the current tax periods in Table 4, 5 and 6 [including debit and credit notes issued during current period and amendments thereof]

Details of original document			Revised details of document or details of original Debit or Credit Notes						Rate	Taxable Value	Amount				Place of supply
GSTIN	Doc. No.	Doc. Date	GSTIN	Document		Shipping bill		Value			Integrated Tax	Central Tax	State / UT Tax	Cess	
				No	Date	No.	Date								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
9A. Amendment of invoice/Shipping bill details furnished															
9B. Debit Notes/Credit Notes [original]															
9C. Debit Notes/Credit Notes [Amended]															

10. Amendments to taxable outward supplies to unregistered persons furnished in FORM GSTR-1 for current tax periods in Table 7

Rate of tax	Total Taxable value	Amount			
		Integrated Tax	Central Tax	State/UT Tax UT Tax	Cess
1	2	3	4	5	6

Tax period for which the details are being revised	(current tax period should be auto populated here)				
10A. Intra-State Supplies[including supplies made through e-commerce operator attracting TCS] [Rate wise]					
10B. Inter-State Supplies[including supplies made through e-commerce operator attracting TCS] [Rate wise]					
Place of Supply (Name of State)					

11. Consolidated Statement of Advances Received/Advance adjusted in the current tax period/ Amendments of information furnished in current tax period [(Net of refund vouchers, if any)]

Rate	Gross Advance Received/adjusted	Place of supply (Name of State /UT)	Amount			
			Integrated Tax	Central Tax	State/ UT Tax UT Tax	Cess
1	2	3	4	5	6	7
I Information for the current tax period						
11A. Advance amount received in the tax period for which invoice has not been issued (tax amount to be added to output tax liability)						
11A (1). Intra-State supplies(Rate Wise)						
11A (2). Inter-State Supplies(Rate Wise)						
11B. Advance amount received in earlier tax period and adjusted against the supplies being shown in this tax period in Table Nos. 4, 5, 6 and 7						
11B (1). Intra-State Supplies (Rate Wise)						
11B (2). Inter-State Supplies(Rate Wise)						
II Amendment of information furnished in Table No. 11[1] in GSTR-1 statement for current tax period [Furnish revised information]						

Month									Amendment relating to information furnished in S. No.(select)	11A(1)	11A(2)	11B(1)	11B(2)

12. HSN-wise summary of outward supplies

Sr. No.	HSN	Description	UQC	Total Quantity	Rate of Tax	Total Taxable Value	Amount			
							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. No.	Nature of document	Sr. No.		Total number	Cancelled	Net issued
		From	To			
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 of the Act or liable to pay tax u/s 9(5) [Supplier to report]

Nature of supply	GSTIN of e-commerce operator	Net value of supplies	Tax amount			
			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)						

14A. Amendment to details of the supplies made through e-commerce operators on which e-commerce operators are liable to collect tax under section 52 of the Act or liable to pay tax u/s 9(5) [Supplier to report]

Nature of supply	Original details		Revised details	Net value of supplies	Tax amount			
	Month / Quarter	GSTIN of e-commerce operator	GSTIN of 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 supplier	Type of recipient	GSTIN of supplier	GSTIN of recipient	Document no.	Document date	Rate	Value of supplies made	Tax amount				Place of supply
								Integrated tax	Central tax	State / UT tax	Cess	
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 e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report, for registered recipients]

Type of supplier	Original details				Revised details				Rate	Value of supplies made	Tax amount				Place of supply
	GSTIN of supplier	GSTIN of recipient	Doc. no.	Doc. Date	GSTIN of supplier	GSTIN of recipient	Doc. no.	Doc. Date			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 madethrough e-commerce operators on which e-commerce operator is liable to pay tax u/s 9(5) [e-commerce operator to report, for unregistered recipients]

Type of supplier	Original details		Revised details	Rate		Value of supplies made	Tax amount				Place of supply
	GSTIN of supplier	Tax period	GSTIN of supplier				Integrated tax	Central tax	State / UT tax	Cess	
1	2	3	4	5		6	7	8	9	10	11
Registered											
Unregistered											”;

Instructions for filing of GSTR-1A:

1. It is an additional facility provided to add any particulars of current tax period missed out in reporting in FORM GSTR-1 of current tax period or amend any particulars already declared FORM GSTR-1 of current tax period (including those declared in IFF, for the first and second months of a quarter, if any, for quarterly taxpayers) The form is an optional form without levy of late fees.
2. The FORM will be available on the portal after due date of filing of FORM GSTR -1 or the actual date of filing of FORM GSTR -1, whichever is later, till filing of corresponding FORM GSTR-3B of the same tax period. Similarly, for quarterly taxpayers, the FORM GSTR-1A shall be opened quarterly after filing of the FORM GSTR-1 (Quarterly) or the due date of filing of FORM GSTR -1 (Quarterly), whichever is later, till filing of FORM GSTR-3B of the same tax period.
3. The particulars declared in FORM GSTR-1A along with particulars declared in FORM GSTR-1 shall be made available in FORM GSTR-3B. In case of taxpayers opting for filing of quarterly returns the same shall be made available in FORM GSTR-3B (Quarterly) along with particulars furnished in FORM GSTR-1 and IFF of Month M1 and M2 (if filed).
4. Amendment of a document which is related to change of Recipient’s GSTIN shall not be allowed in GSTR-1A.
5. In addition to the GSTR-2B already generated, GSTR-2B shall also consist of all the supplies declared by the respective suppliers in GSTR-1A. However, supplies declared or amended in FORM GSTR-1A shall be made available in the next open FORM GSTR-2B . For example,

   (i) a supplier issues two invoices INV1 and INV2 in the month of January 2023. Then he furnished the details of the invoice INV1 on 8th Feb 2023 in FORM GSTR-1. However, he misses one invoice INV2 and furnishes the details of the same in FORM GSTR-1A on 15th Feb 2023. In this case, INV1 will go to the FORM GSTR-2B of the recipient for the month of January made available on

14th Feb 2023. Further, INV2 will be made available in FORM GSTR-2B of the recipient for the month of February made available on 14th March 2023.

(ii) a supplier issues two invoices INV3 and INV4 in the month of January 2023. Then he furnished the details of the invoice INV3 on 15th Feb 2023 in FORM GSTR-1. However, he declared INV 4 in FORM GSTR-1A on 16th Feb 2023. In this case, both INV3 and INV4 will be made available in FORM GSTR-2B of the recipient for the month of February made available on 14th March 2023.

6. Instructions for specific tables:-

Table No.	Instructions
4A, 4B, 5, 6, 9B (for registered recipients)	• Taxpayers may declare additional details of invoices / documents for the current tax period other than those already declared in FORM GSTR-1.
7	• Taxpayers may declare additional details of invoices/ documents for the current tax period other than those already declared in FORM GSTR-1. • In case a POS with any combination of rate has already been declared in FORM GSTR-1, then a new rate cannot be added through Table 7 and the taxpayer will have to use amendment facility in Table 10 for the same.
8,	• Taxpayers may declare additional details of Nil rated, Exempted and Non-GST supplies for the current tax period other than those already declared in FORM GSTR-1.
9A and 9C	• Amendment of values reported in table 4A, 4B, 5, 6A, 6B 6C and 9B in IFF, for the first and second months of a quarter, if any, and FORM GSTR-1 of the current tax period .
12	• HSN details as per additional/amendments details reported in FORM GSTR 1A shall be declared here. In case of any downward amendment, entry can be made with the minus sign for the differential part.
11A(1) & 11A(2), 11B(1) & 11B(2)	• Taxpayers may declare details of advances received or adjusted for the current tax period other than those already declared in FORM GSTR-1. • In case a POS with any combination of rate has already been declared in FORM GSTR-1, then a new rate cannot be added through these tables and the taxpayer will have to use amendment Table 11(II)as the case may be.
14	• Taxpayers may declare additional details of supplies made

	through e-commerce operator for the current tax period
15	• ECO Taxpayers may declare additional details of supplies for unregistered recipients (rate wise) for the current tax period other than those already declared in FORM GSTR-1.
10, 11(II), 14A, 15A(I), 15A(II)	• Taxpayers may amend details already declared in FORM GSTR-1 of the current period.

FORM DRC-01B

a) In Part A, Sr. No. 1, following amendment would be required:-

It is noticed that the Tax payable by you, in accordance with the statement outward supplies furnished by you in FORM GSTR-1 as amended in FORM GSTR-1A, if any or using the invoice furnishing facility, exceeds the amount of tax paid by you in accordance with the return furnished in FORM GSTR-3B for the period <from>< to > by an amount of Rs. …….The details thereof are as follows:

From Type	Liability declared/paid (in Rs.)				
	IGST	CGST	SGST/UT GST	Cess	Total
FORM GSTR-1/GSTR-1A/IFF					
FORM GSTR-3B					
Difference in liability					

B) In the Table in Sr. No .B of Part B, following amendment would be required:-

B. The reasons in respect of that part of the different 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 FORM GSTR-3B	
2.	Some transactions of earlier tax period which could not be declared in the FORM GSTR-1/GSTR-1A/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/GSTR-1A/IFF of the tax period under consideration	
3.	FORM GSTR-1/GSTR-1A/IFF 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	

FORM RFD-01

In the Instructions in Sr. No. 10, 'For the purpose of Statement-1, refund claim will be based on supplies reported in GSTR-1 as amended by GSTR-1A, if any.' requires to be substituted in place of 'For the purpose of Statement-1, refund claim will be based on supplies reported in GSTR-1 and GSTR-2.'

Form GSTR-2Aproposed to be amended as highlighted below:-

FORM GSTR-2A

[See rule 60(1)]

Details of auto drafted supplies

(From GSTR 1, 1A, GSTR 5, GSTR-6, GSTR-7, GSTR-8, import of goods and inward supplies of goods received from SEZ units / developers)

			Year
			Month
1.	GSTIN		
2.	(a)	Legal name of the registered person	
	(b)	Trade name, if any	

PART A

(Amount in Rs. all Tables)

3. *Inward supplies received from a registered person including supplies attracting reverse charge*

GSTIN of supp-lier	Trade/ Legal name	Invoice details				Rate (%)	Tax-able value	Amount of tax				Place of supply (Name of State/ UT)	Supply attracting reverse charge (Y/N)	GSTR-1/1A/5 period	GSTR-1/1A/5 filing date	GSTR-3B filing status (Yes/No)	Amendment made, if any (GSTIN, Others)	Tax period in which amended	Effective date of cancelation, if any
		No.	Type	Date	Value			Integrated tax	Central tax	State/ UT tax	Cess								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20

4. Amendment to Inward supplies received from a registered person including supplies attracting reverse charge (Amendment to 3)

Details of original Document			Revised details					Rate (%)	Taxable value	Amount of tax				Place of supply (Name of State/UT)	Supply attra-cting reverse charge (Y/N)	GSTR-1/1A/5 period	GSTR-1/1A/5 filing date	GSTR-3B filing status (Yes/No)	Amend-ment made (GSTIN, Others)	Tax period of original record	Effective date of can-cellation if any,
No.	Date	GSTIN	Trade/Legal name	No.	Type	Date	Value			Integrated tax	Central tax	State/UT tax/	Cess								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22

5. Debit / Credit notes received during current tax period

GSTIN of supplier	Trade/ Legal name	Credit / Debit Note Details					Rate (%)	Taxable value	Amount of tax				Place of supply (Name of State/UT)	Supply attracting reverse charge (Y/N)	GSTR-1/1A/5 period	GSTR-1/1A/5 - filing date	GSTR-3B filing status (Yes/No)	Amendment made, if any (GSTIN, Others)	Tax period in which amended	Effective date of cancellation, if any
		No.	Note type	Note supply type	Date	Value			Integrated tax	Central tax	State/UT tax	Cess								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21

6. *Amendment to Debit / Credit notes (Amendment to 5)*

Details of original document				Revised details						Rate (%)	Taxable value	Amount of tax				Place of supply (Name of State/UT)	Supply attracting reverse charge (Y/N)	GSTR-1/1A/5 period	GSTR-1/1A/5 filing date	GSTR-3B filing status (Yes/No)	Amendment made (GSTIN, Others)	Tax period of original record	Effective date of cancellation if any
Type	No.	Date	GSTIN of Supplier	Trade/Legal name	No.	Note type	Note supply type	Date	Value			Integrated tax	Central tax	State/UT tax	Cess								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24

PART B

7. ISD credit received

GSTIN of ISD	Trade/ Legal name	ISD document details		ISD invoice details (for ISD credit note only)			ITC amount involved				GSTR-6 Period	GSTR-6 filing date	Amen-dment made, if any	Tax Period in which amended	ITC Eligibility
		Type	No.	Date	No.	Date	Integrated tax	Central tax	State/ UT tax	Cess					
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16

8. Amendments to ISD credit details

Original ISD Document Details			Revised details					Original ISD invoice details (for ISD credit note only)		ITC amount involved				ISD GSTR-6 Period	ISD GSTR-6 filing date	Amendment made	Tax period of original record	ITC Eligibility
Type	No.	Date	GSTIN of ISD	Trade/ Legal name	Type	No.	Date	No.	Date	Integrated Tax	Central Tax	State/UT Tax	Cess					
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

PART- C

9. TDS and TCS Credit (including amendments thereof) received

GSTIN of Deductor / GSTIN of E-Commerce Operator	Deductor Name / Ecommerce Operator Name	Tax period of GSTR-7 / GSTR-8 (Original / Amended)	Amount received / Gross value (Original / Revised)	Value of supplies returned	Net amount liable for TCS	Amount (Original / Revised)		
						Integrated tax	Central tax	State /UT tax
1	2	3	4	5	6	7	8	9

9A. TDS								
9B. TCS								

PART- D

10. **Import of goods from overseas on bill of entry (including amendments thereof)**

ICEGATE Reference date	Bill of entry details				Amount of tax		Amended (Yes/ No)
	Port code	No.	Date	Value	Integrated tax	Cess	
1	2	3	4	5	6	7	8

11. Inward supplies of goods received from SEZ units / developers on bill of entry (including amendments thereof)

GSTIN of the Supplier (SEZ)	Trade / Legal name	ICEGATE Reference date	Bill of Entry details				Amount of tax		Amended (Yes/ No)
			Port code	No.	Date	Value	Integrated tax	Cess	
1	2	3	4		6	7	8	9	10

Instructions:

1. Terms Used :-

a. ITC – Input tax credit

b. ISD – Input Service Distributor

2. **Important Advisory**: FORM GSTR-2A is statement which has been generated on the basis of the information furnished by your suppliers in their respective FORMS GSTR-1, 1A, **5, 6, 7** and**, 8**. It is a dynamic statement and is updated on new addition/amendment made by your supplier in near real time. The details added by supplier would reflect in corresponding FORM GSTR-2A of the recipient irrespective of supplier's date of filing.

3. There may be scenarios where a percentage of the applicable rate of tax rate may be notified by the Government. A separate column will be provided for invoices / documents where such rate is applicable.

4. Table wise instructions:

Table No. and Heading	**Instructions**
3	i. The table consists of all the invoices (including invoices on which reverse charge is applicable) which have been saved / filed by your suppliers in their FORM GSTR-1, 1A and 5. ii. Invoice type : a. R- Regular (Other than SEZ supplies and Deemed exports) b. SEZWP- SEZ supplies with payment of tax c. SEZWOP- SEZ supplies without payment of tax d. DE- Deemed exports e. CBW - Intra-State supplies attracting IGST iii. For every invoice, the period and date of FORM GSTR-1/1A/5 in which such invoice has been declared and filed is being provided. It may be noted that the details added by supplier would reflect in corresponding FORM GSTR-2A of the recipient irrespective of supplier's date of filing. For example, if a supplier files his invoice **INV-1**

	dated 10th November 2019 in his FORM GSTR-1 of March 2020, the invoice will be reflected in FORM GSTR-2A of March, 2020 only. Similarly, if the supplier files his FORM GSTR-1 for the month of November on 5th March 2020, the invoice will be reflected in FORM GSTR-2A of November 2019 for the recipient. iv. The status of filing of corresponding FORM GSTR-3B for FORM GSTR-1/1A will also be provided. v. The table also shows if the invoice or debit note was amended by the supplier and if yes, then the tax period in which such invoice was amended, declared and filed. For example, if a supplier has filed his invoice **INV-1** dated 10th November 2019 in his FORM GSTR-1 of November 2019, the invoice will be reflected in FORM GSTR-2A of November, 2019. If the supplier amends this invoice in FORM GSTR-1 of December 2019, the amended invoice will be made available in Table 4 of FORM GSTR-2A of December 2019. The original record present in Table 3 of FORM GSTR-2A of November 2019 for the recipient will now have updated columns of amendment made (GSTIN, others) and tax period of amendment as December 2019. vi. In case, the supplier has cancelled his registration, the effective date of cancellation will be provided.
4 Amendment to Inward supplies received from a registered person including supplies attracting reverse charge (Amendment to table 3)	i. The table consists of amendment to invoices (including invoice on which reverse charge is applicable) which have been saved/filed by your suppliers in their FORM GSTR-1, 1A and 5 ii. Tax period in which the invoice was reported originally and type of amendment will also be provided. For example, if a supplier has filed his invoice **INV-1** dated 10th November 2019 in his FORM GSTR-1 of November 2019, the invoice will be reflected in FORM GSTR-2A of November, 2019. If the supplier amends this invoice in FORM GSTR-1 of December 2019, the amended invoice will be made available in Table 4 of FORM GSTR-2A of December 2019. The original record present in Table 3 of FORM GSTR-2A of November 2019 for the recipient will now have updated columns of amendment made (GSTIN, others) and tax period of amendment as December 2019.
5 Debit / Credit notes received during current tax period	i. The table consists of the credit and debit notes (including credit/debit notes relating to transactions on which reverse charge is applicable) which have been saved/filed by your suppliers in their FORM GSTR-1,1A and 5. ii. If the credit/debit note has been amended subsequently, tax period in which the note has been amended will also be

	provided. iii. Note Type: Credit Note Debit Note iv. Note supply type: R- Regular (Other than SEZ supplies and Deemed exports) SEZWP- SEZ supplies with payment of tax SEZWOP- SEZ supplies without payment of tax DE- Deemed exports CBW - Intra-State supplies attracting IGST v. For every credit or debit note, the period and date of FORM GSTR-1/1A /5 in which such credit or debit note has been declared and filed is being provided. It may be noted that the details added by supplier would reflect in corresponding FORM GSTR-2A of the recipient irrespective of supplier's filing of FORM GSTR-1/1A. For example, if a supplier files his credit note CN-1 dated 10th November 2019 in his FORM GSTR-1 of March 2020, the credit note will be reflected in FORM GSTR-2A of March, 2020 only. Similarly, if the supplier files his FORM GSTR-1 for the month of November on 5th March 2020, the credit note will be reflected in FORM GSTR-2A of November 2019 for the recipient. vi. The status of filing of corresponding FORM GSTR-3B of suppliers will also be provided. vii. The table also shows if the credit note or debit note has been amended subsequently and if yes, then the tax period in which such credit note or debit note was amended, declared and filed. viii. In case, the supplier has cancelled his registration, the effective date of cancellation will be displayed.
6 Amendment to Debit/Credit notes(Amendment to 5)	i. The table consists of the amendments to credit and debit notes (including credit/debit notes on which reverse charge is applicable) which have been saved/filed by your suppliers in their FORM GSTR-1/1A and 5.

	ii. Tax period in which the note was reported originally will also be provided.
7 ISD credit received	i. The table consists of the details of the ISD invoices and ISD credit notes which have been saved/filed by an input service distributor in their FORM GSTR-6. ii. Document Type : • ISD Invoice • ISD Credit Note iii. If ISD credit note is issued subsequent to issue of ISD invoice, original invoice number and date will also be shown against such credit note. In case document type is ISD Invoice these columns would be blank iv. For every ISD invoice or ISD credit note, the period and date of FORM GSTR-6 in which such respective invoice or credit note has been declared and filed is being provided. v. The status of eligibility of ITC on ISD invoices as declared in FORM GSTR-6 will be provided. vi.The status of eligibility of ITC on ISD credit notes will be provided.
8 Amendment to ISD credit received	i. The table consists of the details of the amendments to details of the ISD invoices and ISD credit notes which have been saved/filed by an input service distributor in their FORM GSTR-6.
9 TDS / TCS credit Received	i. The table consists of the details of TDS and TCS credit from FORM GSTR-7 and FORM GSTR-8 and its amendments in a tax period.. ii.A separate facility will be provided on the common portal to accept/ reject TDS and TCS credit.
10 & 11 Details of Import of goods from overseas on bill of entry and from SEZ units and developers and	i. The table consists of details of IGST paid on imports of goods from overseas and SEZ units / developers on bill of entry and amendment thereof. ii. The ICEGATE reference date is the date from which the recipient is eligible to take input tax credit. iii. The table also provides if the Bill of entry was amended.

their respective amendments	iv.Information is provided in the tables based on data received from ICEGATE. Information on certain imports such as courier imports may not be available.".

Form GSTR-2B:- Proposed to be amended as highlighted below: -

FORM GSTR-2B

Auto-drafted ITC Statement

(From FORM GSTR-1/IFF including E-Commerce supplies, GSTR-1A, GSTR-5, GSTR-6 and Import data received from ICEGATE)

-
-

Financial Year	2023-24
Month	September

1. GSTIN	
2(a). Legal name of the registered person	
2(b). Trade name, if any	GSTN
2(c). Date of generation	14/10/2024

3. ITC Available Summary

(Amount in ₹ for all tables)

S.no.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/ UT tax (₹)	Cess (₹)	Advisory
Credit which may be availed under FORM GSTR-3B							
Part A	**ITC Available - Credit may be claimed in relevant headings in GSTR-3B**						
I	**All other ITC - Supplies from registered persons other than reverse charge**	**4(A)(5)**	312.00	7.50	7.50	262.00	Net input tax credit may be availed under Table 4(A)(5) of FORM GSTR-3B.

-
-
-
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S.no.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/ UT tax (₹)	Cess (₹)	Advisory
Details	B2B - Invoices		540.00	37.50	37.50	62.00	
	B2B - Debit notes		300.00	0.00	0.00	200.00	
	ECO - Documents		300.00	0.00	0.00	200.00	
	B2B - Invoices (Amendment)		-528.00	-30.00	-30.00	0.00	
	B2B - Debit notes (Amendment)		0.00	0.00	0.00	0.00	
	ECO - Documents (Amendment)		0.00	0.00	0.00	0.00	
II	**Inward Supplies from ISD**	**4(A)(4)**	24.00	0.00	0.00	24.00	Net input tax credit may be availed under Table 4(A)(4) of FORM GSTR-3B.
Details	ISD – Invoices		24.00	0.00	0.00	24.00	
	ISD - Invoices (Amendment)		0.00	0.00	0.00	0.00	
III	**Inward Supplies liable for reverse charge**	**3.1(d) 4(A)(3)**	354.00	0.00	0.00	110.00	These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. Net input tax credit may be availed under Table 4A(3) of FORM GSTR-3B on payment of tax.
Details	B2B – Invoices		90.00	0.00	0.00	10.00	
	B2B - Debit notes		300.00	0.00	0.00	100.00	
	B2B - Invoices		-36.00	0.00	0.00	0.00	

S.no.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/ UT tax (₹)	Cess (₹)	Advisory
	(Amendment)						
	B2B - Debit notes (Amendment)		0.00	0.00	0.00	0.00	
IV	**Import of Goods**	**4(A)(1)**	0.00	0.00	0.00	0.00	Net input tax credit may be availed under Table 4(A)(1) of FORM GSTR-3B.
Details	IMPG - Import of goods from overseas		0.00	0.00	0.00	0.00	
	IMPG (Amendment)		0.00	0.00	0.00	0.00	
	IMGSEZ - Import of goods from SEZ		0.00	0.00	0.00	0.00	
	IMGSEZ (Amendment)		0.00	0.00	0.00	0.00	
Part B	**ITC Available – Credit Notes should be net-off against relevant available headings in GSTR-3B**						
I	**Others**	**4(A)**	86.00	0.00	0.00	15.00	Credit Notes shall be net-off against relevant ITC available tables [Table 4A(3,4,5)]. Liability against Credit Notes (Reverse Charge) shall be net-off in Table 3.1(d).
Details	B2B - Credit notes	4(A)(5)	56.00	0.00	0.00	10.00	
	B2B - Credit notes (Amendment)	4(A)(5)	0.00	0.00	0.00	0.00	
	B2B - Credit notes (Reverse charge)	3.1(d) 4(A)(3)	60.00	0.00	0.00	5.00	

S.no.	Heading	GSTR-3B table	Integrated Tax (₹)	Central Tax (₹)	State/ UT tax (₹)	Cess (₹)	Advisory
	B2B - Credit notes (Reverse charge) (Amendment)	3.1(d) 4(A)(3)	-30.00	0.00	0.00	0.00	
	ISD - Credit notes	4(A)(4)	0.00	0.00	0.00	0.00	
	ISD - Credit notes (Amendment)	4(A)(4)	0.00	0.00	0.00	0.00	

4. ITC Not Available Summary

(Amount in ₹ in all sections)

S.no.	Heading	GSTR-3B Table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
Credit which may not be availed under FORM GSTR-3B							
Part A	**ITC Not Available**						
I	**All other ITC - Supplies from registered persons other than reverse charge**	**4(D)(2)**	0.00	12.00	12.00	24.00	Such credit shall not be taken and has to be reported in table 4(D)(2) of FORM GSTR-3B.
Details	B2B – Invoices		0.00	12.00	12.00	24.00	
	B2B - Debit notes		0.00	0.00	0.00	0.00	
	ECO – Documents		0.00	0.00	0.00	0.00	
	B2B - Invoices (Amendment)		0.00	0.00	0.00	0.00	
	B2B - Debit notes (Amendment)		0.00	0.00	0.00	0.00	
	ECO - Documents (Amendment)		0.00	0.00	0.00	0.00	
II	**Inward Supplies from ISD**	**4(D)(2)**	0.00	0.00	0.00	0.00	Such credit shall not be taken and has to be reported in table 4(D)(2) of FORM GSTR-3B
Details	ISD – Invoices		0.00	0.00	0.00	0.00	
	ISD - Invoices (Amendment)		0.00	0.00	0.00	0.00	
III	**Inward Supplies liable for reverse charge**	**3.1(d) 4(D)(2)**	0.00	12.00	12.00	12.00	These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax.
Det	B2B – Invoices		0.00	12.00	12.0	12.0	

S.no.	Heading	GSTR-3B Table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
ails					0	0	
	B2B - Debit notes		0.00	0.00	0.00	0.00	
	B2B - Invoices (Amendment)		0.00	0.00	0.00	0.00	
	B2B - Debit notes (Amendment)		0.00	0.00	0.00	0.00	
Part B	**ITC Not Available – Credit notes should be net-off against relevant ITC available headings in GSTR-3B**						
I	**Others**	**4(A)**	0.00	24.00	24.00	24.00	Credit Notes should be net-off against relevant ITC available tables [Table 4A(3,4,5)].
Details	B2B - Credit notes	4(A)(5)	0.00	0.00	0.00	0.00	
	B2B - Credit notes (Amendment)	4(A)(5)	0.00	0.00	0.00	0.00	
	B2B - Credit notes (Reverse charge)	4(A)(3)	0.00	0.00	0.00	0.00	
	B2B - Credit notes (Reverse charge) (Amendment)	4(A)(3)	0.00	0.00	0.00	0.00	
	ISD - Credit notes	4(A)(4)	0.00	0.00	0.00	0.00	
	ISD - Credit notes (Amendment)	4(A)(4)	0.00	0.00	0.00	0.00	

5. ITC Reversal Summary (Rule 37A)

(Amount in ₹ in all sections)

S.no.	Heading	GSTR-3B Table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
Credit which may be reversed under FORM GSTR-3B							
Part A	**ITC Reversed - Others**						
I	**ITC Reversal on account of Rule 37A**	**4(B)(2)**	0.00	0.00	0.00	0.00	Such credit shall be reversed and has to be reported in table 4(B)(2) of FORM GSTR-3B.
Details	B2B – Invoices		0.00	12.00	12.00	24.00	

S.no.	Heading	GSTR-3B Table	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	Cess (₹)	Advisory
	B2B - Debit notes		0.00	0.00	0.00	0.00	
	B2B - Invoices (Amendment)		0.00	0.00	0.00	0.00	
	B2B - Debit notes (Amendment)		0.00	0.00	0.00	0.00	

Instructions:

1. Terms Used :-
   a. ITC – Input tax credit
   b. B2B – Business to Business
   c. ISD – Input service distributor
   d. IMPG – Import of goods
   e. IMPGSEZ – Import of goods from SEZ
   f. ECO – E-Commerce Operator

2. **Important Advisory:**

   a) FORM GSTR-2B is a statement which has been generated on the basis of the information furnished by your suppliers or by ECOs in their respective FORMS GSTR-1/IFF, 1A, 5 and 6. It is a static statement and will be made available once a month. The documents filed by the Supplier in any FORMS GSTR-1/IFF, 5 and 6 would reflect in the next open FORM GSTR-2B of the recipient irrespective of supplier's date of filing. Taxpayers are advised to refer FORM GSTR-2B for availing credit in FORM GSTR-3B. However, in case of additional details, they may refer to their respective FORM GSTR-2A (which is updated on near real time basis) for more details.

   b) In addition, the supplies declared or amended in FORM GSTR-1A shall be made available in the next open FORM GSTR-2B.

   c) Input tax credit shall be indicated to be non-available in the following scenarios: -
      i. Invoice or debit note for supply of goods or services or both where the recipient is not entitled to input tax credit as per the provisions of sub-section (4) of Section 16 of CGST Act, 2017.
      ii. Invoice or debit note where the Supplier (GSTIN) and place of supply are in the same State while recipient is in another State.

   However, there may be other scenarios for which input tax credit may not be available to the taxpayers and the same has not been generated by the system. Taxpayers should self-assess and reverse such credit in their FORM GSTR-3B.

3. It may be noted that FORM GSTR-2B will consist of all the GSTR-1/IFFs, 5s and 6s being filed by your respective supplier or by ECOs. Generally, this date will be between filing date of GSTR-1(Monthly/Quarterly)/IFF for previous month (M-1) to filing date of GSTR-1(Monthly/Quarterly)/IFF for the current month (M). For example, GSTR-2B for the month of February will consist of all the documents filed by suppliers in their GSTR-1/IFF, 5 and 6 from 00:00 hours on 12th February to 23:59 hours on 11th March. It may be noted that for

import of goods, the data is being updated on real time basis, therefore, imports made in the month (month for which GSTR-2B is being generated for) shall be made available. The dates for which the relevant data has been extracted is available under the "View Advisory" tab on the online portal.

4. It also contains information on imports of goods from the ICEGATE system including data on imports from Special Economic Zones Units / Developers.
5. It may be noted that reverse charge credit on import of services is not part of this statement and will be continued to be entered by taxpayers in Table 4(A)(2) of FORM GSTR-3B.
6. Table 3 captures the summary of ITC available as on the date of generation of GSTR-2B. It is divided into following two parts:
   A. Part A captures the summary of credit that may be availed in relevant tables of FORM GSTR-3B.
   B. Part B captures the summary of credit that shall be net-off from relevant table of FORM GSTR-3B.
7. Table 4 captures the summary of ITC not available as on the date of generation of GSTR-2B. Credit available in this table shall not be availed as credit in FORM GSTR-3B but to be reported as ineligible ITC in Table 4(D)(2) of FORM GSTR-3B. However, the liability to pay tax on reverse charge basis and the liability to net-off credit on receipt of credit notes continues for such supplies.

7A. Table 5 captures the summary of ITC to be reversed under Rule 37A on or before 30th November following the end of financial year in which the ITC in respect of such invoice or debit note has been availed and corresponding FORM GSTR-3B has not been furnished by the supplier. Credit auto populated in this table shall be reversed in FORM GSTR-3B but should be reported as ITC reversed in Table 4(B)(2) of FORM GSTR-3B. Table 5 shall be made available only in FORM GSTR 2B of the September of the next financial year (made available in October).

8. Taxpayers are advised to ensure that the data generated in FORM GSTR-2B is reconciled with their own records and books of accounts. Taxpayers shall ensure that
   a. No credit shall be taken twice for any document under any circumstances.
   b. Credit shall be reversed wherever necessary.
   c. Tax on reverse charge basis shall be paid in cash.
9. Details of invoices, credit notes, debit notes, ISD invoices, ISD credit and debit notes, bill of entries etc. will also be made available online and through download facility.
10. There may be scenarios where a percentage of the applicable rate of tax rate may be notified by the Government. A separate column will be provided for invoices / documents where such rate is applicable.

11. Table wise instructions:

Table No. and Heading	**Instructions**
ITC Available Summary	
Table 3 Part A Section I All other ITC - Supplies from registered persons other than reverse charge	i. This section consists of the details of supplies (other than those on which tax is to be paid on reverse charge basis), which have been declared and filed by your suppliers or by ECOs in their FORM GSTR-1/IFF, GSTR-1A and GSTR- 5. ii. This table displays only the supplies on which input tax credit is available.

	iii.	Negative credit, if any may arise due to amendment in B2B - Invoices and B2B - Debit notes. Such credit shall be net-off in Table 4A(5) of FORM GSTR-3B.
Table 3 Part A Section II Inward Supplies from ISD	i. ii. iii.	This section consists of the details of supplies, which have been declared and filed by an input service distributor in their FORM GSTR-6. This table displays only the supplies on which ITC is available. Negative credit, if any, may arise due to amendment in ISD Amendments – Invoices. Such credit shall be net-off in table 4A(4) of FORM GSTR-3B.
Table 3 Part A Section III Inward Supplies liable for reverse charge	i. ii. iii. iv.	This section consists of the details of supplies on which tax is to be paid on reverse charge basis, which have been declared and filed by your suppliers in their FORM GSTR-1/IFF and GSTR-1A. This table provides only the supplies on which ITC is available. These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. Credit may be availed under Table 4(A)(3) of FORM GSTR-3B on payment of tax. Negative credit, if any, may arise due to amendment in B2B - Invoices (Reverse Charge) and B2B - Debit notes (Reverse Charge). Such credit shall be net-off in Table 4(A)(3) of FORM GSTR-3B.
Table 3 Part A Section IV Import of Goods	i. ii. iii. iv. v.	This section provides the details of IGST paid by you on import of goods from overseas and SEZ units / developers on bill of entry and amendment thereof. These details are updated on near real time basis from the ICEGATE system. This table shall consist of data on the imports made by you (GSTIN) in the month for which GSTR-2B is being generated for. The ICEGATE reference date is the date from which the recipient is eligible to take input tax credit. The table also provides if the Bill of entry was amended. Information is provided in the tables based on data received from ICEGATE. ~~Information on certain imports such as courier imports may not be available.~~
Table 3 Part B Section I Others	i. ii.	This section consists of the details of credit notes received and amendment thereof which have been declared and filed by your suppliers in their FORM GSTR-1/IFF, GSTR-1A and GSTR-5. These credit notes shall be net-off from relevant ITC available Tables [Table 4A(3,4,5)] of FORM GSTR-3B. Liability against Credit Notes (Reverse Charge) shall be net-off in Table 3.1(d) of FORM GSTR-3B.
ITC Not Available Summary		

Table 4 Part A Section I All other ITC - Supplies from registered persons other than reverse charge	i. ii. iii.	This section consists of the details of supplies (other than those on which tax is to be paid on reverse charge basis), which have been declared and filed by your suppliers or by ECOs in their FORM GSTR-1/IFF, GSTR-1A and GSTR-5. This table provides only the supplies on which ITC is not available. Such credit shall not be taken in FORM GSTR-3B. However, such credit shall be reported as ineligible ITC in Table 4D(2) of FORM GSTR-3B.
Table 4 Part A Section II Inward Supplies from ISD	i. ii. iii.	This section consists of details of the supplies, which have been declared and filed by an input service distributor in their FORM GSTR-6. This table provides only the supplies on which ITC is not available. Such credit shall not be taken in FORM GSTR-3B. However, such credit shall be reported as ineligible ITC in Table 4D(2) of FORM GSTR-3B.
Table 4 Part A Section III Inward Supplies liable for reverse charge	i. ii. iii. iv.	This section consists of the details of supplies liable for reverse charge, which have been declared and filed by your suppliers in their FORM GSTR-1/IFF and GSTR-1A. This table provides only the supplies on which ITC is not available. These supplies shall be declared in Table 3.1(d) of FORM GSTR-3B for payment of tax. However, credit will not be available on such supplies. Such credit shall be reported as ineligible ITC in Table 4D(2) of FORM GSTR-3B.
Table 4 Part B Section I Others	i. ii. iii.	This section consists details of the credit notes received and amendment thereof which have been declared and filed by your suppliers in their FORM GSTR-1/IFF, GSTR-1A and GSTR-5. This table provides only the credit notes on which ITC is not available. Such credit notes shall be net-off from relevant ITC available tables [Table 4A(3,4,5)] of FORM GSTR-3B.
Table 5 Part A Section I ITC Reversal on account of Rule 37A	i. ii. iii.	This table shall be made available only in FORM GSTR 2B of the September (made available in October). The table shall contain details of Input Tax Credit required to be reversed in respect of invoices or debit notes of previous financial year as per Rule 37A. Credit auto populated in this table shall be reversed in FORM GSTR-3B and is to be reported in Table 4(B)(2) of FORM GSTR-3B.

1. **Form GSTR 4A:-**In the description of the form, following amendment is required: -

'Auto-drafted details for registered person opting for composition levy

(Auto-drafted from GSTR-1, GSTR-1A, GSTR-5 and GSTR-7)'

2. Form GSTR 6A:-In the description of the form, following amendment is required: -
'Auto-drafted details for registered person opting for composition levy

(Auto-drafted from GSTR-1, GSTR-1A, GSTR-5 and GSTR-7)'

3. FORM GSTR –8:-In Instructions, at Sr. No 7,column 2, following amendment is required:-
'Matching of Details with supplier's GSTR-1 or GSTR-1A will be at the level of GSTIN of supplier.'

4. FORM GSTR –9
In Instructions , following amendments are required to be made:-

Table No.	Instructions
4A	Aggregate value of supplies made to consumers and unregistered persons on which tax has been paid shall be declared here. These will include details of supplies made through E-Commerce operators and are to be declared as net of credit notes or debit notes issued in this regard. Table 5, Table 7 along with respective amendments in Table 9 and Table 10 of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up these details.
4B	Aggregate value of supplies made to registered persons (including supplies made to UINs) on which tax has been paid shall be declared here. These will include supplies made through E- Commerce operators but shall not include supplies on which tax is to be paid by the recipient on reverse charge basis. Details of debit and credit notes are to be mentioned separately. Table 4A and Table 4C of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up these details.
4C	Aggregate value of exports (except supplies to SEZs) on which tax has been paid shall be declared here. Table 6A of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up these details.
4D	Aggregate value of supplies to SEZs on which tax has been paid shall be declared here. Table 6B of GSTR-1 **as amended by FORM GSTR-1A, if any** may be used for filling up these details.
4E	Aggregate value of supplies in the nature of deemed exports on which tax has been paid shall be declared here. Table 6C of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up these details.
4F	Details of all unadjusted advances i.e. advance has been received and tax has been paid but invoice has not been issued in the current year shall be declared here. Table 11A of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up

	these details.
4G	Aggregate value of all inward supplies (including advances and net of credit and debit notes) on which tax is to be paid by the recipient (i.e.by the person filing the annual return) on reverse charge basis. This shall include supplies received from registered persons, unregistered persons on which tax is levied on reverse charge basis. This shall also include aggregate value of all import of services. Table 3.1(d) of **FORM GSTR-3B** may be used for filling up these details.
4I	Aggregate value of credit notes issued in respect of B to B supplies (4B), exports (4C), supplies to SEZs (4D) and deemed exports (4E) shall be declared here. Table 9B of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up these details. For FY 2017-18, 2018-19 , 2019-20 and 2020- 21, the registered person shall have an option to fill Table 4B to Table 4E net of credit notes in case there is any difficulty in reporting such details separately in this table.
4J	Aggregate value of debit notes issued in respect of B to B supplies (4B), exports (4C), supplies to SEZs (4D) and deemed exports (4E) shall be declared here. Table 9B of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up these details. For FY 2017-18, 2018-19 , 2019-20 and 2020- 21, the registered person shall have an option to fill Table 4B to Table 4E net of debit notes in case there is any difficulty in reporting such details separately in this Table.
4K & 4L	Details of amendments made to B to B supplies (4B), exports (4C), supplies to SEZs (4D) and deemed exports (4E), credit notes (4I), debit notes (4J) and refund vouchers shall be declared here. Table 9A and Table 9C of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up these details. For FY 2017-18, 2018-19 , 2019-20 and 2020-21, the registered person shall have an option to fill Table 4B to Table 4E net of amendments in case there is any difficulty in reporting such details separately in this table.
5A	Aggregate value of exports (except supplies to SEZs) on which tax has not been paid shall be declared here. Table 6A of FORM GSTR-1 **as amended by FORM GSTR-1A, if any** may be used for filling up these details.
5B	Aggregate value of supplies to SEZs on which tax has not been paid shall be declared here. Table 6B of GSTR-1 **as amended by FORM GSTR-1A, if any** may be used for filling up these details.
5C	Aggregate value of supplies made to registered persons on which tax is payable by the recipient on reverse charge basis. Details of debit and credit notes are to be mentioned separately. Table 4B of FORM GSTR-1 **as amended by FORM GSTR-1A, if any** may be used for filling up these details.

5D, 5E and 5F	Aggregate value of exempted, Nil Rated and Non-GST supplies shall be declared here. Table 8 of FORM GSTR-1 **as amended by FORM GSTR-1A, if any** may be used for filling up these details. The value of "no supply" shall be declared under Non-GST supply (5F). For FY 2017-18, 2018-19 , 2019-20 and 2020- 21**]**], the registered person shall have an option to either separately report his supplies as exempted, nil rated and Non-GST supply or report consolidated information for all these three heads in the "exempted" row only.**]** For FY 2021-22, the registered person shall report Non- GST supply (5F) separately and shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only. For FY 2022-23, the registered person shall report Non-GST supply (5F) separately and shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only.**]**
5H	Aggregate value of credit notes issued in respect of supplies declared in 5A, 5B, 5C, 5D, 5E and 5F shall be declared here. Table 9B of FORM GSTR-1 **as amended by FORM GSTR-1A, if any** may be used for filling up these details. For FY 2017-18, 2018-19,2019-20, 2020-21, 2021-22 and 2022-23, the registered person shall have an option to fill Table 5A to Table 5F net of credit notes in case there is any difficulty in reporting such details separately in this Table.
5I	Aggregate value of debit notes issued in respect of supplies declared in 5A, 5B, 5C, 5D, 5E and 5F shall be declared here. Table 9B of FORM GSTR-1 **as amended by FORM GSTR-1A, if any** may be used for filling up these details. For FY 2017-18, 2018-19 2019-20, 2020-21, 2021-22 and 2022-23, the registered person shall have an option to fill Table 5A to Table 5F net of debit notes in case there is any difficulty in reporting such details separately in this Table.
5J & 5K	Details of amendments made to exports (except supplies to SEZs) and supplies to SEZs on which tax has not been paid shall be declared here. Table 9A and Table 9C of FORM GSTR-1 **as amended by FORM GSTR-1A, if any** may be used for filling up these details. For FY 2017-18, 2018-19 2019-20, 2020-21, 2021-22 and 2022-23, the registered person shall have an option to fill Table 5A to Table 5F net of amendments in case there is any difficulty in reporting such details separately in this Table.

.....

17 & 18	Summary of supplies effected and received against a particular HSN code to be reported only in this table. It will be optional for taxpayers having annual turnover upto Rs.1.50 Cr. 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 upto Rs.5.00 Cr and at four digits 'level for taxpayers having annual turnover above Rs.5.00 Cr. From FY 2021-22 onwards, it shall be mandatory to report HSN code at six digits level for taxpayers having annual turnover in the preceding year above Rs. 5.00 Cr and at four digits level for all B2B supplies for taxpayers having annual turnover in the preceding year upto Rs. 5.00 Cr.] UQC details to be furnished only for supply of goods. Quantity is to be reported net of returns. Table 12 of **FORM GSTR-1 as amended by FORM GSTR-1A, if any** may be used for filling up details in Table 17. It may be noted that this summary details are required to be declared only for those inward supplies which in value independently account for 10 % or more of the total value of inward supplies. For FY 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall have an option to not fill this table.For FY 2021-22 and 2022- 23, the registered person shall have an option to not fill Table 18.

Agenda Item 3(x): Issue of liability of payment of interest under Section 50 of CGST Act in case of delayed payment of tax, even though the credit is available in Electronic Cash Ledger (ECL).

References have been received regarding liability to pay interest under section 50 of CGST Act, 2017 in cases wherein though balance is available in the Electronic Cash Ledger of the taxpayer but return in FORM GSTR 3B could not be filed by the taxpayer by the due date of filing the return due to various reasons. In such cases, the taxpayers' liability to pay interest under section 50 of the CGST Act 2017 arises on delayed filing of such return in FORM GSTR-3B as the tax is considered to be paid only on filing such returns and debit of tax due from the Electronic Cash Ledger/Electronic Credit Ledger.

2. Statutory Provisions

2.1 Section 39 of CGST Act, 2017 provides for the furnishing of returns.-

"*39. Furnishing of returns*.

(1) ...

(2) ....

(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

***Provided** that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,—*

……..

……..

***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 the said period of three years from the due date of furnishing the said return."*

2.2 Section 49 of the CGST Act provides for payment of tax, interest, penalty, etc., which reads as under:

"49. Payment of tax, interest, penalty and other amounts.-

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

..

(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in subsection (1)

2.3 Section 50 of the CGST Act, 2017 provides for the payment of Interest on delayed payment of tax

50. 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.*

(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.

……

……

2.4 *Rule 61 Form and Manner of furnishing return*

(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in FORM GSTR-3B.

2.5 Rule 88B of the CGST Rules, 2017 provides for the **Manner of calculating interest on delayed payment of tax**

*"**88B. Manner of calculating interest on delayed payment of tax.***

(1) In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with the provisions of the 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, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.

(2)In all other cases, where interest is payable in accordance with sub section (1) of section 50, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of section 50.

…….. ..

……"

3. Analysis

3.1 The issue has been examined and it has been observed that there may be instances in which a taxpayer has deposited the amount in Electronic Cash Ledger by due date of filing return but is unable to file FORM GSTR 3B return by due date due to various reasons.

3.2 In this regard, section 50(1) of CGST Act provides that when a person, liable to pay tax under the Act fails to pay the said tax to the Government within the prescribed period, then he shall be liable to pay interest on such amount for the period of delay of payment of tax. Further, proviso to section 50 provides that when a return for a tax period is filed after the due date in accordance with provisions of section 39 of the CGST Act, then interest shall be payable on the portion on tax which is paid in the return by debiting the Electronic Cash Ledger.

3.3 As per section 49(3) of the CGST Act, the amount available in Electronic Cash Ledger can be used for making any payment towards tax, interest, penalty, fee, or any other amount payable under the provisions of the CGST Act and the rules made there under. Further, as per section 49(11) of the CGST Act, any amount transferred to Electronic Cash Ledger under CGST Act shall be deemed to be deposited in the said ledger.

3.4 As per rule 61 (2) of the CGST Rules, a registered person, required to furnish return under section 39 of the CGST Act, is required to discharge his liability towards tax, interest, penalty, fee, or any other amount payable under CGST Act/ CGST Rules by debiting the Electronic Cash Ledger or Electronic Credit Ledger and the details of such payment are required to be mentioned in GSTR 3B return.

3.5 Therefore, it is clear from above that as per the existing provisions of the CGST Act and CGST Rules, where any return is filed beyond the due date and the tax payable through such return is debited from Electronic Cash Ledger/ Electronic Credit Ledger and mentioned in the said return, liability to pay interest under section 50 of CGST Act arises on such amount debited through Electronic Cash Ledger for the period of delay in filing of GSTR-3B return. Any deposit in the Electronic Cash Ledger prior to the due date of filing of GSTR 3B return does not amount to discharge of tax liability on the part of the registered person and therefore, the same is not deducted from the amount debited from Electronic Cash Ledger for the purpose of calculating interest under section 50 of CGST Act on such delayed filing of the return.

3.6 It is mentioned that Rule 87 of the CGST Rules mandates that any amount towards tax, interest, penalty, fee, or any other amount payable under the provisions of the CGST Act can be deposited by the taxpayer through a challan in FORM GST PMT-06 and such deposits can be made through any of the modes provided in Rule 87 of the CGST Rules. Upon successful credit of the amount to the concerned Government account in the authorized bank, a Challan Identification Number (CIN) is generated by the collecting bank and the same is indicated in the challan. On receipt of the Challan Identification Number from the collecting bank, the said amount is credited to the Electronic Cash Ledger of the taxpayer. Besides as per Rule 87(9) of CGST Rules, any amount deducted under section 51of CGST Act or collected under section 52 of CGST Act and claimed by the

said taxpayer from whom the said amount has been deducted or the case may be collected, shall be credited to his Electronic Cash Ledger.

3.7 It is crucial to note that the CIN is generated by authorized banks only upon actual receipt of payment and credit of the same to the concerned Government account maintained in the said authorized bank. This payment is then recorded as a credit balance in the taxpayer's electronic cash ledger. Similarly, the amount deducted under section 51 or collected under section 52 of the CGST Act is also credited in the Electronic Cash Ledger of the taxpayer from whom the said amount has been deducted or collected, only after the concerned return in FORM GSTR 7 or FORM GSTR 8, as the case may be, has been filed by the concerned deductor or the electronic commerce operator and the said amount has been paid to the Government. In both the situations, the amount which is credited in Electronic Cash Ledger of a taxpayer, has already come into the Government account irrespective of whether the same has been debited through the said ledger or not.

3.8 Since the amount deposited in the electronic cash ledger of a taxpayer has already come into account of the Government, demanding interest on such amount in respect of delayed filing of returns, on the grounds that the said amount has been debited along with return only, does not appear to be fair and amounts to levying interest from the taxpayer on an amount which is already credited with the Government account. Therefore, it is proposed that for the purpose of levying interest under section 50 of the CGST Act, 2017 in respect of delayed filing of return, we may not include any amount which is already credited in the Electronic Cash Ledger on the due date of filing of the said return and which is subsequently debited from the said ledger along with the return while calculating such interest under section 50 of the CGST Act.

4. Therefore, it is proposed that rule 88B of CGST Rules, 2017 which provides for the manner for calculation of interest on delayed payment of tax, may be amended by inserting a proviso to the sub-rule (1) of rule 88B of CGST Rules, 2017 as below:

"Provided that where any amount has been credited in the Electronic Cash Ledger as per provisions of sub-section (1) of section 49 on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return."

5. Accordingly, the agenda is placed before the GST Council for approval.

Agenda Item 3(xi) : Reduction in rate of TCS to be collected by the ECOs for supplies being made through them.

The Electronic Commerce Operator (ECO), who is required to collect tax at source (TCS) as per **section 52 (1)** of CGST Act read with Notification No. 52/2018-Central Tax dated 20.09.2018 and Notification No. 02/2018-Integrated Tax dated 20.09.2024, collects the TCS amount calculated at a rate of **1% (0.5 % for CGST + 0.5% for SGST/ UTGST, or 1% of IGST)** of the net value of taxable supplies made through it by other suppliers, where the consideration with respect to such supplies is to be collected by the ECO.

2. The TCS amount, so collected by ECO from the supplier, and paid to the Government through FORM GSTR-8 return, gets reflected in **Electronic Cash Ledger of the said supplier.** The said amount can then be used by such supplier for making payment of taxes, penalty, interest etc. The said supplier **can also claim refund** under section 54(1) of CGST Act, 2017 of any amounts **lying unutilized in Electronic Cash Ledger**, after paying his due tax liability.

3. Representations have been received stating that in a large number of cases, the said suppliers are not able to utilize the TCS amount credited in their Electronic Cash Ledger for the purpose of payment of due tax liability and have to claim refund of such unutilized cash from the tax authorities. It has been mentioned that a lot of difficulty is being faced in getting refunds of such unutilized cash on account of delay in processing of such refunds as well as multiple queries being raised and notices being issued for denial of such refunds on various grounds, such as tax liability being paid mostly through ITC, not having traditional set up for PPoB, PPoB not being commensurate to size of the business, etc. Denial and/ or delay of refunds causes huge working capital constrains to such suppliers.

3.1 Accordingly, request has been made to reduce TCS rate to be deducted by the ECO **from existing 1% to 0.1%** for mitigating the difficulties so that requirement of refund, if any, by the suppliers get reduced as far as possible, besides reducing financial constraints on them due to working capital blockage, while keeping tracking mechanism intact.

4. **Relevant Legal provisions:**

Section 52 of CGST Act reads as under:

> *(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.*
>
> ***Explanation** .-For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made*

during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.
(2) .....
(3) .....
(4) .....

5. In this regard, data in respect of TCS collected and paid to the Government by ECOs under section 52 of CGST Act and the refunds of the excess balance of cash in Electronic Cash Ledger sought by the suppliers of ECOs for the financial year 2023-24 has been obtained from GSTN which is as follows:

Data on ECOs regarding TCS for Financial Year 2023-24

Number of e-Commerce operators who pay TCS to Government	Amount of TCS paid to Government by (i) (Rs. Cr.)	Number of taxpayers who make supplies through ECOs (who are liable for TCS u/s 52)	Out of (iii), number of taxpayers who applied for refund of excess balance in cash ledger	Amount of refund sanctioned in respect of (iv) (Rs. Cr.)	Percentage of refund sanctioned in (v) vis- à-vis TCS paid in (ii)
(i)	(ii)	(iii)	(iv)	(v)	(vi)
6281	3,970.58	7,19,294	25,769	1,983.06	49.94%

i. From the above, it is observed that tax collected at source by ECOs from approximately 7.19 lakhs taxpayers, who make supplies through ECOs, was Rs. 3970.58 Crore during FY 2023-24, out of which 25,769 taxpayers applied for refund of excess balance in cash ledger during the said period and the refund amount sanctioned is Rs. 1,983.06 Crore, which is **around 50% of the tax collected** in the said period.

ii. Accordingly, as per the present rate of TCS, about 50% of the amount of TCS collected and paid to the Government by ECOs, is being refunded to the suppliers of ECOs as excess balance in Electronic Cash Ledger, due to inability of the said suppliers to utilize such cash credited in their Electronic Cash Ledger.

iii. The requirement of refund of excess balance of cash in Electronic Cash Ledger on account of TCS by the said suppliers is not only causing working capital constraints to the said suppliers, but is also resulting in the increased workload of tax officers in processing the refund applications being filed by sch suppliers.

5.1 The original legislative intent behind the provisions governing TCS under CGST Act, was primarily to ensure tracking and adherence to transactional obligations facilitated by ECOs for large number of smaller suppliers making supplies through ECOs (which are much smaller in number) and to check whether such suppliers are paying their due tax liability or not. It was not intended to withhold a significant portion of their working capital, which could hinder their operational capabilities.

5.2 Therefore, considering this as a revenue neutral measure which is mainly used for keeping a track of the transactions through ECOs who are registered under GST, and considering that as per the present rate of TCS, about 50% of the TCS collected is required to be refunded to the suppliers, it may be desirable to have a relook at the rate of TCS to be collected under section 52 of CGST Act, so as to

promote the ease of doing business, to reduce compliance burden of the such taxpayers and also to reduce the workload of the tax authorities in the field, while at the same time keeping the tracking and monitoring mechanism intact. It is mentioned that any reduction in rate of TCS will have no impact on the tax liability of the taxpayers who are making supply through ECOs and from whom such tax is to be collected by ECOs under section 52 of CGST Act and thus, the revenue of the Government will not be affected in any manner.

6. The Law Committee deliberated on the matter in its meeting held on 30.05.2024 and recommended to reduce the TCS rate from present 1% (0.5% CGST + 0.5% SGST/ UTGST and 1% IGST) to 0.5 % (0.25% CGST + 0.25% SGST/UTGST and 0.5% IGST) by issuing a notification for amending notification No. 52/2018-Central tax dated 20.09.2018, Notification No. 02/2018-Integrated Tax dated 20.09.2024, Notification No. 12/2018-Union Territory tax dated 28.09.2018 as below:

Notification No. 52/2018-Central tax dated 20.09.2018

"G.S.R. .....(E).—In exercise of the powers conferred by sub-section (1) of section 52 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of ~~half~~ 0.25 per cent of the net value of intra-State taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator."

Notification No. 02/2018-Integrated Tax dated 20.09.2024

G.S.R. …..(E).— *In exercise of the powers conferred by the second proviso to section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), read with sub-section (1) of section 52 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of ~~one~~ 0.5 per cent. of the net value of inter-State taxable supplies made through it by other suppliers where consideration with respect to such supplies is to be collected by the said operator.*

Notification No. 12/2018-Union Territory Tax/GSR 940(E), DATED 28-9-2018

-"G.S.R. .....(E).—In exercise of the powers conferred by sub-section (1) of Section 22 read with Section 21 of Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and sub-section (1) of Section 52 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of ~~half~~ 0.25 per cent. of the net value of intra-Union Territory (without legislature) taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.

7. Accordingly, the agenda on above lines is placed before GST Council for deliberation and approval of the proposal.

Agenda Item 3(xii): Clarifications on various issues pertaining to special procedure for the manufacturers of the specified commodities, like pan masala, tobacco etc.

Based on the recommendation of the GST Council in its 50th meeting, Central Government notified the special procedure vide Notification No. 30/2023-Central Tax dated 31.07.2023 to be followed by the manufacturers of the goods mentioned in the Schedule to the said notification, including pan masala, chewing tobacco, gutkha, etc. The said special procedure envisages the monthly statement (SRM- IV) and various other details to be submitted by the concerned registered taxpayer through online mode, for which various FORMs such as SRM –I, SRM-IA, SRM-II A, SRM-IIB, SRM-III, etc need to be made available on the common portal.

2. Representations were received from various trade associations and industry representatives requesting for postponement/ extension of time limit for implementation of said special procedure notified vide Notification No 30/2023 Central Tax dated 31.07.2023, due to numerous difficulties faced by the industry in implementation of the special procedure and also need for clarification about various issues pertaining to the said special procedure.

3. The above mentioned difficulties and issues were deliberated by the GST Council in its 52nd meeting. The Council recommended that the implementation of the said scheme may be deferred till 1st January 2024, since no functionality had been made available on the portal for the said special procedure. Accordingly, as per recommendations of the Council, Notification No. 47/2023-CT dated 25.09.2023 was issued vide which the implementation of the said special procedure was deferred till 1st January, 2024.

4. Law Committee further deliberated on the various issues raised in the representations. The Law Committee recommended in its meeting held on 08.11.2023 that to simplify the special procedure, instead of asking the taxpayer to file information through a number of forms (such as FORM SRM-I, SRM-IA, SRM-II, SRM-IIA, SRM-IIB, SRM-IIIA & SRM-IV in Notification No. 30/2023-CT dated 31st July, 2023), only two FORMs may be enough viz. one for registration and disposal of the machines i.e. FORM SRM-I and the second for filing monthly details of inputs and outputs i.e. FORM SRM-II. Besides, format for Chartered Engineer Certificate was also suggested as per FORM SRM-III. The format of the said forms was also finalized by the Law Committee. The Law Committee recommended that Notification No 30/2023 Central Tax dated 31.07.2023 may be rescinded and a new notification may be issued for notifying the special procedure to be followed by the manufacturers of the goods mentioned in the Schedule to the said notification, including pan masala, chewing tobacco, gutkha, etc., to be implemented from a date, based on the readiness of the portal.

5. The recommendations of the Law Committee were placed before the GST Implementation Committee (GIC). GIC recommended for rescinding Notification No. 30/2023- Central Tax dated 31.07.2023 and for issuance of a new notification for notifying the special procedure to be followed by the manufacturers of the goods mentioned in the Schedule to the said notification, including pan masala, chewing tobacco, gutkha, etc., to be implemented from 01.04.2024. Accordingly, Notification No. 03/2024-Central Tax dated 05.01.2024 was issued for rescinding Notification No. 30/2023-Central Tax dated 31.07.2023. Also, Notification No. 04/2024-CT dated 05.01.2024 was issued for notifying the special procedure to be followed by the manufacturers of the goods mentioned in the Schedule to the said notification, including pan masala, chewing tobacco, gutkha, etc., to be implemented from **01.04.2024**. Further, GSTN informed that the functionality to implement the various forms envisaged in Notification No. 04/2024-CT dated 05.01.2024 is still not ready and hence

on the recommendation of GIC, the implementation of the said notification was deferred till 15.05.2024 by issuing Notification No. 08/2024-CT dated 10.04.2024.

6. The Law Committee in its meeting held on 08.11.2023 also felt that certain issues raised by industry in representations need to be clarified through a Circular. The Law Committee recommended issuance of a Circular for clarifying these issues. The draft Circular recommended by the Law Committee is enclosed with this agenda note as **Annexure A**.

7. Accordingly, the proposal is placed before the GST Council for deliberation and approval.

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ANNEXURE-A

Circular No.-XXXXX

F. No. CBIC-20001/7/2023-GST-CBEC
Government of India
Ministry of Finance
Department of Revenue
*****

North Block, New Delhi
Dated the -- January, 2024

To,
All the Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioner of Central Tax
All the Principal Director Generals/ Director Generals

Madam/Sir,

Subject: Clarifications on various issues pertaining to special procedure for the manufacturers of the specified commodities as per Notification No. 04/2024 - Central Tax dated 05.01.2024– reg.

Based on the recommendation of 50th GST Council meeting, a special procedure was notified vide Notification No. 30/2023-Central Tax dated 31.07.2023 to be followed by the registered persons engaged in manufacturing of goods mentioned in the schedule to the said notification. The said notification has been rescinded vide Notification No. 03/2024-Central Tax dated 05.01.2024 and a revised special procedure has been notified vide Notification No. 04/2024- Central Tax dated 05.01.2024.

2. Representations have been received from various trade associations seeking clarity on some issues pertaining to the said special procedure. 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 & Services Tax Act, 2017 (herein after referred to as the 'CGST Act"), hereby clarifies various issues as under:

S.No.	Issued Raised by Trade	Clarification on the issue
1.	*Non availability of make, model number and machine number* - The trade bodies have raised the issue that some of the manufacturers of the said goods are using very old packing machines since decades including second hand machines. Therefore, the details of make, model number and machine number of these	It is clarified that in Table 6 of **FORM GST SRM-I** as notified vide Notification No. 04/2024-CT dated 05.01.2024, make and model number are optional. However, where make of the machine is not available, the year of purchase of the machine may be declared as the make number. It is also clarified that the machine number is a

	machines are not readily available.	mandatory field in Table 6 of **FORM GST SRM-I** to be filled up by the manufacturer. If the machine number is not available either on the machine or as per the available documents/ records, then the manufacturer may assign any numeric number to the said machine and provide the details of the same in Table 6 of **FORM GST SRM-I**.
2.	In cases where the electricity consumption rating of the packing machine is not available in the specifications of the said machine or in the documents/record of the same, then how to declare the electricity consumption rating of the said machine in Table 6 of **FORM GST SRM-I**?	It is clarified that electricity consumption rating of the packing machine is to be declared in Table 6 of **FORM GST SRM-I** on the basis of details of the same as available either on the machine or in the documents/record of the said machine. However, if the same is not available either on the machine or in the documents/records, then the manufacturer may get such electricity consumption per hour of the said machine calculated through a Chartered Engineer and get the same certified by the said Chartered Engineer in the format prescribed in FORM GST SRM-III, as notified vide Notification No. 04/2024-CT dated 05.01.2024. The said electricity consumption rating can be declared in Table 6 of **FORM GST SRM-I** accordingly. The copy of such certificate of the Chartered Engineer needs to be uploaded along with **FORM GST SRM-I**. The details of the documents so uploaded needs to be provided in Table 10 of the said form. It is also clarified that in cases where there are certificates of Chartered Engineer for more than one machine, then all such certificates may be uploaded in a single PDF file.
3.	Which value has to be reported in Column 8 of Table 9 of **FORM GST SRM-II** in case of goods having no MRP, for example, goods manufactured for export market?	In cases where there is no MRP of the package, then the sale price of the goods so manufactured shall be entered in Column 8 of Table 9 of **FORM GST SRM-II** as notified vide Notification No. 04/2024-CT dated 05.01.2024.
4.	What should be the qualification and eligibility of the Chartered Engineer for providing Chartered Engineer certificate under the special procedure notified vide	It is clarified that a Practicing Chartered Engineer having a certificate of practice from the Institute of Engineers India (IEI) is qualified to provide Chartered Engineer

	Notification No. 04/2024-CT dated 05.01.2024?	certificate under the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024.
5.	Whether the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is applicable to the manufacturing units located in Special Economic Zone (SEZ)?	It is clarified that the special procedure as notified vide Notification No. 04/2024-CT dated 05.01.2024 is not applicable to the manufacturing units located in Special Economic Zone.
6.	Whether the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is applicable to the manual processes using electric operated heat sealer and seamer?	It is clarified that the said special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 is not applicable in respect of manual seamer/ sealer being used for packing operations. Further, it is also clarified that the said special procedure is not applicable in respect of manual packing operations such as those in cases of post harvest packing of tobacco leaves.
7.	In cases where multiple machines are required for filling, capping and packing of containers, the serial number of which machine is required to be declared in Table 6 of **FORM GST SRM-I**?	It is clarified that in a manufacturing process there may be different machines being used such as one for filling of packages, another for putting seal on the packages and another for final packing. The detail of that machine is required to be reported in Table 6 of **FORM GST SRM-I** which is being used for final packing of the packages of the specified goods.
8.	In case of job work or contract manufacturing, which person shall be required to comply with the special procedure as notified vide Notification No. 04/2024-CT dated 05.01.2024?	It is clarified that the special procedure notified vide Notification No. 04/2024-CT dated 05.01.2024 shall be applicable to all persons involved in manufacturing process including a job worker / contract manufacturer. However, if the job worker/ contract manufacturer is unregistered, then the liability to comply with the said special procedure will be of the concerned principal manufacturer.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board.

Sanjay Mangal
Pr. Commissioner (GST)

Agenda Item 3(xiii): Clarification on the provisions of clause (ca) of Section 10(1) of the Integrated Goods and Service Tax Act, 2017 relating to place of supply of goods to unregistered persons.

Reference has been received from trade and industry seeking clarification regarding the place of supply in terms of newly added clause (ca) of section 10(1) of the IGST Act, in case of supply of goods made to an unregistered person where the billing address is different from the address of delivery of goods, especially in the context of supply being made through e-commerce platforms.

2. Background:

Vide Notification 02/2023-Integrated Tax, dated September 29, 2023, the provisions of the Integrated Goods and Services Tax (Amendment) Act, 2023 (31 of 2023) had come into force with effect from 01.10.2023. Clause (ca) has been inserted in Section 10(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") with effect from 01.10.2023

It has been represented that in case of supply of goods made to an unregistered person where the billing address is different from the address of delivery of goods, especially in the context of supply being made through e-commerce platforms, applying the place of supply provisions of section 10(1)(a) of IGST Act, the place of supply of goods will be the State where movement of goods terminates for delivery.

However, as the newly inserted clause (ca) of section 10(1) of IGST Act contains a non-obstante clause overriding the provisions of clause (a) and clause (c) of section 10(1) of IGST Act, doubts have been raised regarding the place of supply in such scenario by applying the newly inserted provision of section 10(1)(ca) of IGST Act.

3. Relevant Legal Provisions:

Section 10 of the IGST Act, 2017 specifies the Place of supply of goods other than supply of goods imported into, or **exported from India.**

10(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,-

10(1)(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient

……

……,

10(1)(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient

10(1)(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Explanation.—For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;"

4. <u>Analysis:</u>

4.1. The clause (ca) under Section10(1) has been inserted as a non-obstante provision overriding the provisions under Section 10(1)(a) or 10(1)(c) of IGST Act. The clause (ca) provides that where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. An explanation has also been added to the said clause to clarify that recording the name of the State of the said person shall be deemed to be the recording of the address of the said person.

4.2. It is mentioned that GST is a destination-based consumption tax and accordingly, in general, the place of supply has been considered on the basis of place of consumption of the said supply. In case of supply of goods to unregistered persons, especially in cases of supplies of goods through e-commerce platforms, where the billing address of the unregistered persons is different from the available delivery address, as the goods are to be consumed in the State where the delivery address is located, place of supply as per destination- based consumption principle should be the State where delivery address is located.

4.3. Thus, in cases involving supply of goods to unregistered person, where the address of delivery of goods recorded on the invoice is different from the billing address of the said unregistered person on the invoice, the place of supply of goods in accordance with the provisions of clause (ca) of sub-section (1) of section 10 of IGST Act, shall be the address of delivery of goods recorded on the invoice. Besides, where the billing address and delivery address are different in cases of supply of goods to an unregistered person, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.

5. Law Committee in its meeting held on 24.01.2024 deliberated on the same, and recommended issue of a circular on the above lines. The draft circular as recommended by the Law Committee is placed at **Annexure-A**

6. Accordingly, the agenda is placed before the GST Council for approval.

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Annexure-A

Circular No. …../…/2024-GST

F.No. CBIC-XX/XX/2023-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, 2024

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 provisions of clause (ca) of Section 10(1) of the Integrated Goods and Service Tax Act, 2017 relating to place of supply– Reg.

Vide Notification 02/2023-Integrated Tax, dated September 29, 2023, the provisions of the Integrated Goods and Services Tax (Amendment) Act, 2023 (31 of 2023) had come into force with effect from 01.10.2023.

2. Clause (ca) has been inserted in Section 10(1) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act") with effect from 01.10.2023. The same is reproduced as under:

> *"(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.*

Explanation.—For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;"

2.1 The said provision has been inserted as a non-obstante provision overriding the provisions under Section 10(1)(a) or 10(1)(c) of IGST Act. The clause (ca) provides that where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. An explanation has also been added to the said clause to clarify that recording the name of the State of the said person shall be deemed to be the recording of the address of the said person.

3. Reference has been received from trade and industry seeking clarification regarding the place of supply in terms of newly added clause (ca) of section 10(1) of the IGST Act, in case of supply of goods made to an unregistered person where billing address is different from the address of delivery of goods, especially in the context of supply being made through e-commerce platforms.

4. 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 hereby clarifies the issues as under:

S.No.	**Issue**	**Clarification**
Place of supply of goods (particularly being supplied through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods.		
1.	Mr. A (unregistered person) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State. Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X state. In such a scenario, what would be the place of supply of the said supply of mobile phone, whether the State pertaining to the billing address i.e. State X or the State pertaining to the delivery address i.e. State Y?	As per the provisions of clause (ca) of sub-section (1) of section 10 of IGST Act, where the supply of goods is made to an unregistered person, the place of supply would be the location as per the address of the said person recorded in the invoice and the location of the supplier where the address of the said person is not recorded in the invoice. Further, as per Explanation to the said clause, recording the name of the State of the said unregistered person on the invoice shall be deemed to be the recording of the address of the said person. Accordingly, it is clarified that in such cases

		involving supply of goods to an unregistered person, where the address of delivery of goods recorded on the invoice is different from the billing address of the said unregistered person on the invoice, the place of supply of goods in accordance with the provisions of clause (ca) of sub-section (1) of section 10 of IGST Act, shall be the address of delivery of goods recorded on the invoice i.e. State Y in the present case where the delivery address is located. Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods.

5. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 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)

Agenda Item 3(xiv): Providing a mechanism for adjustment of payments made through FORM DRC-03, in respect of a demand against pre-deposit as well as for adjustment of liability in Electronic Liability Register (Amendment in Rule 142 of CGST Rules, 2017 along with clarification circular).

1. Background:

1.1 It is to be noted that as per Rule 142 of the Central Goods and Services Tax Rules, 2017, (hereinafter referred to as the 'CGST Rules'), **FORM GST DRC-03** is required to be filed for voluntary tax payments by a taxpayer, vide which he can pay the tax, interest and penalty in respect of any liability voluntarily as a result of self-assessed discrepancy or as a response to a demand raised by the tax authorities. It is also used for making payments for discrepancies noticed during audit, during investigation, for making payments related to Annual Returns, Reconciliation Statement etc.

1.2 After the filing of **FORM GST DRC-03** by the taxpayer, in cases where the payment is made before the issuance of a show-cause notice, the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**. At the same time, in cases where the full payment is made through **FORM GST DRC-03** after the issuance of the show-cause notice, but within 30 days from the issuance of the show-cause notice, the proper officer shall issue an intimation in **FORM GST DRC-05** concluding the proceedings in respect of the said Notice.

1.3 It is also to be noted that the proper officer, before service of a demand notice to the person chargeable with tax, interest and penalty, may communicate such details as ascertained by him in **FORM GST DRC-01A**. This will provide an opportunity to the taxpayer to pay such tax before the issuance of the notice and conclude the proceedings.

1.4 With respect to the said forms, the following issues have been brought to notice, by the trade and industry, as well as by the tax officers:

a) Providing a mechanism for auto-acknowledgement of **FORM GST DRC-03s** filed by the taxpayers.
b) Requirement for a mechanism for closure of proceedings initiated vide **FORM GST DRC-01A**.
c) Providing a mechanism for adjustment of payments made through FORM DRC-03, in respect of a demand against pre-deposit as well as for adjustment of liability in Electronic Liability Register.

The above issues are discussed below.

1.5 **Issue: Providing for a mechanism for processing auto-acknowledgement of FORM GST DRC-03s filed by the taxpayers.**

1.5.1 **FORM GST DRC-03s** which are filed by the taxable persons where the taxpayers give reference to the system generated number/ reference numbers of the show cause notice/ intimation are assigned to the concerned proper officers who have issued the said show cause notice/ intimation. However, in cases where the payments are made by the taxable persons in **FORM GST DRC-03** without giving reference to the system generated number/ reference number of the show cause notice /intimation, the said **FORM GST DRC-03s** are being distributed in the back office amongst the range officer or audit officer or enforcement officer in the GST back office. In some tax administrations, all the **FORM GST DRC-03**s are being assigned to the range officer, who is further given the option to distribute it to other officers like audit officer, enforcement officer based on the nature of the payment etc.

1.5.2 In many cases, especially where the taxpayer does not give reference to the system generated number/ reference number of the show cause notice/ intimation in the **FORM GST DRC-03**, the officer assigned with the said form does not have the information to process the payment, as the same might have been paid by the taxpayer in response to an audit query or an enforcement action, or even self-assessed discrepancy in returns. As a result, the **FORM GST DRC-03** filed by the taxpayer remains unattended for a long time.

1.5.3 Therefore, a mechanism is required to process such FORM GST DRC-03s in the backend.

1.6 **Issue: Mechanism for closure of proceedings initiated vide FORM GST DRC-01A:**

1.6.1 The proceedings initiated vide **FORM GST DRC-01A** (i.e., Intimation of tax ascertained as being payable under section 73(5)/74(5) of the CGST Act under Rule 142(1A) of the CGST Rules, 2017) remains open in the Back Office (BO) even after sufficient compliance being made by the taxpayer. In this regard, it is to be noted that the compliance by taxpayer is sufficient in cases where,

i) The amount intimated in Part-A of FORM GST DRC-01A is paid through FORM GST DRC-03.
ii) Taxpayer files (uploads) reply in Part-B of FORM GST DRC-01A with partial payment and/or submission, which is acceptable to the proper officer.
iii) Taxpayer files (uploads) reply in Part-B of FORM GST DRC-01A without any payment and the proper officer finds the explanation satisfactory.

1.6.2 Therefore, a mechanism as well as amendment in rules and the relevant forms may be required to close the proceedings initiated vide FORM GST DRC-01A where the taxpayer has made the sufficient compliance.

1.7 **Issue: Providing a mechanism for adjustment of payments made through FORM DRC-03, in respect of a demand against pre-deposit as well as for adjustment of liability in Electronic Liability Register:**

1.7.1 Section 112(8) of the CGST Act, 2017 provides that no appeal shall be filed unless the appellant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of the section 107, arising from the said order, in relation to which the appeal has been filed.

1.7.2 It is also mentioned that as per Section 112(9) of the CGST Act, 2017, where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

1.7.3 It is worth noting that there is a big volume of cases awaiting the formation of GSTAT in those where the first appellate authority has dismissed the appeals. In this regard, representations were received from the trade and industry, to clarify as to how to deposit the pre-deposit required for filing of appeals before the Appellate Tribunal, so that recovery proceedings are stayed as per Section 112(9) of the CGST Act.

2. **Relevant provisions:**

2.1 **Rule 142 of CGST Rules, 2017:**

Rule 142. Notice and order for demand of amounts payable under the Act. -

(1) The proper officer shall serve, along with the

*(a) Notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01** ,*

*(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**, specifying therein the details of the amount payable.*

(1A) The proper officer may, before service of Notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

*(2) Where, before the service of Notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of subsection (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.*

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.

*(3) Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a Notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said Notice.*

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any Notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06 .

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded

electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned.

(6) The order referred to in sub-rule (5) shall be treated as the Notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.

3. **Analysis:**

3.1 **Issue: Mechanism for automatic acknowledgment of FORM GST DRC-03:**

3.1.1 Punjab and Haryana High Court in the case of *M/s. Samyak Metals Pvt. Ltd. v. Union of India and Others [CWP No.26529 of 2022 dated May 24, 2023]* and *"Diwakar Enterprises Pvt Ltd v. Commissioner of CGST and another" [WP-23788-2021-14.03.2023]* has inter-alia observed that as per Rule 142 (2) of the CGST Rules, when a payment is made in **FORM GST DRC-03**, the Proper Officer has to issue acknowledgment, accepting the payment made by the said person in **FORM GST DRC-04**. In both the cases, Hon'ble High Court directed the Revenue Department to refund the amount paid by the assessee along with interest during the search proceeding where neither DRC-04 nor notice under Section 74(1) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) was issued.

3.1.2 Law Committee deliberated on this issue in its meeting held on 08.11.2023 and observed that FORM DRC-04 is only an acknowledgement of the payment made in FORM DRC-03. Law Committee accordingly recommended for **auto-generation of acknowledgement in FORM GST DRC-04** after filing of **FORM GST DRC-03**. In order to achieve the auto-generation of the **FORM GST DRC-03,** the Law Committee also recommended that amendments may be made in sub-rule (2) of rule 142 of CGST Rules, 2017 (as detailed in **Annexure A**) and in **FORM GST DRC-04 (**as detailed in **Annexure E)**. The Law Committee also recommended that the details of such system-issued **FORM GST DRC-04** shall be made available to the officers on dashboard as well as through MIS.

3.2 **Issue: Mechanism for closure of proceedings initiated vide FORM GST DRC-01A:**

3.2.1 It was felt that in cases where the taxpayer has made the necessary compliance by either paying the tax amount along with requisite interest, or has made satisfactory submissions or both, there needs to be a logical conclusion to the proceedings initiated by issuance of **FORM GST DRC-01A**.

3.2.2 Therefore, the Law Committee in its meetings held on 16.03.2022, 07.05.2022, 08.11.2023, and 16.05.2024 recommended that Part-C may be added to **FORM GST DRC-01A**, to enable the tax officer to conclude the proceedings, if the reply or the payment or both submitted by the taxpayer in the Part-B of the said form, is satisfactory. The amendments as recommended by the Law Committee are detailed in **Annexure-B**.

3.2.3 In order to enable the said form, and draw the procedure of issuance of Part-C of the said form, Law Committee also recommended amendments to sub-rule (2A) of Rule 142 of CGST Rules, 2017, as detailed in **Annexure-A**.

3.3 **Issue: Providing a mechanism for adjustment of payments made through FORM DRC-03, in respect of a demand against pre-deposit as well as for adjustment of liability in Electronic Liability Register.**

3.3.1 In this regard, it is to mention that the current mechanism/ process flow is as below:

(i) When an adjudication order or an appeal order is issued and a summary is uploaded in the system vide FORM GST DRC-07 or FORM GST APL-04, as the case may be, demand is created and a debit entry is posted in the Electronic Liability Ledger Part II (ELL-II) of the taxpayer.

(ii) When the taxpayer navigates to 'payment towards demand' in his dashboard, he will be shown the demand so created, against which he can very well make payment even now, which will be made as a credit entry against the said demand in the ELL-II.

(iii) Payments made in the said manner (and not vide FORM GST DRC -03) will get adjusted automatically against pre-deposit that is required to be paid by the taxpayer, if and when he decides to file an appeal before the appellate authority. Similar will be the procedure, if and when the taxpayer decides to file an appeal before the appellate tribunal (when the Tribunal comes into operation).

3.3.2 Issue arises when an amount intended to be made as a 'payment towards demand' has been paid vide FORM GST DRC-03, either voluntarily or on persuasion of the tax authorities. For processing such cases, where the payment to be made in respect of a demand has been paid through FORM GST DRC-03, Law Committee recommended to introduce a new form, FORM GST DRC-03A, which will enable the taxpayers to adjust the amounts paid through FORM GST DRC-03, towards the amounts to be paid towards a demand. FORM GST DRC-03A, as recommended by the Law Committee, is detailed in **Annexure-D.** Law Committee also recommended some amendments in FORM GST DRC-03, as detailed in **Annexure-C,** to facilitate the same. Law Committee felt that such a measure will be extremely useful in regularizing the payments made in FORM DRC-03 (where they were intended to be made against certain demands), as well as to clean the Electronic Liability Ledger of the taxpayers.

3.3.4 To achieve the above, Law Committee recommended suitable amendments in Rule 142 of the CGST Rules by insertion of sub-rule (2B) in the said rule, as detailed in **Annexure-A**.

3.3.5 Law Committee also observed that in respect of cases where payment of pre-deposit is to be made for filing of appeal in GST Appellate Tribunal under section 112 of CGST Act, so that recovery proceedings are stayed as per Section 112(9) of the CGST Act, there is a need to provide clarity through a circular. Besides, clarification is also required in respect of adjustment of payments made through DRC-03 against demands created in Electronic Liability Register of a registered person as a result of a demand order or appeal order. Law Committee recommended that these issues may be clarified through a circular. The draft circular recommended by the Law Committee is enclosed as **Annexure-F**.

4. The agenda note is placed before the Council for approval please.

Annexure-A

Rule 142 of CGST Rules, 2017 may be amended as below:

Rule 142. Notice and order for demand of amounts payable under the Act. -

…

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

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, whether on his own ascertainment or, as communicated by the proper officer under sub rule (1A),] he shall inform the proper officer of such payment in FORM GST DRC-03 and ~~the proper officer shall issue~~ an acknowledgement, ~~accepting the payment made by the said person~~ in FORM GST DRC– 04 shall be made available to the person through the common portal electronically.

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in ***Part B*** *of* ***FORM GST DRC-01A,*** *and thereafter the proper officer may issue an intimation in Part-C of FORM GST DRC-01A, accepting the payment or the submissions or both, as the case may be, made by the said person.*

(2B) Where an amount of tax, interest, penalty or any other amount payable by a person under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of this act, has been paid by the said person through an intimation in FORM GST DRC-03 under sub-rule (2), instead of crediting the said amount in the electronic liability register in FORM GST PMT – 01 against the debit entry created for the said demand, the said person may file an application in FORM GST DRC-03A electronically on the common portal, and the amount so paid and intimated through FORM GST DRC-03 shall be credited in Electronic Liability Register in FORM GST PMT –01 against the debit entry created for the said demand, as if the said payment was made towards the said demand on the date of such intimation made through FORM GST DRC-03;

Provided *that where an order in FORM GST DRC-05 has been issued in terms of sub-rule (3) concluding the proceedings, in respect of the payment of an amount in FORM GST DRC-03, an application in FORM GST DRC-03A cannot be filed by the said person in respect of the said payment.*

…

Annexure-B

FORM GST DRC-01A

Intimation of tax ascertained as being payable under section 73(5)/74(5)

[See Rule 142 (1A), (2A)]

Part A

No.: Date:

Case ID No.

To

GSTIN……
Name……
Address……

~~Sub.:~~ Case Proceeding Reference No……- Intimation of liability under section 73(5)/section 74(5) ~~— reg.~~

Please refer to the above proceedings. In this regard, the amount of tax/interest/penalty payable by you under section 73(5) / 74(5) with reference to the said case as ascertained by the undersigned in terms of the available information, as is given below:

Act	Period	Tax	Interest	Penalty	Total
CGST Act					
SGST/UTGST Act					
IGST Act					
Cess					
Total					

The grounds and quantification are attached / given below:

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest in full by ……..,failing which Show Cause Notice will be issued under section 73(1).

OR

You are hereby advised to pay the amount of tax as ascertained above along with the amount of applicable interest and penalty under section 74(5) by …….., failing which Show Cause Notice will be issued under section 74(1).

In case you wish to file any submissions against the above ascertainment, the same may be furnished by…….. in Part B of this Form.

~~Proper Officer~~
Signature……
Name……
Designation……
Jurisdiction ----------
Address ----------

Upload Attachment

Part B

Reply to the communication for payment before issue of Show Cause Notice

[See Rule 142 (2A)]

Reference No. of Intimation:

Date:

~~To~~

~~Proper Officer,~~

~~Wing / Jurisdiction.~~

~~***Sub.: Case Proceeding Reference No……. Payment/Submissions in response to liability intimated under Section 73(5)/74(5) – reg.***~~

Please refer to Intimation ID…… in respect of Case ID…….vide which the liability of tax payable as ascertained under section 73(5) / 74(5) was intimated.

In this regard,

A. this is to inform that the said liability is discharged partially/ fully to the extent of Rs. …… through ……..……and the submissions regarding remaining liability are attached / given below:

OR

B. the said liability is not acceptable and the submissions in this regard are attached / given below:

Signature of Authorised Signatory
Name……
~~GSTIN……~~
Designation / Status ~~Address~~……

Upload Attachment

Part C

[See Rule 142(2A)]

Reference No. of Intimation: Date:

To

GSTIN……

Name……

Address……

Acceptance of submission and/or payment made in reply to intimation made in Part-A of FORM GST DRC-01A

This has reference to the communication issued in **Part-A** of **FORM GST DRC-01A** vide reference no. ---------- dated ----------, the payment made through **FORM GST DRC-03** vide reference no. ------ dated --------.The said payment made by you has been found satisfactory and hence accepted.

OR

This has reference to the reply furnished vide reference no. ------ dated -------- in response to the communication issued in **Part-A** of **Form GST DRC-01A** vide reference no. ---------- dated ----------. along with the payment made through **FORM GST DRC-03** vide reference no. ------ dated --------. The said submission and the payment made by you has been found satisfactory and hence accepted.

OR

This has reference to the reply furnished vide reference no. ------ dated -------- in response to the communication issued in **Part-A** of **Form GST DRC-01A** vide reference no. ---------- dated ----------. The said reply has been found satisfactory and hence accepted.

Signature……
Name……
Designation……
Jurisdiction ……
Address ……

Upload Attachment

Annexure-C

FORM GST DRC- 03

[See rules 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.	GSTIN		
2.	Name	< Auto>	
3.	Cause of payment	<< drop down>>	
3A	Shipping bill details of erroneous IGST refund (to be enabled only if the specified categories~~y~~ are ~~is~~ chosen in drop down menu)	(i) Shipping Bill/ Bill of Export No. & Date: (ii) Amount of IGST paid on export of goods: (iii) Notification No. used for procuring inputs at concessional rate or exemption (in cases of contravention of sub-rule 10 of Rule 96): (iv) Date of notification: (v) Amount of refund received: (vi) Amount of erroneous refund to be deposited: (vii) Date of credit of refund in Bank Account:	
4.	Section under which voluntary payment is made	<< drop down>>	
5.	Details of ~~show cause notice, if payment is made within 30 days of its issue, scrutiny, intimation of tax ascertained through Form GST DRC01A, audit, inspection or investigation, GST RFD-01, others (specify)~~ i. Audit ii. Inspection or investigation iii. After issuance of SCN/ Statement but before issuance of the order iv. Scrutiny, v. Intimation of tax ascertained through FORM GST DRC-01A, vi. Payment made in response to FORM GST DRC -01 B, vii. Payment made in response to FORM GST DRC -01 C, viii. Deposit of Erroneous Refund of unutilized ITC,	Reference No./ARN	Date of issue/filing

	ix. Non-receipt of foreign remittance in respect of refund of unutilized ITC on export of goods under Rule 96B x. Others (specify)		
6.	Financial Year		
7.	Details of payment made including interest and penalty, if applicable (Amount in Rs.)		

Sr. No.	Tax Period	Act	Place of supply (POS)	Tax/ Cess	Interest	Penalty, if applicable	Fee	Others	Total	Ledger utilised (Cash /Credit)	Debit entry no.	Date of debit entry
1	2	3	4	5	6	7	8	9	10	11	12	13

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 made only in cash for deposit of erroneous refund of unutilised Input Tax Credit (ITC) and for deposit of erroneous refund of Integrated Goods and Services Tax (IGST), obtained in contravention of sub-rule (10) of rule 96.
2. ARN of FORM GST RFD-01 to be mentioned mandatorily if cause of payment is selected as – 'deposit of erroneous refund of unutilised ITC'.
3. Details of shipping bills to be entered in the same pattern in which the details have been entered in the returns.

Annexure-D

FORM GST DRC- 03A

[See rules 142(2B)]

Application for adjustment of the amount paid through FORM GST DRC-03 against the order of demand

1.	GSTIN	
2.	Legal name	< Auto>
3.	Trade name, if any	< Auto>
4.	ARN of DRC-03A	< Auto>
5.	Date of filing DRC-03A	< Auto>
6.	ARN of the DRC-03 through which payment made	
7.	Date of filing of DRC-03	<Auto>
8.	Amount paid through DRC-03	< Auto>

(Amount in Rs.)

Sr. No.	Tax Period	Act	Place of Supply (POS)	Tax/ Cess	Interest	Penalty	Fee	Others	Total
1	2	3	4	5	6	7	8	9	10
< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>
< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>
Total	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>

9.	Reference no. of the order of demand against which payment was intended to be made (including rectification / appeal order)	
10.	Date of issue of the order	<Auto>
11.	Amount of demand	<Auto>

(Amount in Rs.)

Sr. No.	Tax Period	Act	Place of Supply (POS)	Tax/ Cess	Interest	Penalty	Fee	Others	Total
1	2	3	4	5	6	7	8	9	10
< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>
< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>
Total	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>	< Auto>

12.	**UNDERTAKING** I hereby undertake that the payment made vide the FORM GST DRC-03 with unique ARN number mentioned at S. No. 6 above, has actually been paid by me as 'payment towards demand' intended to be paid against the demand (with unique ARN number of FORM GST DRC -07, or GST DRC-08 or FORM GST APL-04, as the case may be, mentioned at S. No. 9 above) and has not been used towards any other demand/ payment to be made by me. I also undertake to pay back to the Government the amount so adjusted using this form along with applicable interest, if any of the details declared above are found to be false subsequently. I will also be liable to penal action under Section 122(1)(x) of CGST Act.

13.	**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 ……..

Annexure-E

FORM GST DRC – 04

[See rule 142(2) & 142(3)]

Reference No: Date:

To

_____ GSTIN/ID

---------- Name

_____ Address

Tax Period ---------- F.Y. ----------

ARN - Date –

Acknowledgement of ~~acceptance of~~ payment made voluntarily

The payment made by you vide application referred to above is hereby acknowledged to the extent of the amount paid ~~and for the reasons stated therein~~.

This is a system generated acknowledgement and does not require signature.

~~Signature~~
~~Name~~
~~Designation~~

~~Copy to-~~

Annexure-F

Circular No. ……/…/2024 - GST

CBIC-……..-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the ……

To,

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

Madam/Sir,

Subject: Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation.

Doubts have been raised by the trade and the field formations in respect of recovery of outstanding dues, in cases where the first appellate authority has confirmed the demand created by the adjudicating authority, fully or partially, and where appeal against such order of appellate authority could not be filed under Section 112 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act') due to non- constitution of Appellate Tribunal (hereinafter referred to as 'Tribunal'), as yet. Doubts have also been raised as to whether the amount that was originally intended to be paid towards the demand created but has inadvertently been paid and intimated by the taxpayer through FORM GST DRC-03 either under the 'voluntary' category or under the 'others' category, can be adjusted against the pre-deposit that is required to be paid by the taxpayer for filing appeal before the appellate authority under Section 107, and before the appellate tribunal under Section 112 of the CGST Act.

2. The matter has been examined in detail. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.

3. In cases, where the first appellate authority has confirmed the demand issued by the adjudicating authority, partially or fully, the taxpayers cannot file appeal against the said appellate order at present due to non-operation of GST Appellate Tribunal as yet. As per Section 112 of the CGST Act, every person has statutory remedy of appeal against the order passed by the first appellate authority or by a revisional authority, before the Tribunal. It may further be noted that if any person files an appeal in accordance with the requirement of sub-section (8) of section 112 of the CGST Act (i.e., on payment of prescribed pre-deposit), the recovery proceedings for the balance

amount is deemed to be stayed till disposal of the appeal as per sub-section (9) of section 112 of the CGST Act. At the same time, as per Section 78 of CGST Act, the recovery proceeding shall be initiated after three months of the date of order creating the demand. However, as the taxpayers are not able to file appeal under section 112 in Appellate Tribunal against the orders of appellate authority and therefore, are not able to make the pre-deposit under sub-section (8) of section 112 of CGST Act, in some cases, the tax officers are taking a view that there is no stay against recovery as per sub-section (9) of section 112 of CGST Act. In some cases, taxpayers have either paid or are willing to pay the requisite amount of pre-deposit as per sub-section (8) of section 112 of CGST Act either by crediting in their electronic liability register against the demand so created, or by depositing the said amount through FORM DRC-03. However, tax officers are still resorting to recovery proceedings after completion of period stipulated under section 78 of CGST Act.

4. In order to facilitate the taxpayers to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, and to avail the benefit of recovery of stay from recovery of the remaining amount of confirmed demand as per sub-section (9) of section 112 of CGST Act, it is hereby clarified that in cases where the taxpayer decides to file an appeal against appellate authority and wants to make the payment of the amount of pre-deposit as per sub-section (8) of section 112 of CGST Act, he can make the payment of an amount equal to the amount of pre-deposit by navigating to ***Services >> Ledgers>> Payment towards demand,*** from his dashboard**.** The taxpayer would be navigated to Electronic Liability Register (ELL) Part-II in which he can select the order, out of the outstanding demand orders, against which payment is intended to be made. The amount so paid would be mapped against the selected order and demand amount would be reduced in the balance liability in the aforesaid register. The said amount deposited by the taxpayer will be adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate Tribunal.

5. The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes in to operation, within the timelines mentioned in section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit as per the procedure mentioned in para 4 above, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed as per provisions of sub-section (9) of section 112 of CGST Act.

6. In case, the taxpayer does not make the payment of the amount equal to amount of pre-deposit or does not provide the undertaking/ declaration to the proper officer, then it will be presumed that taxpayer is not willing to file appeal against the order of the appellate authority and in such cases, recovery proceedings can be initiated as per the provisions of law. Similarly, when the Tribunal comes into operation, if he does not file appeal within the timelines specified in Section 112 of the CGST Act read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.

7.1 It has also been noticed that some taxpayers have already paid amounts that were intended to have been paid towards a demand, through FORM GST DRC-03. Attention is invited to notification No. XX/2024- CT dated xx.xx.2024, vide which sub-rule (2B) has been inserted in Rule 142 of Central Goods and Services Rules, 2017 (hereinafter referred to as 'CGST Rules), providing for a mechanism for cases where the person liable to pay tax, interest and penalty under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 has made payment of such tax, interest and penalty, but has inadvertently furnished the intimation through FORM GST DRC-03 under sub-rule (2) of Rule 142. In such cases, the said person can file an application in FORM GST DRC-03A, and the amount so paid and intimated through the FORM GST DRC-03 shall be adjusted as if the said payment was made towards the said demand on the date of such intimation through FORM GST DRC-03.

7.2 Accordingly, in cases, where the concerned taxpayer has paid an amount that was intended to have been paid towards a particular demand through FORM GST DRC-03, has submitted an application in FORM GST DRC-03A, the amount so paid and intimated through the FORM GST DRC-03 will be considered as if the payment was made towards the said demand on the date of such intimation through FORM GST DRC-03. The amount so paid shall also be liable to be adjusted towards the amount required to be paid as pre-deposit under Section 107 and Section 112 of the CGST Act, if and when the taxpayer files an appeal against the said demand, before the appellate authority or the appellate tribunal, as mentioned in para 4 above, and the remaining amount of confirmed demand as per the order of the adjudicating authority or the appellate authority, as the case may be, will stand stayed as per provisions of sub-section (6) of section 107 and sub-section (9) of section 112 of CGST Act. However, if he does not file appeal within the timelines prescribed in Section 107 and Section 112 of the CGST Act, as the case may be, read with Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019, the remaining amount of the demand will be recovered as per the provisions of law.

7.3 In this regard, it is to be mentioned that the application in FORM GST DRC-03A for adjustment of demand liability against the payment through FORM GST DRC-03 cannot be made in cases where against the payment made through the said FORM GST DRC-03, proceedings have already been concluded by issuance of an order in FORM GST DRC-05 as per the Rule 142(3) of CGST Rules, 2017.

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

9. 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 3(xv): Clarification on valuation of supply of import of services by a related person where recipient is eligible to full input tax credit.

1.1 As per S. No. 4 of Schedule I of CGST Act, 2017, 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, is to be treated as supply even if made without consideration. Representations have been received stating that demands are being raised by field formations on taxability of certain activities undertaken by the related person based outside India in the hand of the related person in India as import of services based on an expansive interpretation of the deeming fiction in S. No. 4 of Schedule I of CGST Act, 2017 though no consideration is involved in the said activities and the same are not considered as supplies by the related person in India.

1.2 For instance, there may be cases where the overseas affiliates provide the right to use trademark/ trade name/ brand to its related Indian entity, within the framework of the agreement(s) between overseas affiliates and Indian entity for the limited purpose of rendering services back to overseas affiliates. It has been represented that some of the field formations are taking a view that the use of the trademark/ trade name/ brand by Indian subsidiaries/related entity for captive use for providing service to the overseas affiliate, even if without any consideration, is subject to GST as per deeming provision under S. No. 4 of Schedule I of CGST Act.

1.3 Further, there are also cases where Indian entities are providing IT-IT enabled services to their overseas affiliates whereby, they are given access to proprietary interfaces and software technology belonging to such overseas affiliates specifically for providing services to the said overseas affiliates. It has been represented that some field formations have contended that by virtue of deeming provision under S. No. 4 of Schedule I of CGST Act, access to such proprietary interfaces and software technology by overseas affiliates on free of cost basis are chargeable to GST in the hands of the recipient in India. However, the industry has represented that such proprietary interfaces and software technology is provided by overseas affiliate to them only for the purpose of providing services to the said overseas affiliate as per the agreement/contract entered into between them and cannot be considered as a "supply" under GST law.

2. The matter has been examined as under:

2.1 In cases, where the supplier of services is located outside India and the recipient of services is located in India, and the place of supply of service is in India, the said supply of service is to be referred as import of services as per section 2(11) of IGST Act, 2017. Further, Schedule I of the CGST Act, 2017 provides for the activities to be treated as supply even if made without consideration. 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, is to be treated as supply, even if made without consideration, as per Serial no. 4 of Schedule I of CGST Act. The same is reiterated as under:

"SCHEDULE I

ATIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

(1) ....

(2) ....

(3) ....

(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****."*

Therefore, the recipient of such services is liable to pay GST under reverse charge on such import of services from a related person, even if such supply is made without consideration.

2.2 It may be noted that clause (f) of sub-section (3) of section 31 of CGST Act, 2017 provides that a registered person, who is liable to pay tax under sub-section (3) or subsection (4) of section 9 i.e. on reverse charge basis, shall issue an invoice in respect of goods or services or both received by him from the supplier, who is not registered on the date of receipt of goods or services or both. The said clause is reproduced below:

"Section 31. Tax invoice.-

(3) Notwithstanding anything contained in sub-sections (1) and (2)-

……

(f) a registered person who is liable to pay tax under sub-section (3) or subsection (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;"

Thus, in case of import of services by a domestic entity from its overseas affiliates, the related domestic entity is required to issue invoice under reverse charge mechanism.

2.3 It may be noted that there may be some activities performed by overseas affiliates for the related domestic entity which are not considered as supply of service by such related entities and accordingly, no consideration is being charged by overseas affiliates from the related domestic entity and no invoice is being issued by the domestic related person for the said supply.

2.4 As per clause (a) of rule 28(1) of the CGST Rules, 2017, the value of supply of goods or services or both between distinct persons or where the supplier and recipient are related shall be the open market value of such supply. However, if the open market value is not available, the value of supply of goods or services or both between the related/distinct persons shall be the value of supply of goods or services of like kind and quality as per clause (b) of rule 28(1) of the CGST Rules, 2017. The second proviso to rule 28(1) of CGST Rules provides that **where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services**. The said rule is reproduced below:

"28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.- *(1)The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-*

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.”

2.5 It may also be noted that clarification has been provided vide Circular No. 199/11/2023-GST dated 17.07.2023 regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons. It has been clarified in the said Circular that as per the second proviso to rule 28(1) of CGST Rules, in respect of supply of services by Head Office(HO) to Branch Offices (BO) of an organisation, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. Further, in such cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

2.5.1 Representations have been received from the trade stating that the same treatment, which is being given to domestic related parties as per clarification provided by Circular No. 199/11/2023-GST dated 17.07.2023, may also be provided in cases where a foreign entity is providing service to its related party located in India in cases where full ITC is available to the recipient located in India.

2.6 It may be noted that the second proviso to rule 28(1) of CGST Rules which provides that **where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services** is applicable in all the cases **where supply is between related persons or between distinct persons**. Therefore, it is evident that the clarification which has been issued vide Circular No. 199/11/2023-GST dated 17.07.2023 in respect of supplies of services between distinct persons is also applicable in respect of import of services between related persons.

2.7 In light of the above, Law Committee in its meeting held on 27.12.2023 deliberated on the issue and recommended that it may be clarified through a Circular that in cases where the foreign affiliate is providing certain services to the related domestic entity, for which full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. It may be further clarified that in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule

28(1) of CGST Rules. Draft Circular in this regard recommended by the Law Committee is enclosed with this agenda as **Annexure-A**.

2.8 Accordingly, the agenda is placed before the GST Council for approval.

Annexure-A

Circular No. …../…/2024-GST

F. No. CBIC- 20001/13/2023-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, 2024

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 valuation of supply of import of services by a related person where recipient is eligible to full input tax credit – Reg.

As per S. No. 4 of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), 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, is to be treated as supply even if made without consideration.

2. Representations have been received from trade and industry stating that demands are being raised by field formations from the registered persons seeking tax on reverse charge basis in respect of certain activities undertaken by their related persons based outside India, by considering the said activities as import of services by the registered person in India, based on an expansive interpretation of the deeming fiction in S. No. 4 of Schedule I of CGST Act, though no consideration is involved in the said activities and the same are not considered as supplies by the said related person in India. It has been represented that the same treatment, which is being given to domestic related parties/ distinct persons as per clarification provided by Circular No. 199/11/2023-GST dated 17.07.2023, may also be provided in cases where a foreign entity is providing service to its related party located in India, in cases where full ITC is available to the said recipient located in India.

3.1 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 CGST Act, hereby clarifies the issues as under:

3.2 Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the 'CGST Rules') is reproduced as below:

"Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. –

(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

***Provided** that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

***Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services**.*

…"

3.3 As per second proviso to rule 28(1) of CGST Rules, in cases involving supply of goods or services or both between the **distinct** or **related persons** where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the said goods or services.

3.4 It may be noted that vide Circular No. 199/11/2023-GST dated 17.07.2023, clarification has been issued regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons. It has been clarified in the said circular that as per the second proviso to rule 28(1) of CGST Rules, in respect of supply of services by Head Office (HO) to Branch Offices (BO) of an organisation, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full input tax credit. It has also been clarified vide the said circular that in cases where full input tax credit is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

3.5 The second proviso to Rule 28 (1) of CGST Rules, is applicable in all the cases involving supply of goods or services or both between the **distinct persons** as well as the **related persons, in cases where full ITC is available to the recipient.** Accordingly, it is evident that the clarification which has been issued vide Circular No. 199/11/2023-GST dated 17.07.2023 in respect of supplies of services between distinct persons in cases where full ITC is available to the recipient, is equally applicable in respect of import of services between related persons.

3.6 In case of import of services by a registered person in India from a **related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism.** In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

3.7 In view of the above, it is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules. Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

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

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

Sanjay Mangal

Principal Commissioner (GST)

Agenda Item 3(xvi): Clarification regarding applicability of provisions of Section 16 (4) of CGST Act, 2017, in respect of invoices issued by the recipient under RCM.

Representations have been received from trade and industry seeking clarity on the applicability of time limit specified under section 16(4) of Central Goods & Services Tax Act, 2017 for the purpose of availment of input tax credit (ITC) by the recipient on the tax paid by him under reverse charge mechanism (RCM) in respect of supplies received from unregistered persons. It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly, no invoice is issued as well as no tax is paid by the said recipient under RCM in respect of the same. However, later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgement or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims input tax credit on such tax paid.

2. It has been represented that some of the field formations are taking the view in such cases that for the purpose of section 16(4) of CGST Act, the relevant year of the invoice for the purpose of section 16(4) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received.. On the other hand, industry has represented that as the self-invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31(3)(f) of CGST Act, the relevant year of invoice for the purpose of section 16(4) of CGST Act is the financial year in which such invoice has been issued and accordingly, ITC can be availed on the said invoice under section 16(4) of CGST Act till the September/ November of the financial year following the financial year in which such invoice has been issued. Request has been made to issue clarification in the matter to avoid litigation.

3. The matter has been examined as follows:

3.1 As per section 16(2)(a) of CGST Act, 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 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.

3.2 Rule 36(1)(b) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) prescribes that input tax credit shall be availed by a registered person *inter alia* on the

basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of CGST Act, subject to the payment of tax.

3.3 Further, clause (f) of sub-section (3) of section 31 of CGST Act provides that a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM.

3.4 Section 16(4) of CGST Act, as amended vide the Finance Act, 2022, deals with time limit to avail ITC, and is reproduced below-

"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after ***the thirtieth day of November following the end of financial year to which such invoice or debit note pertains*** *or furnishing of the relevant annual return, whichever is earlier."*

The said section 16(4), before the said amendment vide the Finance Act, 2022, provided as follows:

"A registered person shall not be entitled to take input tax credit 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 under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains*** *or furnishing of the relevant annual return, whichever is earlier."*

3.5 It can be seen that section 16(4) of CGST Act links the time limit for ITC availment with the financial year **to which the invoice or debit note pertains**. As discussed above, in case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and to pay the tax in cash on the same under RCM. Further, as discussed above, ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

3.6 A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the date of issuance

of such invoice. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.

4 The matter was deliberated by the Law Committee in its meeting held on 20.12.2023. The Law Committee recommended to issue a clarification by way of a circular stating that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of the CGST Act. Draft circular recommended by the Law Committee is enclosed with the agenda note as **Annexure A.**

5. Accordingly, the agenda is placed for approval of the Council.

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Annexure A
Circular No. …../…/2023-GST

F. No. CBIC-XX/XX/2023-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, 2023

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 time limit under Section 16(4) of CGST Act, 2017 in respect of RCM supplies received from unregistered persons – Reg.

Representations have been received from trade and industry seeking clarity on the applicability of time limit specified under section 16(4) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the CGST Act) for the purpose of availment of input tax credit (ITC) by the recipient on the tax paid by him under reverse charge mechanism (RCM) in respect of supplies received from unregistered persons. It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India as and accordingly, no invoice is issued as well as no tax is paid by the said recipient under RCM in respect of the same. However, later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgement or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims input tax credit on such tax paid.

1.2 It has been represented that some of the field formations are taking the view that in such cases, for the purpose of section 16(4) of CGST Act, the relevant year of the invoice for the purpose of section 16(4) of CGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received. On the other hand, industry has represented that as the self-invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31(3)(f) of CGST Act, the relevant year

of invoice for the purpose of section 16(4) of CGST Act is the financial year in which such invoice has been issued and accordingly, ITC can be availed on the said invoice under section 16(4) of CGST Act till the September/ November of the financial year following the financial year in which such invoice has been issued. Request has been made to issue clarification in the matter to avoid litigation.

2. The matter has been examined. 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 the issue and as follows:

2.1 As per section 16(2)(a) of CGST Act, 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 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.

2.2 Rule 36(1)(b) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) prescribes that input tax credit shall be availed by a registered person *inter alia* on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of CGST Act, subject to the payment of tax.

2.3 Further, clause (f) of sub-section (3) of section 31 of CGST Act provides that a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM.

2.4 Section 16(4) of CGST Act, as amended vide the Finance Act, 2022, deals with time limit to avail ITC, and is reproduced below-

"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after ***the thirtieth day of November following the end of financial year to which such invoice or debit note pertains*** *or furnishing of the relevant annual return, whichever is earlier."*

Section 16(4) of CGST Act, before the said amendment vide the Finance Act, 2022, provided as follows:

"A registered person shall not be entitled to take input tax credit 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 under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains*** *or furnishing of the relevant annual return, whichever is earlier."*

2.5 It can be seen that section 16(4) of CGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains. As discussed in Para 2.3 above, in case of

supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and pay the tax on the same in cash under RCM. Further, as discussed in Para 2.1 above, ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

2.6 A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the date of issuance of such invoice only. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.

2.7 Accordingly, it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

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 this Circular may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal

Principal Commissioner (GST)

Agenda Item 3(xvii): Clarification in case of taxability of corporate guarantee provided between related persons after insertion of Rule 28(2) of CGST Rules, 2017.

1. Background:

1.1 As per the recommendations of the GST Council made in its 52nd meeting, sub-rule (2) was inserted in Rule 28 of CGST Rules, 2017 vide notification No. 52/2023-Central Tax dated 26th October, 2023 to provide for a specific clause for valuation of supply of services of providing corporate guarantee to any banking company or financial institution by an entity on behalf of a related person.

The said provision is reproduced as below:

> ***28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. -***
>
> *(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-*
>
> *(a) be the open market value of such supply;*
>
> *(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
>
> *(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*
>
> ***Provided** that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*
>
> ***Provided** further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services~~.~~;*
>
> ***(2) Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.***

1.2 Besides, Circular No. 204/16/2023-GST dated 27th October, 2023 was also issued, as per the recommendations of the GST Council, to provide clarity regarding the applicability of the said sub-rule.

2. In this regard, various representations have been received from trade and industry, raising some issues arising consequent to the insertion of the said sub-rule (2) of Rule 28 of CGST Rules,

2017, and also seeking further clarifications on the issue of taxability and valuation of the supply of services of providing corporate guarantee between related persons.

3. **Analysis:**

3.1 The issues raised by the trade have been examined and analysed as below:

A. Issues requiring amendment in the rules:

3.2. Issue 1: Whether the discharge of tax liability on corporate guarantee at 1% of such guarantee offered is to be done one time or on yearly basis or on a monthly basis and when issued for a fixed term of say, five years or ten years as per tenure of the loan?

3.2.1 In this regard, it is to mention that under Rule 10TD pertaining to Safe Harbour under Income Tax Rules, 1962, for providing corporate guarantee in eligible international transactions, the minimum acceptable commission/ fee is one per cent **per annum** of the amount guaranteed.

3.2.2 The Law Committee deliberated on the issue in its meeting held on 24.01.2024. Law Committee recommended that rule 28(2) of CGST Rules may be amended to clearly provide that the deemed valuation created by the said rule, i.e., one per cent of the amount guaranteed, shall be applicable per annum. Thus, the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient for a particular number of years shall be one per cent of the amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered or the actual consideration, whichever is higher.

3.2.3 In cases where the corporate guarantee is provided for a period less than a year, say 6 months (half a year), then in those cases as well, the valuation may be done on proportionate basis for the said period, i.e., in this case, the value of the said supply of services may be taken as half of one per cent of the amount of such guarantee offered (6/12 * one per cent), or the actual consideration, whichever is higher.

3.2.4 It was also recommended by the Law Committee that the issue may be clarified through an illustration in a Circular that, if a corporate guarantee is issued for a period of say five years, then the value of such guarantee is to be calculated at one per cent per year of the amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher, at the time of supply applicable for issue of such corporate guarantee. However, if the corporate guarantee is issued, for a period of one year and is renewed five times, for a period of one year each, then tax would be payable on one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher, on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.

3.3 Issue 2: Due to non-obstante clause in sub-rule (2) of Rule 28 of CGST Rules, 2017, overriding the provisions of sub-rule (1), the benefit of second proviso

to sub-rule (1), is not applicable to the supply of services of providing corporate guarantee between related persons, i.e., even though full ITC is available to the recipient, the tax has to be paid on the said supply on the basis of 1% of the amount of the corporate guarantee of the actual consideration, whichever is higher. This has created a non-level playing field for the supply of service of providing corporate guarantee. Requests have been made to restore the level playing field by providing the benefit of second proviso to sub-rule (1) to the supply of corporate guarantee as well.

3.3.1 Second proviso to Rule 28(1) of CGST Rules, 2017 reads as follows,

"*Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services*."

3.3.2 Sub-Rule (2) of Rule 28 of the CGST Rules, 2017 starts with the phrase '*Notwithstanding anything contained in sub-rule (1)*'.

3.3.3 Resultantly, the benefit of the second proviso to Rule 28(1) of CGST Rules, 2017 is not available for the supply of services of providing corporate guarantee between related persons.

3.3.4 The Law Committee in its meeting held on 24.01.2024 recommended that sub-rule (2) of Rule 28 of CGST Rules, 2017 may be amended to provide a level playing field between the services of providing corporate guarantee between related persons, and all other supplies by inserting the words *"except the second proviso of the said sub-rule,"* after the words *"Notwithstanding anything contained in sub-rule (1),"*.

3.4 Issue 3: In cases where the corporate guarantee is provided by an Indian entity for its related overseas entity, i.e., in cases of export of the service of providing corporate guarantee between related persons, there can be situations where valuation of guarantee, according to transfer pricing agreement is agreed at a value less than 1% of the guarantee offered (say 0.9%). In such cases also, as per Rule 28(2) of CGST Rules, 2017, the value of corporate guarantee will be deemed to be 1% under GST. However, Indian entity will not receive the differential fee (i.e., 0.1%) from its overseas group company, that is the amount received will be lower than the consideration agreement on account of transfer pricing adjustments. On jointly reading of Section 2(6) and Section 16 of the IGST Act, 2017 along with the Rule 28(2) of CGST Rules, 2017, only 0.9% value of the amount guaranteed will be considered as export of services and the balance 0.1% will not be considered as export, and becomes a cost to the company. Therefore, requests have been made to exempt the export of service of providing corporate guarantee between related person from the requirement of Rule 28(2) of CGST Rules, 2017.

3.4.1 Law Committee in its meeting on 24.01.2024 noted that the above was not the intent of the said sub-rule to deny benefit of export of services of providing corporate guarantee between related persons because of valuation of the said supply of the said services. Therefore, in order to provide a level-playing field and to remove the above anomaly, Law Committee recommended that the applicability of the sub-rule (2) of Rule 28 of CGST Rules, 2017 may be restricted only to those supplies where recipient is

located in India, by amending Rule 28(2) of CGST Rules, by inserting "*located in India*" after the words "*a recipient who is a related person*".

3.5 Accordingly, Law Committee recommended that sub-rule (2) of rule 28 of CGST Rules, 2017 may be amended as below:

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent. -

(1) ...

(2) Notwithstanding anything contained in sub-rule (1), except the second proviso of the said sub-rule, the value of supply of services by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company or financial institution, on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered per annum, or the actual consideration, whichever is higher.

3.6 Law Committee also recommended that the above amendment in sub-rule (2) of rule 28 of CGST Rules, 2017 may be made **retrospectively with effect from 26th October 2023** (i.e., the date from which the provisions of sub-rule (2) of Rule 28 have come into effect).

B. Issues requiring clarification:

3.7 Issue 4: Whether notification No. 52/2023-Central Tax dated 26th October, 2023 will apply to the corporate guarantees issued prior to this notification? Where corporates have issued intra-group corporate guarantees before 26th October 2023, which are still in force today, would they be liable to pay GST on "1% of the amount of such guarantee offered" on such guarantees?

3.7.1 The supply of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was taxable even before the issuance of notification No. 52/2023-CT dated 26th October, 2023. Rule 28(2) of CGST Rules, 2017 is only for the determination of the value of the taxable supply and not regarding the taxability of the said supply itself. Prior to the insertion of the said sub-rule, i.e., before 26th October, 2023, the valuation of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was to be done as per the provisions of Rule 28 of CGST Rules, as it existed then.

3.7.2 Therefore, Law Committee recommended that in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26th October 2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26th October 2023, then the valuation

of the said supply will be required to be done as per Rule 28(2) of CGST Rules, 2017. The same may be clarified through a Circular.

3.8 Issue 5: In cases where the corporate guarantee is provided for a particular amount, whereas the loan is only partly availed or not availed at all by the recipient, what will be the value of supply of corporate guarantee, and whether the recipient would be eligible to avail full ITC (Input Tax Credit) until total loan is disbursed?

3.8.1 The activity of supply of the service of providing a corporate guarantee is not linked with the activity of amount of availment of loan. The service that is provided by the guarantor to the guarantee is that of taking on the risk of default.

3.8.2 The Law Committee accordingly recommended that it may be clarified through a circular that the value of supply of the service of providing a corporate guarantee will be calculated based on the amount guaranteed and will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee. It may also be clarified that the recipient of the service of the corporate guarantee is eligible to avail the ITC, subject to other conditions specified in the Act and the Rules made thereunder, irrespective of when the loan is actually disbursed to the recipient, and irrespective of the amount of loan actually disbursed.

3.9 Issue 6: In the case of takeover of existing loans, since there is merely an assignment of an already issued corporate guarantee, whether GST would be applicable again?

3.9.1 In the service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, the supplier of the service is the corporate entity providing the corporate guarantee and the recipient is the related entity for which the corporate guarantee is provided by the said supplier.

3.9.2 Therefore, if the loan issued by the banking company/ financial institution is taken over by another banking company/ financial institution, the same does not fall under the service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient. Therefore, Law Committee recommended clarifying that in such cases, there will be no impact on GST, unless there is issue of fresh corporate guarantee or there is a renewal of the existing corporate guarantee. In cases where fresh corporate guarantee is issued as a result of such taking over of the loans, then the GST would be applicable on the same.

3.10 Issue 7: Where corporate guarantee is provided by more than one entity/ co-guarantors, what is the amount on which GST is payable by each co-guarantor?

3.10.1 In cases where the corporate guarantee is being provided by multiple related entities, the value of such services of providing corporate guarantee shall be the sum of the actual consideration paid/ payable to co-guarantors, if it is higher than one per cent of

the amount of such guarantee offered. In cases where the sum of the actual consideration is less than one per cent of the amount of such guarantee offered, then GST shall be payable by each co-guarantor proportionately on one per cent of the amount guaranteed by them.

3.10.2 For instance, if there are two co-guarantors, A and B, who jointly provide a corporate guarantee to a banking/ financial institution on behalf a related recipient C for Rs. 1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed.

3.10.3 However, if in the above case of A and B providing corporate guarantee jointly to a banking/ financial institution on behalf a related recipient C for Rs 1 crore, A provides guarantee for 60% of the guarantee amount and B provides guarantee for the remaining 40% of the guarantee amount, then GST shall be payable by A and B proportionately i.e., 0.6% and 0.4% of the amount guaranteed. This is to say that A shall pay GST on 1% of the amount guaranteed by A, i.e., 1% on Rs. 60 lakhs and B shall pay GST on 1% of the amount guaranteed by B, i.e., 1% on Rs. 40 lakhs.

3.10.4 Law Committee recommended to clarify the issue on the above lines through the circular.

3.11 Issue 8: Where domestic corporates issue intra-group guarantees, whether GST may be paid by the recipient under reverse charge, as in the absence of actual invoice and payment, the recipient entity would not be able to claim input tax credit of tax paid by the domestic guarantor?

3.11.1 In cases where domestic corporates issue intra-group guarantees, GST is to be paid under forward charge mechanism, and invoice is to be issued by the supplier of the service of providing corporate guarantee to the related recipient under Section 31 of CGST Act, 2017, read along with the relevant rules. However, in cases where such guarantee is provided by the foreign/ overseas entity for a related entity located in India, then GST would be payable under reverse charge mechanism, by the recipient of service, i.e., the related entity located in India. Law Committee recommended that the same may be clarified through the Circular.

4. The draft circular, as recommended by the Law Committee, in respect of various issues discussed above, is enclosed as **Annexure-A with this agenda**.

5. Accordingly, the agenda is placed before the GST Council for approval.

Annexure-A

Circular No. XX/XX/2024-GST

F. No. CBIC-20016/23/2023 - GST
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
GST Policy Wing
*****

New Delhi, Dated the XXXXXX, 2024

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 issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons.

1.1 As per the recommendations of the GST Council, sub-rule (2) was inserted in Rule 28 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") vide Notification No. 52/2023-Central Tax dated 26th October, 2023 to provide for a specific clause for valuation of supply of services of providing corporate guarantee to any banking company or financial institution by an entity on behalf of a related person. Besides, Circular No. 204/16/2023-GST dated 27th October, 2023 was also issued as per the recommendations of the GST Council, to provide clarity regarding the applicability of the said sub-rule. Subsequently, based on the recommendations of the GST Council, sub-rule (2) of Rule 28 of CGST Rules has been amended retrospectively with effect from 26.10.2023 vide Notification No. XXX dated XXX.

1.2 In this regard, various representations have been received from trade and industry, seeking clarifications on various issues pertaining to the taxability and valuation of the supply of services of providing corporate guarantee between related persons as per the said rule.

2. Therefore, in order 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	Whether sub-rule (2) of rule 28 of CGST Rules will apply to the	It is to be clarified that the supply of service of providing corporate guarantee to any banking

	corporate guarantees issued prior to insertion of the said sub-rule on 26th October 2023? Also, where intra-group corporate guarantees have been issued before 26th October 2023, which are still in force today, would they be liable to pay GST on "1% of the amount of such guarantee offered" on such guarantees?	company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was taxable even before the insertion of sub-rule (2) in rule 28 of CGST Rules with effect from 26th October, 2023. Rule 28(2) of CGST Rules, 2017 is only for the determination of the value of the taxable supply of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient and not regarding the taxability of the said supply itself. Prior to the insertion of the said sub-rule, i.e., before 26th October, 2023, the valuation of service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, was to be done as per the provisions of Rule 28 of CGST Rules, as it existed then. Therefore, in respect of supply of services of providing corporate guarantee between related persons, in respect of corporate guarantee issued or renewed before 26th October 2023, the valuation of the said supply is to be done in accordance with Rule 28, as it existed during that time. However, if the corporate guarantee is issued or renewed on or after 26th October 2023, then the valuation of the said supply will be required to be done as per Rule 28(2) of CGST Rules, 2017.
2	In cases where the corporate guarantee is provided for a particular amount, whereas the loan is only partly availed or not availed at all by the recipient, what will be the value of supply of corporate guarantee. Also, whether the recipient would be eligible to avail full ITC (Input Tax Credit) even before total loan is disbursed?	The activity of supply of the service of providing a corporate guarantee is not linked with the actual disbursal of the loan. The service that is provided by the guarantor to the guarantee is that of taking on the risk of default. Therefore, it is clarified that the value of supply of the service of providing a corporate guarantee will be calculated based on the amount guaranteed and will not be based on the amount of loan actually disbursed to the recipient of the corporate guarantee. Similarly, it is also clarified that the recipient of the service of providing corporate guarantee shall be eligible to avail the ITC, subject to other conditions specified in the Act and the Rules made thereunder, irrespective of when the loan is actually disbursed to the recipient, and irrespective of the amount of loan actually disbursed.
3	In the case of takeover of existing loans, since there is merely an assignment of an already issued corporate guarantee, whether GST would be applicable again?	In the service of providing corporate guarantee to any banking company or financial institution by a supplier to a related recipient, on behalf of the said recipient, the supplier of the service is the corporate entity providing the corporate guarantee and the recipient is

		the related entity for whom the corporate guarantee is provided by the said supplier. Therefore, if the loan issued by the banking company/ financial institution is taken over by another banking company/ financial institution, the said activity of taking over of the loan does not fall under the service of providing corporate guarantee to any banking company or financial institution by a supplier to a recipient. Therefore, it is clarified that in such cases, there will be no impact on GST, unless there is issuance of fresh corporate guarantee or there is a renewal of the existing corporate guarantee. However, if the takeover of the loan is followed/ accompanied by issuance of fresh corporate guarantee, then GST would be payable on the same.
4	Where corporate guarantee is provided by more than one entity / co-guarantor, what is the amount on which GST is payable by each co-guarantor?	In cases where corporate guarantee is being provided by multiple related entities, the value of such services of providing corporate guarantee shall be the sum of the actual consideration paid/ payable to co-guarantors, if the said amount of total consideration is higher than one per cent of the amount of such guarantee offered. In cases where the sum of the actual consideration is less than one per cent of the amount of such guarantee offered, then GST shall be payable by each co-guarantor proportionately on one per cent of the amount guaranteed by them. For instance, if there are two co-guarantors, A and B, who jointly provide a corporate guarantee to a banking/ financial institution on behalf a related recipient C for Rs. 1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed. However, if in the above case of A and B providing corporate guarantee jointly to a banking/ financial institution on behalf a related recipient C for Rs 1 crore, A provides guarantee for 60% of the guarantee amount and B provides guarantee for the remaining 40% of the guarantee amount, then GST shall be payable by A and B proportionately i.e., 0.6% and 0.4% of the amount guaranteed. This is to say that A shall pay GST on 1% of the amount guaranteed by A, i.e., 1% on Rs. 60 lakhs and B shall pay GST on 1% of the amount guaranteed by B, i.e., 1% on Rs. 40 lakhs.
5	Where intra-group corporate guarantee is issued, whether GST may be paid by the recipient under reverse charge, as in the absence of actual invoice and	It is clarified that in cases where domestic corporates issue intra-group guarantees, GST is to be paid under forward charge mechanism, and invoice is to be issued by the supplier of the service of providing corporate guarantee to the related recipient under Section 31 of

	payment, the recipient entity may not be able to claim input tax credit of tax paid by the domestic guarantor?	CGST Act, 2017 read along with the relevant rules. However, in cases where such guarantee is provided by the foreign/ overseas entity for a related entity located in India, then GST would be payable under reverse charge mechanism, by the recipient of service, i.e., the related entity located in India.
6	Whether the discharge of tax liability on corporate guarantee @ 1% of such guarantee offered is to be done one time or on yearly basis or on a monthly basis and when issued for a fixed term of say, five years or ten years as per tenure of the loan?	Rule 28(2) of CGST Rules has been amended retrospectively with effect from 26th October 2023, vide notification No. XX/2024 -CT dated xx.xx.2024. Therefore, it is clarified that the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient shall be one per cent of the amount guaranteed **per annum** or the actual consideration, whichever is higher. Accordingly, the value of supply of the service of providing corporate guarantee to a banking company or a financial institution on behalf of a related recipient for a particular number of years shall be one per cent of the amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered or the actual consideration whichever is higher. In addition to the above, in cases where the corporate guarantee is provided for a period less than a year, say 6 months (half a year), then in those cases as well, the valuation may be done on proportionate basis for the said period, i.e., in this case, the value of the said supply of services may be taken as half of one per cent of the amount of such guarantee offered (6/12 * one per cent), or the actual consideration, whichever is higher. To illustrate the same, if a corporate guarantee is issued for a period of say five years, then the value of such guarantee is to be calculated at one per cent per year of the amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount at the time of issuance of such corporate guarantee, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher. However, if a corporate guarantee is issued, say for a period of one year and is renewed five times, for a period of one year each, then tax would be payable on one per cent of the amount of such

		guarantee offered, or the actual consideration, whichever is higher, on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.
7	Whether the benefit of second proviso to sub-rule (1), which states that value declared in invoice is deemed to be the open market value in cases where full input tax credit is available to the recipient of services, is not applicable in cases falling under sub-rule (2)?	Rule 28(2) of CGST Rules, 2017 has been amended retrospectively with effect from 26th October 2023, vide notification No. XX/2024 -CT dated xx.xx.2024 to provide the benefit of second proviso to sub-rule (1) of Rule 28 of CGST Rules to the supply of service of corporate guarantees provided between related persons. Accordingly, it is clarified that in cases involving the supply of service of corporate guarantees provided between related persons, where full input tax credit is available to the recipient of services, the benefit of provisions of second proviso to sub-rule (1) of Rule 28 of CGST Rules, 2017 shall be available for the purpose of valuation of the said supply.
8	Whether the valuation in terms of Rule 28(2) of CGST Rules will apply to the export of the service of providing corporate guarantee between related persons?	As per the amendment done in sub-rule (2) of rule 28 of CGST Rules retrospectively w.e.f. 26th October, 2023 vide notification No. XX/2024 -CT dated xx.xx.2024, the provisions of the said sub-rule will not apply in cases where the recipient of the services of providing corporate guarantee between related persons is located outside India. Accordingly, the provisions of the said sub-rule shall not apply to the export of the services of providing corporate guarantee between related persons.

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

4. Difficulties, 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 3(xviii): Clarification on mechanism for providing evidence of compliance of conditions of Section 15(3)(b)(ii) of the CGST Act, 2017 in respect of post-sale discounts by the suppliers.

References have been received from trade and industry that in cases where a discount is given by the supplier to the recipient, subsequent to the supply of goods or services or both (post-sale discount), by issuing a tax credit note under section 34 of the Central Goods And Services Tax Act, 2017 (hereinafter referred to as the CGST Act), the taxable value of the said supply can be reduced by the supplier to the extent of discount as per Section 15(3)(b) of the CGST Act only if the recipient of supply has proportionately reversed the input tax credit (**ITC**) in respect of the said discount.

1.1 It has been further represented that no system functionality is presently available on the common portal to enable the supplier or the tax officers to verify electronically whether the recipient has reversed the proportionate ITC in respect of such discount or not. Besides, no alternate mechanism has been provided in CGST Act or CGST Rules or otherwise to enable the supplier as well as the tax officers to verify such reversal of input tax credit by the recipient. In absence of such a functionality or any other mechanism to verify such reversal of input tax credit by the recipient, the field formations are raising demand on the suppliers alleging that they have failed to produce evidence of compliance of Section 15(3)(b)(ii) of CGST Act.

2. **GST provisions applicable:**

2.1 Section 15(3) of the CGST Act, 2017 is as reproduced below:

"Section 15. Value of Taxable Supply.-

….……

(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.***

……"

2.2 Section 34 of the CGST Act, 2017 is as reproduced below:

"Section 34. Credit and debit notes.-

(1) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has

supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:
Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person*.*

(3) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation.-For the purposes of this Act, the expression "debit note" shall include a supplementary invoice."

3. **Examination:**

3.1 There are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. The implication of discounts on the transaction value in GST is dealt in accordance with Section 15 of CGST Act, 2017 which governs the value of supply of the particular transaction executed.

3.2 GST Act has not defined 'discount'. However, discounts can be categorized broadly under two types: –

3.2.1 **Pre-sale discounts** i.e. discounts which are given before or at the time of supply and recorded in the invoice at the time of supply, like volume discount, special discount for making cash payment etc.
3.2.2 **Post- sale discounts** i.e. discounts which are given after the sale has been effected like discount offered for completing a sale target for a given financial year, discount for making payments within a specified time period, etc.

3.3 Since, GST is leviable on a taxable supply on the transaction value, in cases, where discount is offered by the supplier, the value of such discounts, which satisfy the conditions specified in Section 15(3) of CGST 2017, is allowed to be deducted from the taxable value.

3.4 As per the above provision, in case of discount offered before or at the time of supply, which is mentioned on invoice by supplier, GST shall be leviable on net taxable value i.e. taxable value minus discount. However, in respect of post-sale discount, the same shall not form part of the value of supply only if it satisfies the following conditions:

i. Such discount is established in terms of an agreement entered into at or before the time of such supply;
ii. Such discount must be specifically linked to the relevant invoices;

iii. Input Tax Credit attributable to such discount on the basis of document issued by the supplier has been duly reversed by the recipient.

3.5 It is worthwhile to mention that in case of credit notes issued under section 34 of CGST Act in respect of post-sale discounts, for the purpose of reduction of taxable value to the extent of such discounts, the statute places the responsibility on the supplier for ensuring that the ITC availed by the recipient of supply has been reduced proportionately. However, there is no system functionality available on the common portal to enable the supplier or the tax officer to verify the said condition of reversal of proportionate input tax credit by the recipient. ITC may be reversed in the return in FORM GSTR-3B by the recipient, however, the details of reversal of input tax credit are available in FORM GSTR-3B only at summary level, and therefore, the details, as to whether ITC has been reversed by the recipient in respect of particular credit note(s), are not available in the FORM GSTR-3B of the recipient. Further, such details are also not made available to the supplier in any other manner. Besides, no alternate mechanism/ procedure has been prescribed in CGST Rules or through a circular for enabling either the supplier or the tax officer to verify the same. Therefore, the supplier has no means to verify electronically through GST portal or through any alternate mechanism as to whether the recipient has reversed the proportionate ITC or not. Similarly, tax officers are also finding it difficult to verify the said details.

4. It is also mentioned that Hon'ble Rajasthan High Court in the matter of **Hindustan Unilever Ltd. v/s Union of India in D.B. Civil Writ Petition No. 13617 of 2023**, has observed that the validity of the provision of requirement of supplier to provide required evidence in terms of section 15(3)(b)(ii) of CGST Act, has been challenged more on workability as no suitable mechanism has been prescribed in this regard. Therefore, the Hon'ble Court has directed learned counsel for Union of India to place before the Court appropriate suggested mechanism in this regard. Similar instruction has been given by the said High Court in the matter of **Tata Motor Ltd. Versus Union of India in D.B. Civil Writ Petition No. 19966 & 19967 of 2023**.

5. It is, therefore, desirable that some mechanism/ functionality is developed on the common portal by GSTN for enabling verification of such reversal of ITC by the recipients. One of the mechanisms can be to provide for acceptance/ rejection of such credit notes by the recipients on the portal. The tax liability of the supplier may be reduced only in the cases, where such credit notes have been accepted by the recipients, and in such cases, tax input tax credit of the recipient may be reduced/ reversed in hard lock manner on the portal in FORM GSTR-3B return. GSTN may also explore any alternate functionality/ mechanism on the portal for enabling verification of such reversal of ITC by the recipients.

5. However, development of such functionality on the portal may take some time. It is proposed that in the meantime, till such a functionality is made available by GSTN on the common portal, we may prescribe a suitable mechanism which can enable the supplier to provide required evidence in terms of section 15(3)(b)(ii) of CGST Act. One such mechanism can be that the supplier may be asked to procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of input tax credit in respect of such credit note issued by the supplier.

6.1 The said CA/CMA certificate may include details such as the details of the credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the FORM GST DRC -03/ return / any other relevant document through which such reversal of ITC has been made by the recipient.

6.2 Such certificate issued by CA or CMA may also contain UDIN (Unique Document Identification Number). 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.

7. However, as seeking CA/ CMA certificate even in respect of recipients, to whom a very small amount of discount is given by the supplier during a financial year, may cause inconvenience to the supplier as well as the concerned recipients in such cases involving small discounts, it is proposed that in such cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding Rs 5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him, along with the details mentioned in Para 6.1 above.

8. Such certificates issued by CA/CMA or the undertakings/ certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act, 2017. The supplier shall produce such certificates/undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc. Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of CGST Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced by him to the tax authorities, the concerned taxpayer may procure and provide such certificates issued by CA/CMA or the undertakings/ certificates issued by the recipients of supply, as the case may be, to the concerned investigating/ audit/ adjudicating authority as evidence of requisite reversal of input tax credit by his recipients.

9. Law Committee deliberated on the same in its meeting held on 18.03.2024 and recommended that the issue may be clarified as above through a circular. The draft circular as recommended by the Law Committee in this regard is enclosed as **Annexure A**.

10. The Agenda note along with the draft Circular is placed before the GST Council for deliberation.

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ANNEXURE-A

Circular No. XX/XX/2024-GST

F. No. CBIC-20006/6/2024 - GST
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
GST Policy Wing

*****

New Delhi, Dated the XXXXXX, 2024

To,

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

The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Mechanism for providing evidence of compliance of conditions of Section 15(3) (b) (ii) of the CGST Act, 2017 by the suppliers -reg.

Representations have been received from the trade and the field formations stating that in cases where the discounts are offered by the suppliers through tax credit notes, after the supply has been effected, the value of the taxable supply shall not include the discount only if the condition of clause (b)(ii) of sub-section (3) of section 15 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), for reversal of the input tax credit attributable to the said discount by the recipient is satisfied. Further, it has been represented that there is presently no facility available to the supplier as well as the tax officers on the common portal to verify whether the input tax credit attributable to the said discount has been reversed by the recipient or not. Request has been made to provide a suitable mechanism for enabling the suppliers as well as tax officers to verify fulfilment of the condition of section 15(3)(b)(ii) of the CGST Act regarding proportionate reversal of input tax credit by the recipients in respect of such discounts given by the supplier by issuing tax credit notes after the supply has been effected.

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 CGST Act, hereby clarifies the issues as under:

2.1 Section 15 of the CGST Act provides for value of taxable supply of goods or services or both. Sub-section (3) of the said section provides that the value of supply shall not include discount given by the supplier, subject to certain conditions. As per clause (b) of the said sub-section, any discount which is given after the supply has been effected shall not be included in the value of the supply only if it satisfies the following conditions:

i. Such discount is established in terms of an agreement entered into at or before the time of such supply;
ii. Such discount must be specifically linked to the relevant invoices
iii. Input Tax Credit attributable to such discount on the basis of document issued by the supplier has been duly reversed by the recipient.

2.2 Accordingly, wherever any discount is offered by the supplier to the recipient, by issuance of a tax credit note as per section 34 of the CGST Act, after the supply has been effected, the said discount can be excluded from the value of taxable supply only if the conditions of clause (b) of sub-section (3) of section 15 of the CGST Act are fulfilled. Such conditions inter-alia includes the requirement of reversal of input tax credit by the recipient attributable to the said discount.

2.3 However, there is no system functionality/ facility available on the common portal to enable the supplier or the tax officer to verify the compliance of the said condition of proportionate reversal of input tax credit by the recipient. Besides, no alternate mechanism/ procedure has been prescribed in CGST Rules for enabling either the supplier or the tax officer to verify the same.

2.4 In view of the above, till the time a functionality/ facility is made available on the common portal to enable the suppliers as well as the tax officers to verify whether the input tax credit attributable to such discounts offered through tax credit notes has been reversed by the recipient or not, the supplier may procure a certificate from the recipient of supply, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of input tax credit at his end in respect of such credit note issued by the supplier.

2.5 The said CA/CMA certificate may include details such as the details of the credit notes, the details of the relevant invoice number against which the said credit note has been issued, the amount of ITC reversal in respect of each of the said credit notes along with the details of the FORM GST DRC -03/ return / any other relevant document through which such reversal of ITC has been made by the recipient.

2.6 Such certificate issued by CA or CMA shall contain UDIN (Unique Document Identification Number). 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.

2.7 In cases, where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to a recipient through tax credit notes in a Financial Year is not exceeding Rs 5,00,000 (rupees five lakhs only), then instead of CA/CMA certificate, the said supplier may procure an undertaking/ certificate from the said recipient that the said input tax credit attributable to such discount has been reversed by him, along with the details mentioned in Para 2.5 above.

2.8 Such certificates issued by the CA/CMA or the undertakings/ certificates issued by the recipient of supply, as the case may be, shall be treated as a suitable and admissible evidence for the purpose of section 15(3)(b)(ii) of the CGST Act, 2017. The supplier shall produce such certificates/undertakings before the tax officers, if required, during any proceedings such as scrutiny, audit, investigations, etc. Even for the past period, where ever any such evidence as per section 15(3)(b)(ii) of CGST Act in respect of credit note issued by the supplier for post-sale discounts is required to be produced by him to the tax authorities, the concerned taxpayer may procure and

provide such certificates issued by CA/CMA or the undertakings/ certificates issued by the recipients of supply, as the case may be, to the concerned investigating/ audit/ adjudicating authority as evidence of requisite reversal of input tax credit by his recipients.

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 this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Agenda Item 3(xix): Court matter regarding extending amnesty scheme for filing of appeals in respect of cases under Section 129 and 130 of CGST Act.

1.1 Section 107(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') provides that any person aggrieved with the order of the Adjudicating Authority can file an appeal against such order before the Appellate Authority. The said provisions also provide that such appeal shall be filed within a period **of three months from the date on which the order is communicated to such person.**

"Section 107. Appeals to Appellate Authority. —

(1) Any person aggrieved by any decision or orderpassed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicatedto such person."

1.2 Additionally, Section 107(4) of the CGST Act, 2017 empowers the Appellate Authority to condone the delay in filing of appeal by the aggrieved person. However, the Appellate Authority can condone such a delay only if sufficient cause is shown and the delay is not beyond the period of one month from the actual due date.

"Section 107. Appeals to Appellate Authority. —

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

2.1 It was brought to the notice of the tax authorities that, many of the taxpayers came to know about demand orders only upon initiation of recovery proceedings under section 79 of the CGST Act, 2017 i.e., after lapse of time prescribed for filing of appeals.

2.2 The GST Council in its 52nd meeting held on 7th October 2023, recommended a one-time relief to taxpayers for filing of appeals against demand orders passed till specified period i.e., orders passed up to 31.3.2023, subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute by the said person, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. Thereafter Notification No. 53/2023-CT dated 2nd November 2023 was issued, wherein the following classes of persons were made eligible for the amnesty scheme for filing appeal up to 31st January, 2024-

i. Taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March 2023 under section 73 or 74 of the said Act within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and

ii. Taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107.

3.1 A writ petition was filed by M/s Risansi Industries Ltd. (No. 275 of 2021) in Hon'ble High Court, Allahabad on the grounds that the notification only deals with the orders passed under Section 73 and 74 of the Act and does not take into account the penalty provisions under Section 129 and 130 of the Act.

3.2 In its order dated 24.01.2024, Hon'ble High Court, Allahabad has observed as following-

> *' 4. Upon due consideration, I am of the view that this Court is not in a position to issue a writ of mandamus directing the Central Government to include Section 129 and 130 of the Act in the said notification. However, I am of the view that the Government can very well consider adding these two Sections in the said notification, so that the benefit that has been provided for the orders passed under Section 73 and 74 of the Act can be extended to Section 129 and 130 of the Act.*
>
> *5. In the light of the above, the Central Board of Indirect Taxes, Ministry of Finance, is directed to look into this aspect of the matter at the earliest.'*

4.1 Therefore, this matter was examined by the Law Committee. The Law Committee was of the view that the said amnesty scheme was considered by the Council only in respect of orders passed under Sections 73 and 74 of the CGST Act, on the basis that a number of such orders under Sections 73 and 74 were issued online on the common portal, without any physical serving to the taxpayers. In a number of such cases, the common portal was not accessed by the taxpayers and hence taxpayers were not aware of the notices/ orders issued to them through the common portal. It was brought to the notice of the tax authorities that many of the taxpayers came to know about demand orders only upon initiation of recovery proceedings under section 79 of the CGST Act, 2017 i.e., after lapse of time prescribed for filing of appeals. Accordingly, a one-time opportunity was recommended by the Council to provide relief to the taxpayers to file appeal in such cases.

4.2 Law Committee also felt that this rationale would not be applicable to orders passed under Sections 129 and 130 of the CGST Act, 2017, as those orders were relating to confiscation/ seizure of goods and conveyances in transit, and essentially the taxpayers would have had the knowledge of such orders being passed. Accordingly, Law Committee recommended that there is no need to extend the scope of the amnesty scheme notified vide Notification No 53/2023-Central Tax dated 02.11.2023, to include orders passed under Sections 129 and 130 of the CGST Act.

4.3 As Hon’ble High Court, Allahabad has given direction to the Government to look into matter at the earliest for considering adding Sections 129 and 130 in the said notification, Law Committee recommended that the matter may be placed before GST Council.

5. Accordingly, the recommendations of the Law Committee as detailed in **para 4** is placed before the GST Council for approval.

Agenda Item 3(xx): Amendment in Rules 110 and 111 of the CGST Rules, 2017 pertaining to filing and processing of appeals in GST Appellate Tribunal.

Section 109 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') provides for constitution of Appellate Tribunal and its Benches thereof. The operationalization of GST Appellate Tribunal (GSTAT) is under process and the system based functionality for the GST Appellate Tribunal [e-Tribunal for GST] is being developed by the GSTN.

2. Under the said system, every appeal (or application) is proposed to be filed electronically with reference number connecting the Order-In-Original or Order-In-Appeal from the GSTN common portal. The existing provision of filing of appeal "*electronically or otherwise as may be notified by the Registrar*" before the Appellate Tribunal or the requirement of submission of a certified copy of the order by the appellant to vouch for its authenticity in accordance with the existing rule 110 (and also rule 111) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") does not seem to be in alignment with the system being developed.

3. The same was discussed in the meeting of the Law Committee held on 02.04.2024, 18.04.2024 and 16.05.2024. Law Committee recommended for amendment in rule 110 and rule 111 to align the same with the business process as envisaged.

3.1 It may be noted in this regard that in respect of appeals filed before the first appellate authority, amendments have already been carried out in rule 108 and rule 109 to align the same with the existing practice vide Notification Nos. 26/2022-CT dated 26.12.2022, and 38/2023-CT dated 04.08.2023.

3.2 The Law Committee accordingly recommended to substitute existing rule 110 and rule 111 of CGST Rules, 2017 with the following formulation (in red):

Rule 110:

"(1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 shall be filed in FORM GST APL-05, along with the relevant documents, electronically and provisional acknowledgement shall be issued to the appellant immediately:

Provided that an appeal to the Appellate Tribunal may be filed manually in FORM GST APL-05, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112, if any, shall be filed electronically in FORM GST APL-06:

Provided that the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and

the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of FORM GST APL-05 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, 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 order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-05, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

Explanation.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

(5) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty five thousand rupees and a minimum of five thousand rupees:
Provided that the fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112."

Rule 111:
"(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be filed in Form GST APL-07, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately.
Provided that an application to the Appellate Authority may be filed manually in FORM GST APL-07, along with the relevant documents, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately;
(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112, if any, shall be filed electronically in FORM GST APL-06:

Provided that the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special or general order to that effect, subject to such conditions and restrictions as specified in the said order.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) Where the order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):

Provided that where the order appealed against is not uploaded on the common portal, the appellant shall submit or upload, as the case may be, a self-certified copy of the said order within a period of seven days from the date of filing of FORM GST APL-07 and a final acknowledgment, indicating appeal number shall be issued in Form GST APL-02 on removal of defects, if any, 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 order is submitted or uploaded after a period of seven days from the date of filing of FORM GST APL-07, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission or uploading of such self-certified copy shall be considered as the date of filing of appeal.

Explanation.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

Explanation.—For the purposes of rule 110 and 111, 'Registrar' shall mean a Registrar appointed by the Government for this purpose, and shall include Joint Registrar, Deputy Registrar and Assistant Registrar. "

4. Law Committee in its meeting dated 16.05.2024 also deliberated on the fact that currently, in CGST Rules, Rule 109C provides for an option to withdraw the appeal up to a specified stage before the Order- in- Appeal is issued by the Appellate Authority. It was recommended by the Law Committee that similar facility may also be provided for withdrawing appeals filed before the Appellate Tribunal. Accordingly, it was recommended that **a new Rule 113A and FORM GST APL-05/07W may be inserted in CGST Rules as follows (in red),** on lines of Rule 109C, for withdrawing appeals before the Appellate Tribunal:

Rule 113A Withdrawal of Appeal or Application filed before the Appellate Tribunal

"113A. The appellant may, at any time before the issuance of the order under sub-section (1) of section 113, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal or the application, as the case may be, by filing an application in FORM GST APL-05/07W:

Provided that where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal or the application, as the case may be, would be subject to the approval of the Appellate Tribunal and such application for withdrawal of the appeal or application, shall be decided by the Appellate Tribunal within fifteen days of filing of such application:

Provided further that any fresh appeal or application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (3) of section 112, as the case may be."

"FORM GST APL-05/07 W

[See rule 113A]

Application for Withdrawal of Appeal /Application filed before the Appellate Tribunal

1. GSTIN:

2. Name of Business (Legal) (in case appeal is filed under sub-section (1) of section 112)

3. Name and designation of the appellant (in case appeal is filed under sub-section (3) of section 112):

4. Order No.& Date:

5. ARN of the Appeal & Date:

6. Reasons for Withdrawal:

i. Acceptance of order of the First Appellate Authority.
ii. Acceptance of order of an Appellate Tribunal/ Court on similar subject matter
iii. Need to file appeal/application again after rectification of mistakes/omission in the filed appeal/application
iv. Amount involved in appeal is less than the monetary limit fixed for Appeal as per provisions of sub-section (2) of section 112
v. Amount involved in the application is less than the monetary limit fixed for application as per the provisions of sub-section (1) of section 120
vi. Any other reason

7. Declaration (applicable in case appeal is filed under sub-section (1) of section 112):

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."

5. Law Committee also recommended that the header of the FORM GST APL-02 for providing acknowledgment for submission of appeal by the registered person needs to be amended to include reference to rule 110(1) and rule 111(1) so that the same Form is also applicable in respect of acknowledgment of Appeal filed in the Tribunal. Accordingly, the following amendment (in red) was recommended by the Law Committee in the header of FORM GST APL-02:

" **Form GST APL-02**

[See Rules 108(3), ~~and~~ 109(2), 110(1) and 111(1)]

……"

4. The Agenda Note is placed before the GST Council for deliberation and approval.

Agenda Item 3(xxi): Clarification on taxability of re-imbursement of securities/shares as ESOP/ESPP/RSU provided by a company to its employees

Representations have been received from the trade and various associations seeking clarification on the applicability of GST on securities/shares of foreign holding company provided to an employee of Indian subsidiary company as part of terms of contract of employment.

2. **Background:**

2.1 There are cases where the option for allotment of securities/shares of the foreign holding company is provided by the Indian subsidiary company to their employees as part of the compensation package by the said Indian subsidiary company as per terms of contract of employment. In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly to the concerned employees of Indian subsidiary company, and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company.

2.2 This practice of utilizing securities/shares as a means of incentivizing their employees, is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Such specific terminology usage depends on the agreed-upon compensation terms between the employer and the employee. ESPPs and ESOPs are typically presented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards. Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e. the allocation of securities or shares from the employer to employee as part of compensation package with the aim of motivating enhanced performance.

2.3 As per the definition of supply under GST Act, securities are neither classified as supply of goods nor as supply of services, and as per Schedule III of Section 7 of the CGST Act, 2017, the services by an employee to the employer in the course of or in relation to his employment is neither supply of goods nor supply of services under GST. At the same time, since the obligation of providing securities as per the employment contract rests with the domestic subsidiary company which in turn is fulfilled through the foreign holding company, doubts are being raised by some field formations regarding the said transaction being in the nature of import of financial service by the domestic subsidiary company from the foreign holding company, and being liable to be charged under GST on reverse charge basis, as per entry 4 of Schedule I of the CGST Act, 2017. Therefore, there is a need for clarification in the matter.

3. Relevant Legal Provisions:

3.1 **As per Section 2(52)** of the CGST Act, 2017, the term '*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.

3.2 **As per Section 2(102)** of the CGST Act, 2017, the term '*services*' means anything **other than goods, money and securities** but includes activities relating to the use of money or its

conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Further, Explanation to section 2(102) provides that the expression "services" includes facilitating or arranging transactions in securities.

3.3 **Section 7** of the CGST Act, 2017 describes ***Scope of supply.-***

> *(1) For the purposes of this Act, the expression - "supply" includes-*
> *(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,*
> *(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.*
> ***Explanation** .-For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;*
> *(b) import of services for a consideration whether or not in the course or furtherance of business; and*
> *(c) the activities specified in Schedule I, made or agreed to be made without a consideration;*
> *(d)[****].*
> *[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]*
> *(2) Notwithstanding anything contained in sub-section (1),-*
> *(a) activities or transactions specified in Schedule III; or*
> *(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,*
> *shall be treated neither as a supply of goods nor a supply of services.*
> *(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -*
> *(a) a supply of goods and not as a supply of services; or*
> *(b) a supply of services and not as a supply of goods."*

3.4 As per **Section 2 (11)** of **IGST Act, 2017, import of service** means supply of any service where—

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India.

3.5 Definition of **securities** under **clause (h)** of **section 2** of **Securities Contracts (Regulation) Act, 1956:**

"*securities" include— (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate*;

……"

3.6 Definition of **body corporate** under **clause (11) of section 2** of The Companies Act, 2013:

"body corporate or corporation includes a company incorporated outside India, but does not include— (i) a co-operative society registered under any law relating to co-operative societies; and (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf."

3.7 **Entry 4 of Schedule I of CGST Act, 2017** states that the following activities are to be considered as supply even if made without consideration:

"*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."*

3.8 **Entry 1 of Schedule III of CGST Act, 2017** states that following Activities or Transactions shall be treated neither as a Supply of Goods nor a Supply of Services:

" 1) Services by an employee to the employer in the course of or in relation to his employment."

4. <u>Analysis:</u>

4.1 It needs to be seen as to whether any taxable supply is involved in transfer of securities/ shares by the foreign holding company to the employees of domestic subsidiary company and more specifically, as to whether the transfer of securities/shares from foreign holding company to the employees of domestic subsidiary company can be considered as import of services by domestic subsidiary company from the foreign holding company in the course or furtherance of business or otherwise.

4.2 A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps:

- The domestic subsidiary company gives option/ facility of ESOP/ESPP/RSU to its employees as part of compensation package as per terms of employment.
- The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest.
- The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, to the employees of the domestic subsidiary company.
- The foreign holding company transfers the shares directly to the employees of the subsidiary company.

- The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to cost basis either through an actual remittance or through an equity transfer as prescribed by the relevant Indian Accounting Standard.
- The employees hold the shares and may sell them at a later date if they choose.

4.3 In the present case, there is a transaction of shares/securities from foreign holding company to an employee of domestic subsidiary company. To attract GST on such transaction, there should be "supply of goods or services" as per section 7 of CGST Act. However, Securities under GST Law are considered neither goods nor services in terms of definition of "goods" under clause (52) of section 2 of CGST Act, 2017 and in terms of definitions of "services" under clause (102) of the said section. Further, securities include 'shares' as per definition of "securities" under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. Accordingly, purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Therefore, in the absence of such transaction, falling under the supply of 'goods' or 'services' as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares.

4.4 Further, the companies offer ESOP/ESPP/RSU to their employees to motivate them to perform better, and to retain the employees, by aligning the interest of employees with that of company. Accordingly, the ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms and conditions of employment contract. As per Schedule III of Section 7 of the CGST Act, 2017, the services by an employee to the employer in the course of or in relation to his employment are treated neither as supply of goods nor as supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/shares of the foreign holding company to the employees of domestic subsidiary company.

4.5 Further, the foreign holding company directly transfers the securities/shares to the employees of the domestic subsidiary company on the direction of domestic subsidiary company. Reimbursement of such securities/ shares is generally done by domestic subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission. Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither goods nor services, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence does not appear to be liable to be charged under CGST Act, 2017.

4.6 However, if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall be considered to be in nature of consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of the later. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company.

4.7 Therefore, in the light of above, no supply of service appears to be taking place between a foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of domestic subsidiary company, and the domestic

subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis. However, in cases where an additional fee, markup, or commission, is charged by the foreign holding company from the domestic subsidiary company, over and above the cost of the securities/shares, GST would be leviable on such amount of additional fee, markup, or commission charged as consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic subsidiary company on reverse charge basis in such a case on the said import of services.

5. Law Committee in its meeting held on 08.12.2023 deliberated on the same, and recommended issue of a circular on the above lines. The draft circular as recommended by the Law Committee is placed at **Annexure-A**.

6. Accordingly, the agenda is placed before the GST Council for approval.

ANNEXURE-A

Circular No. XX/XX/2024-GST

F. No. CBIC-20006/24/2023-GST
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
GST Policy Wing

*****

New Delhi, Dated the XXXXXX, 2024

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 **taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company**-reg.

Representations have been received from the trade and field formations seeking clarification regarding the taxability of Employee Stock Option (ESOP)/Employee Stock Purchase Plan (ESPP)/ Restricted Stock Unit (RSU) provided by a company to its employees.

2.1 It has been represented that some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment. In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly to the concerned employees of Indian subsidiary company, and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company.

2.2 Doubts are being raised regarding taxability of such a transaction under GST, i.e. whether such transfer of shares/ securities by the foreign holding company directly to the employees of the Indian subsidiary company and subsequent re-imbursement of the cost of such shares/ securities by the Indian subsidiary company to the foreign holding company can be considered as import of financial services by the Indian subsidiary company from the foreign holding company and whether the same can be considered as liable to GST in the hands of Indian subsidiary company on reverse charge basis.

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 bysection 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as under.

4. Providing option of allotment of securities/shares by the companies to their employees is being used by them as a means of incentivizing their employees and is commonly referred to as an Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU). Such specific terminology usage depends on the agreed-upon compensation terms between the employer and the employee. ESPPs and ESOPs are typically presented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards. Regardless of the terminology used, the fundamental essence of the transaction remains the same i.e. the allocation of securities or shares from the employer to employee as part of compensation package with the aim of motivating enhanced performance.

4.1 A transaction involving transfer of ESOP/ESPP/RSU to the employees of domestic subsidiary by the foreign holding company appears to involve the following steps:

- The domestic subsidiary company gives option/ facility of ESOP/ESPP/RSU to its employees as part of compensation package as per terms of employment.
- The employees exercise their stock options, either by purchasing shares at the grant price or by holding the options until they vest.
- The foreign holding company of the domestic subsidiary company issues ESOP/ESPP/RSU, which are securities/shares listed on the foreign stock exchange, to the employees of the domestic subsidiary company.
- The foreign holding company transfers the shares directly to the employees of the subsidiary company.
- The domestic subsidiary company generally reimburses the cost of such shares to the foreign holding company on cost-to cost basis either through an actual remittance or through an equity transfer as prescribed by the relevant Indian Accounting Standard.
- The employees hold the shares and may sell them at a later date if they choose.

4.2 The foreign holding company issues securities/shares as ESOP/SPP/RSU to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. However, Securities under GST Law are considered neither goods nor services in terms of definition of "goods" under clause (52) of section 2 of CGST Act, 2017 and in terms of definition of "services" under clause (102) of the said section. Further, securities include 'shares' as per definition of "securities" under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956. Accordingly, purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services. Therefore, in the absence of such transaction, falling under the supply of 'goods' or 'services' as per GST Act, GST is not leviable on said transaction of sale/purchase/transfer of securities/shares.

4.3 Further, the companies offer ESOP/ESPP/RSU to their employees to motivate them to perform better, and to retain the employees, by aligning the interest of employees with that of company. The ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment. As per Entry 1 of Schedule III of Section 7 of the CGST Act, 2017, the services by an employee to the employer in the course of or in relation to his employment are treated neither as

supply of goods nor as supply of services. Therefore, GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract which involve transfer of securities/shares of the foreign holding company to the employees of domestic subsidiary company

4.4 The foreign holding company directly transfers the shares/securities to the employees of the domestic subsidiary company on the request of the said domestic subsidiary company. Reimbursement of such securities/ shares is generally done by domestic subsidiary company to foreign holding company on cost-to-cost basis i.e. equal to the market value of securities without any element of additional fee, markup or commission. Since the said reimbursement by the domestic subsidiary company to the foreign holding company is for transfer of securities/shares, which is neither in nature of goods nor services, the same cannot be treated as import of services by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST under CGST Act, 2017.

4.5 However, if the foreign holding company charges any additional fee, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall be considered to be in nature of consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. In this case, GST will be leviable on such amount of the additional fee, markup, or commission, charged by the foreign holding company from the domestic subsidiary for issuance of its securities/shares to the employees of the later. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company.

4.6 Accordingly, it is clarified that no supply of service appears to be taking place between the foreign holding company and the domestic subsidiary company where the foreign holding company issues ESOP/ESPP/RSU to the employees of domestic subsidiary company, and the domestic subsidiary company reimburses the cost of such securities/shares to the foreign holding company on cost-to-cost basis. However, in cases where an additional amount over and above the cost of securities/shares is charged by the foreign holding company from the domestic subsidiary company by whatever name called, GST would be leviable on such additional amount charged as consideration for the supply of services of facilitating/ arranging the transaction in securities/ shares by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic subsidiary company on reverse charge basis in such a case on the said import of services.

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

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

(Sanjay Mangal)

Principal Commissioner (GST)

Agenda Item 3(xxii): Clarification on requirement of reversal of ITC in respect of balance of taxable premium in cases of Life Insurance services after applying valuation rule.

Representations have been received from Life Insurance Corporation of India seeking clarity as to whether the portion of the premium charged by the insurance company from the insured person/ policy holder, which is not included in the taxable value as per sub-rule (4) of Rule 32 of CGST Rules, 2017, can be treated as an exempt supply/ non-taxable supply and whether the input tax credit availed in respect of the said amount is required to be reversed or not.

2. RELEVANT LAW PROVISIONS:

2.1 The definitions of exempt supply and non-taxable supply are reproduced below:

2.1.1 '***exempt supply'*** has been defined in Section 2(47) of the CGST Act, 2017 as follows:

2(47) "exempt supply" means 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, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

*2.1.2 '**non-taxable supply'*** has been defined in Section 2(78) of the CGST Act, 2017 as follows:

2(78) "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

2.2 Further, reference is made to sub-section (1) and sub-section (2) of Section 17 of CGST Act, 2017, which are reproduced below:

*"**Section 17. Apportionment of credit and blocked credits.-***

(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.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

……."

2.3 Reference is also made to **Rule 32(4) of CGST Rules, 2017** which is reproduced below:

" 32(4) The value of supply of services in relation to life insurance business shall be,-

(a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;

(b) in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or

(c) in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:

***Provided** that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance."*

2.4 Reference is also made to **sub-rule (1)** of **Rule 42 of CGST Rules, 2017** which is reproduced below:

"Rule 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,-

……."

3. **Views of the field formations:**

3.1 Some of the field formations are taking a view that once a registered person has discharged tax only on a portion of premium amount (determined by applying valuation principles under rule 32(4) of CGST Rules, 2017 as applicable for life insurance business), the taxable supply may be considered to have been provided to the extent of taxable value i.e., the portion of premium which has been considered for determination of taxable value as per Rule 32(4) of CGST Rules, 2017. Further, they are of the view that the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of CGST Rules, 2017, shall be treated as pertaining to a non-taxable supply and since the definition of exempt supply as per Section 2(47) of the CGST Act 2017 includes non-taxable supply also, therefore, it is presumed that the same may be treated as an exempt supply for the purpose of reversal of input tax credit as per section 17(2) of CGST Act, 2017 read with Rule 42 & 43 of CGST Rules, 2017.

3.2 Accordingly, the said field formations are insisting on reversal of the common input tax credit on such amount of premium, which is not includible in taxable value of supply of service by insurance company in terms of rule 32(4) of CGST Rules, 2017, by treating the same as pertaining to an exempt supply.

4. **Representation of the trade:**

4.1 Life Insurance Corporation of India has represented that Life Insurance is a single contract between the policy holder and the insurance company for supply of one single service of life insurance. Since, life insurance service is taxable supply and tax is paid on the taxable value as determined under Rule 32(4) of CGST Rules, 2017, the amount of premium which is not included in

the taxable value, cannot be considered as non-taxable supply. Therefore, Life Insurance Corporation of India has represented that the balance amount of gross premium [i.e. the amount of premium not included in taxable value after applying valuation rule under rule 32(4)] should not be considered as pertaining to an exempt supply and accordingly, there should be no requirement for reversal of input tax credit in respect of the same.

5. **Analysis of the Issue:**

5.1 'Life insurance business' has been defined in Section 2(11) of the Insurance Act, 1938 as follows:

"2(11) life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include--

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(b) the granting of annuities upon human life; and

(c) the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;

Explanation. -- ***For the removal of doubts, it is hereby declared that life insurance business shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section****.*

5.2 Life insurance companies are providing service of insuring the life of the insured and in return, are charging consideration in the form of premium from the insured. A number of life insurance companies are providing policies which may consist of a component of investment, in addition to the component for the risk cover of the life insurance and accordingly, in such cases, the premium charged also includes the component which is allocated for investment or saving on behalf of the policy holder. As per definition of 'Life insurance business' provided in Section 2(11) of the Insurance Act, 1938 reproduced above, life insurance business includes any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer. Accordingly, such life insurance policies, which also include a component of investment along with the component of risk cover for life insurance, are also covered under life insurance business.

5.3 The value of taxable supply of the services is to be determined as per the provisions of Section 15 of the CGST Act, 2017. Sub-section (1) of Section 15 of the CGST Act, 2017 provides for value of taxable supply to be the transaction value, which is the price actually paid or payable for the said supply where the supplier and recipient of the supply are not related and price is the sole consideration for the supply. Sub-section (4) of the Section 15 of CGST Act, 2017 provides that

where the value of supply of goods or services or both cannot be determined under sub-section (1) of the said section, the same may be determined in the manner as may be prescribed. The said manner has been prescribed in the CGST Rules, 2017 wherein sub-rule (4) of Rule 32 of CGST Rules, 2017 provides for the method of calculation of the value of supply of services in relation to life insurance business in various situations. Proviso to Rule 32(4) of CGST Rules, 2017 clearly mentions that in case the entire premium paid by the policy holder is only towards the risk cover in life insurance *then the entire premium paid will be considered as the value of supply of service.*

5.4 Provisions of rule 32(4) of CGST Rules, 2017 imply that the premium paid by a policy holder towards risk portion needs to be included in taxable value whereas the component of the premium allocated/ attributable to savings or investment on behalf of the policy holder needs to be excluded from the value of taxable supply. Keeping in consideration the complexity in arriving at such a breakup, Rule 32(4) of CGST Rules, 2017 provides the method of calculation of the value of taxable supply in case of supply of service of life insurance.

5.4.1 Rule 32(4) of CGST Rules, 2017 provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment/savings on behalf of the policy holder from the gross premium charged from the policy holder. The said sub-rule also provides for determination of value of supply of such services based on certain percentage of the gross premium in other situations. However, where the entire premium is only towards the risk cover in life insurance, the value of supply is not required to be determined under the said sub-rule as in such cases whole of the consideration i.e. gross premium is towards life insurance services.

5.5 The issue under examination is as to whether the portion of premium which is attributable to investment/ savings on behalf of the policy holder and is not included in value of taxable supply determined as per sub-rule (4) of Rule 32 of CGST Rules, 2017, can be considered as a non-taxable/ exempt supply and whether ITC on common inputs is required to be reversed in respect of the same as per Rule 42/43 of CGST Rules, 2017.

5.6 As per section 2(47) of the CGST Act, 2017, exempt supply means 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, or under section 6 of the Integrated Goods and Services Tax Act (hereinafter referred to as the IGST Act), and includes non-taxable supply. The said definition of exempt supply has the following three limbs: -

(a) Supply of service which is nil rated;

(b) Supply of service which is wholly exempted from tax under section 11 of CGST Act or under Section 6 of IGST Act; or

(c) Supply of service which is non-taxable supply.

5.6.1. Further, as per section 2(78) of CGST Act, 2017, non-taxable supply means a supply of goods or services or both which is not leviable to tax under the CGST Act, 2017 or under the IGST Act, 2017.

5.6.2 In the present case, there appears to be no doubt about taxability of supply of service of providing life insurance services by the insurance company to the insured/policy holder but the only

issue is regarding the treatment of balance premium amount over and above the taxable value of supply as determined under the provisions of Rule 32(4) of CGST Rules. Further, the service of providing life insurance is neither nil rated, nor there is any notification issued under section 11 of CGST Act, 2017 by virtue of which the said service or any portion of the said service has been exempted from GST.

5.6.3 Further, the supply can be considered as a non-taxable supply only when it is not leviable to tax under the CGST Act, 2017 or under the IGST Act, 2017. It is not a case where the tax is not leviable on the supply of life insurance services provided by life insurance companies to the insured/policy holder. The value of the said supply of service in respect of life insurance business as determined under Section 15 of CGST Act, 2017 read with Rule 32(4) of CGST Rules, 2017 may not include some portion of gross premium as per methodology provided in the said rule. This portion of premium, which is not includible in taxable value as per provisions of Rule 32(4) of CGST Rules, 2017, is neither nil rated, nor wholly exempted from tax under section 11 of CGST Act, 2017 and also not a non-taxable supply. Therefore, just because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion of consideration becomes attributable to a non-taxable or exempt supply. Therefore, the contention of field formations, that the said amount of premium which is not included in the value of taxable supply becomes an exempted supply, appears to be without any basis.

5.6.4 Further, Rule 42 of the CGST Rules, 2017 provides for reversal of common input tax credit in respect of exempt supply. As per the said rule, only that input tax credit which attract the provisions of sub-section (1) and sub-section (2) of Section 17 of the CGST Act, 2017 needs to be determined and reversed thereof. Further sub-section (1) and sub-section (2) of Section 17 of the CGST Act, 2017 restrict the amount of credit only in a case where the registered person uses the goods or services partly for business or other purposes or partly for making taxable supplies or exempt supplies. However, as discussed in **Para 5.6.3** above, the portion of premium which is not includible in taxable value of supply as per Rule 32(4) of CGST Rules, 2017 cannot be considered as pertaining to non-business purpose or pertaining to exempt supply and therefore, there is no requirement of reversal of credit as per provisions of Rule 42/43 of CGST Rules, 2017 read with sub-section (1) and sub-section (2) of Section 17 of CGST Act, 2017.

6. Accordingly, Law Committee in its meeting dated 08.11.2023 deliberated on the issue and recommended clarifying the same by issuing a Circular. Draft circular, as recommended by the Law Committee, is enclosed with this agenda note as **Annexure-A.**

7. The issue is put up before GST Council for deliberation and approval.

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ANNEXURE-A

Circular No. XX/XX/2024-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 XXXXXX, 2024

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 requirement of reversal of input tax credit in respect of the portion of the premium for life insurance policies which is not included in taxable value-reg.

Representations have been received from the trade and field formations seeking clarification on the issue as to whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") applicable for life insurance business, will be treated as pertaining to an exempt supply/ non-taxable supply and whether the input tax credit availed in respect of such amount shall be required to be reversed or not.

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 the "CGST Act"), hereby clarifies the issues as under:

S. No.	Issue	Clarification
	Requirement of reversal of input tax credit in respect of the portion of the premium for life insurance policies which is not included in taxable value	
1.	Whether the amount of insurance premium, which is not included in the taxable value as per Rule 32(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") applicable for life insurance business, shall be treated as pertaining to a non-taxable supply/ exempt supply for the purpose of reversal of Input tax credit as per section 17(1) of CGST Act read with Rule 42 & 43 of CGST Rules.	'Life insurance business' has been defined in Section 2(11) of the Insurance Act, 1938 as follows: *"2(11) life insurance business means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include--* *(d) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,* *(e) the granting of annuities upon human life ; and* *(f) the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons ;* *Explanation. -- For the removal of doubts, it is hereby declared that life insurance business shall include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.* 2. Life insurance companies are providing service of insuring the life of the insured and in return, are charging consideration in the form of premium from the insured. A number of life insurance companies are providing policies which may consist of a component of investment in addition to the component for the risk cover of the life insurance and accordingly, in such cases, the premium charged also includes the component which is allocated for investment or saving on behalf of the policy holder. As per definition of 'Life insurance business' provided in Section 2(11) of the Insurance Act, 1938, life insurance business includes any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a

		component of investment and a component of insurance issued by an insurer. Accordingly, such life insurance policies, which also include a component of investment along with the component of risk cover for life insurance, are also covered under life insurance business. 2.1 It is mentioned that value of supply of services in relation to life insurance business is to be determined as per provisions of sub-rule (4) of rule 32 of CGST Rules. Rule 32(4) of CGST Rules provides that the value of supply of services in respect of life insurance business is primarily to be determined by deducting the amount of premium allocated for investment/savings on behalf of the policy holder from the gross premium charged from the policy holder. The said sub-rule also provides for determination of value of supply of such services based on certain percentage of the gross premium in other situations. However, where the entire premium is only towards the risk cover in life insurance, the value of supply is not required to be determined under the said sub-rule as in such cases whole of the consideration i.e. gross premium is towards life insurance services. 2.2 As per section 2(47) of the CGST Act, exempt supply means 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, or under section 6 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act"), and includes non-taxable supply. The said definition of exempt supply has the following three limbs: - (a) Supply of service which is nil rated; (b) Supply of service which is wholly exempted from tax under section 11 of CGST Act or under Section 6 of IGST Act; or (c) Supply of service which is non-taxable supply. 2.2.1. Further, as per section 2(78) of CGST Act, non-taxable supply means a supply of goods or services or both which is not leviable to tax under the CGST Act or under the IGST Act. 2.2.2 It is mentioned that there is no doubt about taxability of supply of service of providing life insurance services by the insurance company to the insured/ policy holder but the only issue is regarding the treatment of balance premium amount over and above the taxable value

		of supply as determined under the provisions of Rule 32(4) of CGST Rules. Further, the service of providing life insurance cover is neither nil rated, nor there is any notification issued under section 11 of CGST Act by virtue of which the said service or any portion of the said service has been exempted from GST. 2.2.3 It is also mentioned that the supply can be considered as a non-taxable supply only when it is not leviable to tax under the CGST Act or under the IGST Act. It is not a case where the tax is not leviable on the supply of life insurance services provided by life insurance companies to the insured/policy holder. The value of the said supply of service in respect of life insurance business as determined under Rule 32(4) of CGST Rules, 2017 may not include some portion of gross premium as per methodology provided in the said rule. This portion of premium which is not includible in taxable value as per provisions of Rule 32(4) of CGST Rules is neither nil rated, nor wholly exempted from tax under section 11 of CGST Act and also not a non-taxable supply. Therefore, just because some amount of consideration is not included in value of taxable supply as per the provisions of the statute, it cannot be said that the said portion of consideration becomes attributable to a non-taxable or exempt supply. 2.2.4 Further, Rule 42 of the CGST Rules provides for reversal of input tax credit in certain scenarios. As per the said rule, only that input tax credit which attract the provisions of sub-section (1) and sub-section (2) of Section 17 of the CGST Act needs to be determined and reversed thereof. Further, sub-section (1) and sub-section (2) of Section 17 of the CGST Act restrict the amount of credit only in a case where the registered person uses the goods or services partly for business or other purposes or partly for making taxable supplies or exempt supplies. However, as discussed in **Para 2.2.3** above, the portion of premium which is not includible in taxable value of supply as per Rule 32(4) of CGST Rules cannot be considered as pertaining to an exempt supply. 3. In view of this, it is clarified that the amount of the premium for taxable life insurance policies, which is not included in the taxable value as determined under rule 32(4) of CGST Rules, cannot be considered as pertaining to a non-taxable or exempt supply and therefore, there is no requirement of reversal of input tax credit as per provisions of Rule 42 or rule 43 of CGST Rules, read with sub-section (1) and sub-section (2) of Section 17 of CGST Act, in

		respect of the said amount.

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

3. 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 3(xxiii): Clarification on the taxability of wreck and salvage values in motor insurance claims.

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders. Such damages to the insured vehicle are classified in two categories:

i. Total Loss (TL)/ Constructive Total Loss (CTL) or Cash Loss; and

ii. Partial Loss Situation

Representations have been received from the General Insurance Industry seeking clarity on the applicability of GST on salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle.

2. RELEVANT PROVISIONS:

2.1 **Insured Declared Value (IDV)** is defined under Indian Motor Tariff (IMT), which was constituted under Part-II of the Insurance Act, 1938, as below:

> "*The Insured's Declared Value (IDV) of the vehicle will be deemed to be the "SUM INSURED" for the purpose of this tariff and it will be fixed at the commencement of each policy period for each insured vehicle.*
> *….*
> *For the purpose of TL/CTL claim settlement, this IDV will not change during the currency of the policy period in question. It is clearly understood that the liability of the insurer shall in no case exceed the IDV as specified in the policy schedule less the value of the wreck, in 'as is where is' condition*.
>
> *The insured vehicle shall be treated as a CTL if the aggregate cost of retrieval and / or repair of the vehicle, subject to terms and conditions of the policy, exceeds 75% of the IDV of the vehicle.* "

2.2 IMT has also given a standard policy wording format to cover all types of motor insurance policies. The operating clause related to repair of motor vehicles as given in IMT is reproduced below:

> "*The Company may at its own option repair, reinstate or replace the vehicle or part thereof and/or its accessories or may pay in cash the amount of the loss or damage and the liability of the Company shall not exceed:*
>
> *(a) For total loss / constructive total loss of the vehicle – the Insured's Declared Value (IDV) of the vehicle (including accessories thereon) as specified in the schedule less the value of the wreck.*
>
> *(b) For partial losses, i.e. losses other than Total Loss/Constructive Total Loss of the vehicle –actual and reasonable costs of repair and /or replacement of parts lost/damaged subject to depreciation as per limits specified."*

2.3 Reference is also made to FAQs on property insurance issued by Insurance Regulatory and Development Authority of India (IRDAI). The relevant FAQ related to salvage is as given below:

> "*Q. What is the relevance of salvage?*
> *In case of claims under various types of insurance policies, the partly damaged goods or the wreck of a car or any machinery or any other property settled on Total Loss Basis is known as 'Salvage'.* ***After setting the claim for the full amount the salvage becomes the property of Insurance Company****. Generally the job of salvage disposal is entrusted by the Insurance*

Company to the surveyor who carried out the loss assessment, subject to observance of procedure for salvage disposal. The amount realized through salvage disposal will be set off by insurer against losses paid by them."

2.4 Reference is also made to sub-section (2) of Section 64UM of Insurance Act, 1938 which provides for the condition with regard to appointment of surveyor for assessing the insurance claims:

"(2) No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968, shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who holds a licence issued under this section to act as a surveyor or loss assessor (hereafter referred to as "approved surveyor or loss assessors)

Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor."

3. BRIEF FACTS OF THE ISSUE:

3.1 The insurance companies are engaged in the business of providing insurance, inter alia, to indemnify the damage to the vehicle by getting the said vehicle repaired in case of damage to the extent provided as per the terms of the insurance policy. The damages to the motor vehicles may result in either 'total losses' or 'partial losses'. As defined under Indian Motor Tariff (IMT), any damage exceeding 75% of the insured value results in Total Loss or Constructive Total Loss. **In case of such total loss & constructive total loss situations**, the liability of the insurance company is limited to *the Insured's Declared Value (IDV) of the vehicle (including accessories thereon) as specified in the schedule less the value of the wreck.* Further, in cases of partial damage to the vehicle, the liability of the insurance company is limited to *actual and reasonable costs of repair and /or replacement of parts lost/damaged subject to depreciation as per limits specified* in the policy contract itself. The issue raised in the representations is regarding the treatment of salvage/wreck under GST in both the cases i.e. when there is a Total Loss/ Constructive Total Loss or when there is a partial loss to the vehicle. In both the cases, as per the conditions mentioned in the Insurance Act, 1938, a surveyor is first appointed by the insurance company who assesses whether the loss occurred is Total Loss/ Constructive Total Loss or Partial Loss. The said surveyor also prepares an estimate of the repair cost of the vehicle in cases of Partial Loss and the net claim to be paid by the insurance companies in cases of Total Loss, to arrive at an estimated value of salvage which needs to be deducted from the claim amount. For this purpose, the surveyor may also source the quote for salvage from various potential buyers.

3.2 As a general practice, in cases where Total Loss is incurred on the vehicle, the insurance company pays the net claim amount to the insured which is arrived by deducting the value of salvage from the IDV. This salvage value may be estimated by the appointed surveyor inter-alia based on quotations received from salvage buyers.

3.3 Further, in cases where there is a partial loss to the vehicle, once the insured brings the vehicle to the garage for repairs, an independent Surveyor/ Loss Assessor appointed by the insurance company finalise claim liability to be paid to the policy holder. Here, the insurance company generally arrives at the net claim value by reducing the salvage value as estimated by the Surveyor from the repair cost of the vehicle estimated by the garage.

4. **VIEW OF FIELD FORMATIONS:**

Some of the field formations are taking view that as per **FAQs of IRDAI** (referred in Para 2.3 above), insurance companies are the owner of salvage, i.e. the partly damaged goods or the wreck of a car settled on Total Loss Basis. They further are of the view that the general insurance companies partly divert the mode of payment of claim liability in order to avoid payment of GST liability on the value of the damaged vehicle/ salvage/ wreck by showing that the salvage has been retained and sold by the insured. Therefore, according to them, the general insurance companies are engaged in the supply of salvage and are realizing consideration in the form of deduction of value of salvage from the claim amount payable by them to the insured or the repair charges payable to the repairers/garages and are liable to discharge GST against the same.

5. **VIEW OF TRADE:**

On the other hand, the contention of insurance companies is that in the entire process of disposal of wreck/ salvage, whether that is generated in cases of partial loss or total loss, they do not take control or ownership of the same. As per the applicable insurance regulations as well, the insurance company does not become the owner or seller of the salvage or wreck, if the claim is settled on the basis of IDV less the value of the salvage/ wreck. In such cases, the rights over the salvage/ wreck always remain with the insured. Accordingly, demanding GST on the salvage value from the insurance company by considering the same as supply by insurance company is not correct.

6. **EXAMINATION:**

6.1 Under GST law, supply is the relevant taxable event for levying tax. For an activity/transaction to be liable to GST, existence of 'supply' as defined under section 7 of CGST Act, 2017 should be there.

6.2 Section 7 of CGST Act, 2017 defines supply to mean *'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.'* In the instant case, insurance companies are providing service of insuring the vehicle/ automobile for any damages and in return, charging consideration in the form of premium charged from the owner of the vehicle. It is also noted that in respect of insurance services being provided by the insurance companies, it is the responsibility of the insurance company to get the damaged vehicle repaired when there is a partial loss to the vehicle, to the extent covered under the terms of the insurance. The insurance companies get the repair liability assessed through a Surveyor/ Loss Assessor, and make the payment of such approved repair liability, either directly to the garage (cashless mode in case of empanelled or networked garages) or through the insured by reimbursement of the approved repair liability paid by the insured to the garage (reimbursement mode in case of non-networked garages). In both the cases, the liability to make the payment for such repair cost, to the extent of the approved repair liability, lies with the insurance company only, as it is the insurance company which has indemnified the insured for damage of the vehicle.

6.3 Here, it is worthwhile to mention that any deductions made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer while signing the insurance contract. Where the value of the wreck/salvage of the damaged/defective part is deducted from the claim amount, such wreck/damaged part becomes the property of the insured and the insured can dispose it off as per his choice. Such a deduction of the value of wreck/damaged part by the insurance company from the insurance claim cannot be considered as supply of the said wreck/damaged part by the insurance company and no GST appears to be payable by insurance company on the same.

6.4 Further, as per the standard policy contract, in cases where there is total damage to the vehicle, the insurance company's liability to pay the insured is limited to IDV of the vehicle less the value of salvage/ wreck. In all such cases, as the insurance claim is settled by the insurance company as per the terms of the insurance contract by deducting value of salvage/ wreck from the claim settlement amount, the salvage/ wreck does not become property of insurance company, and the ownership for such wreck/ salvage remains with the insured. However, in some cases, the insurance

company may support sourcing of competitive quotes from various salvage/ wreck buyers and the insured may select the best available offer for sale of wreck or damaged car. The insured may also source quotes from open markets and dispose the wreck or damaged car to such a buyer. In any case, the ownership of the wreck vests with the insured and not with the insurance company. The same can be disposed off by the insured either directly, or through the garage, or may not be disposed off at all, as per his wish and choice. The deduction of the value of salvage from the insurance settlement amount, is as per the terms of the insurance contract, and cannot be said to be consideration for any supply being made by insurance company. Accordingly, in such cases, there does not appear to any supply of salvage by insurance company and as such, there does not appear to be any liability under GST on part of insurance company in respect of this salvage value.

6.5 Reliance has been made by some of the field formations on the FAQ issued by IRDAI (referred in Para 2.3 above), wherein it has been mentioned that the salvage becomes ***the property of Insurance Company after setting the claim for the full amount.*** Based on the said FAQ, it has been contended that the salvage is property of insurance company once the claim is settled by them and hence the insurance companies are liable to discharge GST on the amount deducted on account of the estimated value of salvage. It is worthwhile to mention that as per the said FAQ, salvage becomes the property of the insurance company only in case the claim is settled on full amount basis. Once, value of salvage is deducted from the claim amount, the salvage becomes the property of the insured and he is free to dispose the same as per his choice.

6.6 In situations where the insurance contract provides for settlement of claim on full IDV, without deduction of value of salvage/ wreck, the insured will be paid for full claim amount without any deductions on account of salvage value, and as per FAQ issued by IRDAI (referred in Para 2.3 above), the salvage becomes ***the property of Insurance Company*** a***fter setting the claim for the full amount.*** In all such cases, where the right of refusal to keep the salvage rests with the insured and where general insurance companies cannot deny keep/take possession of the salvage, the salvage becomes the property of the general insurance companies and they are obligated to deal with the same or dispose the same, thereby the outward GST liability on disposal/sale of the salvage is to be discharged by the insurance companies.

7. The issue was deliberated by the Law Committee in its meeting held on 08.12.2023. The Law Committee recommended that in cases, where due to the conditions mentioned in the contract itself, general insurance companies are deducting the value of salvage as compulsory deductibles from the claim amount, there the salvage remains the property of insured and insurance companies are not liable to discharge GST liability against the same. However, in cases, where the insurance claim is settled on full claim amount, without deduction of value of salvage/ wreck (as per the contract), the salvage becomes the property of insurance company and the insurance company will be obligated to discharge GST on salvage's outward supply to the salvage buyer.

8. Law Committee recommended that the treatment of salvage and its taxability in various situations may be clarified on the above lines by issuing a Circular. Draft circular recommended by the Law Committee is enclosed with this agenda note as **Annexure A.**

9. The agenda is put up for deliberation and approval by GST Council please.

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Annexure A

F. No. CBIC-20006/5/2023-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
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New Delhi, Dated the – March, 2024

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 issues pertaining to GST-reg.

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders. Such damages to the insured vehicle are classified in two categories:

i. Total Loss/ Constructive Total Loss or Cash Loss; and
ii. Partial Loss Situation

1.2 Representations have been received from the trade and field formations seeking clarification as to whether or not in case of motor vehicle insurance, GST is payable by the insurance company on salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle.

4. 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
Taxability of salvage/ wreck value earmarked in the claim assessment of the damage caused to the motor vehicle		
1.	Whether the insurance company is liable to pay GST on the salvage/ wreckage value earmarked in the claim assessment of the damage caused to the motor vehicle?	Under GST law, supply is the relevant taxable event for levying tax. For an activity/transaction to be liable to GST, existence of 'supply' as defined under section 7 of CGST Act, 2017 should be there. 2.1 Section 7 of CGST Act, 2017 defines supply to mean *'all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.'* In the instant case, insurance companies are providing service of insuring the vehicle/ automobile for any damages and in return, charging consideration in the form of premium charged from the owner of the vehicle. It is also noted that in respect of insurance services being provided by the insurance companies, it is the responsibility of the insurance company to get the damaged vehicle repaired when there is a partial loss to the vehicle, to the extent covered under the terms of the insurance. 2.2 Any Deduction made by the insurance company from the final claim amount paid to the insured is in the form of deductibles which is pre-decided and mutually agreed by the insured and the insurer while signing the insurance contract. Such a deduction of the value of wreckage/damaged part by the insurance company from the insurance claim cannot be considered as supply of the said wreckage/damaged part by the insurance company and no GST appears to be payable by insurance company on the same. 2.3 In cases where as per the policy contract, the insurance company's liability to pay the insured is limited to Insured's Declared Value (IDV) of the vehicle less the value of salvage/ wreck in cases of total loss to the vehicle, if the insurance claim is settled by the insurance company as per the terms of the insurance contract by deducting value of salvage/ wreckage from the claim settlement amount, the salvage/ wreckage does not become property of insurance company, and the ownership for such wreckage/ salvage remains with the insured. However, in some cases, the insurance company may support sourcing of competitive quotes from various salvage/ wreckage buyers and the insured may select the best available offer for sale of wreckage or damaged car. The insured may also source quotes from open markets and dispose the wreckage or damaged car to such a buyer. In any case, the ownership of the wreckage vests with the insured and not with the insurance company. The

		same can be disposed by the insured either directly, or through the garage, or may not be disposed at all, as per his wish and choice. The deduction of the value of salvage from the insurance settlement amount, is as per the terms of the insurance contract, and cannot be said to be consideration for any supply being made by insurance company. Accordingly, in such cases, there does not appear to be any supply of salvage by insurance company and as such, there does not appear to be any liability under GST on the part of insurance company in respect of this salvage value. 2.4 However, in situations where the insurance contract provides for settlement of claim on full IDV, without deduction of value of salvage/ wreck, the insured will be paid for full claim amount without any deductions on account of salvage value. In such a situation, the salvage becomes the property of Insurance Company after settling the claim for the full amount and the insurance company is obligated to deal with the same or dispose of the same. In such cases, the outward GST liability on disposal/sale of the salvage is to be discharged by the insurance companies. 3. Therefore, in cases where due to the conditions mentioned in the contract itself, general insurance companies are deducting the value of salvage as deductibles from the claim amount, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same. However, in cases, where the insurance claim is settled on full claim amount, without deduction of value of salvage/ wreckage (as per the terms of the contract), the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer.

4. 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 3(xxiv): Clarification in respect of Extended Warranty provided by Manufacturers to the end customers in view of Circular No. 195/07/2023-GST dated 17.07.2023.

Reference is invited to Circular No. 195/07/2023-GST dated 17.07.2023 issued on the basis of recommendations of the GST Council in its 50th meeting. The said circular sought to clarify certain issues regarding availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

2. Representation has been received from trade requesting further clarification in respect of the following issues:

A. Clarification regarding liability to pay GST and liability to reverse ITC in cases involving warranty replacement of 'entire goods' (and not mere parts):

2.1. It has been submitted that though Circular No. 195/07/2023-GST dated 17.07.2023 mentions in the opening paragraph that "*Representations have been received from trade and industry that as a common trade practice, the original equipment manufacturers/ suppliers offer warranty for the goods/ services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement*." However, the table in Para 2 of the said circular clarifies regarding GST liability as well as liability to reverse ITC only in cases involving replacement of '**parts**' and **not if the goods itself are replaced** under warranty. Request has been made to issue clarification in respect of such cases also when the goods itself (and not mere parts) are replaced as part of warranty.

B. Clarification regarding liability to pay GST and liability to reverse ITC in cases where the distributor replaces goods to the customer as part of warranty on behalf of the manufacturer out of his own stock and thereafter the manufacturer replenishes the stock of the distributor:

2.2. It has been represented that Sr. No. 4 of Para 2 of the Circular No. 195/07/2023-GST clarifies about the GST liability as well as liability to reverse ITC in cases where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, however, S. No.4 does not cover the scenario where the distributor replaces the goods to the customer as part of warranty out of his own stock on behalf of the manufacturer, to provide prompt service to the customer, and then raises a requisition to the manufacturer for the goods replaced by him under warranty. The manufacturer, thereafter, provides the said goods to the distributor vide a delivery challan, as replenishment for the goods provided as replacement to the customer by the distributor. Request has been made to issue clarification in respect of such cases where the distributor replaces goods to the customer as part of warranty on behalf of the manufacturer out of his own stock and thereafter, the said parts are replenished to the distributor by the manufacturer.

C. Clarification in respect of nature of supply of extended warranty as provided at S. No. 6 of para 2 of the said circular in respect of the following issues:

2.3.1 It has been represented that in respect of cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the extended warranty should be treated as a separate and independent transaction from the supply of goods, whereas the said Circular has treated it to be in the nature of composite supplies, the principal supply being the supply of goods.

2.3.2 It has also been represented that in cases where Extended Warranty is sold subsequent to the original supply of goods, the same should be considered as supply of services only whereas the said Circular clarifies that GST on the same would be payable depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services).

Examination of the issues:

3. The matter has been examined. It is noted that in cases where warranty is provided by the manufacturer/ suppliers to the customers in respect of any goods, and if any defect is detected in the said goods during the warranty period, the manufacturer may be required to replace either one or more parts or the entire product, depending upon the extent of damage/ defect noticed in the said goods. The clarification provided by Circular No. 195/07/2023-GST dated 17.07.2023 was intended to cover all such situations where either any part/ parts are replaced during the warranty period, or where the goods itself are replaced as such. However, while clarifying the issue in Table in Para 2 of the said circular, only the situations involving replacement of part/ parts have been mentioned, without referring to situation involving replacement of entire goods as such. Therefore, in order to remove any ambiguity and doubts on the issue, it is proposed that Circular No. 195/07/2023-GST dated 17.07.2023 may be suitably modified, to include the replacement of 'entire goods' under its ambit.

3.1. It is also noted that Sr. No. 4 of Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023 clarifies three scenarios (as reproduced below), where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer:

4	*In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the*	*(a) There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the*

	distributor would be required to reverse the input tax credit in respect of such replacement of parts?	*manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.* *(b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.* *(c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.*

3.2. However, S. No. 4 of Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023 does not specifically cover the cases where the distributor initially replaces the goods for the customer on behalf of the manufacturer out of his stock and later, gets the same replenished from the manufacturer through a delivery challan without making any additional payments. The key aspects of this scenario i.e.

a) distributor providing replacement out of his own stock;

b) manufacturer replenishing the distributor for the said replacement; and

c) the replacement being made at no additional cost on the distributor,

are all covered in the scenario mentioned in point (b) of the clarification offered with respect to Sr. No.4 of Para 2 of the said Circular and therefore, the treatment of the said scenario in respect of tax liability and ITC reversal should be same as in case covered in point (b) of S. No. 4 of Para 2 of the above circular. However, point (b) only refers to the situation, where the distributor first raises the requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty. This clause does not specifically provide for the situation where the part(s) are first replaced by the distributor to the customer as part of warranty and then the same are replenished by the manufacturer to the distributor. To clarify the issue and remove any doubts about the same, it is proposed that a new point may be inserted in S. No. 4 of Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023 to clarify about tax liability and ITC reversal in such cases also, on the same lines as has been clarified vide point (b) of S. No. 4 of Para 2 of the said circular.

3.3 Further, it is also noted that Sr. No. 4 of Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023(reproduced below) clarifies taxability in respect of extended warranty provided to the customers, wherein it has been clarified that in case the agreement of extended warranty with the manufacturer is entered at the time of original supply, then such extended warranty becomes part of the composite supply and where the said agreement of extended warranty is entered at any time after the original supply, then the same is a separate contract and GST would be payable, depending on the nature of the contract(i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services).

Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original	*(a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite*

supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	*supply, the principal supply being the supply of goods, and GST would be payable accordingly.* *(b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract(i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)*

3.4 In respect of the above, it is to be mentioned that there may be cases where the supplier for the goods may be the dealer while the supplier of extended warranty may be the OEM or third party. In such cases, the supplies being made by different suppliers cannot be treated as part of the composite supply. It is, therefore, clarified that in cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the supply of extended warranty and supply of goods cannot be treated as the composite supply. In such cases, supply of extended warranty will be treated as a separate supply from the original supply of goods.

36.5 Further, supply of extended warranty is an assurance to the customers by the manufacturer/ third party that the goods will operate free of defects during the Extended Warranty coverage period, and in case of any defect attributable to faulty material or workmanship at the time of manufacture, the same will be repaired/ replaced by the said manufacturer/ third party. Further, whether the goods will later on require replacement of parts or just repair service or neither during the said extended warranty period, is also not known at the time of sale/ supply of extended warranty. Thus, Extended Warranty is in the nature of conveying of an "assurance" and not an actual replacement of part or repairs and therefore, supply of extended warranty appears to be a supply of service.

3.6 Accordingly, it appears that in cases, where supply of extended warranty is made subsequent to the original supply of goods, or where supply of extended warranty is to be treated as a separate supply from the original supply of goods in cases referred in Para 3.4 above, the supply of extended warranty shall be treated as a supply of services distinct from the original supply of goods, and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services. To clarify the issue and remove any doubts about the same, it is proposed that

point (a) and (b) of S. No. 6 of Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023 may be suitably amended.

4. Accordingly, Law Committee in its meeting held on 08.11.2023 and 25.04.2024 approved the following amendments/ modifications to be made in Circular No. 195/07/2023-GST dated 17th July 2023 to be made through a Circular as below (draft circular recommended by the Law Committee **attached as Annexure A to the agenda**):

a) Wherever, 'any *part*,' '*parts*' and '*part(s)*' has been mentioned in Circular No. 195/07/2023-GST dated 17th July 2023, the same may be read as '*goods or its parts, as the case may be'*.

b) In the Sr. No. 4 of para 2 of the said Circular, in column 3 of the table, after point (c), point (d) may be added as below: -

4	In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?	(d) There may be cases where the distributor replaces the goods *or its parts, as the case may be* to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods *or the parts*, as the case may be. The manufacturer then provides the said goods *or the parts*, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods *or the parts*, as the case may be, so replenished to the distributor.

c) In the Sr. No. 6 of para 2 of the said Circular, in column 3 of the table, point (a) and (b) may be amended as below: -

6.	*Sometimes companies provide offers of Extended warranty to*	*(a) If a customer enters in to an agreement of extended warranty with the supplier of the goods at the time of*

	the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	*original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.* ~~***(b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract(i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)***~~ *(b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of services distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services.*

5. Accordingly, agenda, along with the draft circular, is placed before the GST Council for approval.

Annexure A

Circular No.-XXXXX

F. No. CBIC-20001/7/2024-GST-CBEC
Government of India
Ministry of Finance
Department of Revenue
*****

North Block, New Delhi
Dated the -- XXX, 2024

To,
All the Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax
All the Principal Directors General/ Directors General

Madam/Sir,

Subject: Clarification in respect of Circular No. 195/07/2023-GST dated 17.07.2023-reg.

Reference is invited to Circular No. 195/07/2023-GST dated 17.07.2023 (herein after referred to as "the said circular") clarifying certain issues regarding availability of ITC in respect of warranty replacement of parts and repair services during warranty period. Representations have been received from trade and industry requesting for clarifications on certain related matters in respect of the said circular.

2. In order 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 & Services Tax Act, 2017 (herein after referred to as the 'CGST Act"), hereby clarifies the following issues as below.

3. Clarification regarding GST liability and as well liability to reverse input tax credit in respect of cases where goods as such or the parts are replaced under warranty:

3.1 Table in Para 2 of Circular No. 195/07/2023-GST dated 17.07.2023 clarifies regarding GST liability as well as liability to reverse ITC, only in cases involving replacement of 'parts' and not if goods as such are replaced under warranty. Request has been made to also issue a clarification in respect of cases where the goods as such are replaced under warranty.

3.2 In cases where warranty is provided by the manufacturer/ suppliers to the customers in respect of any goods, and if any defect is detected in the said goods during the warranty period, the manufacturer may be required to replace either one or more parts or the goods as such, depending upon the extent of damage/ defect noticed in the said goods. However, Table in Para 2 of the said circular only clarifies in respect of the situations involving replacement of part/ parts and does not specifically refer to the situation involving replacement of goods as such. It is clarified that the clarification provided in Para 2 of the said circular is also applicable in case where the goods as such are replaced under warranty.

3.3 Accordingly, wherever, 'any *part*,' '*parts*' and '*part(s)*' has been mentioned in Para 2 of Circular No. 195/07/2023-GST dated 17th July 2023, the same may be read as '*goods or its parts, as the case may be'*.

4. Clarification in respect of cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer:

4.1 Sr. No. 4 of Para 2 of the said Circular clarifies about the GST liability as well as liability to reverse ITC in cases where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer. However, it does not cover the scenario where the distributor replaces the goods to the customer as part of warranty out of his own stock on behalf of the manufacturer to provide prompt service to the customer, and then raises a requisition to the manufacturer for the goods replaced by him under warranty. The manufacturer, thereafter, provides the said goods to the distributor vide a delivery challan, as replenishment for the goods provided as replacement to the customer by the distributor. Request has been made to issue clarification in respect of such a scenario also.

4.2 In cases where the distributor replaces the parts/ goods to the customer as part of warranty out of his own stock on behalf of the manufacturer and subsequently gets replenishment of the said parts/ goods from the manufacturer, the key aspects, viz.(i) distributor providing replacement out of his own stock; (ii) manufacturer replenishing the distributor for the said replacement; and (iii) the replacement being made at no additional cost on the distributor, are all covered in the scenario specified in point (b) of Sr. No.4 of Para 2 of the said Circular. Therefore, GST liability as well as liability to reverse ITC in cases covered by the said scenario should be similar to that in respect of the scenario covered in point (b) of S. No. 4 of Para 2 of the above circular.

4.3 Accordingly, to specifically clarify in respect of such a scenario, in column 3 of the table in Para 2 of the said circular, against S. No. 4, after point (c), point (d) shall be inserted as below:

> *"(d) There may be cases where the distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts, as the case may be. The manufacturer then provides the said goods or the parts, as the case may be, to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment. In such a case, no GST is payable on such replenishment of goods or the parts, as the case may be. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or the parts, as the case may be, so replenished to the distributor."*

5. (i) Nature of supply of extended warranty, at the time of original supply of goods, as a separate supply from supply of goods, if the supply of extended warranty is made by a person different from the supplier of the goods

(ii) Nature of supply of extended warranty, made after original supply of goods:

5.1 It has been represented that in respect of cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the extended warranty should be treated as a separate and independent transaction from the supply of goods, whereas Sr. No. 6 of Para 2 of the said Circular has treated it to be in the nature of composite supplies, the principal supply being the supply of goods. Request has been made to issue a suitable clarification in the matter.

5.1.1 There may be cases where the supplier for the goods may be the dealer while the supplier of extended warranty may be the OEM or third party. In such cases, the supplies being made by different suppliers cannot be treated as part of the composite supply. It is, therefore, clarified that in cases, where agreement for extended warranty is made at the time of original supply of goods, and the supplier of extended warranty is different from the supplier of goods, the supply of extended warranty and supply of goods cannot be treated as the composite supply. In such cases, supply of extended warranty will be treated as a separate supply from the original supply of goods.

5.2 It has also been represented that in cases where Extended Warranty is sold subsequent to the original supply of goods, the same should be considered as supply of services only whereas the said Circular clarifies that GST on the same would be payable depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services). Request has been made to issue a revised clarification in respect of the same.

5.2.1 Supply of extended warranty is an assurance to the customers by the manufacturer/ third party that the goods will operate free of defects during the Extended Warranty coverage period, and in case of any defect attributable to faulty material or workmanship at the time of manufacture, the same will be repaired/ replaced by the said manufacturer/ third party. Further, whether the goods will later on require replacement of parts or just repair service or neither during the said extended warranty period, is also not known at the time of sale/ supply of extended warranty. Thus, Extended Warranty is in the nature of conveying of an "assurance" and not an actual replacement of part or repairs.

5.3 Accordingly, it is clarified that in cases, where supply of extended warranty is made subsequent to the original supply of goods, or where supply of extended warranty is to be treated as a separate supply from the original supply of goods in cases referred in Para 5.1.1 above, the supply of extended warranty shall be treated as a supply of services distinct from the original supply of goods, and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services.

5.4 Accordingly, in Sr. No. 6 of Table in para 2 of the said Circular, in column No. 3 of the table, the following shall be substituted:

> *"(a) If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.*

(b) In case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same shall be treated as a supply of services distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services."

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 this Circular may be brought to the notice of the Board.

Sanjay Mangal
Pr. Commissioner (GST)

Agenda Item 3(xxv): Clarification regarding ITC entitlement on repair expenses incurred in case of reimbursement mode of claim settlement.

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders and settle the claims in two modes i.e., Cashless or Reimbursement. Representations have been received from the General Insurance Industry seeking clarity on availability of input tax credit (ITC) in respect of expenses incurred on repair of motor vehicles in case of reimbursement mode of insurance claim settlement. It has been represented that:

(i) Empanelled garages (Network Garages) offer a credit facility to the insurance companies and therefore, no payments are required to be made by the policyholder/ insured immediately at the time of delivery of the vehicle after repairs. The facility is cashless for the policyholder/ insured (to the extent of claim cost approved by the insurance company based on the Surveyor/ Loss Assessor's report), and in trade parlance, generally, it is referred to as Cashless Mode of claim settlement.

(ii) Alternatively, the insured can also avail repair services from non-network garages, with which the insurance companies do not have routine business relationship, and therefore, there is no written contract between the insurance companies and the Non-Network Garages to provide credit facility for the repair costs. Accordingly, the insurance companies require the policyholder/ insured to make payment of such repair invoice, and subsequently reimburse the approved claim cost to the policyholder/ insured. In trade parlance, this option is referred to as the Reimbursement Mode of claim settlement.

(iii) Under both modes of claim settlement, the insurance company accounts for repair liability (as assessed by the Surveyor/ Loss Assessor) as claim cost and is liable to make payment of approved repair charges to the garage. In both the cases, the invoices are issued by the garages in the name of Insurance companies. While in case of Cashless Mode, the insurance companies directly make the payment of approved repair charge to the Network Garage, in case of Reimbursement mode, the payment is first made by the Insured to the Non-Network Garage, which is subsequently reimbursed by the insurance company to the Insured, to the extent of approved repair/ claim cost.

(iv) The insurance companies are availing input tax credit on the tax paid in respect of such repair services provided by the garages, in Cashless Mode of claim settlement as well as in Reimbursement Mode of claim settlement, on the basis of the invoices issued by the garages in their name.

(v) In case of reimbursement mode of claim settlement, some field formations are raising objections on availment of Input tax credit by insurance companies in respect of repair invoices issued by the non-network garages on insurance companies. It is being claimed that in case of reimbursement mode of claim settlement, there is no credit facility offered by the garages to the Insurance Companies and therefore, the supply of repair service is made by the garage to the policyholder/ insured and not to the insurer. Accordingly, it is being claimed that ITC of repair invoices, in such cases, should not be available to the insurance companies.

1.2. Reference is drawn to Section 17(5) of the CGST Act, 2017 whereby a specific proviso has been added which allows ITC in respect of such services received by a taxable person engaged in the supply of general insurance services in respect of such motor vehicles.

"(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:-

...

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) ***where received by a taxable person engaged-***

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) ***in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him****;*

..."

1.3. Reference is also drawn to section 16(1) of CGST Act which provides for the conditions and eligibility criteria for taking ITC as follows:

(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."

Therefore, the insurer is eligible to claim ITC only in respect of supply of goods or services or both which are used or intended to be used in the course or furtherance of business.

1.4. Section 2(93) of the CGST Act defines 'recipient' as follows:

(93) "recipient" of supply of goods or services or both, means–

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

2.1. The insurance companies are engaged in the business of providing insurance, inter alia, to indemnify the damage to the vehicle by getting the said vehicle repaired in case of damage to the extent provided as per the terms of the insurance policy. Such indemnification can be made by the insurance company either by getting the vehicle repaired from a Network Garage and making direct payment of the approved repair cost to the garage or alternatively, by reimbursing the approved cost of repairs to the insured in case of repairs through a non-network garage. Therefore, the expenditure, which is incurred in repair of the vehicle, is integrally connected to the provision of insurance services. Such costs incurred as repair are, therefore, input services to the insurance companies used in the course and furtherance of their business.

2.2 As per provisions of section 17(5) of CGST Act, 2017 referred in Para 1.2 above, input tax credit is available in respect of repair and maintenance services of the motor vehicles received by an insurance company, which is engaged in the supply of general insurance services in respect of such motor vehicles.

2.3. It is also noted that in respect of insurance services being provided by the insurance companies, it is the responsibility of the insurance company to get the damaged vehicle repaired, to the extent covered under the terms of the insurance. The insurance companies get the repair liability assessed through a Surveyor/ Loss Assessor, and make the payment of such approved repair liability, either directly to the garage (cashless mode in case of empanelled or networked garages) or through the insured, by reimbursement of the approved repair liability paid by the insured to the garage

(reimbursement mode in case of non-networked garages). In both the cases, the liability to make the payment for such repair cost, to the extent of the approved repair liability, lies with the insurance company only, as it is the insurance company which has indemnified the insured for damage of the vehicle. As per clause (a) of section 2(93) of CGST Act, 2017 referred in para 1.4 above, the recipient of a supply of services, in cases where a consideration is payable for the supply of the services, is the person who is liable to pay that consideration. Further, as per provisions of section 2(93) of CGST Act, 2017, "recipient" is the person liable to pay the consideration, and not the person who actually makes the payment in the first instance. As discussed above, in case of insurance services for motor vehicles, as per the terms of the insurance policy, it is the insurance company, which is liable to make any consideration to the garage (to the extent of approved repair liability) for repair of the damaged vehicle. Such liability to pay consideration can be discharged by the insurance company, either by making direct payment to the garage (in case of cashless mode) or through the insured (in re-imbursement mode). A mere change in the mode of claim settlement i.e., reimbursement over cashless settlement cannot alter the underlying nature of transaction. Furthermore, there is no condition under Section 16 or Section 17 of CGST Act, 2017 or in the definition of 'recipient' under Section 2(93) of CGST Act, 2017 that the actual payment should be made directly by the recipient to the service provider. Even in a situation where the insurance company has an existing liability to make the payment and has actually made the payment, albeit, indirectly through the insured, it will be regarded as a recipient of services. Once the insurance companies have the liability to pay for the repairs under the contract of indemnity, its liability to pay for the approved repair liability for repair services provided by the garages (including non-networked garages) cannot be disputed and the insurance companies alone would be regarded as the ultimate beneficiary of this services. Thus, in both cashless mode as well as reimbursement mode, insurance company is the "recipient" of the services of vehicle repair provided by the garage, to the extent of approved repair liability.

2.4 Further, the invoice of such repair services, to the extent of approved repair liability, are also issued by the garage in favour of insurance company in both cashless as well as reimbursement modes of payment. Therefore, in terms of the provisions of section 2(93), section 16(1), section 16(2) and section 17(5) of CGST Act, 2017, input tax credit cannot be denied to the insurance company, merely because the payment in case of reimbursement mode is not directly made by the insurance company to the garage, but is routed through the insured.

2.5 However, there may be cases, where the invoice also includes an amount in excess of the approved repair liability, wherein the insurance company only pays or reimburses the approved repair liability to the garage after considering the standard deductions viz. the compulsory deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of salvage of the damaged parts of the motor vehicles, etc. The remaining amount is to be paid by the insured to the garage. In such cases, the input tax credit may be available to the insurance company only to the

extent of payment made by them to the garage directly, or through reimbursement to the insured, and not on the full invoice value.

2.6 There may also be cases, where the invoice for the repair of the vehicle is not issued in name of the insurance company. In such a case, condition of clause (a) and (aa) of section 16(2) of CGST Act, 2017 may not be satisfied and accordingly, input tax credit may not be available to the insurance company in respect of such an invoice.

3. Accordingly, the Law Committee deliberated on the issue in its meeting held on 27.12.2023 and recommended issuance of a circular to clarify the issue. The draft circular recommended by the Law Committee is enclosed as **Annexure A** with this agenda.

4. The agenda is placed for approval of the Council.

Annexure A

F. No. CBIC- 20006/5/2023-GST

Government of India

Ministry of Finance

Department of Revenue

Central Board of Indirect Taxes and Customs

GST Policy Wing

*****

New Delhi, Dated the -- March, 2024

To,

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

The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement

The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders and settle the claims in two modes i.e., Cashless or Reimbursement.

1.2 Under both modes of settlement, the insurance company accounts for repair liability (as assessed by the Surveyor/ Loss Assessor) as claim cost and is liable to make payment of approved repair charges to the garage. In both the cases, the invoices are issued by the garages in the name of Insurance companies. While in case of Cashless Mode, the insurance companies directly make the payment of approved repair charge to the Network Garage, in case of Reimbursement mode, the payment is first made by the Insured to the Non-Network Garage, which is subsequently reimbursed by the insurance company to the Insured, to the extent of approved repair/ claim cost. Accordingly, the insurance companies are availing input tax credit on the tax paid in respect of such repair services provided by the garages in Cashless Mode of claim settlement as well as in Reimbursement Mode of claim settlement on the basis of the invoices issued by the garages in their name.

1.3 It has been represented by the insurance companies that in case of reimbursement mode of claim settlement, some field formations are raising objections on availment of Input tax credit (ITC) by insurance companies in respect of repair invoices issued by the non-network garages on insurance companies. It is being claimed by the field formations that in case of reimbursement mode of claim

settlement, there is no credit facility offered by the garages to the Insurance Companies and therefore, the supply of repair service is made by the garage to the insured and not to the insurer. Accordingly, it is being claimed that ITC of repair invoices, in such cases, should not be available to the insurance companies.

1.4 Request has been received from the insurance companies seeking clarity on availability of ITC in respect of repair expenses incurred in case of reimbursement mode of claim settlement.

2. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies the following:

S. No.	Issue	Clarification
1	The insurance companies, which are engaged in providing general insurance services in respect of insurance of motor vehicles, insure the cost of repairs/ damages of motor vehicles incurred by the policyholders and settle the claims in two modes i.e., Cashless or Reimbursement. Whether ITC is available to insurance companies in respect of repair expenses reimbursed by the insurance company in case of reimbursement mode of claim settlement.	Under reimbursement mode of claim settlement, the insured avails repair services from non-network garages with which the insurance companies do not have routine business relationship. The said garages issue the invoice in the name of the insurance company while not extending credit facility for the repair costs. Accordingly, the policy holder/ insured makes payment of such repair services, and subsequently, the insurance company reimburses the approved claim cost to the insured. Section 17(5) of the CGST Act provides that ITC in respect of services of repair of motor vehicles shall be available where received by a taxable person engaged in the supply of general insurance services in respect of motor vehicles insured by him. Section 16 of CGST Act provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of the said Act, 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.

		Further, section 2(93) of CGST Act defines “recipient" of supply of goods or services or both, as the person who is liable to pay the consideration, where such consideration is payable for the said supply of goods or services or both. Moreover, as per section 2(31) of CGST Act, consideration includes any payment made or to be made in relation to supply of the goods or services or both, whether by the recipient or by any other person. In reimbursement mode of claim settlement, the payment is made by the insurance company for the approved cost of repair services through reimbursement to the insured. Further, irrespective of the fact that the payment of the repair services to the garage is first made by the insured, which is then reimbursed by the insurance company to the insured to the extent of the approved claim cost, the liability to pay for the repair service for the approved claim cost lies with the insurance company, and thus, the insurance company is covered in the definition of “recipient” in respect of the said supply of services of vehicle repair provided by the garage under section 2(93) of CGST Act, to the extent of approved repair liability. Moreover, availment of credit in respect of input tax paid on motor vehicle repair services received by the insurance company for outward supply of insurance services for such motor vehicles is not barred under section 17(5) of CGST Act. Accordingly, it is clarified that ITC is available to Insurance Companies in respect of motor vehicle repair expenses incurred by them in case of reimbursement mode of claim settlement.
2.	Where the invoice raised by the garage also includes an amount in excess of the approved claim cost,	In cases where the garage issues two separate invoices in respect of the repair services, one to the insurance company in respect of approved claim cost

	the insurance company only reimburses the approved claim cost to the garage after considering the standard deductions viz. the compulsory deductibles to be borne by the insured, depreciation, improvements outside the coverage, value of salvage of the damaged parts of the motor vehicles, etc. The remaining amount is to be paid by the insured to the garage. What is the extent of ITC available to the insurer in such cases?	and second to the customer for the amount of repair service in excess of the approved claim cost, input tax credit may be available to the insurance company on the said invoice issued to the insurance company subject to reimbursement of said amount by insurance company to the customer. However, if the invoice for full amount for repair services is issued to the insurance company while the insurance company makes reimbursement to the insured only for the approved claim cost, then, the input tax credit may be available to the insurance company only to the extent of reimbursement of the approved claim cost to the insured, and not on the full invoice value.
3.	Whether ITC is available to the insurer where the invoice for the repair of the vehicle is not in name of the insurance company.	In such a case, condition of clause (a) and (aa) of section 16(2) of CGST Act is not satisfied and accordingly, input tax credit will not be available to the insurance company in respect of such an invoice.

Agenda Item 3(xxvi): Clarification regarding taxability of the transaction of providing loan by an overseas affiliate to its related Indian affiliate or by a person in India to a related person.

Representations have been received from trade and industry seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its related Indian entity, where the consideration being paid is only by way of interest, and whether any GST is applicable on the same.

2. Relevant legal provisions:

2.1 **Section 2 of CGST Act, 2017:**

*2(31) "**consideration**" in relation to the supply of goods or services or both includes-*

> *(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*

*2(102) "**services**" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged*;

2.2 **Section 7. Scope of supply.-**

(1) *For the purposes of this Act, the expression - "supply" includes-*

> *(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
>
> *...*
>
> *(c) the activities specified in Schedule I, made or agreed to be made without a consideration;*

2.3 **Schedule I of CGST Act, 2017: Activities to be treated as supply even if made without consideration-**

> 2) *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:*
>
> *..*
>
> *(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*.

2.4 **Section 15. Value of Taxable Supply.-**

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

..

(4) where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

***Explanation**. - For the purposes of this Act,-*

(a) persons shall be deemed to be "related persons" if-

.....

(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;

3. Doubts are being raised regarding the taxability and valuation of the services of processing/ administering/ facilitating the loan provided by a person to a related person or by an overseas affiliate to its related person in India, even when made without consideration, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act.

4. Analysis and Proposal:

4.1 The foreign entity/ foreign company and its affiliate in India, hereinafter referred as Indian entity, may be related persons as per the Explanation to the sub-section (5) of Section 15 of CGST Act, 2017. Further, as per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity, made with consideration in form of loan or discount, or even without consideration, is a supply under GST.

4.2 Services by way of 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) are exempted under sub entry (a) of entry 27 of **Notification No. 12/2017-Central Tax (Rate)**. The said entry is reproduced below:

S. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
27	Heading 9971	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);	Nil	Nil

As per the said entry, the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST.

4.3 At the same time, it is to mention that as a general practice, overseas affiliates or domestic related persons generally charge no consideration in form of processing fee/ service fee, other that the consideration by way of interest or discount on the loan amount. The **processing fee/ service fee** is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the **administrative costs of processing the loan application**. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified in point number 42 in the **Sectoral FAQ on Banking, Insurance and Stock Brokers Sector** issued by CBIC.

S. No	Question	Answer
42	If any service charges or administrative charges or entry charges are recovered in addition to interest on a loan, advance or a deposit, would such charges be also a part of the exemption?	No. The services of loans, advances or deposits are exempt in so far as the consideration is represented by way of interest or discount. Any charges or amounts collected over and above the interest or discount would represent taxable consideration and hence liable to GST.

4.4 Doubts are being raised as to whether there is any supply of 'processing/ administrative/ facilitation service' involved in all the situations where the activity of granting credit/loan takes place, including where such loan is provided by the overseas affiliate to its related Indian affiliate or by a person to a related person without charging any consideration, other than by way of interest or discount.

4.5 It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender will carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment will include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out. To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service fee/ loan granting charges, which is leviable to GST.

4.6 However, when an entity is extending a loan to a related entity, it may not be required to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility, and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, i.e. there may not be any administrative cost involved to the lender in granting the loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing.

4.7 Even in case of loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan.

4.8 Accordingly, in the cases, where no consideration is charged by a person from a related person, or by an overseas affiliate from its related Indian entity, for extending loan or credit, other than by the way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of CGST Rules, 2017.

4.9 However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by the way of interest or discount, the same may be considered to be the consideration for the supply of services of supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person availing the loan.

5. Law Committee in its meeting held on 20.12.2023 deliberated on the issue and recommended issuing a circular to clarify the same as above. The circular recommended by the Law Committee is enclosed as **Annexure-A to this agenda**.

6. Accordingly, the recommendations of the Law Committee as detailed in para 4 above are placed before the GST Council for approval.

Annexure A

Circular No. XX/XX/2023-GST

F. No. CBIC-20001/12/2023-GST
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Indirect Taxes and Customs
GST Policy Wing
*****

New Delhi, Dated the XXXXXX, 2024

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 regarding taxability of the transaction of providing loan by an overseas affiliate to its Indian affiliate or by a person to a related person.

Representations have been received from trade and industry seeking clarity on whether there is any supply involved in the transaction of granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount, and whether any GST is applicable on the same.

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 bysection 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
Clarification regarding taxability of the transaction of providing loan by an overseas entity to its Indian related entity or by a person in India to a related person		
1	Whether the activity of providing loans by an overseas affiliate to its Indian affiliate or by a person to a related person, where there is no consideration in the nature of processing fee/ administrative charges/ loan granting charges etc., and the consideration is represented	1. As per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply, even if made without consideration. Therefore, it is evident that the service of granting loan/ credit/ advances by an entity to its related entity is a supply under GST.

	only by way of interest or discount, will be treated as a taxable supply of service under GST or not.	2. Services by way of 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) are exempted under sub entry (a) of entry 27 of Notification No. 12/2017-Central Tax (Rate). Therefore, it is clear that the supply of services of granting loans/ credit/ advances, in so far as the consideration is represented by way of interest or discount, is fully exempt under GST. 3. It is mentioned that overseas affiliates or domestic related persons are generally charging no consideration in the form of processing fee/ service fee, other than the consideration by way of interest or discount on the loan amount. Doubts are being raised regarding the taxability of the services of processing/ administering/ facilitating the loan in such cases, by deeming the same as supply as per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. The **processing fee/ service fee** is generally a one-time charge that lenders levy on applicants when they apply for a loan. This fee is generally non-refundable and is used to cover the **administrative cost of processing the loan application**. Charges of any other nature in respect of loan, other than by way of interest or discount, would represent taxable consideration for providing the facilitation/ processing/ administration services for the loan and hence would be liable to GST. This has been clarified at serial number 42 in the Sectoral FAQ on Banking, Insurance and Stock Brokers Sector issued by CBIC. 4. It is significant to note that the processing/ service fee is generally charged by the bank/ financial institution from the recipient of the loan in order to cover the administrative cost of processing the loan application. An independent lender may carry out a thorough credit assessment of the potential borrower to identify and evaluate the risks involved and to consider methods of monitoring and managing these risks. Such credit assessment may include understanding the business of the applicant, as well as the purpose of the loan, financial standing and credibility of the applicant, how it is to be structured and the source of its repayment which may include analysis of the borrower's cash flow forecasts, the strength of the borrower's balance sheet, and where any collateral is offered, due diligence on the collateral offered may also be required to be carried out To cover such costs, the independent lender generally collects a fee that is in the nature of processing fee/ administrative charges/ service

		fee/ loan granting charges, which is leviable to GST. 5. However, when an entity is extending a loan to a related entity, it may not require to follow such processes as are followed by an independent lender. For example, it may not need to go through the same process of information gathering about the borrower's business, his financial standing and credibility and other details, as the required information may already be readily available within the group, or between related persons. The lender may not also take any collateral from the borrower. Accordingly, in case of loans provided between related parties, there may not be the activity of 'processing' the loan, and no administrative cost may be involved in granting such a loan. Therefore, it may not be desirable to place the services being provided for processing the loans by banks or independent lenders vis-a-vis the loans provided by a related party, on equal footing. 6. Even in case of loans provided between unrelated parties, there may not be any processing fee/ administrative charges/ loan granting charges etc., based on the relationship between the bank/ independent lender and the person taking the loan. The lender might waive off the administrative charges in full, based on the nature and amount of loan granted, as well as based on the relationship between the lender and the concerned person taking the loan. 7. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan or credit, other than by the way of interest or discount, it cannot be said that any supply of service is being provided between the said related persons in form of processing/ facilitating/ administering the loan, by deeming the same as supply of services as per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 and S. No. 4 of Schedule I of CGST Act. Accordingly, there is no question of levy of GST on the same by resorting to open market value for valuation of the same as per rule 28 of CGST Rules, 2017. 8. However, in cases of loans provided between related parties, wherever any fee in the nature of processing fee/ administrative charges/ service fee/ loan granting charges etc. is charged, over and above the amount charged by the way of interest or discount, the same may be considered to be the consideration for the supply of services of processing/ facilitating/ administering of the loan, which will be liable to GST as supply of services by the lender to the related person

		availing the loan.

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

4. Difficulties, 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 3(xxvii): – Clarification on availability of input tax credit on ducts and manholes used in network of optical fibre cables (OFCs).

Representations have been received from Cellular Operators Association of India (COAI) submitting that input tax credit (ITC) is being denied by some tax authorities on ducts and manholes used in network of optical fibre cables (OFCs) on the ground that the same is blocked as per section 17(5) of the CGST Act, 2017, being in nature of immovable property (other than Plant and Machinery).

2. It has been requested to issue clarification in respect of availability of ITC on ducts and manholes used in network of optical fibre cables (OFCs) so as to prevent unwarranted litigation in the telecommunication sector across the country.

3. According to COAI, optical fibre cables (OFCs) network is one of the key components of telecommunication network and constitutes a very significant portion of the total input cost in the telecom sector. The OFC network is laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes that are necessary for not only laying of cable but also their upkeep and maintenance. These manholes or connectivity dumps also serve as nodes of the network. These are basic components for the OFC network, which is a piece of vital equipment used in providing telecommunication services and are also capitalized as plants and machinery in the books of telecom operators. COAI has submitted that these squarely fall in the definition of 'plant and machinery'. Brief details of the said components are as under:

Components	Details	Sample pictures
Optical Fiber cable (OFC)	The function of OFCs is transmission of telecommunication signals from one point to another.	

		
Optical Ducts (OD)	These are normally HDPE ducts used in OFC laying work. The main functions of the ODs are - a. To protect the cable from cuts, soil pressure etc. b. To act as a conduit and facilitate blowing of cables underground. The ducts are lined with special powder which ensures frictionless pulling of the fiber. The internal cavity of the ducts (365mm) is more than the maximum dia- of the fiber (215 mm) to facilitate housing and pulling of OFCs. c. The colour coding on ODs helps define the nature of network at a particular location.	
Manholes	All the manholes in the city area are FRP (Fiber Reinforce Plastic) tubeless section with each manhole consisting of four side sections that	**<u>Unassembled Manhole panels</u>**

	are joined using nuts and bolts which are placed on a plain cement concrete (PCC) slab and not bolted or grouted to PCC slab. These are removable and relocatable as per the need of the network. Normally 6 – 7 manholes are installed over a length of 1 km in a city with a manhole located every 150-200 mts (avg 175 mts). The manholes perform the following functions a. Retaining spare OFC for replacement. 15 meters long coil of spare OFC is kept in alternate manholes for immediate replacement in the event of cut/damaged to OFC. b. The manholes house fiber to fiber splicing or joints using splice boxes which are used for attaching one length of the fiber to another. Normally OFCS come in 1 km to 2 km rolls on a drum. c. For right angle turns to meet the network needs, the manholes also house the joint boxes and joint closures.	   **Assembled Manhole**: 

		 **Inside of a manhole**  

4.1 The issue has been examined. The matter pertains to denial of input tax credit in respect of ducts and manholes used in network of optical fibre cables (OFCs) as a result of interpretation of the provisions of clause (c) and (d) of sub-section (5) of section 17 of the CGST Act, 2017, read with the Explanation after clause (d) of sub-section (5) of section 17 of CGST Act, which read 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:-*
>
> *…….*
>
> *(c) works contract services when supplied for construction of* ***an immovable property (other than plant and machinery)*** *except where it is an input service for further supply of works contract service;*

*(d) goods or services or both received by a taxable person for construction of **an immovable property (other than plant or machinery)** on his own account including when such goods or services or both are used in the course or furtherance of business.*

Explanation.-For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;"

4.2 It can be seen that the said provisions restrict availment of ITC in respect of inputs and input services for construction of an immovable property in circumstances specified therein. However, ITC in respect of plant and machinery has not been restricted as such. For the purpose of said provisions of section 17 of CGST Act, "plant and machinery" is defined in the **Explanation to section 17 of CGST Act**, as under:

"Explanation.- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and 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."*

4.3 Plain reading of the aforementioned provisions indicate that as per clause (c) of sub-section (5) of section 17 of CGST Act, input tax credit is not available in respect of work contract services, used for construction of immovable property (other than plant and machinery), except where it is used as input services for providing further work contract services. Further, as per clause (d) of sub-section (5) of section 17 of CGST Act, input tax credit is not available in respect of goods or services or both, used for construction of immovable property (other than plant and machinery) by a taxable person on his own account. Therefore, input credit is not restricted as per the above clauses in respect of goods or services or both, which are not used for construction of immovable property. Even if the goods or services or both are used for construction of immovable property, input tax credit is not restricted on the same as per the above clauses, if the said immovable property is in nature of plant and machinery as per Explanation at the end of section 17 of CGST Act.

4.4 It may be noted that as per details provided in Para 3 above, ducts and manholes are basic components for the OFC network, which is one of the key component in providing telecommunication services. The OFC network is laid with the use of **PVC ducts/sheaths** in which OFCs are housed and **service/connectivity manholes**, which serve as nodes of the network, and are necessary for not only

laying of cable but also their upkeep and maintenance. Accordingly, it appears the ducts and manholes are used in network of optical fibre cables (OFCs) in telecom sector for laying of optical fibre cables and their upkeep and maintenance. In light of the Explanation to section 17 of the CGST Act, it appears that being used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another, these ducts and manholes appear to be covered under the definition of "plant and machinery". Moreover, ducts and manholes used in network of optical fibre cables (OFCs) have not been specifically excluded from the definition of "*plant and machinery*" in the Explanation to section 17 of CGST Act as these components are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises. Accordingly, availment of input tax credit does not appear to be restricted in respect of such ducts and manhole used in network of optical fibre cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.

5. In view of the above, to avoid divergent interpretations, remove confusion and prevent avoidable litigation, the Law Committee in its meeting held on 20.12.2023 recommended to clarify the issue through a circular as below:

Issue	**Clarification**
Whether the input tax credit on the ducts and manholes used in network of optical fibre cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section (5) of section 17 of the CGST Act, read with Explanation to section 17 of CGST Act, 2017?	1. Sub-section (5) to Section 17 of the CGST Act, 2017 provides that input tax credit shall not be available, inter alia, in respect of the following: i. works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; or ii. goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. 2. Explanation after section 17 of CGST Act provides that the expression "plant and machinery" means apparatus, equipment, and 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 land, building or any other civil structures;

	telecommunication towers; and pipelines laid outside the factory premises. 3. Ducts and manholes are basic components for the optical fibre cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of **PVC ducts/ sheaths** in which OFCs are housed and **service/ connectivity manholes**, which serve as nodes of the network, and are necessary for not only laying of optical fibre cable but also their upkeep and maintenance. In view of the Explanation to section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Moreover, ducts and manholes used in network of optical fibre cables (OFCs) have not been specifically excluded from the definition of "*plant and machinery*" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises. 4. Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fibre cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.

5. The draft circular as per the above recommendations of the Law Committee is enclosed as **Annexure A** with this agenda.
6. Accordingly, the agenda is placed before the Council for approval.

Annexure A

Circular No.-XXXXX

F. No. CBIC-20001/7/2024-GST-CBEC
Government of India
Ministry of Finance
Department of Revenue
*****

North Block, New Delhi
Dated the -- XXX, 2024

To,
All the Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax
All the Principal Directors General/ Directors General

Madam/Sir,

Subject: Clarification on availability of input tax credit on ducts and manholes used in network of optical fibre cables (OFCs) in terms of section 17(5) of the CGST Act, 2017 - reg.

Representations have been received from Cellular Operators Association of India (COAI) submitting that input tax credit (ITC) is being denied by some tax authorities on ducts and manholes used in network of optical fibre cables (OFCs) on the ground that the same is blocked as per section 17(5) of the CGST Act, 2017, being in nature of immovable property (other than Plant and Machinery). It has been requested to issue clarification in respect of availability of ITC on ducts and manholes used in network of optical fibre cables (OFCs), so as to prevent unwarranted litigation in the telecommunication sector across the country.

2. In order 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 & Services Tax Act, 2017 (herein after referred to as the 'CGST Act"), hereby clarifies the issue as below.

Issue	Clarification
Whether the input tax credit on the ducts and manholes used in network of optical fibre cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of sub-section	1. Sub-section (5) to Section 17 of the CGST Act, 2017 provides that input tax credit shall not be available, inter alia, in respect of the following: i. works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; or ii. goods or services or both received by a taxable person

(5) of section 17 of the CGST Act, read with Explanation to section 17 of CGST Act, 2017?	for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. 2. Explanation after section 17 of CGST Act provides that the expression "plant and machinery" means apparatus, equipment, and 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 land, building or any other civil structures; telecommunication towers; and pipelines laid outside the factory premises. 3. Ducts and manholes are basic components for the optical fibre cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of **PVC ducts/ sheaths** in which OFCs are housed and **service/ connectivity manholes**, which serve as nodes of the network, and are necessary for not only laying of optical fibre cable but also their upkeep and maintenance. In view of the Explanation to section 17 of the CGST Act, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another. Moreover, ducts and manholes used in network of optical fibre cables (OFCs) have not been specifically excluded from the definition of "*plant and machinery*" in the Explanation to section 17 of CGST Act, as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises. 4. Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fibre cables (OFCs), either under clause (c) or under clause (d) of sub-section (5) of section 17 of CGST Act.

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

4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board.

Sanjay Mangal
Pr. Commissioner (GST)

Agenda Item 3(xxviii): Clarification on place of supply of custodial services provided by banks to Foreign Portfolio Investors.

Reference has been received from the Indian Banks' Association seeking clarification regarding the place of supply in cases of provision of custodial services by the banks to the Foreign Portfolio Investors (hereinafter referred to as "FPIs") .

2. **Background**

2.1 As per the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, all FPIs are statutorily obligated to appoint a local custodian to manage transactions in 'securities' that are undertaken in India. Various banks enter into custodian agreements with the FPIs for the provision of such custodial services. The main activity carried out by banks as a custodian in relation to custodial service is maintaining account of the securities held by the FPIs.

2.2 According to the Securities and Exchange Board of India (Custodian of Securities) Regulations 1996, '**Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto**, and includes-

(i) maintaining accounts of securities of a client;

(ii) collecting the benefits or rights accruing to the client in respect of securities;

(iii) keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and

(iv) maintaining and reconciling records of the services referred above.

2.3 As per Regulation 20(1) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, **an FPI is allowed to invest only in the following securities,** namely

(a) shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India;

(b) units of schemes launched by mutual funds under Chapter V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996;

(c) units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999;

(d) derivatives traded on a recognized stock exchange;

(e) units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board;

(f) Indian Depository Receipts;

(g) any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time; and

(h) such other instruments as specified by the Board from time to time.

3. Representation received from the Indian Banks' Association (IBA)

The IBA has contended that the Place of Supply (hereinafter referred to as "PoS") in such cases should be determined as per Section 13(2) of IGST Act, 2017 i.e. the PoS should be the location of the recipient of custodial services (in this case, outside India as FPIs are located outside India). Therefore, supply of custodial services by the banks to the FPIs should be considered as export of services and accordingly the same should be eligible for refund as zero rated supply.

4. View taken by field formations

Some field formations have taken a view that the PoS in case of 'custodial service' would be determined as per Section 13(8)(a) of the IGST Act, 2017 i.e. the location of the service provider (banks or financial institutions) and have, accordingly, rejected refund claims filed for accumulated ITC, on account of export of services without payment of taxes, contending that custodial services do not qualify as zero-rated supplies as the PoS is within the taxable territory and thus, the condition of the PoS of the said services being outside India as specified under Section 2(6)(iii) of IGST Act, 2017 is not met.

5. Relevant Legal Provisions

Section 13 of IGST Act,2017 provides for place of supply of services in cases where location of the supplier or the location of the recipient is outside India. Section 13 of IGST Act, 2017 is reproduced as below:

> *Section 13. Place of supply of services where location of supplier or location of recipient is outside India.-*
> *(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.*
>
> ***(2) The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:***

……...

……...

…….

(8) The ***place of supply*** *of the following services shall be* ***the location of the supplier of services,*** *namely:-*

(a) ***services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;***

……

……

Explanation . - For the purposes of this sub-section, the expression,-

(a) ***" account " means an account bearing interest to the depositor,*** *and includes a non-resident external account and a non-resident ordinary account;*

(b) " banking company " shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;

6. <u>Analysis</u>

6.1. Various banks have Custodian Agreements with FPIs for the provision of custodial services. The provision of custodial services is regulated by the Securities Exchange Board of India (SEBI) and can be provided only by licenced custodians under the SEBI (Custodian of Securities), Regulations, 1996 ('SEBI Custodian Regulations'). All FPIs are statutorily obligated to appoint a local custodian to manage transactions in 'securities' that are undertaken in India as per the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 (hereinafter referred to as SEBI (FPI) regulations). FPIs desiring to invest in the Indian Capital Market enter into an agreement for custodial services with a domestic custodian. The scope of services provided to FPIs by a custodian are detailed in para 2.2 above**.**

6.2 As per section 13(8) of IGST Act, 2017, the place of supply of the services provided by banks or financial institutions etc. to its account holders in relation to account bearing interest to the depositor, would be the location of the bank. In all other services provided by banks to its customers (other than holders of interest bearing accounts) would be governed by the default rule i.e. the location of recipient.

6.3.1 Identical position existed during the service tax regime. The Place of Provision of Service under Service Tax was governed by the Service Tax Place of Provision of Supply Rules, 2012. Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012 was identical to section 13 (8) of IGST Act, 2017 and read as follows:

Rule 9., the Place of provision of specified services: - The place of provision of following services shall be the location of the service provider:-

(a) Services provided by a banking company, or a financial institution, or a non-banking financial company, to account holders.

(b) ....]

6.3.2. The terms 'account', 'banking company' and 'financial institutions' are identically worded in Rule 2 of the Place of Provision of Supply Rules, 2012 as in the Explanation to sub-section 13 (8) of the IGST Act, 2017. As the position in GST is same as was in erstwhile Service Tax, the circulars and clarifications issued during the erstwhile Tax regime can be relied upon to clarify the legal position in GST also.

6.3.3 The Education Guide under the Service Tax Law clarified the scope of the term "account holder" and the services provided by banks to account holders as well as the services which are not provided to account holders.

Question: 5.9.2 What is the meaning of "account holder "? Which accounts are not covered by this rule?

Answer: "Account" has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule.

Question: 5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Answer: Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business:-

i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;

ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.

Question: 5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?

Answer: ***Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest),*** *in the ordinary course of business:-*

i) financial leasing services including equipment leasing and hire purchase;

ii) merchant banking services;

iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;

*iv) asset management including portfolio management, all forms of fund management, pension fund management**, custodial,** depository and trust services*

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise."

7. Thus, as per the clarification given in Education Guide under the Service Tax Law, the custodial services are not covered under the service provided by banks to its account holders but are covered under the services which are not provided to account holders and accordingly, the place of **supply of the custodial services by banks to FPIs have been treated as the location of the recipient as per the default rule, i.e.,** Rule 3 of the Place of Provision of Supply Rules, 2012.

8. The similar provision, as was existing in Service Tax regime, has been brought out in GST regime vide Section 13 (8) of the IGST Act, 2017 for Place of Supply in respect of services provided by a banking company or a financial institution or a non-banking financial company to account holders, along with definitions of "account", "banking Company", "financial institution" and "non-banking financial company" in Explanation to Section 13 (8). It is also mentioned that a clarification, similar to that given for service tax in Education Guide, has also been given in GST regime in the form of FAQs on Banking, Insurance and Stockbrokers Sector **(***updated as on 27 December 2018*), as below:

Q.51 — Which services do not qualify as services provided to 'account holder' as per Section 13(8) of the IGST Act, 2017 and thus the place of supply will be the location of the recipient of services?

A.51 - Following are examples of services that are generally not provided by a banking company or financial institution to an account holder (holder of a deposit account bearing

interest to the depositor including NRE and NRO account holders) in the ordinary course of business:

(i) financial leasing services including equipment leasing and hire-purchase;

(ii) merchant banking services;

(iii) securities and foreign exchange (forex) broking, and purchase or sale of foreign including money changing; including portfolio management, **custodial,** depository and trust **services.**

9. Accordingly, as per clarification given in Education Guide given in Service Tax regime as well as that given in FAQs on Banking, Insurance and Stockbrokers Sector **(**updated as on 27 December 2018**)** provided under GST, it is clear that the custodial services being provided by the banks/financial institutions to the FPIs cannot be considered as the services provided by the banks/financial institutions to account holders and thus, cannot be covered under Section 13(8)(a) of the IGST Act, 2017. Accordingly, the Place of Supply of such services cannot be determined under Section13(8)(a) of the IGST Act, 2017 but is required to be determined under the default rule i.e., sub-section (2) of section 13 of the IGST Act, 2017.

10. Law Committee in its meeting held on 31.01.2024 deliberated on the same, and recommended issuance of a circular on the above lines. The draft circular as recommended by the Law Committee is enclosed with this agenda as **Annexure-A.**

11. Accordingly, the agenda is placed before the GST Council for approval.

****

ANNEXURE A

Circular No_XXX/GST

F. No. CBIC-20006/03/2024-GST
Government of India
Ministry of Finance
Department of Revenue
CBIC, GST Policy Wing

North Block, New Delhi
DateXXXX, 2024

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 place of supply applicable for custodial services provided by banks-reg

Representations have been received seeking clarification on the Place of Supply in cases of Custodial Services provided by Banks to Foreign Portfolio Investors (hereinafter referred to as "FPIs") as a view is being taken by some field formations that the Place of Supply in case of 'custodial service' would be determined as per Section 13(8)(a) of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as "IGST Act"), i.e. the location of the service provider (banks or financial institutions).

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 clarifies the issue as under:

Issue	**Clarification**
Whether the activity of providing Custodial Services by banks or financial institutions to FPIs will be treated as services provided to 'account holder' under	According to the Securities and Exchange Board of India (Custodian of Securities) Regulations 1996, 'Custodial Services' in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes- • maintaining accounts of securities of a client; • collecting the benefits or rights accruing to the client in respect of securities;

Section 13(8)(a) of the IGST Act, 2017? Further, how the place of supply of the said services shall be determined?	• keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and • maintaining and reconciling records of the services referred above. As per Regulation 20(1) of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, **an FPI is allowed to invest only in the following securities,** namely- (a) shares, debentures and warrants issued by a body corporate; listed or to be listed on a recognized stock exchange in India; (b) units of schemes launched by mutual funds under Chapter V, VI-A and VI-B of the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996; (c) units of schemes floated by a Collective Investment Scheme in accordance with the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999; (d) derivatives traded on a recognized stock exchange; (e) units of real estate investment trusts, infrastructure investment trusts and units of Category III Alternative Investment Funds registered with the Board; (f) Indian Depository Receipts; (g) any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time; and (h) such other instruments as specified by the Board from time to time. Various banks enter into custodian agreements with the Foreign Portfolio Investors (FPIs) for the provision of such custodial services. The main activity carried out by banks as a custodian in relation to custodial services is maintaining account of the securities held by the FPIs. As per clause (a) of sub-section (8) of section 13 of IGST Act, Place of Supply of services supplied by banking company or a financial institution or a non-banking company to account holders shall be the location of the supplier of services. As per Explanation (a) of Section 13(8) of IGST Act, *'account' means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account.* It is mentioned that the provisions similar to above provisions under IGST Act existed during the Service Tax regime. The place of provision of service under Service Tax was governed by the Service Tax Place of Provision of Supply Rules, 2012. Provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012 were

	identical to that of section 13(8)(a) of the IGST Act. The Education Guide under the Service Tax Law clarified the scope of the term "account holder" and the services provided by banks to account holders as well as the services which are not provided to account holders. *Question: 5.9.2 What is the meaning of "account holder"? Which accounts are not covered by this rule?* *Answer: "Account" has been defined in the rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this rule.* *Question:5.9.3 What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?* *Answer: Following are examples of services that are provided by a banking company or financial institution to an "account holder", in the ordinary course of business:-* *iii) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc;* *iv) transfer of money including telegraphic transfer, mail transfer, electronic transfer etc.* *Question:5.9.4 What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another Rule?* *Answer:* ***Following are examples of services that are generally NOT provided by a banking company or financial institution to an account holder (holder of a deposit account bearing interest),*** *in the ordinary course of business:-* *i) financial leasing services including equipment leasing and hire purchase;* *ii) merchant banking services;* *iii) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;* *iv) asset management including portfolio management, all forms of fund management, pension fund management****, custodial, depository*** *and trust services* *In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default rule i.e. the Main Rule 3. Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the*

	service provider otherwise." Accordingly, as per clarification given in Education Guide under Service Tax Regime, the custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder. As the provisions of section 13(8)(a) of the IGST Act are similar to the provisions of Rule 9(a) of the Service Tax Place of Provision of Supply Rules, 2012, the clarification given in the Education Guide under Service Tax Regime is equally applicable under GST Regime. Accordingly, it is clarified that the custodial services provided by banks or financial institutions to FPIs are not be treated as services provided to 'account holder' and therefore, the said services are not covered under Section 13(8)(a) of the IGST Act. Therefore, the place of supply of such services is not to be determined under Section 13(8)(a) of the IGST Act but has to be determined under the default rule i.e., sub-section (2) of section 13 of the IGST Act.

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

3. 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 3(xxix): Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model.

Reference has been received from Secretary, Ministry of Road Transport & Highways to clarify the time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Mode (HAM) model, where certain portion of Bid Project Cost is received during construction period and remaining payment is received through deferred payment (annuity) spread over years.

2. **MAIN ISSUE**:

2.1 Hybrid Annuity Model (HAM), has been introduced by the Government of India for expediting highway projects and for ensuring increased participation by the private players in construction of such projects. The HAM model takes a more balanced financing risk-sharing approach with the private sector, emphasizes high project readiness, provides early completion incentives, and responds to several other issues facing the construction industry. HAM has been successful in enhancing the bankability of road sector projects and attracting private sector interest in these projects. Under this model, the government is required to finance only 40% of the construction cost during the construction phase, whereas the remaining 60% is arranged by the private player/concessionaire. The remaining 60% amount is paid by the government to the concessionaire in form of annuity/instalments along with interest over a period specified in the contract.

2.2 Under HAM model, the concessionaires are awarded projects by National Highway Authority of India (NHAI) for Highway Development under Concession Agreement. The relevant extract of the model Concession agreement mentions as follows:-

> *"(A) [The Government of India had entrusted to the Authority] the development, maintenance and management of National Highway No. **including the section from km **** to km **** (approx. **** km). The Authority had resolved to augment the existing road from km ** to km ** (approximately*** km) on the *** section of National Highway No. ** (hereinafter called the "NH **") in the State of by [Four-Laning thereof] (the "Project") on* ***design, build, operate and transfer (the "DBOT Annuity" or "Hybrid Annuity") basis****, which shall be partly financed by the Concessionaire who shall recover its investment and costs through payments to be made by the Authority, in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.*
>
> *(B) The Authority had adopted a* ***single stage*** *two envelope bidding process and accordingly invited proposals by its Request for Proposals dated*** (the "Request for Proposals" or "RFP") for qualification and short listing of bidders for* ***construction, operation and maintenance*** *of the above referred Project on Hybrid Annuity basis."*

2.3 Article 2 of the model concession agreement provides for scope of the project as follows:

> *"2.1 Scope of the Project*
>
> *The Scope of the Project shall mean and include, during the Concession Period:*

(a) ***construction of the Project*** *on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule- (, and in conformity with the Specifications and Standards set forth in Schedule*

(b) ***operation and maintenance of-the Project*** *in accordance with the provisions of this Agreement; and*

(c) *performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement".*

2.4 Article 15 of the model concession agreement provides for commercial operation date as follows:

"15.1 Commercial Operation Date (COD)

15.1.1 The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "COD"). The Project shall enter into commercial service on COD whereupon the ***Concessionaire shall be entitled to demand and collect Annuity Payments in accordance with the provisions of this Agreement****."*

2.5 The Ministry of Road Transport & Highways has submitted that:

a. The HAM contract is for supply of construction service and O & M service by the companies or concessionaire generally spread over a certain period of years, with periodic payment during this period;
b. The concession agreement for HAM model is a single wholesome contract including construction, operation and maintenance of the said highway project spread over the specified number of years;
c. The bids are evaluated on the basis of the total price quoted by the concessionaire i.e. for entire responsibility under the contract to construct the road including its maintenance and financing and that the contract remains single and indivisible;
d. The concessionaire is duty bound to complete the entire contract. It has no choice that it may perform the first phase of construction and not to perform for the second phase of O&M. The concessionaire gets no right whatsoever to get payment of money prior to the respective milestone becoming due;
e. The concessionaire is entitled to raise invoice only of the amount which has become due as per the payment milestone mentioned in the agreement. Any invoice mentioning any amount in excess of the payment milestone due to the concessionaire would not be valid for payment under the HAM agreement.

2.6 Article 23 of the model concession agreement provides for payment of bid project cost as follows:

" 23.1 *Bid Project Cost: The Parties expressly agree that the cost of construction of the Project, as on the Bid Date, which is due and payable by the Authority to the Concessionaire, shall be deemed to be Rs (Rupees) (The " Bid Project Cost "Jf. The Parties further agree that the Bid Project Cost specified hereinabove for payment to the Concessionaire shall be inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, expenses and charges for and in respect of construction of*

the Project, save and except any additional costs arising on account of variation in Price Index, Change of Scope, Change in Law, Force Majeure or breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement. For the avoidance of doubt, the Bid Project Cost specified herein represents the amount due and payable by the Authority to the Concessionaire and may be less than, equal to, or more than the Estimated Project Cost."

2.7 Article 23.7 of the model concession agreement provides for O&M payments as follows:

"The Parties acknowledge and agree that all O&M Expenses shall be borne by the Concessionaire and in lieu thereof; a lump sum financial support in the form of biannual payments shall be due and payable by the Authority, which shall be computed on Rs (Rupees) (the "First Year O&M cost")", in accordance with the provisions of this Clause 23.7 (the "O&M Payments"). The Parties further acknowledge and agree that any O&M Expenses in excess of the O&M Payments shall be borne solely by the Concessionaire, save and except as expressly provided in this Agreement. For avoidance of doubt it is clarified that the O&M Payments will be subject to any Change in Scope of the Project of the Concessionaire under Article 16 of this Agreement."

2.8 Based on above, the consideration for above activities is to be paid to the concessionaire/ companies by NHAI in following manner:

Activity	Consideration (when and how much)
1. New Construction of the road which is inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, expenses and charges for and in respect of construction of the Project.	1. 40% of contract price (known as Bid Project Cost i.e. BPC) is to be paid during the construction period (generally 2 years) when 100% construction completed on milestone completion basis. 2. 60% of BPC is to be paid in form of Annuity in 30 bi-annual instalments in such percentage as agreed in the contract agreement with NHAI over the period of 15 years which starts from the 180 days from the date of completion of new construction work (COD date).
2. Operation and maintenance costs	Maintenance Amount as decided in the agreement executed with NHAI and starts from the date of completion of new construction of road i.e. from COD date.

2.9 It has further been represented by the Ministry of Road Transport & Highways that the said supply of services under HAM contract are covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act, 2017. It has also been submitted that the liability to raise invoice in respect of the said services shall arise as per clause (a) of Section 31(5) of CGST Act, 2017 on or before the due date of payment as mentioned in the contract agreement, and the time of supply shall be the date of issue of Invoice, or date of receipt of payment, whichever is earlier, as per Section 13(2) of CGST Act, 2017. They have, therefore, contended that the liability to pay GST in respect of the said services will arise at the time of issuance of invoice, or on receipt of payment, whichever is earlier, as per the terms of the contract.

3. **VIEW POINT OF FIELD FORMATIONS/ INVESTIGATIVE AGENCIES**

3.1 Some of the field formations and investigative agencies are taking a view that in respect of construction service, GST is payable upfront when the construction of road is completed and can't be linked to the due date of payment. They are contending that on conclusion of construction work, supply of construction services is completed and accordingly, whole remaining tax liability on the supply of construction services needs to be discharged on completion of the said construction work.

4. **GST provisions applicable:**

4.1 'Continuous supply of services' is defined under section 2(33) of the CGST Act, 2017 which is reproduced below:

2. Definitions.— In this Act, unless the context otherwise requires,—

……

……

(33) —continuous supply of services means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding ***three months with periodic payment obligations*** *and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;*

4.2 **Section 13 of the CGST Act, 2017** provides for time of supply for payment of the tax liability on supply of services. Sub-section (2) of section 13 provides for time of supply of services by the supplier. Section 13 of the CGST Act, 2017 is reproduced below:

13. Time of Supply of Services*.—*

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

……..

Explanation.—For the purposes of clauses (a) and (b)—

(i) ***the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment****;*

(ii) the date of receipt of payment shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

4.3 In cases of continuous supply of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date or the date of completion of that event as laid down in section 31(5) of CGST Act, 2017. Section 31(5) of the CGST Act, 2017 reads as under:

> ***31. Tax invoice.—***
> *(1)….*
>
> *(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—*
>
> ***(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;***
>
> *(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;*
>
> *(c)* ***where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.***

5. **Examination:**

5.1 Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O & M) of Highways. As emphasised by the Ministry of Road Transport & Highways, the contract awarded to the concessionaire is a comprehensive single contract for construction of the road as well as the operation and maintenance of the same. As per the terms of payment, in respect of construction of the road, as mentioned in Para 2.8 above, 40% of contract price (known as Bid Project Cost i.e. BPC) is to be paid during the construction period (generally 2 years) i.e. when 100% construction is completed on milestone completion basis, whereas 60% of BPC is to be paid in the form of Annuity in instalments in such percentage as mentioned in the contract over the period of certain years which starts from 180 days from the date of completion of new construction work (COD date). Besides, in respect of O & M portion, the maintenance amount, as per the terms of the agreement, is also to be paid starting from the date of completion of new construction of road i.e. from COD date.

5.2 In a HAM contract, as can be observed from para 2.5 above, the essence of the contract is that a concessionaire shall construct and look after the operation and maintenance for a stipulated time. Although the contract is a single contract for construction as well as operation and maintenance of the highway, the payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. In this case, the concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same. The concessionaire cannot simply walk out from the contract

after completing the work of construction and asking for payment of the full amount payable for the construction portion as per the contract as the same would involve breach of the contract. Thus, the view that the contract is divisible and construction portion is separate from the O & M portion appears to be incorrect. Therefore, this HAM contract to construct Highways and to operate and maintain the same for the specified period under the contract is a single contract and has to be treated in this manner for applying the provisions of GST.

5.3. In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act, 2017.

5.4 As per clause (a) of Section 13(2) of CGST Act, 2017, the time of supply in respect of a supply of services shall be **the date of issue of Invoice, or date of receipt of payment, whichever is earlier**, in cases where invoice is issued within the period prescribed under section 31 of CGST Act. Further, as per clause (b) of Section 13(2) of CGST Act, in cases where invoice is not issued within the period prescribed under section 31, the time of supply of service shall be **date of provision of the service** or **date of receipt of payment, whichever is earlier**. However, as per section 31(5) of CGST Act, in cases of **continuous supply** of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date or the date of completion of that event.

5.5 Accordingly, as per section 13(2) of CGST Act, read with section 31(5) of CGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per clause (b) of section 13(2), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service should be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment, as per the provisions of Section 31(5) of CGST Act.

5.6 The tax liability on the construction portion under the HAM contract would, therefore, arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier.

5.7 Further, as per the terms of HAM contracts, the installments/annuity payable by NHAI to the concessionaire also includes some interest component. As per section 15(2)(d) of the CGST Act, 2017 the value of supply shall include any interest or late fee or penalty for delayed payment of any consideration for any supply. Therefore, the amount of such interest payable as a part of the annuity/installments is also includable in the taxable value for the purpose of payment of tax on the said annuity/installment.

6. Law Committee in its meeting dated 09.02.2024 deliberated on the issue and recommended clarifying the same on the above lines by issuing a Circular. Draft circular, as recommended by the Law Committee, is enclosed with this agenda note as **Annexure-A.**

7. The issue is put up before GST Council for deliberation and approval.

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ANNEXURE-A

Circular No. XX/XX/2024-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 XXXXXX, 2024

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 time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model -reg.

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects in Hybrid Annuity Mode (HAM) model, where certain portion of Bid Project Cost is received during construction period and remaining payment is received through deferred payment (annuity) spread over years.

5. 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
Time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model		
1.	Under HAM model **of National Highways Authority of India (NHAI)**, the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15-17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?	Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement **between National Highways Authority of India (NHAI) and the concessionaire**. 2.1 An HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well. The contract needs to be looked holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same. 2.2 In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33) of the CGST Act. 2.3 As per clause (a) of Section 13(2) of CGST Act, the time of supply in respect of a supply of services shall be **the date of issue of Invoice, or date of receipt of payment, whichever is earlier**, in cases where invoice is issued within the period prescribed under section 31 of CGST Act. Further, as per clause (b) of Section 13(2) of CGST Act, in cases where invoice is not issued within the period prescribed under section 31, the time of supply of service shall be **date of provision of the service** or **date of receipt of payment, whichever is earlier**. However, as per

		section 31(5) of CGST Act, in cases of **continuous supply** of services, where the payment is made periodically, either due on a specified date or is linked to the completion of an event, the invoice is required to be issued on or before the specified date or the date of completion of that event. 2.4 Accordingly, as per section 13(2) of CGST Act, read with section 31(5) of CGST Act, time of supply of services under HAM contract, including construction and O&M portion, should be the date of issuance of such invoice, or date of receipt of payment, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per clause (b) of section 13(2), time of supply should be the date of provision of the service, or date of receipt of payment, whichever is earlier. In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act. 3. In the light of above, it is clarified that the tax liability on the concessionaire under the HAM contract, including on the construction portion, would arise at the time of issuance of invoice, or receipt of payments, whichever is earlier, if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable. If invoices are not issued on or before the specified date or the date of completion of the event specified in the contract, tax liability would arise on the date of provision of the said service (i.e., the due date of payment as per the contract), or the date of receipt of the payment, whichever is earlier. 4. It is also clarified that as the installments/ annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includable in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act.

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

7. 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 3(xxx): Refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to export of such goods.

Representations have been received from the trade/ industry requesting for prescribing a mechanism for seeking refund of additional Integrated Goods & Services Tax (hereafter referred to as IGST) paid on account of upward revision in price of the goods subsequent to exports, especially in cases where the prices of the export commodities are linked to some international index or as per the terms of contract between the two parties or due to any other reason, which may result in revision in the price of the goods subsequent to exports. In such cases, the export is made at a mutually decided price but the prices are finalised post export to accommodate for variation in prices as per the terms of contract which may result in either upward price revision or downward price revision of goods exported. In cases where there is upward price revision, the exporter is required to pay additional IGST on account of upward price revision along with applicable interest but there exists no mechanism for allowing them to claim refund of such additional IGST paid.

2. Reference is made to section 16 of the Integrated Good & Services Tax Act, 2017 (hereafter referred to as IGST Act) which provides for zero rated supplies. Export of goods or services has been classified as per clause (a) of sub-section (1) of section 16 of the IGST Act. Sub-section (4) of section 16 provides *inter alia* that Government may notify (i) a class of persons who may make zero rated supply on payment of IGST and claim refund of the tax so paid; (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid. Further, vide Notification 1/2023-IT dated 31.07.2023 and Notification 5/2023-IT dated 26.10.2023, all goods or services (except the goods specified in column (3) of the TABLE mentioned in the Notification 1/2023-IT dated 31.07.2023) have been notified as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid and all suppliers to a Developer or a unit in Special Economic Zone undertaking authorised operations have been notified as the class of persons who may make supply of goods or services (except the goods specified in column (3) of the TABLE mentioned in the Notification 1/2023-IT dated 31.07.2023) to such Developer or a unit in Special Economic Zone for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.

3. In cases of exports on payment of integrated tax, where there is upward revision in price of the goods subsequent to exports, the exporter is required to issue a debit note/ supplementary invoice in terms of sub-section (3) of section 34 of the Central Goods & Services Tax Act, 2017 (hereafter referred to as CGST Act, 2017). Further, in terms of provisions of sub-section (4) of section 34 of the CGST Act, such debit note/ supplementary invoice has to be declared in the return of the month during which such debit note/ supplementary invoice has been issued and tax liability thereon has to be discharged along with the applicable interest.

3.1 In view of the above, in cases of exports made on payment of integrated tax, the exporter or the supplier of the goods is required to pay additional IGST on account of upward revision in prices by raising a debit note/ supplementary invoice for such export, along with applicable interest. In case of domestic supply, it has been prescribed that the supplier can declare the debit note in his FORM GSTR-1 and pay tax on such increased amount in FORM GSTR-3B along with interest and the recipient can take ITC on the tax paid on the basis of such debit note. However, in case of export of

goods made with payment of IGST, while additional IGST on account of upward revision in prices is payable by the exporter, no mechanism is prescribed for refund of such additional IGST paid.

4. Rule 96 of the Central Goods & Services Tax Rules, 2017 (hereafter referred to as CGST Rules) deals with refund of IGST paid on export of goods or services. As per the provision of sub-rule (1) of rule 96, in case of export of goods, Shipping Bill filed by exporter of goods is deemed to be an application for refund of IGST paid on such exports. Therefore, in case of refund of IGST paid on export of goods, the IGST refund gets processed once the details of the invoice and shipping bill declared in FORM GSTR-1 matches with those entered on the ICEGATE portal subject to payment of IGST in FORM GSTR-3B and Export General Manifest (EGM) has been filed.

5. As the process of refund of IGST through Customs is an automated process without manual intervention of customs officers, there is a possibility that the refund of IGST under Rule 96 might have been processed before issuance of debit note/ supplementary invoice in case of upward revision in price of the goods subsequent to exports. There exists no mechanism for either revision of such refund claim on the basis of debit note/ supplementary invoice or for filing a supplementary claim for refund of such additional IGST paid.

6. The said issue was discussed with the officers of Customs Policy Wing, GSTN and DG (Systems) in the meeting held on 02.11.2023. In the said meeting, it was informed by Customs Policy Wing that as per extant provisions, amendment in shipping bill cannot be done on the grounds of revision in price of the goods subsequent to exports i.e. once let export order (LEO) has been issued and goods have been exported out of India. They also informed that at present, there is no functionality in customs system for re-assessment of shipping bill in such cases and since there is no possibility of any re-assessment or amendment in shipping bill after filing of Export General Manifest (EGM), Customs authorities will have no role in processing such refund claims, for the cases where there is upward revision in price of the goods subsequent to exports, in form of issuance of any document/ certificate.

7. Further, there may be situations where prices are changed due to business disputes or factors beyond the control of the exporter. In such a situation, the benefits of zero rating provided under Section 16 of IGST Act, 2017 may not be denied, if any additional IGST has been paid on such revised prices, merely on the grounds that the refund of IGST paid through Customs has already been processed automatically. Therefore, it is felt that there is a need to prescribe a mechanism for refund of such additional IGST paid on account of upward revision in price of the goods subsequent to exports.

8. It is therefore proposed that in such cases, GSTN may be requested to develop a separate category of refund in **FORM GST RFD-01**, for filing an application of refund of such additional IGST paid. However, till the time such separate category for claiming refund of additional amount of IGST paid is developed on the common portal, the said exporters may be allowed to file refund claims of such additional IGST paid on the portal as **FORM GST RFD-01** refund claims under the category "Any other" with the remarks "Refund of additional IGST paid on account of upward revision in price of the goods subsequent to exports". Such claims shall be then handled by the jurisdictional tax officer of the concerned exporter. For doing the same, amendments would be required in rule 89 and rule 96 of the CGST Rules, 2017 to provide for filing of refund of additional IGST paid on account of upward revision in price of the goods subsequent to export. The proposed draft amendment in rules are as follows:

I. Insertion of sub-rule (1B) and proviso to sub-rule (1B) of rule 89:

"(1B) Any person, claiming refund of additional integrated tax paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of integrated tax paid at the time of export of such goods has already been sanctioned in accordance with provisions of rule 96, may file an application for such refund of additional integrated tax paid, electronically in FORM GST RFD-01 through the common portal, subject to the provisions of rule 10B, before the expiry of two years from the relevant date as per clause (a) of Explanation (2) of section 54 of the Act:

Provided that the said application for refund may, in cases where the relevant date as per clause (a) of Explanation (2) of section 54 of the Act was before the date on which this sub-rule comes into force, be filed before the expiry of two years from the date on which this sub-rule comes into force."

II. **Insertion of following clauses below clause (ba) in sub-rule (2) of rule 89 of the CGST Rules, 2017**:

"(bb) a statement containing the number and date of export invoices along with copy of such invoices, the number and date of shipping bills or bills of export invoices along with copy of such shipping bills or bills of export, the number and date of Bank Realisation Certificate or foreign inward remittance certificate in respect of such shipping bills or bills of export invoices along with copy of such Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Banks, the details of refund already sanctioned under sub-rule (3) of rule 96, the number and date of relevant supplementary invoices or debit notes issued subsequent to the upward revision in prices invoices along with copy of such supplementary invoices or debit notes, the details of payment of additional amount of integrated tax, in respect of which such refund is claimed, along with proof of payment of additional amount of integrated tax and interest paid thereon, the number and date of foreign inward remittance certificate issued by Authorised Dealer-I Bank in respect of additional foreign exchange remittance received in respect of upward revision in price of exports along with copy of such foreign inward remittance certificate, along with a certificate issued by a practising chartered accountant or a cost accountant to the effect that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to exports and copy of contract/ other document(s), as applicable, indicating requirement for the revision in price of exported goods which indicate the revision in price of exported goods, in a case where the refund is on account of upward revision in price of such goods subsequent to exports;

(bc) a reconciliation statement, reconciling the value of supplies declared in supplementary invoices/ debit notes/ credit notes issued along with relevant details of Bank Realisation Certificate or foreign inward remittance certificate issued by Authorised Dealer-I Bank, in a case where the refund is on account of upward revision in price of such goods subsequent to exports;"

III. **Amendment in sub-rule (1) of rule 96**:

(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

*(b) the applicant has furnished a valid return in **FORM GSTR-3B**:*

***Provided that** if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in **FORM GSTR-1**, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter :*

(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;

Provided that the exporter of goods may file an application electronically in FORM GST RFD-01 through the common portal for refund of additional integrated tax paid on account of upward revision in price of goods subsequent to export of such goods, and on which the amount of integrated tax paid at the time of export of such goods has already been refunded in accordance with provisions of sub-rule (3) of this rule, and such application shall be dealt with in accordance with the provisions of rule 89;

9. **Relevant date for claiming refund:**

9.1 Another issue which needs to be deliberated is whether there is any time limit for applying for refund under such cases also, i.e. whether time limit of two years prescribed under Section 54(1) of CGST Act is applicable to such refund claims, and if so, what is the relevant date for the same. The relevant date for refund in case of goods exported out of India, in general, is provided in clause (a) of explanation (2) under section 54 of the CGST Act, which is reproduced as under:

"(2) "relevant date" means-

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,-

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;"

9.2 From a plain reading of the aforementioned provision, depending upon the mode of transport, the relevant date for claiming refund of export of goods can be decided as per the provisions of clause (a) of Explanation (2) under section 54 of the CGST Act, 2017.

9.3 However, in many cases, where exports have taken place in past, and the time period provided under Section 54 for filing refund application has already expired, the concerned exporters will not be able to apply for the refund of the additional integrated tax paid on account of upward revision in price of the goods subsequent to exports, even though they could not apply for refund of additional IGST earlier due to unavailability of mechanism regarding the same. Such a delay in filing of such refund claim cannot be said to be attributable to the said exporter, and therefore, depriving the said exporter from claiming refund of such additional IGST paid, would not be justifiable.

9.4 Therefore, it is proposed that in such cases, we may allow the refund application to be filed within two years from the date of these amended rules coming into force, on the same pattern as has

been done through rule 89(1A) in cases of refund under Section 77 of CGST Act. Accordingly, we may provide that where the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act was before the date on which the proposed sub-rule (1B) of rule 89 of CGST Rules comes into force, the said refund application may be allowed to be filed before the expiry of two years from the date on which the said sub-rule comes into force.

10. Also, there may be certain cases where there has been downward revision in the price of the goods subsequent to exports. In such type of cases, the exporter would have raised the credit note and declared the same in his returns resulting in downward revision of the tax liability of the month in which such credit note has been declared in terms of the provisions of sub-section (1) & (2) of section 34. Therefore, in such type of cases, refund of IGST sanctioned in excess of the IGST payable as per the revised price is in nature of erroneous refund and is liable to be recovered from the exporter. Therefore, there is a requirement of a mechanism to ensure that proper officers processing the refund claims of additional IGST paid in case of upward revision in price of the goods subsequent to exports, as referred in para 8 above, may verify that the exporter has also deposited the excess refund sanctioned, along with applicable interest, wherever there is downward revision in price of the goods subsequent to export.

11. The following documents may be prescribed to be accompanied with the said refund claim in order to establish that refund is due to the exporter:

a. Copy of shipping bill or bill of exports;
b. Copy of original invoices;
c. Copy of contract/ other document(s), as applicable, indicating requirement for the revision in price of such goods subsequent to exports;
d. Copy of the relevant debit notes/ supplementary invoices;
e. Proof of payment of additional IGST and applicable interest;
f. Proof of remittance of additional foreign exchange (FIRC) issued by Authorised Dealer-I bank;
g. A certificate of a practising chartered accountant or a cost accountant certifying therein that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to export;
h. Statement 9A of **FORM GST RFD 01** (as detailed in **Annexure A** enclosed); and
i. Statement 9B of **FORM GST RFD 01** (as detailed in **Annexure A** enclosed).

12. Further, GSTN may be requested to ensure that the validated details of shipping bills, the amount of IGST involved as well as the amount of refund sanctioned via IGST route through the Customs system are made available to jurisdictional GST officers so as to enable them to process such refund claims of additional IGST paid on account of upward revision in price of the goods subsequent to exports.

13. The agenda note was placed before Law Committee for examination and deliberation. The Law Committee deliberated on the issue in its meeting held on 10.01.2024 wherein the Law Committee recommended to insert sub-rule (1B) in rule 89 of CGST Rules, clause (bb) and clause (bc) in sub-rule (2) of rule 89 of CGST Rules, Statement 9A and Statement 9B in **FORM GST RFD 01** and amendment in sub-rule (1) of rule 96 of CGST Rules, as proposed in the agenda note. The Law Committee also recommended to clarify the proposed changes vide a circular. The circular recommended by the Law Committee is placed at **Annexure-B**.

14. The agenda note is placed before the GST Council for deliberation and approval.

Annexure 'A'

I. Insertion of the following statements in FORM GST RFD-01 in the CGST Rules, 2017:

Statement 9A [rule 89(2)(bb)]

Refund Type: Additional integrated tax paid on upward revision in price of goods subsequent to export

Export Invoice			Shipping Bill			Export remittance details			Refund details		Post export price increase								
											supplementary invoices/ debit note & IGST payment details						Additional export remittance details		
No.	Date	Total value of Invoice	Port Code	No.	Date	BRC/ FIRC No.	Date	Remittance amount	Amount	Date of sanction	No.	Date	Total value of supplementary invoice	Paid in FORM GSTR-3B return period	Total additional IGST paid	Interest paid on IGST amount	BRC/ FIRC No.	Date	Additional remittance amount
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)

Statement 9B [rule 89(2)(bc)]

Refund Type: Details of debit/ credit notes/ supplementary invoice issued for export of goods

S. No.	Type of document (Debit Note/ Credit Note/ supplementary invoice)	Debit Note/ Credit Note/ supplementary invoice	Date of document	Document Declared in GSTR-1 for the month	Tax liability paid/ ITC claimed in respect of document declared in GSTR-3B for the month	BRC/ foreign inward remittance certificate No.	Date of BRC/ foreign inward remittance certificate	Whether refund claimed for shipping bill under Rule 96 (Y/N)	Details of such shipping Bill No.	Date of such shipping bill	Port of export code
(1)		(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

ANNEXURE B
DRAFT CIRCULAR

F. No. CBIC-200xx/xx/20xx-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
****

New Delhi, Dated the , 2024

To,

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

Madam/Sir,

Subject: Mechanism for refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to exports– reg.

Representations have been received from trade/ industry requesting for prescribing a mechanism for seeking refund of additional IGST paid on account of upward revision in price of goods subsequent to export. It has been represented that there may be a need to revise the price of export goods, subsequent to their exports, due to various reasons such as linking of the prices of the export commodities to some international index or as per the terms of contract between the two parties etc. In such cases, where there is upward revision in price of goods subsequent to exports, the exporter is required to pay additional IGST on account of upward price revision along with applicable interest but there exists no mechanism for allowing them to claim refund of such additional IGST paid.

2. In order to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby lays down the following procedure for claim and processing of refunds of additional integrated tax paid on account of upward revision in prices of goods subsequent to their exports:

3. **Filing of refund claim for additional IGST paid on account of upward price revision of export of goods subsequent to export:**

3.1 The refund of IGST paid on account of export of goods is processed by the proper officer of Customs in an automated manner without manual intervention in terms of provision of rule 96 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules"). However, there exists no mechanism for processing of refunds of any additional integrated tax paid on account of upward revision in price of goods subsequent to exports by the proper officer of customs. Therefore, it has been decided that such exporter may file an application for refund of such additional IGST paid in **FORM GST RFD-01** electronically on the common portal and such application for refunds would be processed by the jurisdictional GST officer of the concerned exporter. Accordingly,

CGST Rules have been amended vide Notification No. XX/2022-CT dated XX.XX.2023 to provide for filing of such refund application in **FORM GST RFD-01**, which shall be dealt with in accordance with provisions of rule 89 of CGST Rules.

3.2 GSTN is in the process of development of a separate category of refund in **FORM GST RFD-01**, for filing an application of refund of such additional IGST paid. However, till the time such separate category for claiming refund of additional amount of IGST paid is developed on the common portal, such exporter(s) may claim refund of the additional IGST paid on account of upward revision in price of goods subsequent to exports, by filing an application of refund in **FORM GST RFD-01** under the category "**Any other**" with remarks "*Refund of additional IGST paid on account of increase in price subsequent to export of goods*" along with the relevant documents as prescribed in clause (bb) of sub-rule (2) of rule 89 of the CGST Rules. The exporter shall also upload the statements 9A & 9B as prescribed in clause (bb) & clause (bc) of sub-rule (2) of rule 89 of the CGST Rules along with the said refund claim. The exporter may also upload any other document to establish that the refund is admissible to him.

3.3 The said refund application shall be processed based on the documentary proof submitted by the refund applicant. Further, the validated details of shipping bills, amount of IGST involved in such shipping bills, as well as the amount of IGST refund sanctioned by the customs under rule 96(3) of CGST Rules will also be made available to jurisdictional GST officers by GSTN to enable them to process such refund claims of additional IGST paid.

4. Minimum Refund Amount: Sub-section (14) of section 54 of the CGST Act provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if amount is less than one thousand rupees. Therefore, no such refund shall be paid if the amount claimed is less than one thousand rupees.

5. **Time limit for filing refund:** Sub-rule (1B) of rule 89 of CGST Rules, 2017 provides that the application for refund of additional IGST paid can be filed before the expiry of two years from the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act. However, in cases, where the relevant date as per clause (a) of Explanation (2) of section 54 of the CGST Act was before the date on which sub-rule (1B) of rule 89 of CGST Rules, 2017 has come into force, such refund application can be filed before the expiry of a period of two years from the date on which the said sub-rule has come into force.

6. The following documents are required to be accompanied with the refund claim in order to establish that refund is due to such exporter:

(a) Copy of shipping bill or bill of exports;
(b) Copy of original invoices;
(c) Copy of contract/ other document(s), as applicable, indicating requirement for the revision in price of such goods subsequent to exports;
(d) Copy of the original invoices as well as relevant debit notes/ supplementary invoices;
(e) Proof of payment of additional IGST and applicable interest and details of the relevant FORM GSTR-1/ FORM GSTR-3B furnished by the applicant in which the said debit note(s) were declared and paid by the applicant;
(f) Proof of receipt of remittance of additional foreign exchange issued (FIRC) by Authorised Dealer-I banks;

(g) A certificate of a practising chartered accountant or a cost accountant certifying therein that the said additional foreign exchange remittance is on account of such upward revision in price of the goods subsequent to export;
(h) Statement 9A of FORM GST RFD 01; and
(i) Statement 9B of FORM GST RFD 01.

7. The proper officer while processing such refund claim shall verify that the exporter has duly reported the details of the export invoice and the debit note in his statement of outward supplies in **FORM GSTR-1** and has duly paid such additional amount of IGST along with applicable interest for which refund is being sought in their **FORM GSTR-3B** return. The proper officer while ascertaining the eligibility of the refund to the exporter shall verify the revised value declared by the exporter in his **FORM GSTR-1**/ **FORM GSTR-3B** and details of foreign exchange remittances received thereof.

8. The proper officer shall scrutinize the application with respect to its completeness and eligibility and only if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall proceed to issue the refund sanction order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**. The proper officer shall also upload a detailed speaking order along with the refund sanction order in **FORM GST RFD-06** in terms of Instruction No. 03/2022-GST dated 14.06.2022.

9. Further, there may be certain cases where there is downward revision in price of goods subsequent to exports, when the export has been made with payment of IGST. In all such cases, the supplier of goods/exporter is required to deposit the refund of the IGST received in proportion to the reduction in price of exported goods, along with applicable interest. The proper officer while granting the refund as per para 8 above, shall also verify whether the exporter has deposited the excess refund amount in the cases where there is a downward revision in price of goods subsequent to exports, during the relevant tax period, if any.

10. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. 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 3(xxxi): Implementation of functionality for online filing of refund application by Canteen Stores Department (CSD) in GST-RFD 10A.

As per notifications No. 6/2017-Central Tax (Rate), No. 6/2017-Integrated Tax (Rate) and No. 6/2017-Union territory Tax (Rate), all dated 28th June 2017, the Central Government has specified that the Canteen Stores Department ("CSD" for short), under the Ministry of Defence, as a person who shall be entitled to claim a refund of fifty per cent. of the applicable central tax, integrated tax and Union territory tax paid by the CSD on all inward supplies of goods received by the CSD for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD. Identical notifications have been issued by the State Governments allowing refund of fifty per cent of the State tax paid by the CSD on the inward supply of goods received by it and supplied subsequently. Consequent to the same, Circular No. 60/34/2018-GST dated 4th September 2018 was issued which outlined the steps to be followed for manual processing of refund applications in FORM GST RFD 10A filed by CSDs till the functionality to file online claim is available in the refund claim.

2. In this regard, GSTN was requested to develop functionality for online filing of refund application on the common portal by Canteen Stores Department (CSD) in FORM GST RFD 10A. Now, GSTN have informed that such functionality for electronic filing and processing of refund application by CSD has been developed and is available for deployment.

3. Accordingly, the matter was deliberated by the Law Committee in its meeting held on 10.01.2024 and 24.01.2024 for requisite amendments in CGST Rules, 2017 for enabling the same. The Law Committee recommended to insert rule 95B in CGST Rules, 2017 and **FORM GST RFD 10A** as follows:

(i) "95B. Refund of tax paid on inward supplies of goods received by Canteen Stores Department (CSD):

(1) Notwithstanding anything contained in rule 95, a Canteen Stores Department under the Ministry of Defence, which is eligible to claim the refund of fifty per cent of the applicable central tax paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the Canteen Stores Department or to the authorized customers of the Canteen Stores Department as per notification issued under section 55, shall apply for refund in FORM GST RFD-10A once in every quarter, electronically on the common portal.

(2) Such application for refund of tax paid on inward supplies of goods filed in FORM GST RFD-10A shall be dealt in a manner similar to that for application for refund filed in FORM GST RFD-01 in accordance with the provisions of rule 89.

(3) The refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods were received from a registered person against a tax invoice and details of such supplies have been furnished by the said registered person in his details of outward supply in FORM GSTR-1 and the said supplier has furnished his return in FORM GSTR-3B for the concerned tax period;

(b) name and Goods and Services Tax Identification Number of the applicant is mentioned in the tax invoice; and

(c) goods have been received by Canteen Stores Department for the purpose of subsequent supply to the Unit Run Canteens of the Canteen Stores Department or to the authorized customers of the Canteen Stores Department."

(ii) After **FORM GST RFD-10**, **FORM GST RFD 10A** may be inserted, in the format enclosed as **Annexure A**.

4. The Law Committee also recommended that the validation of the input supplies should be made on the system with FORM GSTR-2B (instead of FORM GSTR-2A) of the concerned tax period as well as of the previous tax periods and that Circular No. 60/34/2018-GST dated 04.09.2018 on CSD refunds needs to be modified to clarify the proposed changes vide a circular. The draft circular recommended by the Law Committee is enclosed as **Annexure-B**. The Law Committee further recommended that the provisions of the Circular No. 60/34/2018-GST dated 04.09.2018 may continue to apply for all refund applications filed manually before the said amendments are notified and the said functionality is made available on the portal. Such application file manually shall continue to be processed manually accordingly.

6. The agenda note is placed before the GST Council for deliberation and approval.

Annexure A

FORM GST RFD-10A

(See Rule 95B)

Application for refund by Canteen Stores Department (CSD)

1. GSTIN :
2. Name :
3. Address :
4. Tax Period (Quarter) : From <DD/MM/YY>To <DD/MM/YY>
5. Amount of Refund Claim :<INR><In Words>
6. Details of inward supplies of goods received:

GSTIN of the Supplier	Type of the Document	Invoice details / Debit Notes / Credit Notes			Rate	Taxable Value	Amount of Tax		
	Invoices/Credit Notes/Debit notes	No.	Date	Value			Integrated Tax	Central Tax	State Tax
1	2	3	4	5	6	7	8	9	10

7. Total refund applied for:

Central Tax	State/UT Tax	Integrated Tax	Total
<Total>	<Total>	<Total>	<Total>

8. Details of Bank Account:
    a. Bank Account Number
    b. Bank Account Type
    c. Name of the Bank
    d. Name of the Account Holder
    e. Address of Bank Branch
    f. IFSC
    g. MICR

9. Attachment of the documents along with the refund application:

10. Verification

I _____ as an authorised representative of << Name of Canteen Stores Department>> 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. I further declare that all the goods, in respect of which the refund is being claimed, have been received by us for the purpose of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD and that no refund has been claimed earlier against any of the invoices against which refund has been claimed in this application.

Date:

Place:

Signature of Authorised Signatory:

Name:

Designation / Status

Annexure-B

Circular No. xxx /xx/2024 -GST

F. No. CBIC-xx/xx/xx/xxxx-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 January, 2024

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)
The Principal Chief Controller of Accounts, CBIC

Madam / Sir,

Subject: Processing of refund applications filed by Canteen Stores Department (CSD) - regarding

The Central Government, vide notifications No. 06/2017-Central Tax (Rate), No. 06/2017-Integrated Tax (Rate) and No. 06/2017-Union territory Tax (Rate), all dated 28th June 2017, had specified the Canteen Stores Department ("CSD" for short), under the Ministry of Defence, as a person who shall be entitled to claim a refund of fifty per cent of the applicable central tax, integrated tax and Union territory tax paid by the CSD on all inward supplies of goods received by the CSD for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD. Further, vide Circular No. 60/34/2018-GST dated 04.09.2018, the manner and procedure for filing and processing of such refund claims was specified so as to ensure that the CSD shall apply for refund by filing an application manually to the jurisdictional tax office till the time the online utility for filing such refund claim is made available on the common portal.

2. In order to enable such CSD to file application for refund electronically, a new functionality has been made available on the common portal which allows CSD to apply for refund by filing an application electronically on the common portal. Further, Central Goods and Service Tax Rules, 2017 (hereinafter referred to as 'CGST Rules') have been amended and a new rule 95B and **FORM GST RFD-10A** have been inserted in CGST Rules vide Notification No XXX-Central Tax dated XXX.

3. In order to ensure uniformity in the implementation of the provisions of law across 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 lays down the following revised procedure for electronic submission and processing of refund application by CSD, in accordance with Section 55 of CGST Act, 2017, in supersession of Circular No. 60/34/2018-GST dated 04.09.2018.

4. Filing of refund application:

The CSD, who wants to wants to file an application for refund under sub- section 55 of CGST Act, in cases where the refund is claimed of fifty per cent of the applicable central tax, integrated tax and Union territory tax paid by the said CSD on all inward supplies of goods received by it, for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers, shall file an application for refund in **FORM GST RFD-10A** electronically on the common portal and the same shall be processed electronically. The refund to be granted to the CSD shall be based on the invoices of the inward supplies of goods received by it for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers.

5. Filing of refund claim by CSD:

The CSD may apply for refund with the jurisdictional Central tax/State tax authority to whom the CSD has been assigned. In terms of rule 95B of the CGST Rules, the CSD is required to apply for refund once in every quarter. The CSD will also be allowed to file the refund application for multiple quarters, clubbing multiple FYs, as per their option. The refund of the tax paid by the CSD shall be available only if the inward supplies of goods were received from a registered person against a tax invoice and details of such supplies have been furnished by the said registered person in his details of outward supply in **FORM GSTR-1** and the said supplier has furnished his return in **FORM GSTR-3B** for the concerned tax period. The CSD while filing the refund application shall ensure that all the invoices declared by it have the GSTIN of the supplier and the GSTIN of the respective CSD clearly mentioned on them. The said refund application form shall be accompanied with the following documents:

(i) An undertaking stating that the goods on which refund is being claimed have been received by the CSD for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers; and

(ii) A declaration stating that no refund has been claimed earlier against the invoices on which the refund is being claimed.

6. Relevant date for filing of refund:

As per sub-section (2) of section 54 of the CGST Act, a person notified under Section 55 of the CGST Act, 2017, can file the application for refund of tax paid by it on inward supplies of goods or services or both, before the expiry of two years from the last day of the quarter in which such supply was received. Therefore, as the CSD have been notified under section 55 of CGST Act vide notifications No. 06/2017-Central Tax (Rate), No. 06/2017-Integrated Tax (Rate) and No. 06/2017-Union territory Tax (Rate), all dated 28th June 2017, as a person entitled to claim a refund of fifty per cent of the applicable central tax, integrated tax and Union territory tax paid by it on all inward supplies of goods received for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers, the CSD can file the refund of fifty per cent of tax paid on such inward supplies of goods before expiry of two years from the last day of the quarter in which such supply was received.

7. Processing and sanction of the refund claim:

7.1 The proper officer shall process the refund claim filed by the CSD in a manner similar to the refund claims filed in **FORM GST RFD-01** under the provisions of rule 89 of CGST Rules. The proper officer while processing the refund application shall validate the GSTIN details of the CSD on the common portal to ascertain whether all the returns in **FORM GSTR-1** and **FORM GSTR-3B**, which were due to be furnished on or before the date on which the refund application is being filed,

have been filed. The proper officer may scrutinize the details contained in **FORM RFD-10A**, **FORM GSTR-3B** and **FORM GSTR-2B**, for processing the said refund claim. The proper officer shall also verify whether the details of the invoices for which refund has been claimed by the CSD, have been furnished by the concerned supplier in his details of outward supply in **FORM GSTR-1** and the said supplier has furnished his return in **FORM GSTR-3B** for the concerned tax period.

7.2 Further, the proper officer shall ensure that the amount of refund sanctioned is not more than 50 % of the Central tax, State tax, Union territory tax and integrated tax paid on the supplies received by CSD. It may be noted that the invoices uploaded by the CSD while filing will be validated on the portal with **FORM GSTR 2B** of the applicant and only the validated invoices will be allowed in the application. The invoices for which refund has already been availed by the CSD will be flagged in the system and will not be allowed for the refund. The Table in Sl. No. 7 of **FORM GST- RFD 10A** will be auto-populated on the portal based on the 50 % of the amount of respective tax (Central, State and Integrated Tax) as per the Col 8, 9 and 10 of the Table in Sl. No. 6 of **FORM GST- RFD 10A**.The Table in Sl. No. 7 of **FORM GST- RFD 10A** shall be kept editable downwards, i.e., the CSD will be able to make a downward revision in the auto-populated amount in the said Table and cannot enhance the auto-populated amount in the said Table. The proper officer shall also verify whether the ITC in respect of such inward supplies of goods received for the purposes of subsequent supply of such goods to its Unit Run Canteens or to its authorized customers has been reversed by the CSD as clarified in Circular no. 170/02/2022-GST dated 06-Jul-2022.

7.3 The proper officer shall scrutinize the application with respect to completeness and eligibility of the refund claim to his satisfaction and issue the order in **FORM GST RFD-06** accordingly. The proper officer shall also upload a detailed speaking order along with the order in **FORM GST RFD-06**.

8. It is also mentioned that the provisions of the Circular No. 60/34/2018-GST dated 04.09.2018 shall continue to apply for all refund applications filed manually before the amendments in CGST Rules mentioned in Para 2 above and before the said functionality being made available on the common portal. The said applications filed manually shall continue to be processed manually, according to the earlier circular.

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

10. 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 3(xxxii): Procedure for payment of IGST by SEZ unit located in Noida SEZ on DTA clearances.

A reference has been received from the Secretary, Department of Commerce, wherein it has been mentioned that due to the inability of the bank to accept IGST payments through TR-6 Challans on the clearances by Noida SEZ (NSEZ) units to Domestic Tariff Area (DTA) during the period August 2017 to November 2018, these units have paid the IGST due on such DTA clearances through the GSTN online payments. He has also mentioned that though the goods have been cleared by these units on payment of applicable duties on such DTA clearances in a bonafide manner, enforcement action has been initiated against certain NSEZ units by some tax authorities alleging non-payment of IGST due on such DTA clearances. He has requested that since these SEZ units have paid IGST due on such DTA supplies in one manner or the other, the same may be taken into consideration for regularization of such IGST payments made by NSEZ units as it essentially seems to be a case of payment of IGST through GSTN online system, instead of the TR-6 challan mode, to avoid further distress to exporters from avoidable enforcement action. Representations have also been received from trade on this issue.

1.2 Further, another reference has also been received from the Secretary, Department of Commerce, wherein it has been flagged that if any interpretation is made regarding levy of IGST on the clearance of goods in DTA by the SEZ Units/ Developer twice i.e. once as levy of customs under sub-section (7) of Section 3 of Customs Tariff Act, 1975 and second time under Section 5 of the IGST Act, 2017, then necessary amendments may be carried out retrospectively in the IGST Act, 2017 so that IGST is levied only once on clearances from SEZ units to DTA as imports under the Customs Tariff Act, 1962 read with Section 30 of SEZ Act, 2005.

2. From analysis of the references received from the Secretary, Department of Commerce as well as representations received from trade, the following two issues need deliberation:-

I. Whether the payment of IGST on DTA clearances by NSEZ units by depositing the IGST amount in the Electronic Cash Ledger of their GSTIN as per the procedure adopted in NSEZ during the period of August 2017 to November 2018, due to non-acceptance of TR-6 challans for such duty by Punjab National Bank may be considered as payment of duties of Customs under Customs Tariff Act, 1975 read with Section 30 of SEZ Act and whether the same may be regularized; and

II. Whether in respect of the supply of goods to DTA by the SEZ Units/ Developer, in addition to payment of IGST as duties of Customs under sub-section (7) of Section 3 of Customs Tariff Act, 1975 (CTA, 1975) read with proviso to sub-section (1) of section 5 of the IGST Act, 2017 and section 30 of SEZ Act, 2005, payment of IGST is also required to be

made simultaneously as inter-state supplies under sub-section (1) of Section 5 of the IGST Act, 2017 read with section 7(5)(b) of IGST Act.

3. Briefly stated, facts in respect of issue raised in point (I) of Para 2 above are as follows:

3.1 Prior to GST, the SEZ units, while making clearance of goods to DTA, were discharging the Customs duties on such clearances vide TR-6 challan in terms of the provisions of Section 30 of SEZ Act, 2005.

3.2 However, post implementation of GST, during the period August 2017 to November 2018, due to refusal of the Punjab National Bank to accept IGST payments through TR-6 challans alongwith payments of Basic Customs Duty (BCD), the SEZ units in NSEZ paid the IGST due on clearances to DTA through online payments on GSTN portal, even though BCD on such DTA supplies continued to be paid through TR-6 challans.

3.3 As per the details of the procedure for duty payment by NSEZ units during the said period as provided by Department of Commerce vide letter dated 27.12.2019, it has been confirmed that the practice of paying IGST through GSTN (Electronic Cash Ledger on GST portal) for DTA clearances was prevalent at NSEZ from August 2017 to November 2018 which was necessitated because of the refusal of the Punjab National Bank to accept the IGST payments through TR-6 challans. NSEZ units were filing Bill of Entry for the clearance of the goods to DTA during this period by giving details of BCD paid through TR-6 challans on the Bill of Entry, while manually mentioning the details of IGST paid through FORM GST PMT-06 challan on GST online system on the said Bill of Entry.

3.4 The IGST payment through TR-6 challan began in November, 2018 after a clarification dated 08.11.2018 issued by Department of Commerce.

3.5 In the meantime, DGGI initiated investigations against units located in NSEZ for alleged non-payment of IGST on the supplies made by SEZ unit to DTA during the period August 2017 to November 2018.

3.6 The Department of Commerce has provided the following data regarding the quantum of IGST involved in such DTA clearances by NSEZ units during the said period:-

(a) Total 97 NSEZ units have deposited IGST amount of Rs. 1,88,96,40,664 in Electronic Cash Ledger, under section 3(7) of the Customs Tariff Act, 1975 read with Section 30 of SEZ Act 2005.

(b) Out of 97 units mentioned in para 3.6 (a) above:
   (i) 37 Units have debited the full amount of Rs. 92,74,00,752 deposited in Electronic Cash Ledger either by filing return in FORM GSTR-3B or by filing FORM DRC-03.

(ii) 12 units have debited the partial amount of Rs. 3,55,40,545 out of the total amount of IGST of Rs. 14,54,83,040 in Electronic Cash Ledger and therefore Rs. 10,99,42,494 is still lying in Electronic Cash Ledger of these 12 SEZ units.

(iii) 48 units have not debited any amount of IGST from Rs. 81,68,03,944 deposited in Electronic Cash Ledger.

(c) The purpose/ reasons of debiting the above amounts by the 37 units mentioned in para 3.6 (b)(i) are not same for all units and these units have debited the IGST for two different reasons, which are:

(i) 3 units have debited full amount of IGST i.e. Rs. 67,08,88,802 deposited in Electronic Cash Ledger by way of filing FORM DRC-03 as correction measure suggested by senior officers of DGGI team during the investigation and search made by them on these units (i.e. as payment of IGST for supplies made by NSEZ units to DTA).

(ii) 34 Units have debited full amount of IGST i.e. Rs. 25,65,11,439 by way of setting off their liability generated on filing of return in FORM GSTR-3B and outwards supply statement in FORM GSTR -1.

(d) The purpose/ reasons of debiting the above amounts by 12 units mentioned in para 3.6 (b)(ii) are that they have debited partial amount of IGST amounting to Rs. 3,55,40,545 by way of setting off their liability generated on filing of FORM GSTR 3B and FORM GSTR -1, and Rs. 10,99,42,494 is still lying in the Electronic Cash Ledger of these 12 SEZ units.

(e) Thus, 60 units (12 units mentioned in para 3.6 (b)(ii) above and 48 units mentioned in Para 3.6 (b)(iii) above) have either not debited any amount of IGST in Electronic Cash Ledger or have debited only partial amount of IGST in Electronic Cash Ledger. Therefore, Rs 92,67,46,439 is still lying in the Electronic Cash Ledger of these 60 SEZ units (including the unutilized balance of Rs. 10,99,42,494 of 12 SEZ units, as mentioned in para 3.6 (b)(ii) above).

4. The matter was deliberated by the Law Committee in its meeting held on 08.12.2023 and the following was observed.

4.1 Issue of Dual levy of IGST on supplies from SEZ units to DTA:

4.1.1 In respect of the issue mentioned at point (II) of Para 2 above regarding levy of IGST on supplies from SEZ units to DTA, reference is invited to sub-section (1) of section 5 of the IGST Act, 2017 which provides for levy and collection, which is reproduced below as under:

> *"5. Levy and collection.— (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty percent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962."

4.1.2 Reference is further invited to sub-section (7) of section 3 of the Customs Tariff Act, 1975 (CTA, 1975) which provides for levy of IGST on goods imported into India. Sub-section (7) of section 3 of the Customs Tariff Act, 1975 is reproduced as under:

"(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be."

4.1.3 On perusal of the aforesaid provisions, it is noticed that the levy of IGST on goods imported in India under sub-section (7) of Section 3 of Customs Tariff Act, 1975 is in accordance with the powers specified vide proviso to sub-section (1) of the section 5 of the IGST Act, 2017 as the provisions under CTA, 1975 have been made applicable for levy and collection of IGST on such imports.

4.1.4 It would also be pertinent to refer to the section 30 of the SEZ Act, 2005 regarding domestic clearance by SEZ Units. Section 30 of the SEZ Act, 2005 is reproduced below:

"30. Subject to the conditions specified in the rules made by the Central Government in this behalf:-

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty."

4.1.5 Further, section 7(5) of IGST Act is also reproduced below:

"Supply of goods or services or both,-

(a) when the supplier is located in India and the place of supply is outside India;
(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce."

4.1.6 On perusal of the said provisions, it can be stated that supply of goods by SEZ units to DTA are akin to imports and are thus chargeable to IGST in terms of the provisions of section 30 of the SEZ Act read with sub-section (7) of section 3 of Customs Tariff Act, 1975 read with proviso to sub-section (1) of section 5 of the IGST Act, 2017.

4.1.7 Law Committee was of the view that as section 30 of SEZ Act provides for levy of duties under Customs Tariff Act, 1975 on all DTA clearances, and clearance of such goods by SEZ Units in DTA are chargeable to IGST as duties of customs under sub-section (7) of CTA, 1975 read with proviso to sub-section (1) of section 5 of IGST Act, 2017, IGST is not separately leviable again as inter-state supply on such DTA supplies by SEZ units as per sub-section (1) of section 5 of IGST Act read with section 7(5)(b) of IGST Act. Law Committee also observed that the same supply of goods cannot be levied twice under the Section 5 of IGST Act, once under sub-section (1) of Section 5 and then under proviso to sub-section (1) of Section 5. Accordingly, Law Committee recommended that IGST cannot be levied twice on the same supply of goods from SEZ units to DTA and IGST is payable on such supply, only once as duties of customs as per Section 30 of SEZ Act read with sub-section (7) of section 3 of CTA, 1975 and proviso to Section 5(1) of IGST Act.

4.2 Issue of regularization of IGST payments done by NSEZ units during the period August 2017 to November 2018:

4.2.1 In respect of the issue referred at point (I) of Para 2 above regarding the problem faced by units of NSEZ due to non-acceptance of Customs TR-6 challan by bank for supply of goods from SEZ units to DTA during the period August 2017 to November 2018, the Law Committee noticed that from the facts mentioned in Para 3 above, it is found that the process followed by the NSEZ units regarding the payment of IGST on DTA clearances by depositing the amount in the Electronic Cash Ledger under IGST head on the GST portal during the period of August 2017 to November 2018, was due to non-acceptance of TR-6 challans for such duty payment by Punjab National Bank and it was uniformly followed in NSEZ during the said period for processing DTA bill of entry by specified officers.

4.2.2 Law Committee also noticed that as per the details received from the Department of Commerce, the practice being followed by NSEZ units regarding paying of IGST through electronic cash ledger on GST portal for supplies from NSEZ units to DTA during the said period was in the knowledge of NSEZ authorities as well as of Department of Commerce and that such payment of IGST through e-challan (FORM GST PMT-06 challan) was necessitated due to the refusal of the bank to accept the GST payments through TR-6 challan.

4.2.3 Law Committee observed that this practice of depositing the IGST dues through the e-payment challan (FORM GST PMT-06 challan) was not a deliberate practice adopted by these SEZ units themselves but was rather adopted temporarily due to the refusal of the PNB bank in the Noida SEZ to accept the IGST payments through TR-6 challan and as per the procedure adopted by NSEZ authorities. Hence, it would not be desirable to demand the IGST in respect of DTA clearances by the units in NSEZ during the period August 2017 to November 2018 as customs duty again, when they have already paid the said duty by way of e-payment challan (FORM GST PMT-06 challan) instead of the payment of IGST through the TR-6 challan.

4.2.4 Law Committee accordingly observed that the amount of IGST of Rs. 1,88,96,40,664/- deposited by these NSEZ units in their Electronic Cash Ledger through FORM GST PMT-06 challan during the period August 2017 to November 2018 in respect of the DTA clearances may be treated as payment of IGST as part of Customs duty under the provisions of sub-section (7) of section 3 of Customs Tariff Act, 1975, read with Section 30 of SEZ Act 2005 and proviso to Section 5(1) of IGST Act, and may be regularized as payment of duties of customs.

5. Law Committee further observed that as the said IGST deposits in Electronic Cash Ledger is proposed to be considered as payment of IGST under the provisions of sub-section (7) of section 3 of Customs Tariff Act, 1975, read with Section 30 of SEZ Act, the interest on delayed payment of tax under Section 50 may not be applicable in respect of the said payments, irrespective of whether the amount lying in Electronic Cash Ledger has been debited or not.

6. Law Committee also observed that in respect of cases where these SEZ units have shown their DTA removal in FORM GSTR 1 and FORM GSTR 3B to set off their balance in Electronic Cash Ledger, the same would have been appearing in the FORM GSTR 2A of the buyer. In such cases, there is a possibility that the buyers have availed input tax credit on the said DTA supplies twice, once on the basis of the BOE endorsed by Customs and second, on the basis of invoice and FORM GSTR 2A. Therefore, it needs to be ensured that the DTA recipient of the said NSEZ units have not availed ITC on such amount two times, once on the basis of Bill of Entry and another on the basis of invoice/ GSTR 2A/ DRC 03.

7. In view of the above, Law Committee made the following recommendations:

7.1 The amount of IGST of Rs. 1,88,96,40,664/- deposited by NSEZ units in their Electronic Cash Ledger through FORM GST PMT-06 challan during the period August 2017 to November 2018 in respect of the DTA clearances may be treated as payment of IGST as part of Customs duty under the provisions of sub-section (7) of section 3 of Customs Tariff Act, 1975, read with Section 30 of SEZ Act 2005 and proviso to Section 5(1) of IGST Act, and may be regularized as duties of customs.

7.2 As IGST of Rs. 1,88,96,40,664/- has been paid by NSEZ units on such DTA clearances during the period August 2017 to November 2018 by depositing in their Electronic Cash Ledger through FORM GST PMT-06 challan, no interest shall be payable under section 50 of CGST Act in respect of the said amount, irrespective of whether the amount lying in Electronic Cash Ledger has been debited or not.

7.3 In respect of payment made through FORM DRC-03 by 3 units as mentioned in Para 3.6 (c)(i), the amount Rs. 67,08,88,802/- paid by these 3 units may be treated as IGST paid as part of Customs duty. However, this regularization may be allowed subject to the condition that ITC is not availed twice by the recipients in these cases, as there is a possibility that the recipients (in DTA) of these SEZ units may have taken the benefit of input tax credit two times on their purchases made i.e. once on the basis of Bill of Entry and another on the basis of invoice/ FORM GSTR 2A/ FORM DRC 03.

7.4 In respect of the amount of Rs. 29,20,51,984/- paid by 46 units through FORM GSTR 3B for the liability created through FORM GSTR-1/ FORM GSTR-3B as mentioned in Paras 3.6 (c)(ii) & 3.6 (d), since the jurisdiction to collect IGST on SEZ removals as part of Customs duty lies with the Customs Authorities under sub-section (7) of section 3 of Customs Tariff Act, 1975, the SEZ units are not required to pay the IGST on SEZ removals by way of creating a liability in FORM GSTR 3B and setoff the same by debiting the amount lying in Electronic Cash Ledger. Further, the said amount may be regularized as payment of IGST as part of Customs duty. This regularization may be allowed subject to the condition that ITC is not availed twice by the recipients in these cases, as there is a possibility that the recipients (in DTA) of these SEZ units may have taken the benefit of input tax credit two times on their purchases made i.e. once on the basis of Bill of Entry and another on the basis of invoice and GSTR 2A.

7.5 To ensure that no double benefit of ITC is availed by the DTA recipients in cases mentioned in Paras 7.1 & 7.2 above, the concerned SEZ units may be asked to procure a Chartered Accountant (CA) or the Cost Accountant (CMA) certificate in respect of each of their DTA recipient unit during the period August 2017 to November 2018, and submit it to the concerned Specified Officer of NSEZ, certifying that the concerned DTA recipient has not availed ITC twice on the same supply in respect of all the DTA supplies made by the said SEZ unit during the said period (i.e. once on the basis of BOE and another on the basis of invoice/ FORM GSTR 2A/ FORM DRC 03).

7.6 For this purpose, Director General of Export Promotion, CBIC may be mandated to coordinate with Department of Commerce to procure/ collect the compiled CA/ CMA certificates in respect of these 49 NSEZ units. Based on these certificates, further action may be taken by DGEP for regularization of the said IGST payment.

7.7 Besides, the list of such DTA recipients alongwith the concerned SEZ unit may be separately sent by DGEP to the concerned jurisdictional tax authorities for due time bound verification to ensure that the said DTA recipient has not availed ITC twice on the same supply in respect of all the DTA supplies made by the said SEZ unit during the said period (i.e. once on the basis of BOE and another on the basis of invoice/ FORM GSTR 2A/ FORM DRC 03) and to take remedial action, if required, to safeguard Government revenue.

7.8 In respect of the amount of Rs. 92,67,46,439, which has not been debited as mentioned in Para 3.6 (e), the amount lying un-utilized in Electronic Cash Ledger may be regularized and treated as IGST paid as duties of customs.

7.9. For the regularization of amount of IGST deposited by these NSEZ units in their electronic cash ledger as per paras above, DGEP may work out the modalities for such regularization in coordination with GSTN & DG Systems and in consultation with Office of Pr. CCA.

8. The agenda note and the recommendations of the Law Committee are placed before the GST Council for deliberation and approval.

Agenda Item 3(xxxiii): Seeking clarity on Time of supply in respect of supply of allotment of Spectrum to Telecom companies in cases where an option is given to the Telecom Companies for payment of licence fee and Spectrum usage charges in instalments in addition to an option of upfront payment.

References have been received from the Secretary, Department of Telecommunications, Ministry of Communication, Government of India, Member (Finance), Digital Communications Commission, Government of India and the Cellular Operators Association of India (COAI) to issue clarification regarding the time of supply for the purpose of payment of GST in respect of supply of spectrum allocation services in cases of deferred payment for the spectrum allocated to telecom operators.

2. **BACKGROUND:**

2.1. The Government of India, through the Department of Telecommunications (DoT), invited application for auction of Spectrum to assign the right to use certain specified radio spectrum frequencies in various Licensed Service Areas (LSA), for a period of twenty years from the date of frequency assignment to the telecom operator. The Notice Inviting Application (NIA) specified payment terms and the terms of contract which were to be accepted by the telecom operator / bidder.

2.2. Successful bidders were required to make the payment of the final bid amount after issuance of Frequency Assignment Letter (FAL) by the Wireless Planning and Finance (WPF) Wing of DoT in any of the following two options:

Option I: Full upfront payment within 10 days of declaration of final price; or
Option II: Deferred payment in instalments for a specified period.

2.3. In addition to the successful bid amount, Spectrum Usage Charge as a percentage of the Adjusted Gross Revenue (AGR) is also required to be payable by the successful bidders as per the rates, procedures and methodology notified by the Government from time to time.

2.4. The WPF Wing of DoT issues a Frequency Assignment Letter/ demand note informing the successful bidder about the acceptance of his bid by Government. This letter inter-alia mentions about the details of spectrum (band-wise and LSA-wise) along with the details and schedule of payments to be made by the telecom operator.

3. ISSUE IN BRIEF:

3.1. Most of the telecom operators have chosen Option II i.e. deferred payment in instalments for a specified period, along with applicable interest, as specified in the Frequency Assignment Letter.

3.2. In respect of supply of spectrum allocation services, the telecom operators, being the recipients of the said supply, are required to discharge GST liability on reverse charge basis. The telecom operators are discharging their GST liability on the said supply at the time of making payment, either upfront fee or annual instalments with interest as specified in the Frequency Assignment Letter, to the Government.

3.3. It has been represented that some of the tax authorities have issued letters to the telecom operators for payment of GST on the entire bid amount payable, irrespective of the payment option adopted by the operators and irrespective of the fact that in case of option for deferred payment scheme exercised by the telecom operator, payment may still be required to be made as per the date of the payment for instalments mentioned in Frequency Assignment Letter/ demand note. As per the representations, spectrum allocation is a case of 'continuous supply of services' as per section 2(33) of CGST Act, 2017 where its usage is allotted for a period of 20 years with periodic payment obligation as laid down in NIA, as specified in Frequency Assignment Letter. It has also been represented that since the Frequency Assignment Letter/ demand note clearly specifies the due dates for payment of each yearly instalment, the industry has correctly paid the tax as per the Section 13(3) of CGST Act, 2017.

4. VIEW POINT OF FIELD FORMATIONS/ INVESTIGATIVE AGENCIES:

Some of the field formations are taking a view that as this is a supply in which tax liability is to be paid on reverse charge basis, the time of supply would be decided in accordance with section 13(3)(b) of the Central Goods and Service Tax Act, 2017 (CGST Act, 2017) and accordingly, the GST liability would arise from the date immediately following sixty days from the date of issuance of the Frequency Assignment Letter by DoT.

5. GST provisions applicable:

5.1 The 'Continuous supply of services' is defined under section 2(33) of the CGST Act, 2017 as reproduced below:

> ***2. Definitions.— In this Act, unless the context otherwise requires,—***
> ……
> *(33) —continuous supply of services means a* ***supply of services which is provided, or agreed to be provided,*** *continuously or on recurrent basis, under a contract, for a period exceeding* ***three months with periodic payment*** *obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;*

5.2 **Section 13 of the CGST Act, 2017** provides for time of supply for payment of the tax liability on supply of services. Sub-section (3) of section 13 provides for time of supply of services on which tax has to be paid by the recipient on reverse charge basis. Section 13 of the CGST Act, 2017 is reproduced below:

> ***"13. Time of Supply of Services****.—*
>
> *(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*
> *(2) The time of supply of services shall be the earliest of the following dates, namely:-*
> *(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*

(b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not: apply.

(3) In case of supplies in respect of which tax is paid or liable to be paid on ***reverse charge basis****, the time of supply shall be the earlier of the following dates, namely:-*

(a) ***the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or***

(b) ***the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier****:*

Provided *that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:*

…….

(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value."

5.3 Section 31 of the CGST Act, 2017 provides for Tax invoices as follows:

" ***31. Tax invoice****.—*

(1) A registered person supplying taxable goods shall, before or at the time of,—

……

(3) Notwithstanding anything contained in sub-sections (1) and (2)—

……

(f) ***a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both****;*

(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.

……

(5) ***Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—***

(a) ***where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment****;*
(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event."

6. Position in Service Tax Regime

6.1 In the Service Tax era, as per the 4th proviso to Rule 7 of the Point of Taxation Rules, 2011, the point of taxation was governed by an explicit provision. The relevant extract reads as follows:

"Provided also that in case of services provided by the Government or local authority to any business entity, the point of taxation shall be the earlier of the dates on which, -

(a) any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment; or

(b) payment for such services is made."

6.2. Based on the above provisions, CBIC vide Circular No. 192/02/2016- ST dated 13th April, 2016 clarified that in cases of deferred payment of bid amount for spectrum by the telecom operators, the service tax would be payable as and when the installment payments are due or made, whichever is earlier. The said clarification is reproduced below:

Issue no 10:

"*When does the liability to pay Service Tax arise upon assignment of right to use natural resource where the payment of auction price is made in 10 (or any number of) yearly (or periodic) instalments under deferred payment option for rights assigned after 1.4.2016."*

Clarification:- *" Rule 7 of the Point of Taxation Rules, 2011 has been amended vide Notification No. 24/2016 –ST dated 13.4.2016 to provide that in case of services provided by Government or a local authority to any business entity, the point of taxation shall be the earlier of the dates on which: (a) any payment, part or full, in respect of such service becomes due, as indicated in the invoice, bill, challan, or any other document issued by Government or a local authority demanding such payment; or (b) such payment is made.*

Thus, the point of taxation in case of the services of the assignment of right to use natural resources by the Government to a business entity shall be the date on which any payment, including deferred payments, in respect of such assignment becomes due or when such payment is made, whichever is earlier. Therefore, if the assignee/allottee opts for full upfront payment then Service Tax would be payable on the full value upfront. However, if the assignee opts for part upfront and remainder under deferred payment option, then Service Tax would be payable as and when the payments are due or made, whichever is earlier."

6.3 Therefore, under the erstwhile law, the liability to pay tax was linked with the due dates of payment or the actual payment, whichever is earlier.

7. **Examination:**

7.1 Under the spectrum allocation model followed by DoT, bidder (telecom operator) bids for securing the right to use spectrum offered by the government. Here, service provider is the

Government of India (through DoT) and service recipient is the bidder/ telecom operator. The GST is to be discharged on the supply of spectrum allocation services by the recipient of services (here, the telecom operator) on reverse charge basis *[Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 referred*].

7.2. In respect of the said supply of spectrum allocation services, if the telecom operator chooses the option to make payment in installments, the payment has to be made spread over the contract period in installments and payment for each installment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract. The same is a 'continuous supply of services' as defined under section 2(33) of the CGST Act, 2017, since the supply of services (here, spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations.

7.3. As per section 13(1) of CGST Act, 2017, the liability to pay tax on supply of services shall arise at the time of supply. In case of forward charge supplies, the time of supply of services is governed by section 13(2) of CGST Act, 2017, which is the earlier of date of issue of invoice by the supplier or date of provision of service or the date of payment, as the case maybe.

7.4. However, in respect of supply of services, on which tax is paid or liable to be paid on **reverse charge basis,** as per Section 13(3) of CGST Act, 2017, the time of supply of services shall be the earlier of the following dates, namely**:-**

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

7.5 In the instant case, field formations are considering the Frequency Assignment Letter issued by DoT as akin to 'any other document, by whatever name called, in lieu of an invoice' mentioned in clause (b) of section 13(3) of CGST Act and are demanding interest on instalments paid after 60 days from the date of issue of the same. On examination of the Frequency Assignment Letter, it is observed that the same is in the nature of a bid acceptance document intimating the telecom operator that the result of the auction has been accepted by the competent authority and the details of blocks and spectrum allotted to the telecom operator. The frequency allotment letter also clearly mentions the options and the amounts to be paid by the telecom operator in each of the two options.

7.6 As per section 31(5)(a) of CGST Act, 2017, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment. In the instant case, the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the Notice Inviting Applications (NIA) read with the Frequency Assignment Letter. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator.

8. In the light of above, in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment is made by the telecom operator, GST would be payable as and when such deferred payments are due or made, whichever is earlier.

9. It is worthwhile to highlight that the provisions for tax payment for upfront/ installments under deferred payment option were same in service tax regime also as mentioned in para 6.2 above. Since, the nature of supply remains same in GST regime also, it may be desirable that the treatment of tax payment may also be similar.

10. Further, similar treatment regarding the time of supply, as is discussed in the above Para should apply in all other cases where any natural resources are being allocated by the government to the successful bidder/purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time.

11. Law Committee in its meetings held on 24.01.2024 and 31.01.2024 deliberated on the issue and recommended clarifying the time of supply in respect of supply of service of allocation of spectrum and other natural resources as per Para 8 and 10 above through a circular. Draft circular, as recommended by the Law Committee, is enclosed with this agenda note as **Annexure-A.**

12. The agenda is placed before GST Council for deliberation and approval.

****

ANNEXURE-A

Circular No. XX/XX/2024-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 XXXXXX, 2024

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 time of supply of services of spectrum usage and other similar services under GST -reg.

Representations have been received from the trade and the field formations seeking clarification regarding the time of supply for payment of GST in respect of supply of spectrum allocation services in cases where the successful bidder for spectrum allocation (i.e. the telecom operator) opts for making payments in instalments under deferred payment option as per Frequency Assignment Letter (FAL) issued by Department of Telecommunication (DoT), Government of India.

6. 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
Clarification on time of supply of services of spectrum usage and other similar services under GST		

1.	In cases of spectrum allocation where the successful bidder (i.e. the 'telecom operator') opts for making payments in instalments as mentioned in the Notice Inviting Application (NIA) and Frequency Assignment Letter (FAL) issued by Department of Telecommunications (DoT), Government of India, what will be the time of supply for the purpose of payment of GST on the said supply of spectrum allocation services.	Under the spectrum allocation model followed by DoT, bidder (the telecom operator) bids for securing the right to use spectrum offered by the government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/ telecom operator. The GST is to be discharged on the supply of spectrum allocation services by the recipient of services (the telecom operator) on reverse charge basis *[Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 referred*]. 2.1 In respect of the said supply of spectrum allocation services, if the telecom operator chooses the option to make payment in installments, the payment has to be made spread over the contract period in installments and payment for each installment is to be made after specified periods, as specified in the Frequency Assignment Letter of DoT, which is in the nature of contract. The same is a 'continuous supply of services' as defined under section 2(33) of the CGST Act, since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations. 2.2 As per section 13(1) of CGST Act, the liability to pay tax on supply of services shall arise at the time of supply. In case of forward charge supplies, the time of supply of services is governed by section 13(2) of CGST Act, which is the earlier of date of issue of invoice by the supplier or date of provision of service or the date of payment, as the case maybe. 2.3 However, in respect of supply of services, on which tax is paid or liable to be paid on **reverse charge basis,** as per Section 13(3) of CGST Act, 2017, the time of supply of services shall be the earlier of the following dates, namely**:-** (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

		(b) the date immediately following **sixty days from the date of issue of invoice or any other document**, by whatever name called, in lieu thereof by the supplier. 2.3.1 Some of the field formations are considering the Frequency Assignment Letter issued by DoT as akin to 'any other document, by whatever name called, in lieu of an invoice' invoice' mentioned in clause (b) of section 13(3) of CGST Act and are demanding interest on instalments paid after 60 days from the date of issue of the same. 2.3.2 It is observed that Frequency Assignment Letter is in the nature of a bid acceptance document intimating the telecom operator that the result of the auction has been accepted by the competent authority and the details of blocks and spectrum allotted to the telecom operator. The Frequency Allotment Letter also mentions the options and the amounts to be paid by the telecom operator in each of the two options. 2.4 Further, as per section 31(5)(a) of CGST Act, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment. In the instant case, the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the Notice Inviting Applications read with the Frequency Assignment Letter. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator. 3. In the light of above, it is clarified that in case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier, whereas in case where deferred payment is made by the telecom operator in specified installments, GST would be payable as and when the payments are due or made, whichever is earlier. 4. It is also clarified that the similar treatment regarding the time of supply, as is discussed in the

		above paras, may apply in other cases also where any natural resources are being allocated by the government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services as per the definition under section 2(33) of the CGST Act, with the option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time.

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

9. 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 3(xxxiv): Proposal for creation of unique identifiers for unregistered persons opting to generate e-way bill.

In the 2nd National Co-ordination meeting of Central and State Tax officers held on 14.12.2023 under the chairmanship of the Hon'ble Union Revenue Secretary, it was discussed that there is a need for providing a unique identifier for the unregistered persons desirous of generating e-way bill for causing movement of goods, so as to keep track of supplies made or received by such unregistered persons.

2. In terms of rule 138 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as CGST Rules, 2017) every registered person causing movement of goods of consignment value exceeding fifty thousand rupees is required to generate e-way bill. Further, in accordance with the first proviso to sub-rule (3) of rule 138, generation of e-way bill is optional for a registered person or the transporter in case the consignment value is less than fifty thousand rupees.

2.1The second proviso to sub-rule (3) of rule 138 of CGST Rules, 2017 makes it optional for an unregistered person causing movement of goods to generate e-way bill in FORM GST EWB-01. Furthermore, in terms of the fourth proviso to sub-rule (1) of rule 138 of CGST Rules, 2017, in case of inter-state movement of handicrafts goods by a person who has been exempted from the requirement of obtaining registration under clauses (i) & (ii) of section 24 of the Central Goods And Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017), e-way bill is mandatorily required to be generated by the said person, irrespective of the value of the consignment.

2.2An unregistered person desirous of generating e-way bill has to generate the same from the facility/ module **'E-way bills for citizens'.** There is no mechanism to keep the track of the e-way bills he might have generated on the earlier occasion(s), since the **system does not create or store a unique identifier** in respect of the said unregistered person.

3. It appears that a system for creating or storing of a unique identifier in cases of generation of e-way bill by an unregistered person engaged in business activities would not only help in data analysis but would also prove to be user friendly for such persons.

3.1Further, reference is drawn to Rule 58 of the CGST Rules, 2017 that provides for a provision for enrolment of owner or operator of a godown or warehouse or transporter upon submission of his business details on the common portal in FORM GST ENR-01 if they are not already registered under the GST Acts. A transporter having the same PAN and who is registered in multiple states/ UTs, can also apply for a unique common enrolment number by submitting details in FORM GST ENR-02.

3.2A similar facility, if created for unregistered persons engaged in business activities and desirous of generating e-way bill, would prove to be beneficial in keeping a track of their business volume. This would also relieve such unregistered persons from entering the same details over and over again for generation of e-way bill.

4. The issue was deliberated by the Law Committee in its meeting held on 25.04.2024. The Law Committee recommended that CGST Rules, 2017 may be amended suitably by incorporating a provision for enrolment/ creation of a unique user id for unregistered persons engaged in business activities who are desirous of generation of e-way bill, by way of insertion of a fourth proviso to sub-rule (3) of 138 of the said Rules and also to create a functionality for the same on the common portal. The same is as given below:

> *"Provided also that an unregistered person required to generate e-way bill in FORM GST EWB-01 in terms of the fourth proviso to sub-rule (1) or an unregistered person opting to generate e-way bill in Form GST EWB-01, on the common portal, shall submit the details electronically on the common portal in FORM GST ENR- 03 either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person."*

4.1 Further, Law Committee in its meeting dated 25.04.2024 recommended that a new functionality may be created on the common portal for enrolment/ creation of a unique user id and password for unregistered persons engaged in business activities who opt to generate e-way bill and also to require them to use such enrolment number/ unique user id and password for generation of e-way bill. For the same, Law Committee recommended that a new **FORM GST ENR-03** may be inserted in CGST Rules, 2017, which may allow unregistered persons who opt to generate e-way bill, to apply for unique enrolment number. Draft FORM GST ENR-03 is as given below:

FORM GST ENR-03

[See rule 138(3)]

Application for Enrolment

[only for un-registered persons]

1.	Name of the State			
2.	(a) Name as per PAN			
	(b) Trade Name, if any			
	(c) PAN			
	(d) Aadhaar, if applicable (optional)			
3.	**Type of enrolment**			
(i) Unregistered supplier of goods			(ii) Unregistered recipient of goods	
(iii) Both (i) & (ii)				
4.	Contact Information (the email address and mobile number will be used for authentication)			
Email Address				
Mobile Number				
5.	Consent			
I on behalf of the holder of Aadhaar number <pre-filled based on Aadhaar number provided in the form> give consent to "Goods and Services Tax Network" to obtain my details from UIDAI for the purpose of authentication. "Goods and Services Tax Network" has informed me that identity information would only be used for validating identity of the Aadhaar holder and will be shared with Central Identities Data Repository only for the purpose of authentication.				
6. List of documents uploaded				
7. **Verification** I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom. Place: Signature Date: Name of Authorised Signatory				
For Office Use:				
Enrolment no			Date-	

5. The Agenda Note is placed before the GST Council for deliberation and approval.

Agenda Item 3(xxxv): Alignment of rule 96A of CGST Rules, 2017 with the provision of FEMA Act, 1999.

Representations have been received from trade and industry requesting for amendment in Rule 96A of the Central Goods & Services Rules, 2017 (hereinafter referred to as the CGST Rules) to align the clause for realization of sale proceeds for exports of services in Rule 96A of CGST Rules with the extensions permitted by the Reserve Bank of India (RBI) for realization of sale proceeds for such exports.

2. Rule 96A of CGST Rules, 2017 provides for export of goods/services under LUT or bond. It was inserted in CGST Rules pursuant to the recommendation of the Committee on Exports to extend the facility of supplying goods or services for export without payment of integrated tax under Letter of Undertaking, to all registered persons, subject to certain conditions and safeguards. Rule 96A of CGST Rules is reproduced below:

> ***"96A. Export of goods or services under bond or Letter of Undertaking***
>
> *1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of—*
>
> *a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or*
>
> *b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India."*

2.1 Accordingly, as per clause (b) of rule 96A (1) of CGST Rules, in case of export of services without payment of Integrated Tax under Letter of Undertaking, if the payment for such supply of services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India, then the said exporter is required to pay the due Integrated Tax alongwith interest on expiry of 15 days beyond one year from the date of issue of the invoice for export. However, the said period can be extended by the Commissioner, on request made by the exporter on case to case basis.

2.2 It has been represented that RBI's Master Directions provide for extension of time for realization of export proceeds/ foreign remittances and accordingly, fixing a timelimit of one year and fifteen days for receiving remittances for export of services or for seeking specific permission of Commissioner for extension of such time, even in cases where such extension of time for realization of export proceeds/ foreign remittances has already been granted as per RBI's Master Directions, is not only contrary to RBI's Master Directions but is also adding to the compliance burden. The Master Directions (FED Master Direction No. 16/2015-16) of RBI on export of goods and services (updated as on 22.11.2022)) for extension of time in respect of foreign remittance corresponding to exports are as follows:

> *"**C.20 Extension of time***

(i) The Reserve Bank of India has permitted the AD Category – I banks to extend the period of realization of export proceeds beyond stipulated period of realization from the date of export, up to a period of six months, at a time, irrespective of the invoice value of the export subject to the following conditions:

a) The export transactions covered by the invoices are not under investigation by Directorate of Enforcement / Central Bureau of Investigation or other investigating agencies,

b) The AD Category – I bank is satisfied that the exporter has not been able to realize export proceeds for reasons beyond his control,

c) The exporter submits a declaration that the export proceeds will be realized during the extended period,

d) While considering extension beyond one year from the date of export, the total outstanding of the exporter does not exceed USD one million or 10 per cent of the average export realizations during the preceding three financial years, whichever is higher.

e) In cases where the exporter has filed suits abroad against the buyer, extension may be granted irrespective of the amount involved / outstanding.

(ii) Cases which are not covered by the above instructions would require prior approval from the concerned Regional Office of the Reserve Bank.

(iii) Reporting should be done in EDPMS."

2.3 It is also relevant to note that rule 96B of CGST Rules, which provides for recovery of refund in respect of export of goods on non realization of export proceeds, also incorporates the provisions regarding extension of time limit provided by RBI in respect of realization of foreign exchange. The said rule is reproduced as below:

"96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised. *–*

(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India ***within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period,*** *the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the* ***expiry of the said period or, as the case may be, the extended period****, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50.*

Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale

proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, ***provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.****"*

3. The matter has been examined. In this regard, it is submitted that in cases of export of services, where the extension of time for realization of export proceeds/ foreign remittances has been permitted as per Master Directions of the RBI, there may not be any further requirement of seeking extension of timelines from the Commissioner as it only adds to compliance burden and is against the principles of ease of doing business.

3.2 In addition, it is also mentioned that rule 96B of CGST Rules already takes into account any extension of time as permitted by RBI for receiving export remittances. Accordingly, it is proposed to align rule 96A (1)(b) with rule 96B as well as the Master Directions of RBI so that the tax due is required to be paid on export of services under LUT, alongwith interest, only when export proceeds/ foreign remittances are not realized within the time period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of time granted as per RBI's Master Directions.

4. **Proposal for amendment:** In light of the discussions held in the preceding paras, it is proposed that rule 96A may be amended (in red) as follows:

"96A. Export of goods or services under bond or Letter of Undertaking

1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of—

a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

b) fifteen days after the expiry of one year, or the period as allowed under the Foreign Exchange Management Act, 1999 (42 of 1999) including any extension of such period as permitted by the Reserve Bank of India, whichever is later, from the date of issue of the invoice for export, or such further period as may be allowed by the Commissioner, ~~from the date of issue of the invoice for export,~~ if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India."

5. The matter was deliberated by the Law Committee in its meeting held on 16.05.2024 wherein the Law Committee recommended to amend rule 96A of CGST Rules, as proposed in Para 4 above.

6. The agenda note is placed before the GST Council for deliberation and approval.

Agenda Item 3(xxxvi): Change in due date for filing of return in FORM GSTR-4 for composition taxpayers from 30th April to 30th June.

Representations have been received from trade and industry to extend the time limit to furnish FORM GSTR-4, i.e. the return required to be filed by a registered person who opts to pay tax under composition levy.

2. As per sub-section (2) of section 39 of CGST Act, 2017 read with sub-rule (1) of rule 62 of CGST Rules, 2017, a registered person opting to pay tax under composition scheme as per section 10 of CGST Act, is required to furnish return in FORM GSTR-4 for every financial year, by 30th April following the end of such financial year. The said provisions are reproduced below:

Section 39.

(2) A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.

...

Rule 62. Form and manner of submission of statement and return. –

(1) Every registered person paying tax under section 10 shall-

(i) furnish a statement, every quarter or, as the case may be, part thereof, containing the details of payment of self-assessed tax in FORM GST CMP-08, till the 18th day of the month succeeding such quarter; and

***(ii) furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4, till the thirtieth day of April following the end of such financial year, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner**.*

...

3. It is to be mentioned that FORM GSTR-4 is the return to be filed by the taxpayers under composition levy, who are typically small taxpayers, after completion of a financial year. The self-assessed tax liability is discharged by such taxpayers on quarterly basis through FORM GST CMP-08, as per provisions of clause (i) of sub-rule (1) of Rule 62 of CGST Rules. Further, whereas, the due date to furnish annual return in FORM GSTR-9 by registered taxpayers other than those under composition levy, has been kept as 31st December following the end of financial year to which such return pertains, the due date for FORM GSTR-4 is 30th April of the following year, i.e. much before the due date for FORM GSTR-9, although both are the returns for a financial year.

4. Therefore, Law committee in its meeting held on 30.05.2024 recommended that the due date of filing of FORM GSTR-4 be extended to 30th June following the end of the financial year to which it

may pertain. Further, it recommended that the said extension be made applicable in respect of FORM GSTR-4 to be filed for the financial year 2024-25 onwards. The same would require amendment of clause (ii) of sub-rule (1) of Rule 62 of CGST Rules and Instructions of the FORM GSTR-4, as below, to be made effective after 30th June 2024.

a) amendment of clause (ii) of sub-rule (1) of Rule 62 of CGST Rules:

(ii) furnish a return for every financial year or, as the case may be, part thereof in FORM GSTR-4, till the thirtieth day of ~~April~~ June following the end of such financial year, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

b) amendment in Sr. No. 2 of the Instructions in the FORM GSTR-4:

2. The details in FORM GSTR-4, for every financial year or part thereof, should be furnished till the thirtieth day of april following the end of such financial year for the financial year upto FY 2023-24.
Further, the details in FORM GSTR-4, for every financial year or part thereof, should be furnished till the thirtieth day of June following the end of such financial year for the financial year 2024-25 onwards.

5. Accordingly, the agenda is placed up before GST Council for approval.

Agenda Item 3(xxxvii): Amendment in FORM GSTR -8 to capture place of supply.

It has been represented by some tax authorities that extant FORM GSTR-8, i.e. statement to be furnished by an electronic commerce operator (ECO) required to collect tax at source under section 52, does not capture place of supply details in respect of the supplies effected through such ECO, due to which it is difficult for the tax authorities to verify whether the suppliers have correctly reported the place of supply in their FORM GSTR-1 and correctly paid tax in FORM GSTR-3B.

2. The matter has been examined. As per section 52 (4) of CGST Act, read with Rule 67 of CGST Rules, every ECO is required to collect tax at source under section 52 is required to furnish a statement in FORM GSTR-8, containing details of supplies effected through such operator and the amount of tax collected by him in terms of section 52(1) of CGST Act. The relevant extract of the said provisions are reproduced below:

Section 52. Collection of tax at source.-

....

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

...

Rule 67. Form and manner of submission of statement of supplies through an e-commerce operator .-

(1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in FORM GSTR-8 electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.

(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

3. From a perusal of the FORM GSTR-8, it is seen that the extant format of FORM GSTR-8 does not capture place of supply details in respect of the supplies which are made though the e-commerce operator, which makes it difficult for tax authorities to cross verify whether the suppliers of such supplies have correctly reported the place of supply details in their FORM GSTR-1 and correctly

paid their tax liabilities in FORM GSTR-3B. In view of the same, Law committee in its meeting held on 16.05.2024 and 07.06.2024 recommended that FORM GSTR-8 may be suitably amended to incorporate place of supply details in Table 3 and Table 4 of the said form, as below:.

3. Details of supplies made through e-commerce operator

(Amount in Rs. for all Tables)

GSTIN of the supplier	Details of supplies made which attract TCS			Amount of tax collected at source			Place of Supply (POS)
	Gross value of supplies made	Value of supplies returned	Net amount liable for TCS	Integrated Tax	Central Tax	State /UT Tax	
1	2	3	4	5	6	7	8
3A. Supplies made to registered persons							

4. Amendments to details of supplies in respect of any earlier statement

Original details		Revised details							
Month	GSTIN of supplier	GSTIN of supplier	Details of supplies made which attract TCS			Amount of tax collected at source			Place of Supply (POS)
			Gross value of supplies made	Value of supply returned	Net amount liable for TCS	Integrated Tax	Central Tax	State/UT Tax	
1	2	3	4	5	6	7	8	9	10
4A. Supplies made to registered persons									
4B. Supplies made to unregistered persons									

The draft Notification to revise FORM GSTR-8 is attached as **Annexure A** to this agenda.

4. Accordingly, the agenda is placed before GST Council for its approval.

Annexure A

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i)]

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

Notification
No. XX/2024 – Central Tax

New Delhi, the xxxxxx, 2024

G.S.R…(E).- In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. **Short title and commencement**. -(1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2024.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, in **FORM GSTR-8**,–

(i) for serial number 3, the following shall be substituted, namely:-

"3. Details of supplies made through e-commerce operator

(Amount in Rs. for all Tables)

GSTIN of the supplier	Details of supplies made which attract TCS			Amount of tax collected at source			Place of Supply (POS)
	Gross value of supplies made	Value of supplies returned	Net amount liable for TCS	Integrated Tax	Central Tax	State /UT Tax	
1	2	3	4	5	6	7	8
3A. Supplies made to registered persons							
3B. Supplies made to unregistered persons							

";

(ii) for serial number 4, the following shall be substituted, namely:-

"**4. Amendments to details of supplies in respect of any earlier statement**

Original details		Revised details							
Month	GSTIN of supplier	GSTIN of supplier	Details of supplies made which attract TCS			Amount of tax collected at source			Place of Supply (POS)
			Gross value of supplies made	Value of supply returned	Net amount liable for TCS	Integrated Tax	Central Tax	State/UT Tax	
1	2	3	4	5	6	7	8	9	10
4A. Supplies made to registered persons									
4B. Supplies made to unregistered persons									

";

[F. No. CBIC-20013/7/2024-GST]

(Raghavendra Pal Singh)

Director

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* notification No. 3/2017-Central Tax, dated the 19th June, 2017, published *vide* number G.S.R. 610(E), dated the 19th June, 2017 and were last amended, *vide* notification No. 52/2023 -Central Tax, dated the 26th October 2023, *vide* number G.S.R. 798 (E), dated the 26th October 2023.

Agenda Item 3(xxxviii): Amendment in GST Rules and FORM GSTR-1 to reduce the current threshold of invoice value of Rs. 2.5 lakhs for inter-state B2C supplies to Rs. 1 lakh.

As per section 37 of CGST Act, 2017, read with rule 59 of CGST Rules, 2017, a statement of outward supplies has to be furnished by a registered person for a tax period in FORM GSTR-1. While in respect of B2B supplies, invoice-wise details are required to be furnished in FORM GSTR-1, however, in respect of B2C supplies, invoice-wise details are required to be furnished in Table 5 in respect of inter-State supplies with invoice value more than Rs 2.5 Lakh only, whereas for other B2C supplies, only consolidated details are required to be furnished in Table 7 thereof.

2. It has been represented by some tax administrations that this threshold of invoice value for declaration of invoice-wise details of intra-State supplies may be reduced from Rs. 2,50,000/- now to facilitate availability of more information to the tax administrations for verification of correct reporting of B2C supplies by the suppliers, thus improving tax compliance, as well as to enable the consumption states to cross-verify the IGST settlement made to them.

3. It is mentioned that clause (e) of Rule 46 of CGST Rules mandates that in respect of supplies made to unregistered persons, where the value of supply is fifty thousand rupees or more, the name and address of the recipient and the address of delivery, along with the name of the State and its code are required to be captured in the invoice. The said clause is reproduced below:

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,-

..

(e) 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 fifty thousand rupees or more;

..

...

4. Law Committee deliberated on the issue in its meeting held on 16.05.2024. The law Committee observed that as per rule 46(e) of CGST Rules, a tax invoice of taxable value of Rs. 50,000/- or more, issued to a unregistered person, is required to capture the address of the recipient. Accordingly, there may not be any difficulty for the registered person for furnishing invoice-wise details in respect of B2C inter-State supplies of value of Rs 50,000 or more in FORM GSTR-1. However, lowering the threshold value from Rs 2.5 Lakh to Rs 50,000 for reporting invoice-wise details for inter-State B2C supplies, may increase the compliance burden on the taxpayers substantially, and accordingly, Law committee recommended that the said threshold value may be lowered in a phased manner. Law Committee recommended that initially, the said threshold value may be reduced from the present Rs. 2,50,000/- to Rs. 1,00,000/-.

5. Law Committee also recommended that clause (a)(ii) and (b)(ii) of sub-rule (4) of rule 59 of CGST Rules , which pertains to the threshold value in respect of Inter-state B2C supplies for which invoice wise details are required to be furnished in FORM GSTR-1, may be amended as follows:

Rule 59. Form and manner of furnishing details of outward supplies.-

...

(4) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the-

(a) invoice wise details of all -

(i) inter-State and intra-State supplies made to the registered persons; and

(ii) inter-State supplies with invoice value more than one lakh rupees ~~two and a half lakh rupees~~ made to the unregistered persons;

(b) consolidated details of all -

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value upto one lakh ~~rupees~~ ~~two and a half lakh rupees~~ made to unregistered persons for each rate of tax;

(c) debit and credit notes, if any, issued during the month for invoices issued previously.

...

6. Law Committee further recommended that Table 5 and 7 of FORM GSTR -1 and the instructions in column 3, against Sr. No. 3. of Table specific instructions may also be suitably amended.

7. It is also mentioned that return in FORM GSTR-5, to be furnished by a Non-resident taxable person under section 39(5) of CGST Act read with rule 63 of CGST Rules, and the relevant instructions, may also be suitably amended so as to reduce the current threshold of invoice value of Rs. 2.5 lakhs for inter-state B2C supplies to Rs. 1 lakh, in line with the changes proposed in the FORM GSTR 1.

7.1 Accordingly, Law Committee, in its meeting held on 07.06.2024 recommended that amendment may be made in Table 6 and Table 7 of FORM GSTR-5 and Instruction No. 7(ii), 8(ii) and 9 in the said return, so as to reduce the current threshold of invoice value for reporting invoice-wise details for B2C inter-State supplies from Rs. 2.5 lakhs to Rs. 1 lakh.

8. The agenda is placed before GST Council for approval.

Confidential

सत्यमेव जयते

Agenda for

53rd GST Council Meeting

22nd June, 2024

Volume-II

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

GST Council Secretariat New Delhi

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
13th June, 2024

OFFICE MEMORANDUM

Subject: Notice for the 53rd GST Council Meeting to be held on 22nd June, 2024-reg

The undersigned is directed to refer to the above subject and to convey that the 53rd Meeting of the GST Council will be held on 22nd June, 2024 at New Delhi. The schedule of the meeting is as follows:-

Saturday, 22nd June, 2024 from 2.00 P.M. onwards

2. In addition, an Officers' Meeting will be held on 21st June, 2024 at New Delhi as per the following schedule:

Friday, 21st June, 2024 from 11.30 A.M. onwards

3. The venue of the meeting, agenda items and other details for the 53rd Meeting of the GST Council and officers' Meeting will be communicated in due course of time.

4. Kindly convey the invitation to the Hon'ble Member of the GST Council to attend the 53rd Meeting of the GST Council.

Sd/-
(Sanjay Malhotra)
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 proceedings of the Council.
5. CEO, GST Network

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Discussion on Agenda Items

Agenda Item 4: Issues recommendations by the Fitment Committee for the consideration of the GST Council:

This agenda item 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. Meetings of Fitment Committee were held on 27th October 2023, 9th November 2023, 29th November 2023, 15th December 2023, 28th December 2023, 5th January 2024, 18th January 2024, 30th January 2024, 8th February 2024, 29th February 2024, 4th April 2024, 17th May 2024, 31st May 2024 and 14th June, 2024 to deliberate on the issues referred by industry, line ministries, State governments and other bodies for issuance of clarifications, granting exemptions or making changes in GST rates on goods and services. The Fitment Committee discussed these issues in detail and has made recommendations on the same. Further, one issue is being kept before the Council for information.

4. Accordingly, Fitment Agenda for consideration of the GST Council is summarized 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**

b. Issues where no change has been proposed by the Fitment Committee in relation to goods – **Annexure-II**

c. Issue in relation to goods placed before the Council for information– **Annexure-III**

d. Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services – **Annexure-IV**

e. Issues where no change has been proposed by the Fitment Committee in relation to services – **Annexure-V**

5. The proposals, as contained in para 4 above are placed before the GST Council for consideration.

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 of Goods /HSN	Present Rate	Requested Rate	Comments
1.	Compensation Cess on goods imported by a SEZ unit or SEZ developer for authorised operations.	As applicable	Exemption with effect from 1st July, 2017	• Prior to GST, all imports by SEZ units or a SEZ developer for authorized operations were exempt from basic customs duty (BCD), CVD in lieu of Central Excise duty and Special Additional duty (SAD) to facilitate export competitiveness of such units keeping in view that such units are expected to export the resultant final goods. • At the time of roll out of GST, exemptions with respect to IGST leviable on the such imports were continued vide 64/2017-Customs based recommendation of GST Council. The present issue has arisen as no such notification was issued for continuation of exemption from Compensation Cess leviable on such imports. • Since all pre-GST exemptions were continued at the time of roll out of GST, the intent appears to be to continue exemption from Compensation Cess on import of goods to SEZ, but the exemption from compensation cess was not notified. • The request is to exempt the Compensation Cess leviable on the imports into SEZ retrospectively from 1st July, 2017 • Dept of Commerce (DoC) informed that as per declared data for 1st July, 2017 to January, 2024, 123 units/ developer/co-developers filed transactions with HSN attracting ₹ 6848 Cr Compensation Cess. Out of which Compensation Cess to the tune of ₹ 2511.46 Cr on the goods imported from abroad into SEZ has been paid.

				• Fitment Committee deliberated this issue in detail and recommended to provide: o exemption from Compensation Cess leviable on the imports by SEZ Unit/developer for authorised operations prospectively from the date of issue of Notification. o retrospective exemption also for the period from 1st July, 2017 till the date of notification referred above.
2.	Extension of validity of IGST exemption at the time of imports under notification No. 19/2019-Customs dated 06.07.2019	18/28%	Nil	• Vide Notification 19/2019-Customs dated 06.07.2019, exemption from BCD and IGST was provided on imports of specified defence items for defence forces (Airforce, Navy and Army) for a period of five years. This exemption is lapsing on 30.06.2024. • Considering that these items are not indigenously manufactured and have to be necessarily imported by the armed forces for operational readiness and strategic importance, the M/o Defence has sought for extension of the aforementioned exemption. • The revenue implication is not quantifiable. • Fitment Committee recommended extension of IGST exemption for another 5 years.
3.	Aircraft parts/components mentioned in aircraft maintenance manuals for use in aircraft mentioned irrespective of their	18/28%	5%	• The Committee of Secretaries (CoS) on facilitating growth of Aircraft MROs in India, has recommended harmonizing GST rate at a maximum of 5% on aircraft parts/components mentioned in the various manuals of aircraft maintenance. • Presently, aircraft parts classified under HSN 8807 attract GST at 5% (Sl. No. 245 of Sch I to Notfn 01/2017-CTR). Some other parts like aircraft engines classifiable under Chapter 8407 1000 and 8411, aircraft tyres classifiable under Chapter 40 also attract GST at 5% (refer Sl. No. 230A and 189

	classification in any chapter.			respectively of Sch I in 1/2017-CTR) • However, there are other parts used in aircraft classifiable under chapters 84, 85 etc. that attract GST ranging from 18%-28%. Examples of such parts include transducers, radars, aircraft pantry equipment like coffee machines etc. • Further, 'Parts, testing equipment, tools and tool-kits for MRO activities for aircrafts' attract 'Nil' BCD when imported by MRO operators registered with the DGCA. This exemption from BCD is available on all parts and equipment falling under any chapter. However, IGST is payable on such imports at the applicable rate as mentioned above. • The domestic MRO industry has stated that the domestic manufacturing capability for such parts is non-existent and consequently they are all imported. At the time of import of these parts, the IGST is applicable at 18%-28%. This becomes imputed cost for the MROs, which is passed on to its consumers thereby making them uncompetitive vis-à-vis established international MRO hubs like Turkey, Singapore etc. • The issue of uniform 5% on aircrafts parts under any chapter was placed before the Council in its 47th and 50th Meeting. However, considering the dual use nature of such parts, the Council did not recommend any change. • However, in the CoS as well as follow up meetings with the M/o Civil Aviation, it has been ascertained that the Country is 100% import dependent of all such parts. • Ministry of Civil Aviation has clarified that only parts which feature in the following manuals can be considered for 5% GST rate which will translate to 5% IGST for import of these parts: i. aircraft maintenance manual (AMM),

				ii. component maintenance manual (CMM), iii. Illustrated Parts Catalogue (IPCL), iv. Structural Repair Manual (SRM) and v. the Standard Procedures Manual (SPM) of the OEMs • Further, MoCA has also clarified that the existing conditions applicable for Nil customs duty should be made applicable to import of such aircraft parts for 5% GST rate. • The conditions in the customs Notification no 50/2017-Customs dated 30.06.2017 (Sl. No. 536) reads as below: *'If,-* *(A) imported by units approved by Director General of Civil Aviation in the Ministry of Civil Aviation, for maintenance, repair, or overhauling of-* *(a) aircraft registered in India; or* *(b)aircraft not registered in India, which are brought into India for the purpose of flight to or across India, or for the purpose of maintenance, repair or overhauling and which are intended to be removed from India within six months or for such periods as extended by the Director General of Civil Aviation, as the case may be; or* *(c) aircraft components or parts, including engines of aircrafts;* *(B) the importer submits documents duly certified by the Director General of Civil Aviation approved Quality Managers of aircraft maintenance organisations indicating such parts, testing equipment, tools and tool-kits;* *(C) the importer maintains a proper account of import, use and consumption of the specified goods*

				imported for the purpose of servicing, repair and maintenance of aircrafts, aircraft components, parts including engines of aircrafts and submits such account periodically to the Commissioner of Customs in such manner as may be specified by the said Commissioner; *(D) the importer, by the execution of bond, in such form and for such sum as may be specified by the said Commissioner, binds himself to pay on demand an amount equal to the duty leviable,-* *(i) on parts, tools and tool kits as are not proved to the satisfaction of the said Commissioner to have been used or consumed for the aforesaid purpose;* *(ii) on the testing equipment, as are not proved to the satisfaction of the said Commissioner to have been installed or otherwise used for the aforesaid purposes,* *within a period of three years from the date of importation thereof or within such extended period as that Commissioner, on being satisfied that there is sufficient cause for not installing, using or consuming as the case may be, for the aforesaid purposes within the said period, allow.'* • Fitment Committee recommended a uniform rate of 5% IGST for imports of these parts/components irrespective of their classification subject to conditions similar to Customs Notification.
4	Scientific Equipment required for Research Moored Array for African-	18%	Nil	• The Ministry of Earth Sciences (MoES) has stated that the National Institute of Ocean Technology (NIOT) is a Scientific and Research Organization under Ministry of Earth Sciences (MoES), which provides information on weather, cyclone and Tsunamis for India as well as to global community. • MoES and National Oceanic and Atmospheric Administration (NOAA), USA entered into an MoU

.	Asian-Australian Monsoon Analysis and Prediction (RAMA) programme.			for Technical Co-operation in Earth Observation and Earth Sciences. The present Implementing Arrangement (IA) between NOAA & MoES was signed on 06/08/2021 and is valid for duration of five years i.e. till July 2026. • Under the RAMA programme, research buoys are sent to India for storing and basic maintenance activity and are subsequently deployed in the International waters in the Indian Ocean region and Bay of Bengal region for data collection. Further, post deployment period, the buoys are re-exported to NOAA (USA) after maintenance, for re-calibration for re-import for next round. This whole cycle takes around 16-24 months. • Notification No. 47/2017-Integrated Tax (Rate) dated 14.11.2017 prescribed a concessional IGST rate of 5% on equipment supplied to specified institutions related to scientific research and notification No. 51/96-Customs prescribed a concessional IGST rate of 5% on such equipment at the time of import. Imports under the RAMA programme were availing benefits of these exemptions. • On the basis of recommendations of the GoM on Rate Rationalization, which were accepted by the GST Council in its 47th Meeting, the exemption to scientific and technical instruments supplied to public funded research institutes was withdrawn. • Accordingly, notification No. 47/2017-Integrated Tax (Rate) were rescinded and also the corresponding customs notification No. 51/96-Custom was amended vide notification No. 42/2022-Customs dated 13.07.2022. • Consequently, the research buoys and moorings now attract 18% GST, which is being borne by the NOAA. • The issue was deliberated in the meeting and

				Fitment Committee recommended to extend GST exemption to research equipment/buoys imported under the RAMA programme for a period of 3 years i.e. till July 2026 as recommended by the MoES subject to the condition that such imports are certified Ministry of Earth Sciences and that such goods are re-exported within 2 years, extendable to further period of 1 year. If the imported goods are not exported back in stipulated time, importer will pay tax/duty along with interest.
5.	Technical documentation related to AK-203 rifle kits. (HSN 4911)	18%	Ad-hoc Exemption from import IGST	• Ministry of Defence (MoD) requested for exemption of duty in terms of section 25(2) of the Customs Act, 1962 on imports of technical documentation related to AK-203 rifles by the Indo-Russian Rifles Pvt Ltd. (IRRPL), which is a JV under the Inter-Governmental Agreement between India and Russia for manufacturing AK-203 rifles exclusively for Indian Defence forces. • IRRPL had imported two consignments of AK-203 rifle kits under notification 19/2019-Customs covered by Bill of Entry dated 19.11.2022 and 26.02.2023. However, the scope of the said notification did not cover technical documentation under chapter 49. Consequently, a notice was issued for recovery of applicable duties at the time of import of such kits. • On the request of Ministry of Defence, ad-hoc exemption order under Section 25(2) of the Customs Act, 1962 from the basic customs duty for these consignments has been issued vide Ad-hoc Exemption Order No. 01/2024 dated 01.02.2024. • The matter has been referred for recommendation of the Council for providing ad-hoc IGST exemption on these imports. • The value of imports of such technical documentation is Rs 177 Cr. Thus, the revenue

				implication of the requested IGST exemption is Rs. 31 Cr. approx. • Fitment Committee after considering request from Defence Ministry, recommended to provide ad-hoc IGST exemption on the said imports.
6.	Carton Boxes for packaging apples and other horticulture produce.	18%	12%/5%	• Carton boxes fall under HSN heading 4819. • Before 01.10.21, items falling under HSN 4819 like cartons, boxes and cases of non-corrugated paper or paper board attracted a GST rate of 18% and cartons, boxes and cases of corrugated paper or paper board attracted a concessional GST rate of 12%. • The matter in respect to the GST rates on the items falling under HSN 4819 was placed before the GST Council in its 45th meeting held in September, 2021. The Council recommended that all items falling under HSN 4819, irrespective of being corrugated or non-corrugated, shall attract a uniform GST rate of 18%. This change was made effective from 1st October, 2021. • The matter was again raised in 49th GSTC meeting by Himachal Pradesh (HP). The matter was examined by Fitment Committee and status quo was recommended in 50th GSTC. The matter was deliberated in 50th GSTC where HP and J&K requested for reducing the rate as these are used for packaging of apples and horticulture products. • Representatives from Himachal Pradesh and J &K were invited in the Fitment Committee meeting for presenting their view, wherein it is informed by Himachal that the apple has contributed to the tune of Rs 4500 Cr to state's economy amounting to 13% of SGDP. The prices of cartons have gone up to the tune of 15.4% to 10.1% in May 2022 as compared to May 2021 mainly due to hike in GST from 12% to 18% and it was requested that GST

				rate of specified apple carton boxes be reduced to 5%. • Jammu & Kashmir highlighted that Horticulture contributes 8% of SGDP and around 27% of population is dependent on the sector. Around 75%-80% of apples are packed in corrugated boxes. GST rate hike in 2021 has led to increase in prices of apple carton boxes by 10%-15%. A differentiation in tax rate based on end-use would lead to confusion, litigation. A lower rate of 5% would introduce inversion as the inputs (paper products) also attracts GST of 12%. Thus, a uniform lower rate of 12% on all corrugated boxes may be considered. • Cartons/boxes either corrugated or non-corrugated are intermediate products which are used by the manufacturer/trader to transport or deliver the commodity. Thus, the recipient of the boxes has an option to utilise ITC on tax paid on the cartons to set-off final tax liability. • Further, as the carton/box is naturally bundled with the final commodity, it becomes composite supply and the tax liability is that of principal supply is applicable. In case the principal supply attracts Nil rate, or the supplier of principal supply is unregistered, then the GST paid on carton becomes a cost to the supplier. In the instant case, the principal supply is of apples which attracts Nil rate [Sl.No. 55 of 2/17-CT(R)] and there are no other taxable supplies to be made by apple farmers. Thus, the GST paid on cartons becomes cost to the apple farmer. However, agro sector would be around 10% of total user. • Other uses of carton boxes are in FMCG sector, healthcare/pharma. E-commerce supplies, industrial packaging, pharmaceuticals, electronics and processed. This constitutes around 90 % of total

				turnover of carton boxes. And, in these end-uses the tax will be utilised as ITC by such end-users. • If, the tax is reduced to 12% then the loss to exchequer will be in case where the cartons are sold to horticulture sector. In other cases, the reduced tax would be used as ITC. • A further reduction to 5% would introduce inversion in the value chain. • Providing end-use based or specification based differentiation of rate are not advisable as they are difficult to administer, prone to litigation. • Fitment Committee deliberated this issue in detail and recommended a uniform GST rate of 12 % on carton, boxes and cases of corrugated paper or paper-board as well as of non -corrugated paper or paper -board falling under heading 4819 10 and 4819 20 respectively.
7.	Fire water sprinklers (HSN 8424)	-	Request is to clarify that fire sprinklers are also covered under entry 195B.	• All Sprinklers are classified under CTH 8424. • Entry 195 B of Schedule-II (12%) of Notification 01/2017-CTR reads as follows: *"Sprinklers; drip irrigation system including laterals; mechanical sprayers".* • This entry was inserted vide Notification No. 6/2018-Central Tax (Rate) dated 25.01.2018 based on recommendation of GST Council in its 25th meeting held on 18.01.2018 accepting the recommendations of Fitment Committee which recommended concessional 12% GST for 'micro irrigation systems, namely, sprinklers, drip irrigation system, including laterals.' The intent appears to have been to extend the benefit of concessional rates to sprinklers being used for irrigation/agriculture. • Field formations are holding that sprinklers for uses other than irrigation will fall under Sl. No. 325 of Schedule III of Notification no. 1/2017- CT

				(Rate), dated 28.06.2017 and will attract 18%. The entry reads as follows: *Mechanical Appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charges; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [* ***other than*** *sprinklers; drip irrigation systems including laterals; mechanical sprayer; nozzles for drip irrigation equipment or nozzles for sprinklers]* • However, CESTAT, New Delhi vide Final Order 51063 /2022 (Decision on 04.11.22) held against the revenue and observed, inter alia that –it is also clear that Sl. No.195B of the notification does not restrict the sprinklers to any category. • Although intent appears to be to extend the benefit of concessional rate to sprinklers for use in irrigation system, the notification entry providing concessional rate of 12% (Entry No. 195 B) does not explicitly exclude any type of sprinklers, hence the different interpretation in field and quasi-judicial fora. • After deliberations, Fitment Committee recommended : o to clarify that all types of sprinklers including fire sprinklers are covered under the above entry (195 B Schedule-II @ 12%), and o to regularize the past practice on 'as is basis' in view of genuine doubts.

8.	Parts of Poultry machinery (8436 9100)	-	12%	• GST classification is based on Customs classification and 'Parts of Poultry keeping Machinery' are specifically classified under HSN 8436 9100. Customs Heading of HSN 8436 which explicitly includes 'parts'(8436 9100) is as follows: *Other agricultural, horticultural, forestry, poultry keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.* • In GST, HSN 8436 is covered under Sl. No. 199 of Schedule II (@12%) to Notification no. 1/2017- CT (Rate) and corresponding States / UT / IGST notification Entry 199 reads as: *Other agricultural, horticultural, forestry, poultry keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders* • It can be seen that description of goods for Customs heading 8436 (which includes parts as well) has been entirely incorporated in GST. • Parts of poultry machinery which can only be for use specifically in these machinery shall be classified under CTI 8436 91, whereas general use parts which can be used in poultry machinery and other machinery/usages also, shall be classified under their respective headings. Thus, parts of poultry-keeping machinery are also included in Sl. No. 199 even though these are not explicitly mentioned. • However, in the past, for goods under heading 8432 and 8433, 'parts' have been specifically included at a later stage in Sl. No. 196 & 197 of Schedule II to Notification no.1/2017- CT (Rate), dated 28.06.2017, which has created ambiguity for entries

				wherein parts are not explicitly included. • Fitment Committee recommended to amend notification entry to add 'parts thereof' and to regularize past practice on 'as is basis'.
9.	Pulses and cereals supplied to or by any agency engaged by Governme nt.	5%	NA	• For the period from 01.07.2017 up to 17.07.2022, supplies of any goods falling under heading 0713 (pulses) or chapter 10 (cereals) attracted GST at the rate of 5%, when such goods are put up in a unit container and bear a registered brand name and/or bear a brand name on which an actionable claim or enforceable right in a court of law is available. • For the purposes of the said levy: o the phrase "registered brand name" means: a brand registered as on the 15th May, 2017 under the Trademarks Act, 1999, irrespective of whether or not the brand is subsequently deregistered; a brand registered as on the 15th May, 2017 under the Copyright Act, 1957; a brand registered as on the 15th May, 2017 under any law for the time being in force in any other country. o the phrase "brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person. • Pulses and cereals are goods procured by Governments for distribution free of cost or at subsidized rate to the eligible beneficiaries like economically weaker sections of the society or under schemes of the Government such as PDS,

				ICDS etc. • Agencies and Government Cooperatives such as NAFED stock these goods under Government purchase in packages with their name to ensure the stock of Government is identified in the warehouses of State/Central Warehousing Corporations and safely stored. Buyers purchase the stock as per prevailing market rate of raw pulses. No special price is realised by these agencies by putting its name on the bags. However, if the name of the agency happens to be a trademark (such as NAFED), then supplies that are put up in a unit container and bearing a registered brand name are leviable to GST at the rate of 5%. • In view of genuine interpretational issues, the Fitment Committee recommended to regularise on "as is where is" basis, the issue on supplies of pulses (falling under HS 0713) and cereals (chapter 10) when supplied to or by any agency engaged by Union Government or State Government/ Union Territory for procurement and sale, for the entire period from 01.07.2017 up to 17.07.2022, under any programme/scheme duly approved by the Central Government or any State Government that intends to distribute such goods at free of cost or at subsidized rate to the eligible beneficiaries like economically weaker sections of the society subject to the condition that : (i) the concerned supplier shall submit a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the State Government /Union Territory, within 180 days from the date of issuance of the Circular, and (ii) Input Tax Credit shall not be allowed on such inputs, and if availed on such inputs, shall be reversed within a period of 180 days from the date of issuance of the Circular if the supplier intends or

				takes the benefit under the proposed regularisation.
10.	Solar Cooker [7321]	18%	Nil or 5%	• Goods falling under heading 7321 attract GST rate of 18% vide Sl. No. 235 of Schedule III of notification No. 01/2017-CT (Rate) dated 28.06.2017. Description of goods under Sl. No. 235 is as follows: *"Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel [other than kerosene burners, kerosene stoves and wood burning stoves of iron or steel]".* • "Kerosene burners, kerosene stoves and wood burning stoves of iron or steel" falling under heading 7321 have been provided a concessional GST rate of 12%. • As per the WCO explanatory notes, heading 7321 covers all cooking appliances which are normally used in household and use solid, liquid or other source of energy including solar energy. • In light of the description, such solar cookers are classifiable under CTH 7321 attracting 18%. • However, heading 7321 excludes electro-thermic appliances falling under heading 8516 and appliances also using electricity for heating purpose, as in case of combined gas-electric cookers for example (heading 8516). Therefore, solar cookers which may have electricity as an alternate source of energy are out of purview of heading 7321. • A concessional GST rate of 12% is provided to various renewable energy devices and parts for their manufacture, which may fall under chapter 84, 85 and 94, vide Sl. No. 201A of Schedule II of

				notification No. 01/2017-CT (Rate) dated 28.06.2017. The goods covered under this entry are falling under chapters 84, 85 and 94, and are described as shown below: *Following renewable energy devices and parts for their manufacture:-* *(a) Bio-gas plant;* *(b) Solar power based devices;* *(c) Solar power generator;* *(d) Wind mills, Wind Operated Electricity Generator (WOEG);* *(e) Waste to energy plants / devices;* *(f) Solar lantern / solar lamp;* *(g) Ocean waves/tidal waves energy devices/plants;* *(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.* • The heading 8516 of chapter 85 covers the following goods as described below: *Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545* • Further, while tariff item 8516 50 00 covers microwave ovens, tariff item 8516 60 00 covers other ovens; cookers, cooking plates, boiling rings, grillers and roasters. Therefore, it appears that solar cooker with a dual source of both solar energy and electricity may fall under heading 8516 and attract GST rate of 12% under Sl. No. 201A of Schedule II of notification No. 01/2017- CT (Rate) dated 28.06.2017. • Since there is duality of rates on solar cookers

				depending on whether it is a single energy source or multiple energy source, Fitment Committee recommended to provide uniform concessional rate which would also promote renewable energy devices, and also bring parity with GST rate applicable on kerosene and wood burning stoves which are more harmful to the environment. • Fitment Committee recommended that along with issuing a clarification that Solar cookers that work on dual energy sources of solar energy and grid electricity are classifiable under 8516 and already attract 12%, a uniform rate of 12% for all kinds of solar cookers to avoid litigation.
11.	Steel/Aluminium Milk Can used in milk dairies	18%	12%	• Goods (Table, kitchen or other household articles of iron & steel; Utensils) falling under HSN 7323 and 7615 (Table, kitchen or other household articles of aluminium; Utensils) attract GST Rate of 12% vide Sl. No. 184 and 186 respectively of Schedule II of Notification No. 01/2017-CT (Rate) dated 28.06.2017. • WCO Explanatory Notes for HSN 7323, states that articles for kitchen use such as domestic milk cans are included within its ambit. Similarly, WCO Explanatory Notes for HSN 7615 state that this heading covers the same type of articles as are described in the explanatory notes to headings 7323 and 7324, particularly the kitchen utensils, sanitary and toilet articles described therein. • Further, as mentioned above, goods falling under HSN 7310 (Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 l) and 7612 (Aluminium casks, drums, cans, boxes, etc.) attract GST Rate of 18% vide Sl. No. 224 and 273 respectively of Schedule III of Notification No. 01/2017-CT (Rate) dated 28.06.2017.

				• As per the WCO Explanatory Notes (for HSN 7310), this heading *inter alia* covers sheet or plate iron or steel containers of a capacity not exceeding 300 l, commonly used for the commercial conveyance. Further, the larger containers covered by this heading include tar, or oil drums; petrol cans; milk churns; casks and drums for alcohol, latex, caustic soda, calcium carbide, dyestuffs or other chemicals. The smaller containers include boxes, cans, tins, etc. mainly used as sales packing for butter, milk, beer, preserves, fruit or fruit juices etc. • Similarly, for HSN 7612, the WCO Explanatory Notes state that the provisions of Explanatory Note to heading 7310 also apply mutatis mutandis to this heading. Further, it states that *"casks and drums of aluminium are mainly used for the transport of milk, beer, wine etc*." • It is also pertinent to mention that Sl. No. 275 A of Schedule III (goods at 18% GST) pertaining to HSN 7615 deals with *"goods [other than table, kitchen or other household articles, of aluminium; Utensils]"*. • Thus, a clear distinction is created between goods for domestic use/consumption, which are to be taxed at 12%; and goods for commercial use (which are to be taxed at 18%) with respect to HSN 7615. • Thus, from the WCO Explanatory Notes for the relevant chapters, it is clear that milk cans for use at a commercial scale/for business purpose would be covered under the heading 7310/7612, whereas, domestic milk cans would be classifiable under HSN 7323/7615. • Fitment Committee recommended to provide a uniform rate of 12 % for all kinds of milk cans irrespective of their use by way of creating a

				separate entry.
12	Aerated beverages and energy drinks (HS 2202) sold by Unit Run Canteens.	GST Compensation Cess:12 %	Cess payable by URC on outward supply of good may be fully exempted OR applicable cess may be collected at the Depot level for supplies made by URCs	• Aerated beverages and energy drinks are sold by Canteen Stores Department (CSD) through URCs to the authorised customers. • On account of exemption from GST on outward supply of goods by the URCs to the authorized customers, they are not required to be registered under GST. However, this exemption does not apply to Compensation Cess and therefore, URCs, being the point of sale, are required to be registered and pay compensation cess. • Ministry of Defence has represented that URCs are required to move along with Army units to different often remote locations across India and due to these challenges for the URCs to comply with GST Compensation Cess only for sale of aerated and energy drinks and therefore requested to either exempt the compensation cess or allow for the applicable cess may be collected at the Depot level. • Based on the recommendation of the GST Council in its 52nd meeting, the matter was referred to the Law Committee. The Law Committee has opined that there are no provisions as per which tax can be collected and deposited by a registered person in a State on behalf of a supply made by a supplier located in another state. Further, in the GST regime, supply is a taxable event and a person making taxable supply (except in case of RCM) is supposed to collect and deposit the applicable GST & cess and no such exception can be made within the current scheme of GST to collect and deposit GST at a different place than the point of sale. • In view of the observations of the Law Committee, the Fitment Committee recommended to exempt

				Compensation Cess on supply of aerated beverages by URCs.
13	Fertilizers	5%	Further reduction	• All fertilizers attract GST at the rate of 5%. The fertilizers are urea, DAP, Potassic (muriate of potash) fertilizers, and ammonium sulphate. • The Standing Committee on Chemicals & Fertilizers in its 43rd Report has recommended that the issue to further reduce GST on fertilizers may be placed before the GST Council. • The issue to further reduce GST (from 5%) on fertilizers was placed before the GST council in its 45th and 47th meetings held in September, 2021 and June, 2022, respectively. The GST Council, however, did not recommend any change in the rates of fertilizers or other organic farm inputs. • Blanket exemption from items such as fertilizers, chemicals and nutrients will cause duty inversion and blocking of capital for the industry. • However, in light of the strong recommendations of Standing Committee on Chemicals & Fertilizers, the matter is being placed again before the Council. • The Fitment Committee recommended that since the matter has been discussed in the previous GST Council meetings, the matter may be referred to the GoM on Rate Rationalization to take a holistic view.
14	Fertilizer Raw Materials (like Sulphuric Acid and Ammonia)	18%	5%/12%	• The Standing Committee on Chemicals & Fertilizers in its 43rd Report has stated that lower the GST on raw materials • Sulphur and Ammonia have been prescribed GST rate of 18% considering the pre-GST rate. Both Sulphur and Ammonia have multiple uses. • While sulphuric acid is used to make fertilisers, it is also used in the production of detergents, paints, dyes, plastics, artificial fibres etc. Similarly, while

				ammonia is mostly used in agriculture as fertilizer, it is also used as a refrigerant gas, for purification of water supplies, and in the manufacture of plastics, explosives, textiles, pesticides, dyes and other chemicals. It is found in many household and industrial-strength cleaning solutions also. • GST reduction for actual use on fertilizers would entail an end use-based exemption. This besides being difficult to administer are usually prone to misuse. • However, in light of the strong recommendations of Standing Committee on Chemicals & Fertilizers, the matter is being placed before Fitment Committee • The Fitment Committee recommended that the matter may be referred to the GoM on rate rationalization to take a holistic view.
15	Micronutrients	12%/18%	Reduce GST	• The Standing Committee on Chemicals & Fertilizers in its 43rd Report has opined that GST rates on micronutrients should be brought down • Micronutrients are considered as an essential plant nutrient under the Fertilizer (Inorganic, Organic Mixed) Control order, 1985. For example, Copper Sulphate (CuSO4.5H2O) [HS 2833 25 00] is inter alia used in agricultural fungicide. It attracts GST at 18%. Fertilizers attract GST at rate of 5%. Copper sulphate has other uses like drying agent, as an additive in fertilizer and food, and in industrial applications like textile, leather, wood batteries etc., as well. • Normally, micronutrients (like Zinc, manganese, copper and boron) are used in smaller quantities compared to fertilizer. Further, these have multiple uses across various industries. • Providing concession to micronutrients specifically for use as fertilizer would entail an end use-based

				exemption which besides being difficult to administer are usually prone to misuse. • The matter has been discussed in various GST council meetings including the 25th, 31st and 37th meetings. • However, in light of the strong recommendations of Standing Committee on Chemicals & Fertilizers, the matter is being taken up before Fitment Committee • Fitment Committee recommended that since the matter has been discussed in various GST council meetings including the 25th, 31st and 37th meetings, the matter may be referred to the GoM on rate rationalization to take a holistic view.
16	Tobacco products like cigarettes, bidis, smokeless tobacco products etc	28%	To notify maximum tax of 20% under CGST and 20% under SGST	• Request has been received to notify the maximum tax rate of 20% under CGST and 20% under SGST Act on tobacco products like cigarettes, bidis, smokeless tobacco products etc. • Fitment Committee recommended to refer the issue to GoM on Rate Rationalisation.
17	Pulses	5%, "pre-packaged and labelled" Nil, other wise	Clarification on IGST rate applicable on imported raw pulses packed in packages above 25 kg	• In the 47th GST Council meeting, the GST Council (based on the Interim Report of GoM on Rate Rationalisation) had recommended a change in levy of GST on specified goods like pulses, cereals like rice, wheat, flour, etc., from 'when bearing a registered brand or brand in respect of which an actionable claim or enforceable right in a court of law is available' to when "pre-packaged and labelled" as required under the Legal Metrology Act, 2009 and rules made thereunder. • The change was notified on 13th July, 2022, with effect from 18th July, 2022. Herein, it was

				defined that "the expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder." • Prior to 01.01.2018, Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011 read that as regards the applicability of Chapter II (provisions applicable to packages intended for retail sale), it was provided that the provisions of this Chapter shall not apply to - (a) packages of commodities containing quantity of more than 25 kg or 25 litre excluding cement and fertilizer sold in bags up to 50 kg; and (b) packaged commodities meant for industrial consumers or institutional consumers. • After the Legal Metrology (Packaged Commodities) Amendment Rules, 2017, with effect from 01.01.2018, it was amended to provide that the provisions of this Chapter shall not apply to - (a) packages of commodities containing quantity of more than 25 kilogram or 25 litre; (b) cement, fertilizer and agricultural farm produce sold in bags above 50 kilogram; and (c) packaged commodities meant for industrial consumers or institutional consumers. • FAQ was issued (after deliberation by the Fitment Committee) on 17th July, 2022, to clarify the scope of pre-packaged and labelled for the purposes of GST levy. • *For eg. In Sl No. 3 of the FAQ it was clarified that " For such commodities (food items- pulses, cereals, flour, etc.), rule 3 (a) of Chapter-II of*

				Legal Metrology (Packaged Commodities) Rules, 2011, prescribes that package of commodities containing quantity of more than 25 kg or 25 litre do not require a declaration to be made under rule 6 thereof. Accordingly, GST would apply on such specified goods where the pre-packaged commodity is supplied in packages containing quantity of less than or equal to 25 kilogram. *Illustration: Supply of pre-packed atta meant for retail sale to ultimate consumer of 25 Kg shall be liable to GST. However, supply of such a 30 Kg pack thereof shall be exempt from levy of GST."* • From the above FAQ, it is clear that the intention of the GST Council was that supply of specified items like cereals, pulses, flour etc., containing a quantity of more than 25 Kg/25 litre would not fall in the category of pre-packaged and labelled commodity for the purposes of GST and would therefore not attract 5% GST. • The Fitment Committee observed that the intention of the GST Council was always to tax agricultural farm produce less than 25 kg. In view of above, in order to align the GST rate notification with the intention of the GST Council, the Fitment Committee recommended that suitable amendment may be made in the definition of the expression 'pre-packaged and labelled' in the concerned GST rate notifications to align it with the afore-said intention of the GST Council, to exclude the supply of agricultural farm produce in packages of more than 25 kg or 25 litre from the scope of pre-packaged and labelled for the purpose of taxation. • Further, the Fitment Committee also recommended to regularise the issue for the past period on "as is where is" basis.

b) Issues where no change has been proposed by the Fitment Committee in relation to goods

Annexure II

S. No.	Description of Goods /HSN	Present Rate	Requested Rate	Comments
1.	Ice cream (HS 2105)	18%	*To reconsider the exclusion of Small Scale Manufacturers of Ice Cream from the benefit of Section 10(1) of the GST Act (composition levy scheme).*	• The Hon'ble High Court of Chhattisgarh, Bilaspur in W.P. (C) No. 2139 of 2019 has directed the GST Council to reconsider its decision on exclusion of ice cream from composition levy. • In the 17th GST Council meeting, the GST Council had approved to exclude manufacturers of ice cream and other edible ice, whether or not containing cocoa from composition scheme. • In view of the directions of the Hon'ble High Court of Delhi to reconsider the exclusion of small scale manufactures of ice cream from the benefit of Section 10(1) of the Act, the issue was placed before the Council in its 43rd meeting and the GST Council approved the continuation of exclusion of ice cream from composition levy. • Fitment Committee has recommended that the issue has been deliberated at length time and again by the GST Council and the Council has made a well-thought out recommendation. Therefore, the Fitment Committee recommends to maintain status quo.
2.	Pharmaceutical products/ equipment for research (Chapter 30)	5%/ 12%	Nil IGST on imports	• PAC recommended for : (i) exempting imports of pharmaceutical products to those organisations that are carrying out serious research in scientific field . (ii) Hospitals carrying out research on life saving medicines and treatment may

S. No.	Description of Goods /HSN	Present Rate	Requested Rate	Comments
				also be considered for extending the benefit IGST exemption. • Prior to GST, imports scientific equipment, instruments, apparatus, parts and consumables were exempt from additional duty (Countervailing duty in lieu of central excise duty and special additional duty leviable under section 3 of the Customs Tarff Act,1975) under Notification no. 51/96-Customs. Such countervailing duty and special additional duty based on existing domestic taxes like excise duty and VAT was to ensure that a level playing field was available to domestic manufacturers. With the enactment of GST, IGST is levied on imported goods at a rate equivalent to the domestic GST. • Upon introduction of GST, Notification no. 51/96-Customs was amended by Notification no. 43/2017-Customs dated 30th June 2017 to substitute, among others, the reference to "additional duty leviable thereon under Section 3" with "Integrated Tax leviable thereon under sub-section (7) of section 3 of the said Tariff Act". Consequently, such imports enjoyed IGST exemption after the introduction of GST. • Thereafter it was felt that domestic manufacturers of such goods were put in a disadvantageous position by paying 18%/28% while making inter-state supplies, the GST Council, in its 23rd meeting held on **10.11.2017**, recommended 5% concessional IGST to restore a level playing field for

S. No.	Description of Goods /HSN	Present Rate	Requested Rate	Comments
				domestic manufacturers. • The GoM on rate rationalization recommended that the concessional GST structure (including IGST on imports) may be withdrawn to avoid inverted duty structure. This was accepted in the 47th GST Council meeting held in June 2022. Accordingly, vide notification No. 11/2022-Integrated Tax (Rate) dated **13.7.2022** (which came into effect from 18.7.2022), notification 47/2017- Integrated Tax (Rate) was rescinded. Further, vide notification No. 42/2022-Customs dated 13.07.2022 the reference to "from the whole of Integrated tax leviable thereunder under sub section (7) of the Customs Tarff Act" in notification No. 51/96-Customs has been omitted. • The above position was also placed before the PAC. • As regards the second issue, this will entail end use-based exemption which are difficult to administer and monitor. The policy of the Government is to move away from end use-based exemptions. • Fitment Committee did not recommend to exempt IGST on imports of such goods as it would be detrimental to domestic manufacturers of such goods. The IGST exemption to imports were withdrawn to restore a level playing field for domestic manufacturers.
3.	Orthopaedic Implants	5%	18%	• In the 47th GST Council, the GST rate of 5% was fixed on all goods falling under heading 9021 (S. No. 255A of Schedule I of

S. No.	Description of Goods /HSN	Present Rate	Requested Rate	Comments
	HSN – 9021			notification No. 01/2017-CT Rate refers) in order to bring uniformity for all these goods falling under heading 9021 and bring relief to consumers needing such medical items. • Prior to this change some of the items like splints, implants etc attracted 12% GST rate. • Now, request is for increase the GST rate on orthopaedic implants to 18% stating that the inverted duty structure leads to blocking of working capital. • Further, it has also been mentioned that the imports have an advantage over domestic producers due to 'Nil' BCD and low 5% IGST rate. • Further, inputs were sought from Ministry of Social Justice & Empowerment (MoSJE) with respect to the request for increase in GST rates, which has replied that increase in GST rates would increase the cost of these goods and not be in the interest of persons with disabilities (Divyangjan). • Fitment Committee recommended to maintain status quo considering inputs from Ministry of Social Justice that the increase in GST rate would increase cost of these goods and not be in the interest of Divyangjan.

c) Issue in relation to goods placed before the Council for information

Annexure III

S. No.	Description of Goods /HSN	Present Rate	Requested Rate	Comments
1.	Updation in list of banks/entities eligible for IGST exemption as per S No. 359 A of Notification No. 50/2017 (Customs) dated 30.06.2017 to align with the change in Appendix 4B HBP of Foreign Trade Policy, 2023, by DGFT.	NA	NA	• A general approval was obtained from GST Council (in the 52nd Meeting) to update the lists as and when Appendix 4B is amended by DGFT, and thereafter place the changes before Council for information as the changes are technical in nature. • In light of the Corrigendum dated 09.02.2024 to Public Notice 28/2023 dated 18.08.2023 issued by DGFT to make it explicitly clear that the list of banks authorised by RBI to import- both Gold & Silver and only Gold is for FY 2023-24 w.e.f. 01.04.2023 and valid upto 31.03.24, a corrigendum was also issued with respect to Notification No. 60/2023-Customs dated 19.10.2023 so as to align it with the partially modified Appendix 4B of the Handbook of Procedure, 2023 (FTP 2023). • For the FY 2024-25, after issuance of updated list of authorised banks by RBI, DGFT also amended Appendix 4B of Handbook of Procedure, Foreign Trade Policy (FTP) ,2023 vide Public Notice No. 54/2023, dated 28.03.2024, updating the list of banks authorised for import of *Gold and Silver* by way of removing 4 banks namely- Bank of India, Indian Overseas Bank, Punjab National Bank & Union Bank of India from the existing list

				and by way adding 3 banks in the list of banks authorised for import of *only Gold* ,namely Indian Overseas Bank, Punjab National Bank & Union Bank of India, for the financial year 2024-25 wef 01.04.24 to 31.03.25.Accordingly, Notification No. 25/2024-Customs, dated 6th May, 2024 was issued to amend the list in Notification 50/2017-Cus implementing the same. • As general approval has already been obtained from GST Council to update the lists as and when amended by DGFT, and thereafter place the changes before the Council for information as the changes are only technical in nature, • Fitment Committee recommended to place the same before the GST Council for information.

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d) Recommendations made by the Fitment Committee for making changes in GST rates or for issuing clarifications in relation to services

Annexure IV

Sl. No.	Proposal	Details of request	Discussions in Fitment Committee and its recommendations
1.	To clarify the GST liability on the premium settlement by lead insurer to co-insurers in the co-insurance agreement.	• Transfer of money by lead insurer to the other co-insurers is merely a settlement of money. • There is no supply of service by co-insurers to the lead insurer. • The insurance service is jointly rendered by all the insurers to the insured. • GST is being discharged on the entire premium by the lead insurer. It is the tax suffered premium which is apportioned by the lead insurer to the co-insurers. • Based on the recommendations of the 47th GST Council meeting held on 28th & 29th June, 2022, it was clarified to IRDAI that though lead insurer pays tax on the entire amount, the co-insurer(s) being separate legal entities and receiving a share of premium from lead insurer are liable to pay GST on the portion of the premium they receive. • In GST, this arrangement could only ensure that co-insurers avail ITC on their input services and pay GST on their output service, i.e., share of premium. Lead insurer could avail the ITC of GST paid by the co-insurer(s). • It was also conveyed that no extra liability is created if co-insurer(s) pay	• The issue of taxability of co-insurance premium apportioned by lead insurer to the co-insurer in coinsurance agreements was placed before GST Council in its 47th meeting held in June, 2022 and based on recommendation of the Council, it was clarified to IRDAI that though lead insurer pays tax on the entire amount, the co-insurer(s) being a separate legal entity and receiving a share of premium from lead insurer are liable to pay GST on the portion of premium they receive. • Thereafter, IRDAI has brought to the notice certain challenges in implementing the above decision of the GST council. • In co-insurance, insured (policy holder) chooses to get the risk/asset insured by more than one insurer. The insured determines the panel of insurers and their share of participation at the time of commencement of insurance cover. • Lead insurer and co-insurers jointly provide the insurance service to the insured. All co-

Sl. No.	Proposal	Details of request	Discussions in Fitment Committee and its recommendations
		tax on their share of premium received from lead insurer. In fact, if co-insurers are absolved of their liability, they would lose their proportionate ITC, while lead insurer would end up paying higher amount of tax in cash. • IRDAI has represented that it may not be appropriate for co-insurers to raise an invoice on the lead insurer against the co-insurance premium apportioned to them in absence of any underlying supply by the co-insurers to the lead insurer. • For the same reason, it may not be appropriate for the lead insurer also, to take ITC of the GST charged by co-insurers on such invoices. • IRDAI has also raised the issue as to what should be the description of service declared in such invoices as the same definitely cannot be insurance service by co-insurer to the lead insurer.	insurers are signatories to the co-insurance agreement with the insured. The lead insurer handles the premium and claim, as a single point of contact for the insured (policy holder). • The entire premium is collected by the lead insurer which is apportioned among the lead insurer and the other co-insurers in the ratio of the risk assumed by them. • The claims are also processed by the lead insurer but paid by all the co-insurers in the ratio of the risk assumed by them. • Lead insurer pays GST on the entire amount of premium. • All co-insurers including the lead insurer are distinct legal entities who jointly supply insurance service to a common insured. • Since the entire GST @18% is paid by the lead insurer on behalf of all the co-insurers, after deliberation, Fitment Committee recommended as below: (i) Supply between lead insurer and co-insurer may be declared as no supply under Schedule III of the CGST Act, 2017. (ii) To regularise the past cases on "as is where is basis" by way of issuance of a

Sl. No.	Proposal	Details of request	Discussions in Fitment Committee and its recommendations
			circular.
2.	To clarify regarding GST taxability on re-insurance commission.	• As per General Insurance Council (GIC) and Insurance Regulatory and Development Authority of India (IRDAI), under the Insurance Act, 1938, every general insurer reinsures a part of the general insurance risk assumed by it with other insurers/ reinsurers. This is known as reinsurance. • The reinsurer allows a deduction (as a certain percentage of the premiums received) as per mutual agreement. This is treated as a discount allowed by the reinsurer in the premium payable. This is referred to as "reinsurance commission" in trade parlance. • Reinsurer charges GST on the gross premium charged without deducting reinsurance commission. Here, the reinsurance commission operates like a credit note. • Reliance has been placed on circular dated 16-04-2010 issued by CBIC in the context of service tax in the positive list regime which clarified as below *"…… the arrangement between the insurance company and the reinsurer is only sharing of expenses and there is no service provided by the insurance company to the re-insurer for a consideration. Since the policy holder may not even be aware of the operations of the re-insurer, it cannot be said that the payment made by the re-insurer to the*	• Reinsurance is an insurance of the insurance companies. Insurance companies spread their risk by reinsuring whole or part of the risk assumed by them for which re-insurance premium is paid by insurance companies to the re-insurer. • Primary insurers make marketing, administrative and underwriting efforts and incur expenses in procuring the insurance business. • The reinsurers do not incur these costs. Therefore, it is a general practice that reinsurers participate in the insurers acquisition cost by paying reinsurance commission from the premium ceded to them. • Reinsurance commission is a fee paid by a reinsurance company to a ceding company to cover such administrative costs, underwriting and business acquisition expenses. • The very reinsurance contract which specifies the risk and the premium ceded by the insurer to the reinsurer also specifies the reinsurance commission as a percentage of the ceded insurance premium. • While calculating operating profit, ceding commission received by insurer is not added to his earnings.

Sl. No.	Proposal	Details of request	Discussions in Fitment Committee and its recommendations
		insurance company is for its business promotion or a service on behalf of the re-insuring company (i.e., Business Auxiliary Service). In fact, it is the reinsurer which provides insurance service to the insurance company. As both the insurance company and reinsurer pay service tax on the entire amount of premium charged by them, the question of charging service tax under any other taxable service does not arise." • IRDAI have requested for a clarification along the lines of 2010 circular that no GST is payable on reinsurance commission.	• Thus, it was observed that the arrangement between the insurance companies and the reinsurer in this transaction is only sharing of expenses. • After deliberations, Fitment Committee recommended as follows: (i) Transaction of ceding commission between Insurer and Reinsurer may be declared as no supply under Schedule III of CGST Act, 2017. (ii) To regularise the past cases on "as is where is basis" by way of issuance of a circular.
3.	(a) To restore GST exemptions on outward supplies made by Ministry of Railways (MoR) and exemption on intra-railway supplies (those made between different	• Indian Railways vide representation dated 12.01.2024 has stated the following: o Railways provide transport services to general public carrying both passengers and vital goods at subsidized rates. They recover only 57% of the cost of travel from passengers; o Various commodities across both agriculture and industry sectors are carried at less than cost, as part of socio-economic service rendered by Railways; o Railways also operated a host of services and lines including branch	**(a) To restore GST exemptions on outward supplies made by Ministry of Railways (MoR).** • Based on the request of Indian railways, all supplies of goods and services made by Indian Railways were brought under Forward change mechanism after recommendation of the GST Council in its 52nd Meeting and consequently exemptions that were available to Indian railways were withdrawn. • Indian Railways had brought difficulties in compliance of the

Sl. No.	Proposal	Details of request	Discussions in Fitment Committee and its recommendations
	railway zones). **AND** (b) To exempt GST on transactions between Special Purpose Vehicles (SPVs) and Ministry of Railways (MoR) retrospectively w.e.f 01.07.2017	lines and strategic lines in the interest of regional equity and to serve the defence needs of the country. They are designed to serve the larger public interest of economic development of backward areas and are not focused on earning profits. o Since various State Governments are also partnering the Railways in various JV projects they are also impacted by changes in taxation. o IR are an environmentally friendly mode of transport which is now losing to road transport; from 80% in 1950s it has come down to 26% in 2023 o IR has set a target to raise the modal share of transportation by rail from the current level of to 35% by 20230-31 to mitigate the adverse impact on environment and to reduce the overall logistics cost for the country. This will result in savings of Rs 1.2 lakh crores on account of HSD oil with consequential environmental impact. • In addition to above Indian Railways has submitted the following points in support of their request for restoring exemptions on outward supplies: o IR plays a vital role in ensuring the smooth movement of goods and	decision of the 52nd GST Council meeting given that Indian Railways provide transport services to general public carrying both passengers and vital goods at subsidized rates. They recover only 57% of the cost of travel from passengers. • They also provide services to general public such as platform tickets, facility of cloak room services etc at very nominal charges. It would create a burden on Indian railways as it would not be possible to pass on the burden. • <u>After deliberations, Fitment Committee recommended that following specific services provided to general public may be exempted from GST:</u> (i) Platform tickets, (ii) Facility of retiring rooms/waiting rooms, (iii) Cloak room services and (iv) Battery-operated car services. • As regards, intra railway supplies, Railway officials explained before the Fitment Committee that the structure of the Indian Railways is such that Zonal railways are responsible for operating and managing transportation services among specific zone.

Sl. No.	Proposal	Details of request	Discussions in Fitment Committee and its recommendations
		services. Constituent Zonal Railways are responsible for operating and managing railway services within specific geographic region cutting across state boundaries. o Each zone has its own administrative and operational structure and these zones are further divided into divisions, which are responsible for specific routes and services with zone. o Zonal divisions help in efficient operation and management of vast railways network in India. All the zonal railways work in tandem with each other. o Many long distance and important trains pass through the jurisdictions/states of several zonal railways. o Coordination among them is of utmost importance for seamless running of trains and other issues like scheduling route planning, repair, maintenance and crew management are handled collectively. o On day-to-day basis, Railways are engaged in enormous volume of transactions with its customers, other railway zones or divisions, various central/state government agencies or departments, public	• Each Zone has been further divided into divisions. Many trains, especially long distance pass through states of several zones. • Intra Railways services include services such as train operations, repair and maintained services, supply of wagons, coaches, locomotives etc. amongst various zones and divisions of the railways. • Indian Railways has not been charging for intra railways activity and no invoices are being issued for these transactions. Taxing the intra railways transactions will hamper the operational efficiency. • There are intricate issues involved in intra railways supply such as identifying the supply from one zone/division to other; nature of supply such as mixed, composite supply; place of supply as one zone may be located in one or more states etc. • Further, value of supply is also difficult to be ascertained as there is no actual flow of consideration and no cost allocation per supply is there. • Fitment Committee recommended to restore exemption on intra-railway supplies (those made

Sl. No.	Proposal	Details of request	Discussions in Fitment Committee and its recommendations
		sector undertakings, etc. o As a government entity, the Railways does not charge for intra railway activities, hence implementing GST on transactions is not possible since pricing and invoicing cannot be done. o Additionally due to several limitations on availing the ITC including restriction on using the credit of GST paid on goods (since only services are permitted for availment of ITC) for providing transportation services, the overall costs will increase for MoR and this will need to be passed on to the general public or will need additional GBS from Government of India. • Indian Railways has submitted the following points in support of their request to exempt GST on transactions between SPV and IR o The issue of GST on transactions between SPVs and Indian Railways and charging of GST on transactions within the component units of Indian railways will push up Railway's logistics cost significantly and will render rail transport costly. o Given the huge social costs borne by the Railways and being a part of Government of India its	between different railway zones). • Further, the intervening period i.e. from 20.10.2023 till date of notification on above services has been recommended to be regularised on "as is where is basis". **(b) To exempt GST on transactions between Special Purpose Vehicles (SPVs) and Ministry of Railways (MoR) retrospectively w.e.f. 01.07.2017.** • MoR has earlier requested for issuance of clarification that both apportioned revenues paid to SPVs and O&M costs charged by Indian Railways from the SPV do not attract GST. • This request was placed before 48th GST Council held on 17.12.2022 and based on the recommendations of the Council, it was clarified that Indian Railways and the SPV are distinct persons. • Supply of services by SPV to IR by way of allowing it 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. Similarly, maintenance of services supplied by Indian Railways to SPV are also taxable.

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		operations cannot be treated as commercial in nature. o MoR has been exploring options for supplementing funds for capacity building since 1986, in view of the need to supplement budgetary support and internal generation. MOR created financial structures (mainly Joint Ventures) to raise debt for implementing sanctioned ports/mines connectivity projects. o In 2012, CCEA approved new PPP policy of MoR whereby various participative models including Joint Ventures, BOT, Non-Government Line, Customer Funding, Annuity models were approved. Under the JV model interested stake holders in partnership with railway PSU could participate in funding to expedite execution. In many cases, project specific SPVs were formed by RVNL. Stakeholders of SPVs include the state governments of Odisha, Andhra Pradesh, Gujarat, Karnataka, Chhattisgarh, Maharashtra, Goa and Kerala, besides MoR. o Currently, GST is charged at 5% on rail transport, including transport on SPV lines. The SPVs do not run a separate transport	• MoR has brought out the difficulties faced by them in implementation of the issue and matter has been examined. • SPVs are created for funding projects of Indian Railways and to supplement the Gross Budgetary Support of the Government to meet the infrastructure requirements of the Indian Railways. MOR created financial structures (mainly Joint Ventures) to raise debt for implementing sanctioned ports/mines connectivity projects. • The additional 18% cannot be transferred to ultimate user as SPVs do not decide the fare/freight structure which is based on tariffs set by Railways which are uniform throughout the country. • After deliberations, Fitment Committee recommended to exempt GST on transactions between SPVs and MoR and to regularise the past cases on "as is where is basis."

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		business. To tax the transaction between IR and SPVs cannot be transferred to ultimate user as SPVs do not decide the fare/freight structure which is based on tariffs set by Railways which are uniform throughout the country. The ITC on this transaction would also be partially blocked. o SPVs finances are also adversely affected due to this sudden tax burden leasing to financial unviability. The financial burden would result in either in rendering these crucial transport connections defunct or the Governments would have to step in to fund these lines to keep them functional. This is not in interest of Government or the national economy. • These projects were conceived during the period 2000-2010 and changing their revenue streams mid-concession period, by imposition of huge tax burden, will be against the spirit of PPP scheme. It shall dissuade private sector participation in MoR's future railway projects. Even future projects canvassed by state governments premised on part funding by states may not find any traction in view of the adverse tax implications.	
4.	To either exempt or	• Post 1st July 2012, Notification No. 25/2012-ST dated 20.06.2012 was	• Under GST, Crop Insurance under Pradhan Mantri Fasal Bima

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	regularize reinsurance services of specified insurance schemes from payment of the GST liability for the period from 01.07.2017 to 24.01.2018.	issued. Sl. No. 26 of this notification exempted services concerning general insurance business provided under certain specified schemes. • The exemption vide entry no. 35 of Notification Number 12/2017 - Central Tax (Rate) dated 28/06/2017 pertains to general insurance under various notified schemes. All such schemes are Government programmes for priority areas of the Indian public policy. One of the specified schemes is the Pradhan Mantri Fasal Bima Yojna (PMFBY). As per the operational guidelines issued by the Ministry of Agriculture and Farmers welfare for this scheme, insurer is required to take appropriate reinsurance cover for their portfolio to safeguard the interest of insured. Accordingly, as per the regulations and guidelines, every PMFBY policy is required to have both components – insurance and reinsurance. Reinsurance is an integral part of the arrangement. • Under service tax regulations, both insurance and reinsurance were exempted. If this was not done, service tax charged by reinsurance companies (or paid by insurer under reverse charge in case of import of such services) would become a cost to the insurer, thereby impacting the cost of providing such insurance to farmers. • The reinsurance service provided to	Yojana (PMFBY) and Rashtriya Krishi Bima Yojana are exempt from GST vide Sl. No. 35 of notification No. 12/2017-CT(R). • In the 25th GST Council meeting held in January, 2018, it was recommended to exempt re-insurance services in respect of services related to insurance schemes already exempt under Sl. Nos. 35 and 36 of notification No. 12/2017-CT (Rate). Accordingly, exemption was notified w.e.f. 25.01.2018. • The issue of exemption of reinsurance services of the specified insurance schemes for the period from **1st July 2017 to 24.01.2018** was discussed in the 47th GST Council meeting held in June, 2022. However, no change was recommended. • The matter has been re-examined and the Fitment Committee viewed that the issue is for a brief period of 7 months only before exemption was granted to reinsurance of specified exempt services covered by Sl. Nos. 35 & 36 of notification No. 12/2017-CT (Rate). • Fitment committee recommended to regularize the payment of GST on reinsurance services of specified insurance schemes covered by Sl.

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		insurance companies is a part and parcel of the same activity provided by the insurance company to the farmers. No GST is required to be paid on supply of such reinsurance services as the said reinsurance services are required to be provided in relation to the insurance policies which are exempted from payment of GST under the Notification Number 12/2017 CT (Rate) as amended.	Nos. 35 & 36 of notification No. 12/2017-CT (Rate) for the period from 01.07.2017 to 24.01.2018 on 'as is where is basis' i.e., suppliers who have paid GST shall not be eligible for refund and those who have not paid shall not be required to pay. This may be done by way of issuance of a circular.
5.	To clarify that reinsurance services of the insurance schemes for which total premium is paid by the Government is exempt from GST for the period 01.07.2017 to 26.07.2018.	• Certain insurance services under the erstwhile regime of service tax were exempted from the levy of service tax under Sl. Nos. 26 and 26A of Notification No. 25/2012-ST dated 20.06.2012. • With advent of GST, such exemption was extended to insurance services for schemes covered under Sl. Nos. 35, 36 and 40 of the Notification No. 12/2017 - CTR. • Reinsurance services provided to insurance companies engaged in providing insurance services under specified schemes as notified under Sl. Nos. 35, 36 and 40 of Notification No. 12/2017-CTR dated 28.06.2017 were not exempted initially. • GST being an indirect tax levy, the burden was ultimately borne by the end customer, and in the present case, by the state exchequer, which increased the	• In the 28th GST Council meeting held on 21.07.2018, it was decided to exempt re-insurance of insurance schemes already exempt under Sl. No. 40 of Notification No. 12/2017-CTR. The exemption, brought into effect by Notification No. 14/2018-CT(R) dated 26-Jul-2018, is prospective w.e.f. 27-Jul-2018. • Sl. No. 40 of Notification No. 12/2017-CT(R) exempts services provided to the Central Government, State Government and Union Territory under any insurance scheme for which total premium is paid by the Central Government, State Government and Union territory. • The matter has been examined and Fitment Committee viewed that the issue is for a period of 13

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		cost of premium. • In addition, since the credit of GST charged by reinsurance company was not available as an input tax credit to the insurance companies, any GST collected by the reinsurance company was ultimately added to the cost of the premium. • The GST Council in its 25th meeting dated 18.01.2018 recommended exemption of reinsurance of specified government insurance schemes under Sl. No. 35 and 36 to the Notification No. 12/2017-CTR. • To give effect to the said decision of the GST Council, vide Notification No. 02/2018-CTR dated 25.01.2018, Sl. No. 36A was inserted in Notification No. 12/2017-CTR. • However, the notification failed to consider public insurance scheme(s) run by Central Government /State Government/Union Territories specified under Sl. No. 40 of Notification No. 12/2017-CTR. • That on account of such fallacy, reinsurance services only for selective public insurance scheme(s) provided by the Central Government got exempted. • It would be evident that it was never the intention of the Government to levy GST on reinsurance services provided to insurance companies for insurance schemes which were funded by the	months before exemption was granted to reinsurance of insurance services covered by Sl. No. 40 of Notification No. 12/2017-CTR dated 26.07.2018. • Fitment committee recommended to regularize the payment of GST on reinsurance services of the insurance schemes for which total premium is paid by the Government covered under Sl. No. 40 of notification No. 12/2017-CTR dated 28.06.2017 for the period from 01.07.2017 to 26.07.2018 on 'as is where is basis' i.e., suppliers who have paid GST shall not be eligible for refund and those who have not paid shall not be required to pay. This may be done by way of issuance of a circular.

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		Government. • After the 28th GST Council meeting, Notification No. 14/2018-CTR dated 26.07.2018 extended exemption to reinsurance services covered under Sl. No. 40. • The decision of GST Council was merely to clarify and make explicit that was implicit in the Notification No. 02/2018-CTR and therefore the benefit of such curative Notification No. 14/2018-CTR should be available from 01.07.2017.	
6.	To clarify that the term 'reinsurance' as mentioned at Sl. No. 36A of Central Tax Notification No. 12/2017-CT(Rate) dated 28.06.2017 means and includes 'retrocession' services and therefore	• In the 25th GST Council meeting dated 18.01.2018 and 28th GST Council meeting dated 21.07.2018, it was recommended that re-insurance of government sponsored insurance schemes should be exempt from GST. • Exemption Notification No. 02/2018-Central Tax (Rate) dated 25.01.2018 and Exemption Notification No. 14/2018-Central Tax (Rate) dated 26.07.2018 were issued to exempt reinsurance services with respect to such government sponsored insurance schemes. • Insurance Regulatory and Development Authority of India ("**IRDAI**"), recognises retrocession services to be included in reinsurance services and that no distinction has been made by IRDAI between the two. • The term 'retrocession' refers to a	• Entry at Sl. No. 36A in the notification No. 12/2017-CTR dated 28.06.2017 provides for exemption to services by way of reinsurance of the insurance schemes specified in serial number 35, 36 (w.e.f. 25.01.2018) and serial number 40 (w.e.f. 27.07.2018). • An insurance company (primary insurer) takes on a risk by insuring someone's property. To manage their own exposure to potential large losses, they might purchase reinsurance from another company (reinsurer). • However, the reinsurer might also want to further spread their risk by transferring a portion of the risk they have taken on to other reinsurers. This process of reinsuring a reinsurance contract is

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	retrocession services of specified insurance schemes are also eligible for exemption from GST.	reinsurance transaction where 'reinsurers' further reinsures its risk in an underlying insurance scheme. It is a settled position of law that reinsurance means and includes retrocession, and that retrocession is nothing but a term of commercial use. • The retrocession is nothing but a re-insurance transaction whereby the risk of a reinsurance is ceded to another insurer while in reinsurance agreement also part of one insurer's risk is ceded to another insurer. • A position has been taken that retrocession services are different from reinsurance services by some field formations.	called retrocession. This practice enhances the overall stability of the insurance industry by mitigating the impact of large losses. • IRDAI (Re-insurance) Regulations, 2018 provides for the following definition of 'retrocession': 2(21)'Retrocession' means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or an IIO (IFSC Insurance Office) or a CBR (Cross border re-insurer); • From the above, it is seen that retrocession is a 're-insurance of re-insurance' transaction wherein the reinsurer further cedes a part of its risk to the retrocessionaire. • Fitment committee recommended that the issue may be clarified that retrocession is a 're-insurance of re-insurance' transaction wherein the reinsurer further cedes a part of its risk to the retrocessionaire and therefore, eligible for the exemption under Sl. No. 36A of the notification No. 12/2017-CTR dated 28.06.2017. This may be done by way of issuance of a circular.
7.	To clarify regarding	• A Gazette notification was issued in compliance with the budget	• This issue was deferred by the 52nd Council held on 07.10.2023.

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	incentive amount that is shared by acquirer bank with other stakeholders in the digital payment ecosystem, as this also comes under the purview of the Gazette notification issued to notify the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions (Scheme in short).	announcement (FY 2021-22), to give further boost to digital transactions in the country. • It was decided by government to incentivise the acquiring banks by way of paying percentage of value of RuPay Debit card transactions and low value BHIM UPI transactions for a period of one year w.e.f. April, 2021. • Further, in the same Gazette notification, it has been notified that the incentive will be shared by the acquiring banks with other stakeholders. • Under the said scheme, the Government has paid incentive for FY2021-22 and is in process of making Q4 FY2022-23 payment.	• To boost the digital transactions, government is incentivizing the acquiring banks by way of paying percentage of value of RuPay Debit card transactions and low value BHIM UPI transactions. • Applicability of GST on the incentive paid by MeitY to acquiring banks under the said incentive scheme was examined in the 48th GST Council meeting held in December, 2022. • Based on the recommendations of the 48th GST Council meeting, it was clarified that incentives paid by MeitY to acquiring banks under the said scheme are in the nature of subsidy and thus not taxable. • The instant request is for clarification regarding incentive amount that is further shared by acquiring bank with other stakeholders in the digital payment ecosystem. • As per Section 10A of Payments and Settlement Act, 2007, no bank or system provider shall impose, whether directly or indirectly, any charge upon a person making or receiving a payment by using the electronic modes of payment prescribed under section 269SU of the Income Tax Act, 1961 and debit card powered by RuPAY,

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			BHIM UPI are notified under said section. • The gazette notifications dated 17th December 2021 and 14th January 2023 issued by MeiTY state that the incentives will be shared by the acquiring banks with other payment system participants and the payment system operator, in the proportion and manner decided by NPCI in consultation with the participating banks. • However, under the preview of the Incentive Scheme FY2021-22 and 2022-23, no specific guidelines have been issued for Payer Payment Service Providers (PSPs) (typically banks) to share incentives with Third Party application Providers (TPAPs) at a specified rate. The sharing of incentive is determined by the business agreement between the payer PSP and TPAP. • The incentive given by the government to acquiring banks has already been clarified as being in the nature of subsidy and the same is being shared with stakeholders. • The portion of the incentive to be shared with the stakeholders is not income of the acquiring banks and has to be shared with the stakeholders on the proportions as

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			decided by the NPCI in consultation with the acquiring banks and stakeholders. • The acquiring bank is merely acting as a single point for the government to disburse the incentive scheme. • Fitment committee recommended to issue a clarification that further sharing of the incentive, where such incentive is clearly defined under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions and is decided in the proportion and manner by NPCI in consultation with the participating banks is not taxable.
8.	To clarify whether GST is applicable on the statutory collections made by the Real Estate Regulatory Authority (RERA) in accordance with the Real Estate (Regulation and	• RERA is a statutory authority established under Real Estate (Regulation and Development) Act, 2016 enacted by the Parliament for the regulation and promotion of the real estate sector with a mandate to discharge its statutory functions prescribed in the above Central Act and the Rules and Regulations made by the respective state/ UT government. • Under the said regulation, real estate projects and real estate agents have to get themselves registered with RERA for which RERA get a registration/renewal fee. RERA also collects penalty in case of failure to register or acting in	• This issue was deferred by the 52nd Council meeting held on 07.10.2023. During the meeting, it was recommended by Hon'ble Minister of Maharashtra to call the representative of the RERA authorities to the fitment committee so that they can explain their views on the issue. • Accordingly, representatives of RERA were called and they gave detailed representation on the issue. • Earlier there was no single regulator to ensure compliances of the sanctions granted by Urban

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	Development) Act, 2016.	contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016. • The fees collected get credited to the Real Estate Regulatory Fund and all the penalties get credited to the consolidated fund of the states. • The statutory function of regulating the real estate development and construction of the building entrusted to the RERA falls squarely under Entry No.1 and 2 of the Twelfth Schedule of the Indian constitution read with Article 243W, as below: o Urban planning and town planning; o Regulation of land-use and construction of buildings. • Services by Central Government, State Government, Union territory, local authority, or a governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the constitution is exempt from levy of GST vide entry 4 of the notification No.12/2017-CTR. • RERA can revoke the registration under Section 7 (b) of the Act, if a promoter violates any of the terms or conditions of the approval given by the competent Authority and get the remaining works carried out under section 8. • RERA can authorise transfer of a project from one promoter to another	and Town Planning bodies and designated adjudicator for redressal of consumer disputes. To fill this crucial functional gap, a single regulatory authority with statutory powers, i.e. RERAs were conceived through the Real Estate (Regulation and Development) Act, 2016. • The main functions of RERA are to ensure compliance of obligations cast upon the promoters under this Act including Town planning, monitor progress of construction of Projects till their completion and to adjudicate cases. • Entry 4 of notification No.12/2017-CTR dated 28.06.2017 exempts "s*ervices by Governmental Authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the constitution".* • Governmental Authority has been defined as *"an authority or a board or any other body,—* o *set up by an Act of Parliament or a State Legislature; or* o *established by any Government* *with ninety per cent or more*

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		and it also ensures that a project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authority. • Under Section 32 of the RERD Act, RERAs render advice to the appropriate government in matters relating to the development of the Real Estate Sector. • Certain CGST authorities in a few states have initiated proceedings to assess GST liability on RERA's statutory collections. This has raised concerns among the association members, who are entities regulated under the Central Act. No. 16 of 2016.	*participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution."* • RERA has claimed that their statutory function of regulating the real estate development and construction of the building entrusted to them falls squarely under Entry No.1 and 2 of the Twelfth Schedule of the Indian Constitution. • S. No. 1 and 2 of the 12th Schedule of the Constitution reads as under: o Urban planning and town planning; o Regulation of land use and construction of buildings. • The functions and powers of RERA indicates that RERA ensures, actual implementation of Urban Planning and Town Planning in the Real Estate Projects. • RERA performs statutory function of regulating the real estate development and construction of the building entrusted to them which fall under Entry No.1 and 2 of the Twelfth Schedule of the Indian constitution. • Real Estate Regulatory Authority (RERA) being an authority set up by an Act of Parliament, viz., The

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			Real Estate (Regulation and Development) Act, 2016 (RERD Act), is a 'governmental authority' as per above definition mentioned in the exemption notification. • Fitment Committee recommended to clarify by way of a circular that RERA is covered under the scope of entry number 4 of notification No. 12/2017-CT(R).
9.	(i) To clarify whether service by way of hostel accommodation, service apartments/ hotels booked for longer period is a service of renting of residential dwelling for use as residence and exempted as per entry no. 12 of the notification No. 12/2017-CT (Rate) dated	• The accommodation services under heading 9963 by a hotel, inn, guest house, club or campsite by whatever name called, having declared tariff of a unit below one thousand rupees per day or equivalent were exempt till 17.07.2022 vide entry no. 14 of the notification No. 12/2017-CT(R) dated 28.06.2017. • Vide the latest amendment notification No. 04/2022- CT(Rate) dated 13.07.2022, the exemption to hotel accommodation having per day charges below Rs. 1000/- has been withdrawn w.e.f. 18/07/2022 and the said supply is now made taxable at 12% by the notification No. 03/2022-CT (Rate) dated 13.07.2022. Currently, hotel accommodation having value of supply less than or equal to Rs. 7500 per unit per day attracts 12% whereas those having value of supply more than Rs. 7500 per unitper day attracts 18%.	• This issue was deferred in the 52nd GST Council meeting held on 07.10.2023. • Vide Sl. No. 66 of notification No. 12/2017 – CTR, no GST is payable on hostel fee or rent collected by educational institutions whether private or Government including schools, colleges, and universities, from students living in their hostels. • However, hostels operated privately which do not belong to any educational institutions have to pay GST as applicable. They are exempt upto threshold turnover of Rs. 20 lakh. • Earlier, hotel accommodation having tariff of Rs. 1000 per day or less was exempt from GST. Private hostels charging Rs. 30000 or less per month were availing benefit of this exemption.

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	28/06/2017. (ii) Request for GST exemption on hostels for poor and middle-class students run by charitable trusts.	• Circular No. 354/17/2018-TRU dated 12.02.2018 at its point no. 11 has considered the hostel accommodation at par with the hotel accommodation. The said clarification reads as below: *Hostel accommodationservices do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT (Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent are exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt. [Sl. No. 14 of notification No. 12/2017-CT(Rate) refers]* • However, in the case of Taghar Vasudeva Ambrish, in WP No. 14891 of 2020, the Hon'ble Karnataka High Court at para 12 of the judgment, while reproducing the meaning of 'residential dwelling' has observed that "*in normal trade parlance residential dwelling means any residential accommodation and is different from hotel, motel, inn, guest house, etc. which is meant for temporary stay*." In para 13, the	• Based on the recommendations of GoM on rate rationalization in the 47th GST Council meeting held in June, 2022, this exemption in respect of hotel accommodation having tariff of Rs. 1000 or less per day was withdrawn with effect from July, 2022. • Thereafter private hostels started claiming exemption applicable to renting of residential dwelling for use as residence, as per entry at Sl. No. 12 of notification No. 12/2017 - CTR. • The Hon'ble Karnataka High Court order dated 03.02.2022 in the case of Taghar Vasudeva Ambrish held that residential dwelling includes hostels. An appeal has been filed and is pending before Hon'ble Supreme Court of India. • As per Annexure to notification No. 11/2017- CTR dated 28.06.2017, accommodation services provided by Hotels, Inn, Guest houses, Clubs & the like are classified under SAC 9963. Other accommodation services such as student residences, hostels, Camps, Paying Guest and the like are also classified under the same heading. The said entries reads as below:

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		court has noted that "in hostels, the duration of stay is more as compared to hotel." And later in para 14, it came to conclusion that "*it cannot be held that the residential dwelling does not include hostel which is used for residential purposes by students or working women*." Thus, the court has held the service of hostel accommodation as the services by way of renting of residential dwelling for use as residence. • Entry no. 12 of notification No. 12/2017-CT (Rate) dated 28.06.2017 exempts the services by way of renting of residential dwelling for use as residence. Therefore, if the hostel accommodation is considered as the hotel accommodation, in line with the circular dated 12.02.2018 issued by CBIC, it is taxable service and if it is considered as residential dwelling, as held by the Hon'ble Karnataka High Court, it is an exempt service. If the ratio of 'temporary stay' applied by Hon'ble Karnataka High Court, is considered then it may initiate some more legal disputes in case of taxation on Service apartments, which were usually booked by the companies for a considerably longer period. • Further, services provided by an	"Group 99631 Accommodation services 996311 - Room or unit accommodation services provided by Hotels, Inn, Guest House, Club and the like 996312 - Camp site services 996313 - Recreational and vacation camp services. Group 99632 Other accommodation services 996321 - Room or unit accommodation services for students in student residences 996322 - Room or unit accommodation services provided by Hostels, Camps, Paying Guest and the like 996329 - Other room or unit accommodation services nowhere else classified" • Heading 9972 includes real estate services involving owned or leased property. It includes rental or leasing services involving own or leased residential property that are primarily residential and excludes accommodation services provided by operating hotels, motels, rooming houses, school dormitories, camp sites and other lodging places.

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		education institution to its students, faculty and staff are already exempt from payment of GST vide Sl. No.66 of the notification No. 12/2017-CTR. Hence, hostel facilities wherever provided by an educational institution to its students, faculty and staff are covered under this exemption.	• The said entries in Annexure to notification No. 11/2017 -CTR reads as below: "Heading 9972 - Real estate services Group 99721 - Real estate services involving owned or leased property 997211 - Rental or leasing services involving own or leased residential property" • Further, in the Explanatory notes to the Scheme of Classification of Services, it is clearly mentioned that the service code 997211 does not include accommodation service such as school dorms etc. The relevant extract is placed below: "997211 Rental or leasing services involving own or leased residential property. This service code includes rental or leasing services concerning residential properties by owners or lease holders houses, flats, apartment buildings, multiple use buildings that are primarily residential, residential mobile home sites. This service code does not

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			include: - accommodation services provided by operating hotels, motels, rooming houses, school dormitories, camp sites and other lodging places, cf.99631" • Service by way of hostel accommodation, service apartments/ hotels are not classified under heading 9972 and thus, it is not a service of renting of residential dwelling for use as residence which is exempt under entry no. 12 of the notification No. 12/2017-CT (Rate) dated 28/06/2017. • There is no exemption for hostels run by charitable trusts or religious institutions at present. However, renting of rooms having charges less than Rs. 1000/- per day, in religious precincts by a registered charitable or religious trust is exempt from GST vide entry at Sl. No.13 of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017. • Fitment Committee recommended that: (i) A new entry may be inserted under Heading 9963 in the exemption notification to exempt

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			supply of accommodation services upto Rs.15000/- per bed, per person per month provided the accommodation service is supplied for a minimum continuous period of 90 days. (ii) An explanation may be inserted in Sl. No. 12 of notification No. 12/2017-CT(R) dated 28.06.2017 which exempts services by way of renting of residential dwelling for use as residence as below: "Explanation,- Nothing contained in this entry shall apply to: o accommodation services for students in student residences; and o accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like. (iii) Chapter heading 9963 may be deleted from Column No. 2 in the Sl. No. 12 in the notification No. 12/2017- CT (R).

e) Issues where no change has been proposed by the Fitment Committee in relation to services

Annexure-V

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
1.	To give retrospective effect to the amendment carried out in notification No. 17/2017-CTR vide which bus operators organized as companies were excluded from purview of section 9(5) of CGST Act, 2017.	• W.e.f. 01.01.2022, the Government vide notification No. 17/2021-Central Tax (Rate), dated 18th November 2021 made ECO liable to pay GST under Section 9(5) of Central Goods and Services Tax Act, 2017 in respect of services by way of transportation of passenger by any motor vehicle. • Pursuant to the aforesaid tax position, with effect from 1st January 2022, the liability to pay GST in respect of passenger transport services provided by way of buses was shifted from the applicant to the ECO in terms of Section 9(5) of the CGST Act. • Therefore, with the said amendment, the tax which was used to be collected by the ECO and was used to be reimbursed to the applicant, who thereafter	• With effect from 1st January 2022, liability to pay GST on bus transportation services supplied through Electronic Commerce Operators (ECOs) has been placed on the ECO under section 9(5) of CGST Act, 2017. • This trade facilitation measure was taken on the representation of industry association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances. • Based on the request received from two bus operators who run the electronically operated buses and in order to arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, 52nd GST Council recommended that bus operators organised as companies may be excluded from the purview of section 9(5) of CGST Act, 2017. • This would enable them to pay GST on their supplies using their ITC. • Accordingly, amendment was carried out to notification No. 17/2017-CTR w.e.f 20.10.2023 with prospective effect. • The applicant has approached the Hon'ble Delhi High Court for giving retrospective

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		used to utilise the ITC availed on its inward supplies to pay the outward tax liability, was no longer able to utilise the ITC that 4 was statutorily available to him. Thus, effective from 01.01.2022 huge ITC was being accumulated with the applicant and the same has been becoming cost to the Applicant. • After having been facing serious financial difficulties on account of ITC becoming cost of the applicant, the applicant submitted representations dated 21.04.2022 and 23.05.2022, explaining the difficulties being faced by them due to the aforesaid amendment. • The issue raised by the applicant in the representations was considered by the GST Council in the 47th and 48th Council Meetings. Ultimately, the Government issued the Notification No. 16/2023 - Central Tax (Rate) dated 19.10.2023 amending	effect to the amendment carried out in notification No. 17/2017-CTR on recommendations of the 52nd GST Council. • The Hon'ble Delhi High Court has vide interim order dated 04.04.2024 directed to dispose of the representation of the petitioner within four weeks of the order. • The applicant/petitioner in representations have not only asked to give retrospective effects to the amendment carried out vide Notification No.16/2023 - Central Tax (Rate) dated 19.10.2023 but also has requested to suitably amend the GST portal so that the lTC accumulated during the period 01.01.2022 to 19.10.2023 be transferred to the ECO or refund of the ITC accumulated during the period of 01.01.2022 to 19.10.2023 be given to the applicant/petitioner. • There are no provisions in CGST Act to transfer the ITC of the bus operators available with them to ECO. • Fitment Committee recommended that the request may not be accepted.

Sl. No.	Proposal	Details of Request	Discussions in Fitment Committee and its recommendations
		Clause (i) of the Notification No. 17/2017 - Central Tax (Rale) dated 28.06.2017. However, the said amendment was given prospective effect from 20.10.2023. • The prospective effect given to the amendment has not completely resolved the difficulties which the applicant has been facing on account of original amendment carried out in Notification No. 17/2017 - Central Tax (Rate) dated 28.06.2017 w.e.f 01.01.2022. The amendment has resolved grievance of the applicant from 20.10.2023 onwards, however, the serious financial blockage of the applicant with regard to the ITC which has been accumulated during the period of 01.01.2022 to 19.10.2023 has not been resolved. • Therefore, retrospective effect may be given to the amendment carried out in notification No. 17/2017-CTR.	

Agenda Item 5: Issues recommended by GSTN

Agenda Item 5(a): All India roll-out of the Biometric-based Aadhaar Authentication and Document Verification System.

The Officers across India have encountered cases involving fake billing embedded with the issue of bogus registrations carried out through impersonation and other forms of misrepresentation. The modus operandi employed in these impersonations typically involves:

i. Procuring government-approved identity documents such as Aadhaar and PAN cards under false pretence, such as offering loans or incentives.
ii. Manipulating mobile numbers associated with the IDs to facilitate OTP validations.
iii. Availing bogus GST registrations using these documents without the knowledge or consent of the rightful owners.
iv. Loaning of identity for consideration by poor people.

2. To contain the above, it is suggested to establish a risk-enabled biometric-based authentication system as a preventive measure, which can control 3 out of above 4 scenarios effectively. A pilot for risk-based Biometric Aadhaar Authentication of GST registration applicants, as directed by GST Council, was launched in the States of Gujarat, Andhra Pradesh, and Puducherry as a preventive measure to address the issue. The initial feedback of trade and field formations indicates that

3. It is a positive step towards mitigating fake registration and preventing the issuance of fake invoices by unscrupulous persons engaged in dubious and fraudulent transactions.

The study from Gujrat on the efficacy and efficiency of the system indicates a significant reduction (25% approximately in Gujarat) in new registration applications in these States after implementation of risk-based biometric-based Aadhaar Authentication of GST registration.

Further, a large number of applicants have failed to appear for biometric authentication, after being selected for it.

4. This indicates that the biometric authentication process is effective in filtering out taxpayers at the initial stage and is a deterrent for non-genuine taxpayers.

In addition, GSTN has also developed an advanced system of facial recognition-based Aadhaar Authentication (Face authentication) alongside Fingerprint/Iris scans. This system can give flexibility in the biometric authentication

5. GSTN has conducted virtual meetings with nearly all states and UTs, sharing detailed requirements with them for rolling out this functionality & training to State and UT officers in two batches on 19/06/2024 and 20/06/2024, in New Delhi.

Road Map for implementation:

6. The Biometric-based Aadhaar authentication process predates assignment of jurisdiction i.e. before generation of ARN. Keeping in mind the recent migration of CBIC field formations and that States also need time to set up GSK along with the procurement of infrastructure for the GSK; the following Phase-wise implementation approach toward rollout is suggested subject to the changes in law and preparedness of the States/UTs.

Phase	Period	Remarks
Phase 1	Last week of June 2024	At present, Uttarakhand State has shown willingness for this phase
Phase 2	Last week of July 2024	As per the preparedness of the States/UTs
Phase 3	First week of Aug 2024	As per the preparedness of the States/UTs
Phase 4	Last week of Aug 2024	As per the preparedness of the States/UTs

It is also planned to roll out Face authentication alongside the Fingerprint/ Iris based Biometric authentication for pilot in smaller states and UTs, as mentioned below:

Approval Required:

a. Biometric-based Aadhaar authentication be expanded across all states and Union Territories in phases and GSTN may work with GST Council about the roll out plan of Biometric verification and pilot project regarding Face Authentication
b. GST (PW), CBIC may issue notifications, as may be required.

Agenda Item 5(b): Waiver of Interest on delayed receipt of Advance User Charges (AUC) from a few states and CBIC.

1. Background

i. As per the Revised Revenue Model of GSTN approved in 49th GST Council meeting, the 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 31st March and 30th September of the year respectively or any other date as decided by GSTN, of the financial year in which the demand letters are issued for the next financial year.

ii. Further, as per Para 2 (vi) (c) of the Revised 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 @12% p.a.". The copy of Revised Revenue Model has been attached as **Annexure-I**.

2. Status of Payment of AUC as on 14th June 2024

As per the approved Revenue Model, GSTN had raised demand for the payment of AUC to the Central and State Governments for the FY 2022-23 and 2023-24. The status of AUC demanded and received (as on 14th June 2024) is given below:

(Rs. in Crores)

Financial Year	Amount demanded	Amount received	Amount Pending	Pending States
2022-23 (Opex)	296.54	296.54	-	NIL
2022-23 (Capex)	631.64	631.64	-	NIL
2023-24 (Opex)	85.50	77.93	7.57	**As per Annexure – II**
2023-24 (Capex)	443.32	412.38	30.94	**As per Annexure - II**

3. Waiver of Interest on late payment of AUC for FY 2022-23 and 2023-24

Late payment of AUC for FY 2022-23

The request letter for Advance User Charges for Opex (1st Instalment) was issued on 29th March 2022 and Request letter for Advance User Charges for Capex was issued on 02nd January 2023, post approval of Revised Revenue Model by GST Council.

The interest on delay remittance of AUC has been worked out post due date i.e. 01st June 2022 and 31st March 23 respectively for Opex and Capex.

The interest payable on the delay remittance of AUC (Opex + Capex) has been worked out as Rs.27.61 Crores, the interest is calculated considering the rate of interest @12%, as per the Revised Revenue Model. The working of interest is attached **Annexure-III**.

Late payment of AUC for FY 2023-24

The request letter for Advance User Charges for Opex and Capex was issued on 21st September 2023.

The interest on delay remittance of AUC has been worked out post due date i.e. 30th November 2023.

The interest payable on the delay remittance of AUC (Opex + Capex) has been worked out as Rs.15.56 Crores, the interest is calculated considering the rate of interest @12%, as per the Revised Revenue Model. The working of interest is attached **Annexure-III**.

4. Proposal:

Following proposal is submitted for the kind consideration and approval of the Council:

i. The interest payable by the respective Governments of Rs.27.61 Crores for FY 2022-23 and Rs.15.56 Crores for FY 2023-24 till 14th June 2024 may be waived off.

ii. GST Council may direct that States and Central Government may pay their dues in time.

Annexure – I

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) Total Expenses (Capex and Opex):

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. Advance User Charge for the next year will be comprised of the following components:

a. Operating expense payments to be made to the Managed Service Providernext 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 financialyears.
e. Capital expenditure.
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 the revenue expenses on backend system as per contract from total revenue expenses (including depreciation) 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 revenue 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.

ii. In case, requirement of additional working capital requirement arises in future, the 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) 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-II
(Rs. In Crores)

Detail of outstanding Advance User Charges of FY 2023-24 as on 14th June 2024				
Sl. No.	**Centre/ States/ UTs**	**Opex**	**Capex**	**Total**
1	Tamil Nadu	4.41	17.60	22.01
2	Andhra Pradesh	2.67	4.94	7.61
3	Punjab	-	5.00	5.00
4	Gujarat	-	1.89	1.89
5	Goa	0.22	0.66	0.88
6	Nagaland	-	0.16	0.16
7	Sikkim	-	0.17	0.17
8	Mizoram	0.07	0.12	0.19
9	Ladakh	0.19	0.13	0.32
10	Arunachal Pradesh	0.01	0.27	0.28
	Total	**7.57**	**30.94**	**38.51**

Annexure-III

Goods and Services Tax Network **(Rs. In Crores)**

Calculation of Interest on pending or delayed payment of Advance User Charges as on 14th June 2024

		2022-23		2023-24	
Sl. No.	**CENTRE/STATE/ UT**	**Opex**	**Capex**	**Opex**	**Capex**
1	Central Government	-	10.40	0.79	7.14
2	Andaman & Nicobar	-	0.01	0.004	0.003
3	Andhra Pradesh	0.48	0.39	0.17	0.40
4	Arunachal Pradesh	0.01	0.03	0.001	0.02
5	Assam	0.02	-	-	0.14
6	Bihar	0.65	1.54	0.32	0.33
7	Chandigarh	-	0.004	-	0.02
8	Chhattisgarh	0.04	0.43	-	0.08
9	Daman & Diu and Dadra & Nagar Haveli	0.001	0.02	-	0.002
10	Delhi	0.01	0.45	-	0.36
11	Goa	0.01	0.14	0.01	0.04
12	Gujarat	1.26	2.56	0.17	0.59
13	Haryana	0.12	0.02	0.16	0.31
14	Himachal Pradesh	0.03	-	0.01	0.05
15	Jammu & Kashmir	-	0.05	0.03	0.10
16	Jharkhand	0.20	-	0.01	0.02
17	Karnataka	-	-	0.05	0.11
18	Kerala	0.16	0.84	0.02	0.25
19	Ladakh	0.01	-	0.01	0.01
20	Lakshadweep	-	-	-	0.000
21	Madhya Pradesh	0.19	0.02	0.10	0.32
22	Maharashtra	0.49	0.02	-	-
23	Manipur	0.01	0.02	-	0.01
24	Meghalaya	0.01	0.03	-	0.02
25	Mizoram	0.01	0.02	0.005	0.01
26	Nagaland	0.01	0.03	-	0.01
27	Puducherry	0.002	-	-	0.01
28	Punjab	0.15	0.28	0.03	0.36
29	Rajasthan	0.08	0.21	0.01	0.24
30	Sikkim	0.01	0.03	0.01	0.01
31	Tamil Nadu	0.83	3.41	0.29	1.14
32	Tripura	0.002	-	0.001	0.01
33	Telangana	0.21	1.39	-	0.31
34	Uttar Pradesh	0.003	-	0.18	0.73
35	West Bengal	-	0.24	-	0.05
	Total	**5.01**	**22.59**	**2.37**	**13.18**
			27.61		**15.56**

Agenda Item 6: Recommendations of the 20th meeting of the IT Grievance Redressal Committee for approval/decision of the GST Council:

The 20th meeting of the IT Grievance Redressal Committee (ITGRC) was held on 12th January, 2024 at 4.00 PM in online mode 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 20th ITGRC meeting covered the following issues:

1. Technical Issues requiring data fixes through back-end utilities
2. Any other agenda with the permission of the chair

2. Recommendations of ITGRC on Data Fix issues:

As per the SOP approved in the 45th GST Council meeting for Technical issues requiring data fix of the processed incorrect data through backend utilities, GSTN presented 38 issues which required data fixes for the consideration of ITGRC during its 20th meeting.

2.1 ITGRC took note of the data fixes carried out by GSTN in 21 issues impacting 11,387 cases which were technical issues with no financial implication where correct data was known (Category-1 of the approved SOP).

2.1.1 In the cases mentioned above in Category-1 (*Technical issues having no financial implications where correct data is known*), ITGRC recommended that:

i) In cases where end user was not able to see list of newly added Additional Place of Business (APOB) in amended Registration Certificate as database transaction was not getting completed within optimized time limit, as a result of master tables not getting updated and this was happening with large firms who are adding 400+ APOB in one go, GSTN would do permanent fix for cases where Registration Certificate was not displaying more than 400 additional places of business, in the next three months.

ii) In cases where the system did not permit Aadhaar authentication by foreign nationals, GSTN would carry out data fix permitting Aadhaar Authentication of foreign nationals to be implemented by June, 2024.

2.2 For the 12 technical issues pertaining to Category-2 (*Technical issues where there were financial implications and the correct data was known*), ITGRC took note of the data fixes carried out by GSTN in all 76,546 cases involving an amount of Rs. 4,894 crores.

2.2.1 In the cases mentioned above in Category-2 (*Technical issues having financial implications where correct data is known*), ITGRC recommended that:

i) In cases where Electronic ITC ledger had been credited while filing TRAN-2 and the same had been utilized by taxpayers before verification by officers, GSTN would send list of these cases to the jurisdictional officers for checking the interest liability.

ii) In cases where there was Data mismatch issue between Hbase & Ledger in GSTR-3B, of possible short payment of about Rs. 4,823 crore, GSTN would send list of the same to the jurisdictional officers by 15.1.2024 for necessary action.

iii) In cases where recovery of partial refund amount of Rs. 6.47 lakh sanctioned to the taxpayers was pending that had to be transferred to Consumer Welfare Fund, GSTN would monitor till recovery.

iv) In case of System generated IGST refund applications (RFD 01s) for the duplicate records sent by ICEGATE and Rs. 2.38 crore be recovered from the taxpayers, GSTN would keep reporting the status till recovery.

ITGRC noted that an amount of Rs. 98.96 crore has been recovered/reversed, Rs. 5,500/- had been refunded and an amount of Rs. 2.44 crore is pending recovery.

2.3 ITGRC also took note of the data fixes carried out by GSTN in case of 3 Court Directions impacting 18 cases.

2.4 2 cases were presented during the meeting. One was request in case of M/s Deoria Papers Mills Ltd to-reopen GST Portal to file TRAN forms and other was issue related to adjustment of excess tax paid with RCM liability. ITGRC approved the opening of TRAN forms for M/s Deoria Papers Mills to enable them to file the same. The second issue was deferred till the next meeting of the ITGRC.

The recommendations of ITGRC as per attached Minutes of the 20th meeting of the ITGRC are placed for information of the GST Council as Annexure – A (attached).

The GST Council may approve the recommendations of the ITGRC and the data fixes carried out by GSTN as mentioned in Para 2 above.

Annexure-A

Minutes of the 20th Meeting of the IT Grievance Redressal Committee (ITGRC) held on 12.01.2024

The 20th meeting of the IT Grievance Redressal Committee (ITGRC) was held in online mode over WebEx platform on 12th January, 2024 at 04:00 pm. The list of officers who attended the meeting is attached as **Annexure-1**. The agenda and annexure to agenda circulated for the meeting is at **Annexure-2.**

2. Shri Shashank Priya, Chairman, ITGRC welcomed all the members of ITGRC and invited EVP, GSTN to proceed with the agenda. Joint Secretary, GST Council Secretariat brought to the notice of the members of ITGRC that five actionable points were pending from the last ITGRC (19th) meeting.

3. Shri Dheeraj Rastogi**,** Executive Vice President, GSTN stated that the agenda items shared were the issues for which GSTN had carried out data fixes during the period April, 2023 to October, 2023. He stated that the period up to March, 2023 had been covered earlier. Further, he stated that there was one major issue where GSTN had noticed differences between the Hbase database and the ledger that are there in the applications; that there were certain technical issues associated with it and proposed that the same could be taken up towards the end of the meeting. Also, there were two other issues which were not listed in the agenda as the same had been received just a few days prior to the meeting and if feasible, could be taken up. One was a VIP reference which had been cropping up regularly over the past 2-3 months and therefore, GSTN would like to present the same before ITGRC for a decision on whether data fix needs to be done in this particular case or not, and the other was a glitch that happened at the time of filing of the returns of a taxpayer which resulted in double debit to his account and therefore showed excess payment. The taxpayer had tried to make payments from the extra amount debited since 2017, however, since the tax dues were minor compared to the debited amount, he was finding it very difficult to offset the whole amount. So, while Rs. 7.50 lakh had been the excess payment, so far in the last six years, he had been able to deduct only about Rs. 2.50 lakh from the same. The taxpayer was seeking some data fix so that the remaining amount could be transferred to his ITC ledger and he could utilize the same.

4. Shri Dheeraj Rastogi**,** Executive Vice President, GSTN further stated that the agenda for the meeting consisted of three broad classifications of the issues as per the SOP developed and approved in the 45th meeting of the GST Council. There were 21 technical issues with no financial implications where correct data was known with certainty, 12 technical issues affecting locally with financial implications where data is known with certainty and an agenda on implementation of court directions.

5. EVP, GSTN then proceeded with the presentation **(Annexure-3)**. First the technical issues having no financial implications were taken up.

6(a) Technical issues having no financial implications where correct data known:

6(a).1

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
1.	**a. User unable to open core/non-core amendment application.** **b. End user was unable to see newly added *Additional Place Of Business (APOB).*** **c. End user unable to see amended Registration Certificate.**	4	Registration	a. End user is not able to open fresh core/non-core application as data from all the master tables is not getting loaded within optimized time limit. This is happening with large firms who are having high count of Additional Place of Business. b. End user is not able to see list of newly added APOB in amended Registration Certificate as database transaction is not getting completed within optimized time limit, as a result master tables are not getting updated. This is happening with large firms who are adding 400+ new *Additional Place of Business (APOB)* in one go. c. End user is not able to see amended RC as database transaction is not getting completed within optimized time limit as a result master tables are not getting updated. This is happening with large firms who are adding 400+ new APOB in one go.	Data fix has been done on ticket basis. RQM 26195 has been generated to permanently fix this issue.

Discussion:

Shri Dheeraj Rastogi, EVP, GSTN explained that 4 taxpayers were unable to open core/non-core amendment application in cases of registration and not able to see the additional places of business. This was due to a glitch in the application which allowed only up to 400 additional places of business to be updated in the master tables seen. He then asked Shri Nirmal Kumar, EVP, GSTN to explain the issue.

Shri Nirmal Kumar, EVP, GSTN stated that this was a technical issue. If the additional place of business for a taxpayer was more than 400, then the taxpayer was not able to add those addresses. Further, such addresses were also not appearing in the Registration Certificate because

at the time of generation of the registration certificate, the program had a check of 2 minutes and the update was taking more than 2 minutes and hence was getting timed out. GSTN is working to optimize the program and fix the issue. Meanwhile, GSTN had done data fix for the 4 taxpayers.

Chairman, ITGRC enquired how much time GSTN would take to do a permanent fix. EVP, GSTN stated that this was planned and permanent fix would be done within the next 3 months.

CCT West Bengal stated that the agenda states that data fix had already been done. GSTN replied that it had been done for the 4 cases mentioned in the agenda.

Decision: ITGRC took note of the data fix done by the GSTN. Permanent fix for cases where Registration Certificates are not displaying more than 400 additional places of business to be done in the next three months.

6(a).2

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
2.	**For a migrated taxpayer, the photo of primary authorised signatory and director got interchanged in Registration certificate (RC) when the TP applied for a core-field amendment.**	1	Registration	At the time of migration, member identifier generated by utility was not created correctly and as a result same identifier for two persons was generated. Subsequently the taxpayer applied for core field amendment, photo of the director got overridden with photo of director via batch job which is responsible for RC generation.	Data fix done.

Discussion:

EVP, GSTN stated that during migration, when taxpayer was migrated to the new GST platform, the photo of the primary authorized signatory and director got interchanged. So, it needed a data fix for swapping the photo of each other and this had been done.

Decision: The ITGRC took note of the data fix carried out by GSTN.

6(a).3

S. No.	Issue reported	No. Of Cases Impacted	Module	Detailed Description	Status
3.	**Change of effective date of cancellation of registration for GSTIN: 08BOTPK4490J2Z6**	1	Registration	A GSTIN 08BOTPK4490J2Z6 has been cancelled with effect from 31-03-2020 but as per order of Chief Commissioner State Tax, Rajasthan the GSTIN 08BOTPK4490J2Z6 was liable to be cancelled from effective date	Data fix done.

				05-06-2018. Request received from CC, State Tax, Rajasthan.	

Discussion:

EVP, GSTN stated that Rajasthan Tax Department cancelled a taxpayer with effect from 31-03-2020 but as per the order of Chief Commissioner of State Tax, the taxpayer was liable to be cancelled from 05-06-2018. So, GSTN had applied the data fix and cancelled the GSTIN with effect from 05-06-2018 upon request received from Chief Commissioner, State Tax, Rajasthan.

Chairman, ITGRC enquired about the reason for this mismatch. EVP, GSTN stated that the concerned officer had wrongly chosen the effective date of cancellation as 31-03-2020 instead of 05-06-2018.

CCT, West Bengal stated that this was adversely going to affect the taxpayer. It was clarified that the order was effective from 5.6.2018 and there was an error by the officer in choosing effective date of cancellation.

On being asked by the Joint Secretary, GST Council Secretariat about the financial implications in this case, GSTN stated that for invoices issued in the intervening period, credit would get transferred if the date was not changed in the system. Once the date was changed to 05-06-2018, any invoice issued after that date would be marked as invalid and accordingly, would become ineligible to take credit.

Chairman, ITGRC stated that there was no financial implication in this case in respect of the taxes to be paid.

GSTN stated that cases would be classified as having financial implication, where taxes need to be recovered or there was outgo of taxes.

Decision: ITGRC took note of the data fix carried out by GSTN.

6(a).4

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
4.	**The issue pertains to the amendment of a promoter/partner details of M/S Jay Ess Kesar Corporation (GSTIN-01AAAFJ7679L1Z3)**	1	Registration	At the time of migration to GST, the taxpayer has submitted his old inactive PAN. The old / inactive PAN has been surrendered and the new PAN has not been updated in this GST registration. The	Data fix done (Current amendment application was deleted from the system to allow the user to file new

	. The PAN of an existing partner was an Inactive PAN. And therefore amendment could not be filed			functionality to edit PAN is not available in the portal. This has put the applicant in the state of deadlock as portal does not allow the amendment in the partnership of the said firm.	amendment)

Discussion:

EVP, GSTN stated that in case of M/S Jay Ess Kesar Corporation the PAN of an existing partner was an inactive PAN and the issue arose when the taxpayer tried to change PAN of another partner. He stated that at the time of migration of GSTIN in 2017, PAN was not validated. But when the taxpayer tried to amend the PAN by adding another PAN into the system, all the PANs were checked and the application got stuck because one of the PAN was inactive PAN. So, GSTN had applied the data fix and changed the PAN.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).5

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
5.	**Issue in registration end date for casual taxpayers**	39	Registration	The registration end date of casual/NRTP taxpayers for 39 users was showing as Null in the system. As the end registration date was null, users were facing issue in updating invoices for certain dates in GSTR-1.	Registration end date was updated in master table via data fix. For permanent fix, RQM 26172 has been raised.

Discussion:

EVP, GSTN explained that in some cases of non-resident/casual taxpayers, the registration end date was showing as null in the system. It was some program error and was creating difficulty in various modules. So, through a data fix, GSTN had put that end date for those non-resident/casual taxpayers on the basis of application data.

On being asked by Chairman, ITGRC to further explain this issue, GSTN stated that for casual taxpayers, the registration was for a particular period only i.e. for one month or two months or three months, whatever period was specified in the application for registration. In the case of 39 taxpayers taken up in the agenda, the end date of the registration was not populated in the system

and because of that, they were facing difficulties. The same had been populated from the end date taken from the registration application.

On being asked, GSTN replied to Chairman, ITGRC that the data fix had already been carried out.

Decision: ITGRC took note of the data fix done by GSTN carried out by GSTN.

6(a).6

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
6.	**Incorrect calculation of GSTR1-GSTR3B mismatch and incorrect creation of DRC01B.**	2	Returns	An incorrect DRC01B was getting created for June2023 when user tried to generate summary of GSTR1 for July 2023 before the due date of GSTR3B (June 2023) without filing June 2023. The spike calculation b/w GSTR-3B & GSTR-1 is based on auto-calculation. As the mismatch calculation happens only after filing GSTR3B but the TP has not filed GSTR3B (i.e., June 2023) so there is no data for mismatch of GSTR1-GSTR3B. And the current spike rule check is not blocking the user from generating summary of GSTR1 of current return period (i.e., July 2023) before due date of previous return period GSTR3B (i.e., June 2023), due to which the system is trying the check directly for GSTR1-GSTR3B mismatch which does not exist, so as a fallback mechanism the system calculates the mismatch on GSTR1 filing data and GSTR3B save data of previous return period (i.e., June 2023).	Permanent fix is deployed in production

Discussion:

EVP, GSTN stated that Form DRC-01B had been recently launched for intimating the difference between the liability declared in GSTR-1 and that in GSTR-3B. During the first two months of operation, the application got stuck in 2 cases, as the application checks for gap between GSTR 1 and 3B for a particular GSTIN and whether any explanation for the said gap has been filed. If not, it is not allowing furnishing of GSTR 1 for the subsequent period. But in two cases, since the GSTR-3B was not filed timely by those taxpayers, no DRC01B was generated. And therefore, the application upon not finding any DRC01B got stuck. Accordingly, the data fix was done and a permanent fix had also been applied that in case GSTR-3B had not been filed, then it would be treated as not eligible for comparing the difference.

Chairman, ITGRC enquired about the course of action to be taken in such cases. EVP, GSTN stated that there was a flag in the system: whether to check for DRC01B or not. In the said 2 cases, the flag was reset to 'no', since those taxpayers were not eligible for comparing the difference.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).7

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
7.	**Issue in filing GSTR-3B after opting for composition scheme** **Taxpayer is not able to File GSTR-3B for month December 2017 because taxpayer has tried to file GSTR-4 for the period Oct-Dec 2017 but could not file and left the return at submit stage. Due to submission of the return liability was posted in the liability register. Since the liability was not discharge, the system has not allowed to file any return afterwards.**	1	Returns	While checking in database, it has been found that liability posted in the liability register was not paid by the tax payer. It had happened due to defect in the system application during 2017-18. Since the return in form GSTR-4 was not filed but only submitted for the tax period Oct-Dec 2017, therefore entries in the liability register were deleted through utility and the taxpayer was enabled to file GSTR-3B of Dec 2017.	RQM#25614 has been raised to fix this issue.

Discussion:

EVP, GSTN stated that this was a case of a taxpayer changing from normal to composition taxpayer midway and trying to file GSTR-4, where the past GSTR-3B was not in the system. VP, GSTN further explained that basically, there were three stages of filing. The earlier practice was that the taxpayer would save, submit and then file the returns. In the said case, the taxpayer has submitted the GSTR 4 returns but not filed. The entry, at the 'submit' stage, had gone to liability register and since the same was not discharged the system did not permit any subsequent filing of returns. Thus, GSTR-4 was not filed for the period from October 2017 to December 2017 and taxpayer was not permitted by the system to file GSTR 3B for Dec 2017. The entry, at the 'submit' stage, populated in the liability register was deleted on taxpayer's request. This enabled him to file GSTR-3B of December 2017.

On being asked by the Chairman, ITGRC for the delay in correction, VP, GSTN replied that the taxpayer had approached for filing post the amnesty scheme for late fee launched by the government in the previous year. They further informed that the amnesty in late fee was initially given for 3 months from April to June but later extended to August.

CCT, West Bengal raised the issue that if the taxpayer submits a return but fails to file the same, a provision should be made to ensure that the same is automatically filed after a certain window of time.

VP, GSTN replied that the said system had been changed and presently there is no submission stage and after saving, taxpayer proceeds directly to filing stage.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).8

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
8.	**Reset cases in GSTR-3B (Partial commit happened on click of reset button while filing GSTR- 3B)**	2	Returns	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). In the beginning, returns lying at submit stage were reset from the backend as lot of complaints were received on account of inadvertent mistakes. Taxpayer clicked on "Reset" button with intention to clear liabilities posted in ledger and the submit entry posted in return database. Rollback happened in return database but entries in ledger didn't happen which	Permanent fix is not required because RESET button is removed from system. These are the cases raised by taxpayers prior to the implementation of RESET button.

				were also supposed to be rolled back. Return period involved is 10/2017.	

Discussion:

The EVP, GSTN stated that during 2017-18, GSTR-3B had a reset button. During the said period, the return could be reset even after submission. But for two taxpayers, upon clicking the reset button, the saved entries were rolled back but the entries in the liability ledger were not. So GSTN did a data fix for these two taxpayers to roll back the entries in the liability ledger also.

Chairman, ITGRC enquired about the reason for the huge delay. EVP, GSTN replied that taxpayers have approached late post the amnesty scheme. In the absence of amnesty scheme, for many taxpayers, the quantum of late fee would be much higher than the tax liability.

Chairman, ITGRC stated that in those cases, where return for a period was not filed, the taxpayers would not be permitted to file for the subsequent period as well. He further enquired whether during this period, the said GSTINs were under suspended animation and were not making any clearance.

GSTN replied that said taxpayers might have been doing business, but not filing any return for the past.

CCT, West Bengal had raised the point that if the return for period 2017-18 was not filed by TP, could he be allowed to file rest of the returns in the amnesty period, in spite of the fact that the earlier return was not filed. EVP, GSTN replied that returns for the period 2017-18 was also filed during the amnesty period. CCT, West Bengal further enquired when the data fix was done by GSTN and what would happen if the same had been fixed post the amnesty period.

GSTN replied that the question of late fee would not arise in the said cases as data fix was done around July, before the expiry of the amnesty period.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).9

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
9.	**Taxpayers were not able to pay GSTR-3B liability as 'Make Payment' button was not working**	2	Returns	Taxpayers were not able to pay his liabilities for GSTR3B by clicking on "MAKE PAYEMENT/POST CREDIT TO LEDGER" button, hence not able to file GSTR3B. Two taxpayers had submitted GSTR3B for tax period November 2017 and did not file GSTR3B. Now, interest has also been levied in GSTR3B and due to this code change, taxpayers are unable file GSTR3B for the above said tax period. This issue is coming for users who had saved their GSTR3B in years when interest was not mandatory and not filed it yet. When they subsequently come to file the GSTR 3B, system notices that the format has changed	Data fix done. As frequency of these types of cases are very less likely, therefore no code fix is required.

				and the interest is payable and hence not allowing them to file the saved return.	

Discussion:

GSTN stated that two taxpayers had saved their GSTR 3B in the years when interest was not mandatory and subsequently had not filed the returns. Upon trying to file the returns post introduction of new format, the saved returns could not be filed. GSTN has rolled back the form and enabled them to file afresh with interest.

Decision: ITGRC took note of the data fix done by GSTN.

6(a).10

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
10.	**Electronic ITC Ledger incorrectly debited from new GSTIN instead of old GSTIN while filing ITC02.**	1	Returns	While filing ITC02 for transfer of ITC from the old GSTIN (closed) to new GSTIN, the system has transferred the amount from new GSTIN to old GSTIN. This has happened because the taxpayer has provided same phone number for both the GSTINs - Old (09ABHPC7139C1ZW) & New (09BSMPS2087J2ZY) and due to which system has encountered the issue.	It was executed on 21-07-2023 vide ICR - 22036.

Discussion:

EVP, GSTN stated that in a case of proprietorship concern where the proprietor had expired and some family member had obtained new registration, the mobile number remained the same and when the ITC available in the old credit ledger was sought to be transferred to the new GSTIN, instead of the same being credited into the ledger of new GSTIN, it was getting credited back to the old credit ledger. Only one such case has been noticed so far during the last 6 years.

CCT, West Bengal enquired as to how the mobile number being common could cause such an issue since GSTINs are PAN based.

EVP GSTN stated that the reason could be that mobile number was common for both and that is why data fix had been done in this case as the taxpayer had been pursuing this issue for quite some time.

Chairman, ITGRC enquired whether such transfer was permissible. CCT, West Bengal pointed out that rule 41 allows transfer of ITC in case of transfer of business, amalgamation, merger etc. and circular No. 96 dated 20.3.2019 clarified how ITC would be transferred in case of death of proprietor.

Joint Secretary, GST Council Secretariat raised the issue of whether such cases were corner scenarios or it would require some permanent fix.

EVP, GSTN replied that it was a programming error and it had been fixed and only one case came to notice in the past 6 years.

Decision: ITGRC took note of the data fix.

6(a).11

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
11.	**Error in GSTR-7 filing-** **Deductor was unable to file GSTR-7 due to issue in flowing of rejected record from TDS/TCS received from (R2X)**	1	Returns	GSTR-7 user had amended the 072021 records in 082021 return period because GSTR2X user had not taken any action in R2X on 072021 records but accepted the 082021 record auto-populated from amendment table of GSTR7. The original record in R2X was supposed to be deferred but due to technical glitch it had not so happened. GSTR2X user took action on 072021 records and rejected the 072021 record in 032023. Due to this the GSTR7 user was not able to file the return for the March, 2023 period	It was executed on 15-06-2023 RQM-22154.

Discussion:

EVP GSTN stated that this was a case pertaining to Tamil Nadu Electricity Board. They had filed July 21 return and amended it in August 21. The supplier had accepted the amended record and taken credit of the same. The system stopped TNEB from passing the credit pertaining to July, 2021 again. However, the GSTR7 for March, 2023 could not be filed.

CCT West Bengal enquired about the meaning of 'execution' on a particular date as mentioned in the agenda and requested to ensure that there would be no double credit.

GSTN replied that they had not allowed the double credit and rejected the record which could not be deferred otherwise due to System glitch.

To Chairman, ITGRC's enquiry, GSTN stated TNEB was trying to pass on the credit of the July 2021 record, however it was pointed out the credit in this case had already been passed on and the record was rejected.

Decision: ITGRC took note of the data fix carried out by GSTN.

6(a).12

S. No.	Issue reported	No. of Cases Impacted	Module	Detail Description	Status
12.	GSTR-7: Filing status of GSTR7 was struck in 'In Progress' stage. TDS/TCS Received Form not populated after GSTR-7 filing GSTR-9: Filing status of GSTR9 was not updated properly. CMP-08: Taxpayer had filed CMP08, but Filing Status was not updated to 'FIL' GSTR-8: Filing	GSTR7 Form – 5 cases TDS/TCS Received Form – 3 cases GSTR9 Form – 15 cases CMP08 Form – 1 case GSTR8 Form – 1 case	Returns	1. Due to non-updation of filing status of previous tax period's return filed in FORM GSTR7 by the deductor, the return of subsequent tax period could not be filed. 2. DB insertion was not happened into RETURN_FILING_STATUS table and not updated in cache. 3. Filing status not updated in Data base	1. GSTR7: It was fixed vide ICR-22061 (RQM 10022) on 02-08-2023 and vide RQM-22154 on 15-06-2023 and return status is 'Filed' now. 2. TDS/TCS: It was fixed on 23-06-2023 vide ICR-21213 (RQM- 13465). 3. GSTR9/CMP08/GSTR8: It has been fixed.

	status of GSTR8 filed by ECO was stuck up 'In Progress'.				

Discussion:

EVP, GSTN stated that such cases where the return filing gets stuck in "In Progress" stage, are usually due to technical glitches which could happen due to peak load at GSTN end or when the user logs out without completing the filing process or when there is a snap in connectivity.

Then, filing process is not complete and some file records need to be updated. So, in these cases, data fix had been done by updating the filing status. Otherwise, user cannot file the return for the subsequent tax period.

There were 5 such types of returns/forms where filing status had not been updated in the database. In GSTR 7 Form, there were 5 cases; in TDS/TCS received Form, there were 3 cases; in GSTR 9 Form, there were 15 cases; in CMP08 Form, there was 1 case and in GSTR8 Form, there was 1 case. GSTN has carried out data fix to change Return filing status to 'FIL'.

Decision: ITGRC took note of the data fix carried out by GSTN.

6(a).13

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
13.	**Error while auto-populating details in table 4A and 4B of GSTR-4 (Annual).**	2	Returns	Taxpayer attempted to file his GSTR4 (Annual) but auto population of data in table 4A and 4B from GSTR-4A was not successful. As per the existing implementation, data in table 4A & table 4B of GSTR-4 is auto-generated from GSTR-4A. However, this activity was not successful as the *SQL connection timeout exception* due to large data.	It was executed on 18-07-2023 and 07-09-2023 vide ICR – 21971 & 22697.

Discussion:

EVP, GSTN stated that frequency of filing GSTR-4 had been made annual. The inward supplies are being auto populated in GSTR-4A which in turn is auto-populated from GSTR-1 filed by suppliers.

However, in these two cases, taxpayers were facing problem as their purchase records were not getting auto populated properly. GSTN had now corrected the same.

Decision: ITGRC took note of the data fix carried out by GSTN.

6(a).14

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
14.	**Incorrect data getting auto-drafted in table 5 of GSTR-4 Annual return.**	2	Returns	Taxpayer attempted to file his GSTR4 (Annual) return but auto population of CMP08 data in table 5 of the said return was getting populated incorrectly. This has happened because total value for Taxable Amount, CGST & SGST of HBase has incorrect value. Proposed solution is to update the value of Taxable Amount, CGST & SGST with Actual value in HBase (GSTR4 Filing Summary table) by running an utility (ReturnR4CMP08Utility).	It has already been executed.

Discussion:

EVP, GSTN stated that the payments made by the taxpayer in all quarters were to be auto populated in table 5 of the GSTR-4 Annual return. He further mentioned that if there was some additional payment made by the taxpayer, it would be reflected in table 6. For example, in table 5, through CMP08 he had paid 100 rupees, so he could make it 99 or 110 through credit/debit notes/reversal in table 6. However, in this case, in table 5, auto population was not getting correctly reflected. The same has been rectified.

Decision: ITGRC took note of the correction done by the GSTN.

6(a).15

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status

15.	**Date format mismatch in Offline tool of ITC-01 (Invoice date format was different in offline tool than required.)**	3	Returns	System was giving error "Type Mismatch" while adding invoice in ITC01 offline tool and taxpayer was unable to file ITC01-18(1)(c) within the due date. This had happened as taxpayers copied the invoice date into ITC01 Offline Tool and date format expected by the tool was incorrect. However, no proper validation exists for date field in the tool and mismatch runtime error was shown to user.	Defect was fixed on production via RQM-24876 & 25757 on 1stOct-23. However, since the due date for filing ITC01-18(1)(c) was over, the ITC01 was reopened for filing.

Discussion:

EVP, GSTN stated that the issue was date format mismatch in offline tool and ITC-01 in 3 cases. The offline tool was in Excel and the taxpayer did copy paste from some other document type. Due to this the acceptable date format DD MM YY became MM DD YYYY. Then the taxpayer uploaded the JSON of ITC 01 with incorrect data on the portal. GSTN had reset the form for the taxpayer and had provided drop down facility for date but some taxpayers developed their own utility and tried to copy and paste there.

Chairman, ITGRC enquired that due to this date format issue; there may be more such cases and there should be a mechanism in place to disallow the taxpayer to copy paste the date.

EVP, GSTN stated that ITC-01 filing was not very frequently used. It was basically used by taxpayers while switching from 'composition to normal'.

Joint Secretary, GST Council Secretariat enquired about validation tool for the date, to which GSTN replied that they had permanently fixed this issue now.

Decision: ITGRC took note of the data fix in these cases.

6(a).16

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
16.	**Correction in cash ledger balance due to credit/debit happened simultaneously.**	21	Returns	The issue has occurred due to debit and credit entry happening simultaneously in the cash ledger, due to which balance was not updated properly for 23 taxpayers. These 23 cases pertain to the period - Dec 2022 to June 2023. Out of 23 cases, 21 are registered taxpayers and 2 have	Data fix was done on 27 Oct 2023 via ICR#23364

				already been cancelled. It is happening due to defect in the application which is being looked into separately.	

Discussion:

EVP, GSTN stated that this situation arose where debit and credit entries were made simultaneously due to which the correct cash ledger balance was not being reflected in the ledgers. There were 21 such cases where the data fix had been carried out.

Chairman, ITGRC stated that such cases had come earlier also.

GSTN responded that they had Suo-moto generated the data set pertaining to such cases and accordingly data fixes had been carried out without waiting for the taxpayer to raise the tickets.

Decision: ITGRC took note of the data fix done by the GSTN.

6(a).17a

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
17a.	**Transfer of Cash Ledger Amount from Temporary Registration to GSTIN with same PAN.**	1	Returns	The challan amount of Rs.10,34,775/- was deposited in GST No.172300000017AR5(Temporary) meant for Advance Ruling. This amount cannot be used for any other purpose as there is no functionality for setting off against any demand or claiming refund. The taxpayer has ignorantly deposited amount in Temp ID for Advance Ruling through Challan facility.	Functionality to restrict payment *(more than required amount)* through Challan for Advance Ruling Temp ID users is in pipeline. Data fix is done for this particular case.

Discussion:

EVP, GSTN stated that this situation arose when some of the taxpayers either opted for Advance Ruling or some other action. The taxpayer deposited the amount of Rs. 10,34,775/- in the temporary GSTIN meant for Advance Ruling instead of regular GSTIN. Accordingly, the said amount had to be

transferred back to the regular GSTIN. Now this issue is in the process of being fixed by GSTN by way of temporary registration not allowing any deposit above the expected fee for the Advance Ruling.

Decision: ITGRC took note of the data fix done by the GSTN.

6(a).17b

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
17b.	**Reversal of cash balance from provisional/inactive GSTIN to Active GSTIN**	100	Returns	While transferring amount through Form GST PMT-09 from cash ledger to another GSTIN registered on the same PAN, in 100 cases (Ledger reference numbers), amount was transferred to inactive taxpayers also who were not migrated to GST and have no credentials to carry out any business transaction on the portal. This error happened in past cases due to defect which has now been fixed. Ledger amount to be transferred to the active GSTINs of the same PAN.	Permanent code fix has already been done vide CR#24869. The issues of impacted taxpayers have been fixed.

Discussion:

EVP, GSTN stated that this was a case where the cash balance was available in the provisional GSTIN account which was inactive. He stated that while transferring amount through Form GST PMT-09 from cash ledger to another GSTIN registered on the same PAN, in 100 cases (Ledger reference numbers), amount was transferred to inactive taxpayers who were not migrated to GST and had no credentials to carry out any business transaction on the portal.

He further stated that this error happened in past cases which has now been fixed and Ledger amount had been transferred to the active GSTIN of the same PAN.

Decision: ITGRC took note of the data fix done by the GSTN.

6(a).18

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status

18.	**For the category of "Excess cash ledger balance", in case deficiency memo is issued, the amount debited while applying refund application is not crediting back to the cash ledger.**	3	Refund	For the refund applications AA060323017870K dated 12.03.2023, AA2902230726537 dated 24.02.2023 and AA080623067593Y dated 26.06.2023 (all belongs to the category of Excess cash ledger balance refund), the tax departments have issued Deficiency memo. However, the amount debited at the time of filing of refund applications were not credited to the Applicant's cash ledger due to technical issue.	Permanent solution is given in September 2023 wherein the option of issuance of Deficiency memo was removed for Excess cash ledger balance refund.

Discussion:

EVP, GSTN stated that when a taxpayer had applied for refund for the excess cash ledger balance and the proper officer had issued deficiency memo, the amount which was debited at the time of filing was not credited back to the tax payer's cash ledger. GSTN had identified three such cases and were given data fix. Now, auto acknowledgement had been issued by the system in these cases and issuance of deficiency memo for this category of refund has been disabled in the system.

Decision: ITGRC took note of the data fix done by the GSTN.

6(a).19

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
19.	**Issue in status update of taxpayer on EWB portal.**	1	E-way bill	The status of taxpayer was BLOCKED on EWB portal due to non-filing of GSTR-3B. However, after filing the return GSTR-3B the status on EWB portal was not getting updated from Blocked to Unblocked". The taxpayer was UNBLOCKED from NIC end, therefore on GST portal the status was manually updated to UNBLOCKED in our	The status was manually updated to UNBLOCKED.

				database. This happened during peak filing; because of batch load the user's "STATUS" was stuck in "Blocked" status. Reason is because of batch load the user's "STATUS" was stuck in "Blocked" for of which taxpayer is not able to generate E-way bill.	

Discussion:

EVP, GSTN stated that this was an issue in the status update of a taxpayer on e-way bill portal. E-way bill generation is blocked when taxpayer does not file GSTR 3B. Due to system issue, in the said case the taxpayer's status on the E-way bill portal remained blocked even after filing the GSTR 3B. GSTN has manually updated the status to 'unblocked' and fixed this issue.

Decision: ITGRC took note of the data fix done by the GSTN.

6(a).20

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
20.	**Export Invoices were not transmitted to ICEGATE from GST portal for IGST refund.**	11,173	Refund	The export invoices were not transmitted to ICEGATE because the export ledger is updated incorrectly by GST system. Export ledger is maintained for each taxpayer with the values of liability (Table 6) reported in GSTR 1 and the payment (Table 3.1(a)) made in GSTR 3B. Invoices are transmitted to ICEGATE if Payment in GSTR 3B >= liability reported in GSTR 1. Invoices are not transmitted to ICEGAGE due to negative balance in the export ledger. The reason is that the SEZ invoices from Table 6B of GSTR 1 is computed twice by the GST system. It resulted in more liability and negative balance in export ledger. That's why, invoices are not getting transmitted to ICEGATE for the	Team has already completed code fix, and the same is planned to be deployed during next window. Meanwhile, the DB scan has been done for similar cases between June to Oct 2023 – data fix will be done for the impacted cases.

				exporters who reported SEZ supply.	

Discussion:

EVP, GSTN stated that the next issue pertained to export with payment of duty. Some taxpayers had reported that their export invoices were not being transmitted to ICEGATE portal. On analysis, it was found that with respect to the SEZ invoices reported by the taxpayer, the liability in them had been counted twice by the system. GSTN maintains export ledger for each taxpayer for forwarding it to ICEGATE portal. Since the liability in the SEZ invoice in these cases were counted twice, the export ledger showed negative balance. Invoices are transmitted to ICEGATE only if the ledger is positive or zero. Since in these cases it was negative, their invoices were not transmitted to ICEGATE.

EVP, GSTN stated that the same was a programming error and code fix had been done. Further data fix has also been carried out by GSTN for the impacted cases.

Upon query raised by CCT, West Bengal, EVP, GSTN stated that all supplies by SEZ under this category for the period from June to October 2023 faced the said issue. The issue had been resolved since October 2023.

Decision: ITGRC took note of the data fix done by the GSTN.

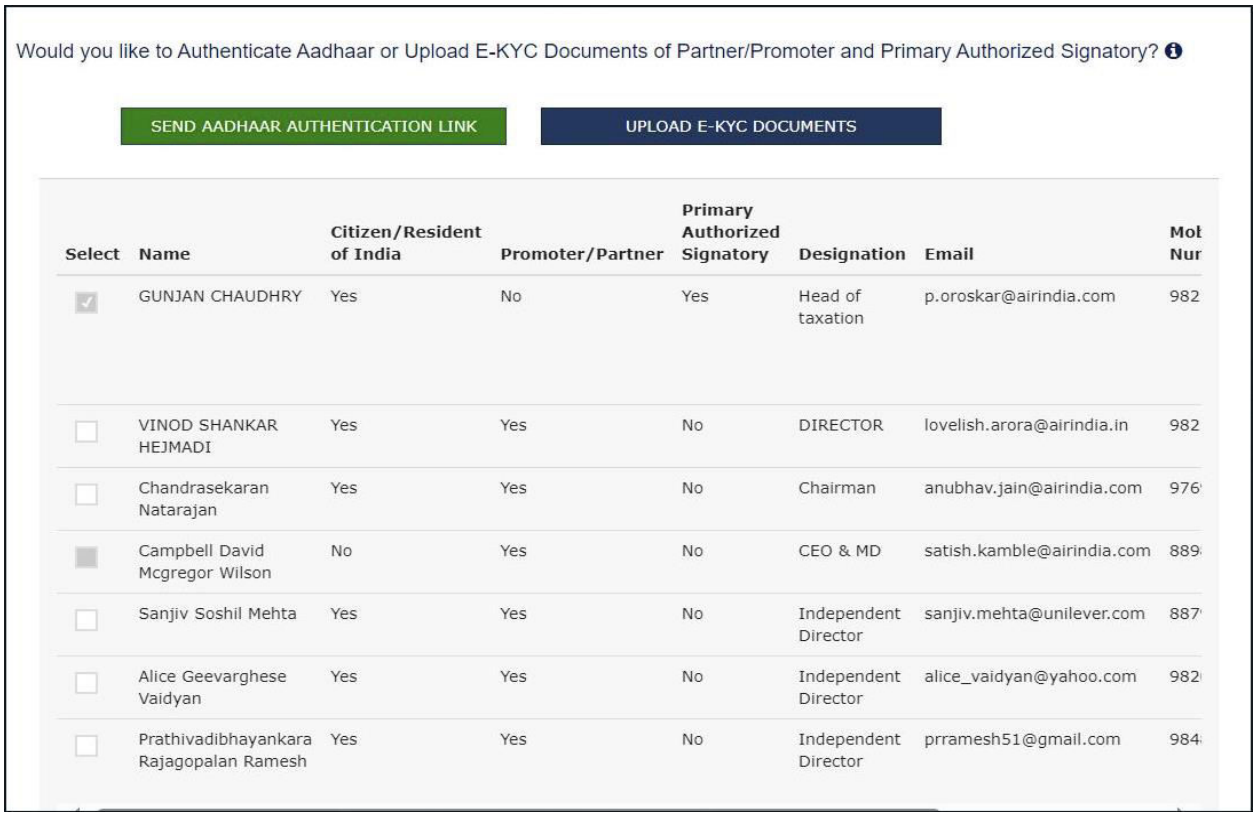
6(a).21

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
21.	**Aadhaar Authentication of Non-resident**	1	Registration	A foreigner is restricted from performing Aadhar authentication in GST system. As this GSTIN is having other directors mentioned as "Promoter/Partner" tab, system is expecting for AA for refund functions. However, the CEO & MD of Air India is a foreign national but having Aadhar and wants to do Aadhar authentication. The following persons are required to do Aadhaar Authentication in GST system: 1. Primary Authorised Signatory (PAS);	Code fix has to be done to allow residents to perform Aadhar authentication. This will take time and if ITGRC agrees data fix can be done. When data fix is done, the status will be shown as Aadhar authenticated both to the taxpayer and tax officer.

				2. Indian Citizen mentioned in Partners Promoters tab. In case, all the persons mentioned are non-resident, then system is not asking non-resident to do Aadhaar Authentication and Status of Aadhaar would be Aadhar validated if PAS has completed Aadhaar Authentication and system will allow taxpayer to file refund. In instant case (ticket no. 2023112111659366), the taxpayer has Indian Director and hence system is not allowing taxpayer to file refunds and treating Aadhaar as unauthenticated. The above has been developed as per the requirements received by us. This is as per the expected system behaviour.	

Discussion:

EVP, GSTN stated that the next issue was relating to Air India. CEO of Air India was not an Indian citizen but possessed an Aadhaar. The system requires Aadhar authentication by either one of the partner promoters or the authorized signatory for certain functions such as application of refund, transmission of invoices to ICEGATE portal, etc. For a company one plus one system was followed by the system that was one primary authorized signatory and one person in partner and promoter tab had to complete the Aadhaar authentication. In the case of Air India, the primary authorized signatory has valid Aadhaar authentication. But in the category of partner promoter, while the CEO possessed Aadhaar, the system does not permit Aadhaar authentication by a foreigner. They shared the below screen for the understanding of the members.



EVP, GSTN pointed out that as seen in the screen, the option to select the CEO & MD was greyed out and hence unavailable. GSTN further stated that out of the remaining 2 partner promoters, one had left the organization and the other was not involved in the day-to-day affairs of the company. Remaining were independent directors.

GSTN further informed that the said matter had been taken up with Law Committee and LC had clarified that such a check was not required and therefore, GSTN is in the process of carrying changes in the portal to permit Aadhaar authentication by foreign nationals. EVP, GSTN stated that for the specific case, data fix is being carried out.

Chairman, ITGRC enquired when a permanent fix in this regard would be carried out. GSTN submitted that the same would be implemented by June 2024.

Decision: ITGRC took note of the data fix done by the GSTN.

6 (b). Thereafter, EVP, GSTN explained 12 cases where there were technical issues affecting locally with financial implications and where the correct data was known.

The details of the cases are mentioned as follows:

6 (b).1

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status

1.	**Excess amount credited to the cash ledger of suppliers on account of TCS**	1	Returns	E commerce operator (ECO, GSTR8 user) has filed GSTR8 for the return period of Jul 2022 on 08th Aug 2022. Supplier has accepted this record for Jul 2022 return period and he has filed the return on 11th Aug 2022. Due to technical glitch, status was not updated as FIL in return filing status table. Because of this issue, system allows ECO to self-amend this record in Nov 2022. While doing self-amendment ECO has performed downward amendment. Supplier again accepted this amended record in Nov 2022 period through which he claimed the credit twice for the single record. During compute liability, entry went to ledger. But due to issue with Kafka the status was not updated to FIL in Return Filing Status table. Since status was not updated to FIL, GSTR8 user has changed the data which was already saved and it again got populated. Auto populated value at R2X user is hence greater than what GSTR8 user has filed. Due to that R2X user has claimed the excess amount which has to be recovered from R2X user.	It has been fixed.

Discussion:

EVP, GSTN stated that in this case, excess amount of credit had been claimed by the supplier as the system had allowed ECO to amend record pertaining to July, 2022 in November, 2022 due to a technical glitch where status of return had not been updated to filed for the July, 2022 return period.

Chairman, ITGRC enquired how auto populated value for R2X user is more than what the GSTR8 user has filed. EVP, GSTN replied that it is basically records auto populated in TDS/TCS Form accepted by the supplier twice. In this case credit was claimed twice for a single record.

On being asked by CCT West Bengal as to how the recovery had been made, GSTN replied that amount was recovered by debiting the cash ledger of the supplier and that a minor amount (Rs. 975/-) had also been recovered from the e-commerce operator.

Recovery of total amount of Rs.78,666/- from both supplier & ECO has been done.

Decision: ITGRC took note of the data fix done and recovery made by the GSTN.

6 (b).2

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
2.	**Electronic ITC ledger credited while filing TRAN-2**	369	TRAN	Taxpayers who have filed their TRAN-2 return via DSC filing, during period from 29-09-2022 to 30-11-2022 got the electronic ledger credited as per their filing amount at the same time of filing instead of getting Electronic ITC Ledger after verification through BO- tax official flow.	The defect was fixed on 28th April 2023 via RQM 24409.

Discussion: EVP, GSTN stated that TRAN-1 and TRAN-2 utilities were opened as per the directions of the Hon'ble Supreme Court. So changes were made to the earlier utility and promoted to production. Earlier filing used to be through digital certificates. The usual pattern was that the credit would first go to the officer, he would assess, check the same and then allow and then the amount would be credited to ledger. However, in 369 cases of filing of TRAN-2 through digital certificate, the amount was credited directly into the ledgers of the tax payer. This was a code defect and therefore, reversal was done by GSTN in those 369 cases.

JS, GSTCS enquired whether in all cases amount was available for reversal.

EVP, GSTN replied that in cases where sufficient amount was not available, credit had been made negative. Whenever taxpayer files a return, that amount would be deducted first.

Chairman, ITGRC enquired whether these units were operational units.

GSTN replied that mostly all the units who filed TRAN-1 and TRAN-2 were operational.

CCT, West Bengal enquired about the interest on that portion of credit that had been utilized by the taxpayer even before verification. Chairman, ITGRC suggested that a list be sent by GSTN to jurisdictional officers for checking the interest liability, if any.

Reversal of total amount Rs. 68,73,66,284.06 was done in 369 cases.

Decision: ITGRC took note of the data fixes done by the GSTN. List of cases where credit had been utilized by taxpayers before verification by officers be sent by GSTN to jurisdictional officers for checking the interest liability, if any.

6 (b).3

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status

3.	**Error in filing GSTR-3B due to balance liability**	10	Returns	In the initial period of implementation of the GST, in composition return filed in form GSTR-4, there were two stages of filing i.e. Submit & File. System used to compute late fee up to the date of submission of the return and the late fee for the period between Submit & File used to be carried forward to the next tax period. The upper celling of late fee was Rs. 5000/- per tax period. The addition of late fee of previous tax period should not have been accounted for the upper celling but system has kept a limit of Rs. 5000/- in this case also. Thus, some taxpayers had paid short late fee than actual. The defect was noticed later on and balance late fee liability was posted in the return due to be filed. Therefore, the balance amount of late fee was recovered and taxpayer filed the return without any error. This has happened because the cap of late fee of Rs. 5000/- was applicable for one tax period and not for any liability carried forward from the previous tax period.	No changes is required to be made in the application software as GSTR-4 (Quarterly) has already been discontinued from April 2019.

Discussion:

EVP, GSTN stated that in the initial period of implementation of the GST, for composition return, there were two stages of filing i.e. Submit & File. System used to compute late fee up to the date of submission of the return and the late fee for the period between Submit & File used to be carried forward to the next tax period. The upper ceiling of late fee was Rs. 5000/- per tax period. The addition of late fee of previous tax period should not have been accounted for the upper ceiling but

system has kept a limit of Rs. 5000/- in this case also. Thus, some taxpayers had paid short late fee than was actually required to be paid by them.

GST System has done the actual computation and recovered the balance amount from these taxpayers. Two taxpayers had paid excess amount and the same would be refunded to them whenever they raise any ticket towards the same.

CCT West Bengal enquired as to how the late fee was recovered when there was a ceiling of Rs.5,000/- for late fee per return.

GSTN replied that outstanding liability was added to the current GSTR-3B. In all the cases, late fee amount had been realized and recoveries had been made.

Upon enquiry by Chairman ITGRC, EVP, GSTN replied that recovery had been affected by including the said amount in their Liability Register.

Late fee of Rs.64,600/- has been recovered from 8 taxpayers.

Decision: ITGRC took note of the data fixes done and recovery made by the GSTN.

6 (b).4

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
4.	**Redundant entries in ledger while filing GSTR-4(Annual)**	3	Returns	Taxpayer has cleared the liability and filed his CMP08/GSTR4 (Annual) return but redundant (multiple) entries were inserted in ledger. In cases where sufficient balance was available in subsequent insertion, balance was deducted again and filing status was updated to" FIL". In cases where sufficient balance was not available in subsequent insertion, filing status was not updated to" FIL". Solution is to a) Remove redundant (multiple) entries from ledger and update filing status as "Filed" b) Refund of extra liability deducted (wherever applicable)	It was executed on 27-06-2023 vide ICR- 21690. Yes; Refund of late fee of Rs. 500/- (CGST: Rs. 250/- & SGST: Rs. 250/-) has been done in one case. No refund was due in two cases.

Discussion:

EVP, GSTN stated that this case was of a composition taxpayer wherein some redundant entries were lying in the ledger. So those had been removed and refund of Rs. 500 was paid in one case where the

taxpayer had paid excess late fee. No refund was due in two other cases where there were redundant entries.

On being asked by the Chairman, ITGRC to further clarify the issue, EVP, GSTN stated that these are corner scenarios. If a taxpayer files CMP08 when the network is slow, it is possible that the taxpayer would have clicked the file button and then after some time again clicked it. He stated that the file button gets disabled after the first click, however, where the network is slow, the taxpayer may have pressed the button a second time before it was disabled. EVP, GSTN further clarified that this was an issue of multiple entries in the ledger rather than a case of redundant entries.

CCT, West Bengal suggested that agenda notes may be more clear so as to aid understanding. EVP, GSTN clarified that in this case, the late fee had got debited twice which was refunded back to the taxpayer. It is basically a queue system in which the first event got stuck and the taxpayer did the second one then second filing was successful and ultimately the first also.

To Chairman ITGRC's enquiry as to whether two returns were filed, EVP, GSTN clarified that this was a case of double entry rather than double filing.

Decision: ITGRC took note of the data fixes done by the GSTN.

6 (b).5

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
5.	**System error while filing GSTR-4(quarterly) form**	3	Returns	System had computed the late fee liability at the time of "Compute Liability' in GSTR-4 (Quarterly) but later on not updated the same when taxpayer came to file the return and allowed to file the return with short paid late fee. Thus, balance amount of late fee needs to be recovered from the taxpayer which can be paid by taxpayer voluntarily through Form GST DRC-03. Thereafter, the status of the return would be changed to 'FIL' in the relevant table in the database. Afterwards, taxpayer will be able to file future returns.	It was executed on 02-08-2023 and 11-08-2023 vide ICR- 22228 and 22362 respectively. The defect was fixed permanently on 04-08-2023 vide ECR- 22213 (RQM- 24947)

Discussion:

EVP, GSTN stated that **w**hile filing GSTR4 composition return, in compute liability the taxpayer was facing some issue and late fee actually was not recovered fully. This happened because system had computed the late fee liability at the time of "Compute Liability' in GSTR-4 (Quarterly) but later on not updated the same when taxpayer came to file the return and allowed to file the return with short paid late fee. So, in cases where taxpayers had initiated filing but completed the filing process at a later date, the late fee remained outstanding and the taxpayer was allowed to file only when he made the payment of short paid late fee. Two taxpayers had made payment but one taxpayer has not made the payment so far.

JS, GSTCS enquired the time period of these returns. EVP, GSTN replied that these are old GSTR4 quarterly returns for composition taxpayers during 2017-18 and 2018-19 and the same had been discontinued from April 2019. These were old cases. The system stopped the taxpayer filing further returns until he clears the balance late fee.

The defect was fixed permanently on 04.08.2023.

Recovery of late fee amounting to Rs.1450/- has been done through DRC-03 in two cases. Return of one taxpayer would be opened after payment of the outstanding dues.

Decision: ITGRC took note of the data fixes done by the GSTN.

6 (b).6

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
6.	**Data mismatch issue between Hbase & Ledger in GSTR-3B**	75,732	Returns	1. Taxpayers & tax officers have raised tickets stating that the taxpayers have filed the GSTR 3B return but there is a mismatch in the data entered vis-à-vis payment made. 2. The table 6 of GSTR 3B i.e. the payment table is auto-populated from values in table 3 i.e. Outward supplies and table 4 i.e. ITC Availed. Post the payment of the liability, the values are then posted to the respective ledgers i.e., the cash, ITC and liability ledgers. 3. On reporting of these values on the GST portal, the data is thereby stored in Hbase tables in the backend. Hbase is a type of database management technology used to store and handle big data systems. 4. On technical analysis of the issue reported it was found that in certain situations a technical glitch is occurring in the backend technological systems	Proposed solution: 1) The list of the cases may be provided to the field formations for recovery of the unpaid liability and the ITC values which have been claimed in the credit ledger vis a vis lesser or no values in Hbase tables. (This is the easiest solution with no technical development involved and the number of cases per tax officer would not be unmanageable). OR 2) The returns

				resulting in storing of different values in the Hbase tables in the backend and the ledger entries of the taxpayers. Further, in some rare cases system also allowed the returns to be filed without debiting the taxes from the respective ledgers. 5. In total, there are 1,31,907 cases of mismatch in data entries with 98,253 unique GSTNs across all financial years. Further, out of 1,31,907 cases, in 75,732 cases there is a possible revenue loss of Rs 4,822.96 crore on the below counts – a) either through no values or less than Hbase value entered in liability ledger; b) availing more value in ITC ledger than data available in Hbase	identified in the cases mentioned above may be reset by the system. After the reset of the returns, the taxpayers would be communicated via e-mail/SMS/Phone to file their returns with the correct values and correspondingly the t ax officers would be informed so that they can facilitate and follow up on the return filings. This solution requires certain technical development

Discussion:

EVP, GSTN stated that this was a major issue. A ticket was raised from the jurisdiction of CCT, West Bengal communicating that they had observed that some taxpayers had filed GSTR3B return but the data suggests that they had not offset the taxes**.** He further stated that similar cases had been observed in the past also where there was a mismatch in the Hbase database and the ledgers. So, an exercise was carried out to identify all such cases.

Chairman, ITGRC asked EVP, GSTN to explain what is Hbase database. EVP, GSTN stated that on opening GST forms on GST portal, the data is stored in Hbase tables in the backend whereas on actual filing and saving of returns, the data is posted into ledger. In certain situations a technical glitch is occurring in the backend systems resulting in storing of different values in the Hbase tables in the backend and the ledger entries of the taxpayer. In some rare cases, system also allowed the returns to be filed without debiting the taxes from the respective ledgers.

Chairman ITGRC enquired whether they were talking about ITC ledger.

EVP, GSTN replied both kinds of ledgers cash as well as credit could have this discrepancy.

CCT, West Bengal stated that in table 3 of GSTR3B, taxpayers had to report the outward supplies. The payment table, table 6, is auto- populated from values in table 3. In this case, the taxpayers had shown their outward supply in table 3 but the corresponding tax which should had been auto populated in table 6 of GSTR3B was showing zero and the liability ledger also showed zero. The taxpayer had liability evident from his return but table 6 and the liability ledger was showing NIL or zero. So they had pointed out this discrepancy and afterwards GSTN had done an exercise to identify if other returns had also such discrepancies. More than 75,000 cases were identified where such

discrepancies existed. The most important thing would be to recover taxes in respect of these 75,000 known taxpayers.

EVP, GSTN detailed various scenarios where discrepancies had crept in as shown below:

S.no	Type of issue	No of Cases	Revenue
1	Liabilities in Hbase but no value in ledger	37,725	Rs 4,079.26 crores
2	No ITC values in Hbase but values in Ledger	12,589	266.34 crores
3	ITC values both in ledger and Hbase but excess values in ledger	13,711	290.83 crores
4	Liability values both in ledger and Hbase but excess values in Hbase	11,707	186.53 Crores
	Total Cases	75,732	Rs 4,822.96 crores

He further explained how such discrepancies could have crept in. One reason was that the save request was processed after offsetting the taxes. Even though validation checks exist to abort save requests after offset, still in some cases save had been allowed after offsetting taxes. The second reason was that in case of filing a NIL return through API, it was not getting checked with the Hbase database. So, in those cases whatever data had come through API had gone directly into the ledgers resulting in the difference between the ledger and HBase. The third reason was that user tries to perform NIL filing simultaneously via multiple browser tabs. When taxpayer opts 'yes' in questionnaire page for NL return in one tab and opts 'no' in another tab, then such discrepancies might crop up. The fourth one was that taxpayer had to file a non-nil return but had opened multiple browsers and initiates the save request and files GSTR3B with different sets of data in different tabs. The last one was that taxpayers had offset and ledger got inserted but filing status was not updated because of data connectivity loss.

JS, GSTCS enquired as to whether in an earlier meeting it had been decided not to allow NIL filing where liability was being shown in the return.

EVP, GSTN replied that fix had been carried out and if Nil return is sought to be filed when some data in the taxpayer's pre-populated database was available, the return filing was stopped and taxpayer was being asked to clear those entries.

Chairman ITGRC enquired as to what encompasses the term ledger.

EVP, GSTN replied that ledger means liability ledger, credit ledger and cash ledger.

Chairman ITGRC suggested that the second option presented by GSTN seems to be a better solution that the system would reset the returns and communication to taxpayers would follow.

CCT, West Bengal agreed with the Chairman, ITGRC and stated that option 2 to reset the button, inform the taxpayers and recover the amount would happen in a much faster manner. Any other solution suggested may take a long time and it would be complicated.

EVP, GSTN listed the type of issues, number of cases and the revenue involved. He stated that in 75,732 cases there may be a possibility of short payment of Rs.4,822.96 crore. Now the reverse case might also happen where the data in the ledger was more and that in the Hbase was less. So all those cases are not being reopened where the amount was more in the ledger and the taxpayer had already paid the taxes, because the same might have adjusted in the earlier months.

Chairman, ITGRC enquired whether GSTN had come across such kind of cases.

EVP, GSTN stated that in total, there are 1,31,907 cases out of which 75,732 cases were of short payment.

CCT, West Bengal stated that the short payment cases may be taken up.

Chairman, ITGRC enquired about those scenarios which put taxpayer at a disadvantage and whether the same had been brought to notice of GSTN by the taxpayers.

EVP, GSTN replied than in the reverse scenarios of Sl. No. 1 to 4, taxpayer had been approaching GSTN and they were resetting the database as required and being reported on a case to case basis.

CCT, West Bengal enquired as to further course of action in cases where the credit ledger of a taxpayer had been populated with more credit than was actually available to the taxpayer and he had utilized the same.

EVP, GSTN stated that these cases are covered in the 75 thousand cases detailed earlier and the proposal was to reset the returns and inform the jurisdictional officer.

To Chairman, ITGRC's enquiry about whether taxpayers were required to refile their returns, EVP, GSTN stated that necessary verification would have to be done by the jurisdictional tax officers before arriving at whether in a particular case recovery was warranted. This would be collaborative effort between the system and the tax officer. GSTN is seeking approval of ITGRC for resetting the returns of the taxpayers to the extent of revenue involved and informing both the taxpayers and the tax officers simultaneously regarding the same.

CCT, West Bengal enquired as to whether the taxpayer would be allowed to file further returns in cases a return had been reset for short payment. EVP, GSTN replied taxpayer would be allowed to file returns. CCT, West Bengal requested that officers may be provided with an MIS for the same. He also raised the issue of interest on the delayed payment of tax. Chairman, ITGRC enquired as to whether this short payment could be attributed to a technical glitch like in the case set out where due to slowness of the system, data had got saved after offsetting of taxes. EVP, GSTN stated that except for this scenario, the other reasons as stated earlier for short payment could not be called a technical glitch.

Chairman, ITGRC stated that the best solution would be to combine the 2 options presented by GSTN, viz., that GSTN would reset the return and send the same to jurisdictional officers for verification. CCT, West Bengal pointed out that issue may arise where such short payment is for the years 2017-18 and 2018-19. 2017-18 had already become time barred. Even for the year 2018-19 very little time is left for issue of notices, if required.

Additional Commissioner, Haryana expressed apprehension that by the time data was sent to officers, even 2018-19 would be time barred.

Chairman, ITGRC directed that the data be sent to officers by 15.1.2024. EVP, GSTN agreed to the same. Officer from Haryana enquired whether these short payments could be considered self-admitted liability and hence a confirmed demand. EVP, GSTN stated that there could be cases where the liability was shifted downwards intentionally and fraudulently.

Chairman, ITGRC directed that the list be shared with jurisdictional officers on priority to enable them to issue notices, wherever required, in alignment with the extant legal provisions.

Decision: ITGRC approved the reset of returns of taxpayers with possible short payment. List of 75,732 cases of possible short payment be sent to jurisdictional officers by 15.1.2024 for recovery, along with interest, as per law, wherever tax dues have been short paid.

6 (b).7

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
7.	**System failure while filing GSTR-4 (quarterly) return**	13	Returns	Taxpayer has done the compute liability before amnesty and system calculated his late fee liability as per the submission date. Now, taxpayer has tried to file the return in amnesty period and paid the earlier calculated liability but got system error. Additionally filing status is not updated to FIL. This has happened because taxpayer has tried to reset the filing by clicking 'RESET' button, but there was a bug in the system that if more than one return period is in submitted status and taxpayer has tried to reset the filings then system has failed to reset the latest return.	The defect was fixed permanently on 04-08-2023 vide ICR-22213 (RQM-24947). The data fixes were executed on 09-06-2023, 06-07-2023, 20-07-2023 & 31-08-2023 vide ICR- 21471, 21814, 22036 & 22604 respectively.

Discussion:

GSTN submitted that in these cases, the taxpayer had computed late fee before the amnesty period. During the amnesty period, taxpayer filed the return and paid the late fee as computed earlier, while they were exempted from paying the same. The excess late fee so paid was refunded to the taxpayer.

Decision: ITGRC took note of the data fixes done by the GSTN.

6 (b).8

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
8.	**Recovery of excess amount credited than TDS deducted**	1	Returns	While accepting the GST TDS for May 2022, excessive TDS appearing on the portal is higher than the amount deducted. Due to defect in the System application, excess amount has been credited to the cash ledger of deductee. Deductor had paid less tax than the amount credited to cash ledger. Team is analyzing the root cause.	It has been executed on 28-07-2023 vide ICR-22063 (RQM – 13465). An amount of Rs. 13,15,400.00/- (Rs. 6,57,700.00/- for each CGST and SGST) was debited from cash ledger of the taxpayer. Sufficient amount was available in the cash ledger of the taxpayer at the time of debit.

Discussion:

EVP, GSTN stated that this was a case where excess amount has been credited to the cash ledger than the TDS actually deducted due to duplicate entries in the ledger. GSTN further informed that recovery of the excess credit has been carried out in this case.

Chairman, ITGRC enquired as to how such errors pertaining to a single taxpayer occurred.

GSTN replied that there are multiple scenarios in which such errors could occur such as during the peak filing day or slow micro services which leads to timing out and filing button gets enabled twice. Further they explained that system errors could also arise when taxpayers opened the form in multiple browsers and saved different figures in different browsers.

Decision: ITGRC took note of the data fixes done by the GSTN.

6 (b).9

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
9.	**Issue in filing status of GSTR-4**	1	Returns	Taxpayer had filed quarterly GSTR4 return for the period of Apr-Jun 2018-19 on 18th July 2018 and paid his liability but filing status was not updated to FILED. Hence, reset of this	It was executed on 07-06-2023 vide ICR-21424. Total amount of Rs.

	(quarterly) Return			return was done on 15th Oct 2018. After reset, taxpayer again filed his GSTR4 return on 21st Oct 2018 by once again clearing his liabilities. Since the liability was paid twice, refund was to be given to the taxpayer.	5000/- (CGST: Rs. 2500/-, SGST: Rs. 2500/-) has been refunded.

Discussion:

GSTN said that this was a case pertaining to the period 2018-19. The taxpayer had paid the tax liability twice due to resetting of his return. The amount involved was Rs. 5000/-. The amount has since been refunded to the taxpayer.

Decision: ITGRC took note of the data fixes done by the GSTN.

6 (b).10.

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
10.	**Error in filing GSTR-4** **(Quarterly)**	3	Returns	The taxpayers were getting error while filing CMP-08 form "Liability for previous tax period is yet to be paid. Transaction handling was not proper due to mix of Transaction Handling Manager/ Non Transaction Handling Manager transactions 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 'Fil' in return filing status table without paying liability and without updating 'No' in column 'Is Open' of Return Liability Master table besides the rollback of liability setoff entries in ledger.	It was executed on 29-05-2023, 08-06-2023 and 18-07-2023 vide ICR – 21343, 21471 and 21971 respectively, to reset the returns.

Discussion:

GSTN stated that in the said 3 cases**,** GSTR4 return had been filed by the taxpayers without clearing the tax liability. However, it was found that when the taxpayer tries to file the next return, the system asks for payment of the old liability. Recovery of late fee of Rs. 700/- was done in one case. For the other 2 taxpayers there are no financial implications.

Decision: ITGRC took note of the data fixes done and recovery made by the GSTN.

6 (b).11

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
11.	**Issue in updation of CWF flag when partial refund amount is sanctioned by the officer**	17	Refunds	When Tax officer issues refund order partially sanctioning to Taxpayer and part to Consumer welfare fund (CWF), the amount sanctioned to CWF was crediting to Taxpayer's bank account. As per the current functionality, RFD_R1R2_MAP table contains the list of payment order (RFD 05) which is being used for generation of payment file to PFMS. The RFD 05 details in this table is updated with CWF flag when complete amount is sanctioned to CWF. However, if part amount is sanctioned, CWF flag is not updated. This resulted in disbursement of CWF amount into taxpayer's account.	The issue has been fixed permanently. The 17 taxpayers were sent e-mail to pay back the wrongly credited amount. Out of 17, 5 taxpayers have paid back an amount of Rs. 752668/- (SGST-486815/-; CGST-225117/-; IGST-38368/-; CESS-2368/-) through DRC 03. For the remaining 12 taxpayers, amount of Rs. 647861/- is to be recovered. Tax officers are communicated to recover the said amount from remaining 12 taxpayers.

Discussion:

GSTN stated that 17 cases were those in which the officer had issued a refund partially to the taxpayer and the remaining to consumer welfare fund. However, the entire refund amount had been credited to the taxpayer's bank account. They further informed that it was a code issue and has since been corrected.

GSTN submitted that there were a total of 17 cases, where the amount involved was Rs. 14.00 lakhs. Out of Rs. 14.00 lakhs, Rs. 7.52 lakhs had been paid by the taxpayers and remaining Rs. 6.47 lakhs was yet to be recovered. GSTN had to go case by case basis and thus, recovery was under process.

Chairman, ITGRC stated that the matter should not be closed and the agenda should be kept pending until the entire recovery was done. He further suggested that the recovery should be monitored by the ITGRC and GSTN should report the same to ITGRC.

The members agreed with the Chairman.

GSTN stated that they would update on the same in every ITGRC meeting.

JS, GSTCS enquired whether there were only 17 cases throughout.

GSTN stated that a scan of the entire database has been done and only 17 ARNs were found to be impacted.

Decision: ITGRC took note of the data fixes done by the GSTN and instructed GSTN to keep reporting the recoveries to ITGRC till the entire recovery is done.

6 (b).12

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
12.	**System generated IGST refund applications (RFD 01s) for the duplicate records sent by ICEGATE**	393	Refunds	ICEGATE transmits shipping bill details to GST system for generation of RFD 01s for Risky exporters. In this case, ICEGATE has resent 1879 shipping bills for which refund applications were already generated. GST system generated duplicate RFD 01s for those shipping bills which were sent twice. GST system has duplicate check which contains Shipping bill number, SB date, SB port code, Customs invoice number and date. ICEGATE has transmitted 1879 shipping bills contrary to the data exchange protocol by swapping of MM and DD values. Ex – 6745216 dated 01.06.2023 has been retransmitted as 6745216 dated 06.01.2023. It was considered as new record by GST system and RFD 01s were created for those shipping bills.	Total 393 refund applications amounting to Rs 66.89 Cr were created. Out of these applications, for 365 applications (Rs 63.12 Cr) no actions were taken by the tax officer. These 365 applications were purged by the GST system. For the remaining 28 applications, the refund has been processed by tax officers.

Discussion:

GSTN stated that the said 393 cases were related to refunds to risky exporters. Risky exporters' refund details i.e., shipping bills and invoice details are sent by ICEGATE to GST system for creation of RFD01. In the month of August and September, ICEGATE transmitted 1879 shipping bills which had already been transmitted to the GST system. In those shipping bills retransmitted by ICEGATE, dates were swapped from DD MM Y YY format, to MM DD Y YY format. GST system had

considered that as a unique record and created refund applications for those duplicated records. Total duplicate records transmitted by ICEGATE is 1879. Using those records, GSTN created 393 refund applications amounting to Rs. 66.89 Crore. After issue was found out, GSTN had nullified/purged from the system 365 applications where officers had not taken any action. For the remaining 28 applications, the officers had issued the orders and also disbursed the amounts. So out of the 28 applications of Rs. 3.77 crore, officers had rejected Rs. 1.38 crore and sanctioned Rs. 2.38 crore which was to be recovered from the taxpayers. They further informed that they had written to all the states. 3 States had responded that the said amount had been recovered but details on the same were to be collected.

Chairman, ITGRC instructed that the recovery should be monitored by ITGRC.

CCT West Bengal stated that the list of the taxpayers should be shared once with the concerned States.

JS, GSTCS enquired whether there was a permanent fix for this now.

GSTN stated that a permanent fix would be done by ICEGATE.

Chairman ITGRC suggested that GSTN could build some flag for such cases and that DG systems might be informed of the issue.

GSTN stated that the same had already been formally communicated to DG Systems.

Decision: ITGRC took note of the data fixes done by the GSTN and instructed GSTN to keep reporting to ITGRC the status of recoveries till the entire recovery had been done.

6(c) Court Directions:

Thereafter, EVP, GSTN explained 3 cases of Court Directions. The details of the cases are mentioned as follows:

6(c).1

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
1	2	3	4	5	6
1.	**Change in effective date of cancellation as per HC order**	1	Registration	The taxpayer M/s Bansal Steels with GSTIN 07AFKPB3694Q1ZT applied for cancellation on 11.2.2019 wherein mistakenly the effective date of cancellation was mentioned as 1.2.2018 in the place of 1.2.2019 and the said cancellation application was approved by the Range officer on 12.2.2019. The taxpayer subsequently during 2022 filed application dated 1.7.2022 under section 161 of the CGST Act, 2017 for rectification of order u/s 29 of CGST Act, 2017 and also filed W.P. (C) 17439/2022 in the Hon'ble High court of Delhi.	Effective date of cancellation was updated from backend.

				The Hon'ble High court vide order dated 1.3.2023 ordered that the effective date of cancellation be considered as 1.2.2019 instead of 1.2.2018 and in compliance the Range officer had passed order dated 15.3.2023 determining the effective of cancellation as 1.2.2019.	

Discussion: EVP, GSTN stated that M/s Bansal Steels had applied for cancellation on 11.02.2019, whereas the effective date of cancellation was mentioned as 01.02.2018 in place of 01.02.2019. The application was approved by the range officer. For getting the cancellation date changed, the taxpayer approached the Hon'ble High Court and Court had directed that effective date of cancellation should be considered as 01.02.2019 and not 01.02.2018.

Chairman, ITGRC enquired whether the issue could have been corrected at GSTN's end without the taxpayer having to approach the Court.

EVP, GSTN replied that if the ticket were raised by the officer, then the same could have been resolved by GSTN.

Decision: ITGRC took note of the data fix done by the GSTN.

6(c).2

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
1	2	3	4	5	6
2.	**Reverting APL 01 to submitted status as APL 04/02 has been remanded back by Hon`ble High Courts**	16	Appeal	Requests have been received from various states to enable Appellate authority to restore APL 01 where either Appeal orders APL 04 or APL 02 have been remanded back by High Courts of different States. Functionality is not available for remand back to Appellate authority. The remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted" as per High Court Directions	Appeal application ARNs were restored to "Appeal Submission " stage. Functionality is developed and rolled out in production as a permanent solution.

Discussion:

EVP, GSTN stated that issue pertained to appeal orders APL 04 or APL 02 which have been remanded back by the Hon'ble HC of various States. In system, the remand back functionality was not available earlier and a data fix had to be done. Appeal application ARNs were restored to "Appeal Submission" stage. They further informed that the functionality had since been developed and was in production for demand and refund orders. In the said 16 cases, a data fix was undertaken.

Decision: ITGRC took note of the data fixes done by the GSTN.

6(c).3

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
1	2	3	4	5	6
3.	**Non-filing of ITC-01 within the prescribed period**	1	ITC-01	The taxpayer M/s Anupam Electricals (GSTIN: 09AEXPA7281G1Z1) has opted out of composition scheme on 7th January, 2023. He was allowed to file ITC-01 form within 30 days of the said date. However, he could not file the form within the time period. There was no defect in the System Application, but the taxpayer has got the relief from Hon'ble High Court.	To comply the orders of Hon'ble H.C order, the taxpayer was allowed to file the said form to claim the credit. The state confirmed that they have accepted the order and are not filing appeal. ITC amounting to Rs. 31,18,718/- has been credited to the ledger after filing of the said form.

Discussion:

EVP, GSTN stated that the issue was that a taxpayer converted to normal from the composition scheme but did not file ITC-01 within 30 days as required by the law. The taxpayer approached the Hon'ble High Court for relief. The taxpayer got relief from the Court and the Court allowed him to file ITC-01. Further they informed that they had discussed the matter with the State of UP, where the taxpayer was registered and confirmed that the State had informed that the order has been accepted and the taxpayer may be allowed to file. GSTIN enabled the same and the taxpayer had now filed the ITC – 01.

Decision: ITGRC took note of the same.

6(d) Other issues presented during the meeting

Thereafter, EVP, GSTN presented two other cases during the meeting. One was about a VIP reference and the other one was about a person who had excess of cash ledger balance. The details of the cases are mentioned below:

6(d).1

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
1	2	3	4	5	6
1.	**To Re-open GST Portal for M/s Deoria Papers Mills Ltd to file their TRAN forms**	1	TRAN	Hon'ble Supreme Court Order, ordered for GST Portal to be opened from 01.10.2022 to 30.11.2022 for aggrieved taxpayers to file their TRAN forms. The taxpayer grievance on GST Portal on 26.11.2022 that they were unable to file the TRAN form due to some technical glitch. The said grievance was acknowledged, and the taxpayer was communicated that the resolution is under process and they will be informed once the issue is resolved. After the resolution, the window was re-opened for the TP to file TRAN form. To inform the TP, 6 reminders were sent between 27th Dec 2022 to 4th January 2023. However, despite the reminders, the taxpayer neither filed his TRAN form nor reported any technical difficulties on GST Portal. The filing of TRAN form for all the taxpayer was finally closed on 05th January, 2023.	ITGRC to provide decision for re-opening the TRAN form for the taxpayer.

Discussion:

GSTN stated that a VIP reference was received in case of M/s Deoria Paper Mills located in Uttar Pradesh. As per the Hon'ble Supreme Court orders, the TRAN-1 and TRAN-2 forms were opened and the last date of filing was 30.11.2022. However due to technical glitch, GSTN kept it open till 05.01.2023 for this particular taxpayer. The taxpayer initially tried to file TRAN-1 but as he faced some technical difficulty, he filed a ticket, which was resolved by GSTN. After resolution, six

reminders were sent between 27.12.2022 to 04.01.2023 to the taxpayer to file TRAN -1 but the taxpayer did not act on it. Eventually the filing window was closed on 5.01.2023. Now the VIP references were coming, forwarding his letter that he should be allowed to file the TRAN-1.

On being enquired by JS, GSTCS about the financial implication in this issue, GSTN replied that the further course of action in this case may be decided by the ITGRC and the data on amount of credit involved in this TRAN-1 matter is currently not available.

Chairman enquired about the legal implications and whether this relaxation could be given for individual applicants.

EVP, GSTN responded that they had resolved the technical difficulty which were being faced by this taxpayer in Filing TRAN-1 and had sent sufficient reminder e-mails also.

CCT West Bengal stated that the taxpayer had attempted to file TRAN-1 within stipulated timeline but due to some technical glitch he could not do so. GSTN removed those glitches and e-mailed him regarding this, but he did not act upon it. The basic thing remained that he had attempted to file within time.

Pr. CC, CGST Delhi Zone clarified that instructions were there to cover cases where a taxpayer had already filed his TRAN-1 and there were enough footprints in the system that he was trying to file it but it was not getting through. So, this grievance committee i.e. ITGRC should allow those cases because he was denied the opportunity to file the TRAN-1 due to the system glitches. If there were enough proofs in the system that he had attempted to file but could not get through because of the system failure, then he should be allowed. Otherwise, he would have to get directions from Hon'ble Supreme Court in this regard.

Chairman, ITGRC stated that we may accept this view.

Additional Commissioner, Haryana agreed with the Chairman ITGRC.

Chairman ITGRC directed that such cases may be brought as a table agenda.

Decision: ITGRC approved the opening of TRAN forms for M/s Deoria Papers Mills to enable them to file the same.

6(d).2

S. No.	Issue reported	No. of Cases Impacted	Module	Detailed Description	Status
1	2	3	4	5	6
2.	**Issue in adjustment of excess tax paid with RCM liability**	1	Returns	Taxpayer reported that while filing GSTR 3B for the month of Nov. 2022, the CGST amount under RCM liability mentioned in table 3.1d (inward supplies liable to reverse charge) was not reflecting in Table 6 (Payment of Tax details). Upon analysis, it was found that the system was auto adjusting the Excess paid	The taxpayer is asking either for a refund of the remaining excess tax collected or to shift the amount to the ITC ledger so that the same can be used for other than reverse charge liability.

				tax by the taxpayer from his reverse charge liability. Upon technical analysis it was found that the taxpayer paid excess tax of Rs. 7,90,126/- in July 2017 through double debit of cash ledger and ITC ledger and the system was built to accept the excess tax payment. Over the course of years his excess tax collected is getting adjusted in the Reverse Charge Liability due to the transaction code of 90018 which was designed for adjustment of negative liability, and it can be adjusted into only reverse charge liability. Hence the system is adjusting the negative liability with Reverse charge CGST only and the remaining negative liability amount is Rs. 4.58 lakh.	Note- If refund is filed by the TP under Excess payment of Tax category (July 2017), it will be time barred. The solution available is to give the excess paid amount in ITC ledger through data fix.

Discussion:

EVP, GSTN stated that this case was about the adjustment of excess tax paid by the taxpayer with the RCM liability. GSTN had received a ticket from the taxpayer that he had filed GSTR-3B in July, 2017 and his account was debited twice. Cash ledger and the ITC ledger both got debited with the liability and thus, excess tax amounting to Rs. 7,90,126/- was paid.

Further, when the taxpayer filed his returns, the liability in RCM got adjusted due to an adjustment code that was written down in 2016-17. Whenever any taxpayer paid excess tax liability then the transaction code of 90018 would auto apply and the liability would get adjusted by the system in the RCM liability. This particular taxpayer did not have much RCM liability, thus for the last 4-5 years, it was getting auto adjusted and Rs. 2.5-3 lakhs had been auto adjusted till now. The taxpayer has requested that either the excess tax payment might be transferred to his ITC ledger so that he could use it for other than reverse charge liability or the same might be refunded back.

CCT West Bengal stated that the taxpayer could apply for refund for excess cash ledger in that case.

EVP, GSTN replied that the excess amount paid was not available in cash ledger.

Chairman, ITGRC stated this issue should be presented as an agenda point in the next meeting of the ITGRC.

Decision: Issue to be taken up as an agenda point in the next meeting of the ITGRC.

Additional Discussions

JS, GSTCS stated that there were five points carried over from the previous meeting for discussion.

Chairman, ITGRC advised that these outstanding points could be shared with GSTN and GSTN would give update on these points in the next ITGRC meeting.

To summarize, 38 issues including 3 court directions were presented by GSTN for the consideration of ITGRC during its 20th meeting.

- 21 issues impacting 11387 cases where there were technical issues with no financial implication and where data was known were presented by GSTN. ITGRC took note of the data fixes in those 11387 cases and directed that permanent fix for cases where Registration Certificate was not displaying more than 400 additional places of business to be done in the next three months. Also, permanent fix permitting Aadhaar Authentication of foreign nationals to be implemented by June, 2024.

- 12 technical issues affecting locally with financial implications and where the correct data was known were thereafter discussed impacting 76,546 cases involving an amount Rs. 4894 crores. ITGRC directed that list of cases related to Electronic ITC ledger credited while filing TRAN-2, where credit had been utilized by taxpayers before verification by officers to be sent by GSTN to jurisdictional officers for checking the interest liability and list of 75,732 cases related to Data mismatch issue between Hbase & Ledger in GSTR-3B, of possible short payment of about Rs. 4823 crore to be sent to jurisdictional officers by 15.1.2024 for necessary action. ITGRC noted that an amount of Rs. 6.47 lakh is pending recovery in case of updation of Consumer Welfare Fund flag when partial refund amount is sanctioned by the officer. ITGRC directed that the same may be monitored till recovery. In case of System generated IGST refund applications (RFD 01s) for the duplicate records sent by ICEGATE, Rs. 2.38 crore has to be recovered from the taxpayers. ITGRC noted that an amount of Rs. 98.96 crore has been recovered/reversed, Rs. 5,500/- had been refunded and an amount of Rs. 2.44 crore is pending recovery. Also, the list of 75,732 cases with possible short payment of Rs. 4823 crore needs to be sent to jurisdictional officers for verification.

- ITGRC also took note of the data fixes carried out by GSTN in case of 3 Court Directions impacting 18 cases.

- Two cases were presented during the meeting. One was request in case of M/s Deoria Papers Mills Ltd to-reopen GST Portal to file TRAN forms and other was issue related to adjustment of excess tax paid with RCM liability. ITGRC approved the opening of TRAN forms for M/s Deoria Papers Mills to enable them to file the same. The second issue was deferred till the next meeting of the ITGRC.

Chairman, ITGRC thanked all the members for so patiently attending the long meeting and for their valuable contribution.

Annexure-1

Centre:

i. Member (GST), CBIC – Sh. Shashank Priya (Chairman, ITGRC)

ii. Pr. Chief Commissioner, CGST, Delhi Zone – Sh. Rajesh Sodhi

States:

i. Commissioner, State Tax, West Bengal – Sh. Khalid Aizaz Anwar

ii. Additional Commissioner, Haryana – Dr. Hemant Kumar

iii. Joint Commissioner, e-Gov, SGST, Gujarat – Sh. Dharmesh Goyani

iv. Joint Commissioner, State Tax, Tamil Nadu – Thiru E. Muniyasamy

GST Council Secretariat:

i. Additional Secretary, GSTCS- Sh. Pankaj Kumar Singh
ii. Joint Secretary, GSTCS- Ms. Ashima Bansal
iii. Joint Secretary, GSTCS- Ms. B. Sumidaa Devi
iv. Director, GSTCS- Sh. Kshitendra Verma

Special Invitees:

i. Executive Vice President, GSTN- Sh. Dheeraj Rastogi

ii. Executive Vice President, GSTN- Sh. Nirmal Kumar

iii. Vice President, GSTN - Sh. Jeyanth Malaiyandi

iii. Vice President, GSTN- Sh. Jagmal Singh

Annexure-2

Agenda on Data Fix issues

Technical Issues Requiring Data Fix of the Processed Incorrect Data through Backend Utilities

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 the15th meeting held on 12/08/2021, which is as below:

i. Analysis of data discrepancy.
ii. Confirmation of discrepancy sought from MSP.
iii. Upon confirmation, utility to be created by MSP to extract similar cases from GST System data.
iv. A root cause analysis conducted to fix the issue and implemented by MSP in consultation with GSTN to rectify data inconsistency.
v. Scripts created for data fix and tested in multiple cycles by MSP and GSTN.
vi. Approval note presented to competent authority to fix the issue.
vii. After approval, audit entries created for each change affecting the data.
viii. Scripts executed and post execution state of data stored for reference later.
ix. 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

Technical Issues Requiring Data Fixes through Backend Utility

(Period -1st April, 2023 to 31st October, 2023)

Cases Requiring Internal Approval of SVP, EVP/CEO or Post facto Approval of ITGRC									
S. No.	**Issue reported**	**Approved By**	**Date of Approval**	**No. of Cases Impacted**	**Financial Implication**	**Module**	**Correct Data Known / Not Known**	**Detail Description**	**Status**
1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
Cases having no financial implications									
1	**a. User unable to open core/non-core amendment application.** **b. End user was unable to see newly added *Additional Place Of Business (APOB)*.** **c. End user unable to see amended Registration Certificate.**	EVP (Services)	12.10.2023	4	No	Registration	Known	a. End user is not able to open fresh core/non-core application as data from all the master tables is not getting loaded within optimized time limit. This is happening with large firms who are having high count of Additional Place of Business. b. End user is not able to see list of newly added APOB in amended Registration Certificate as database transaction is not getting completed within optimized time limit, as a result master tables are not getting updated. This is happening with large firms who are adding 400+	Data fix has been done on ticket basis. RQM 26195 has been generated to permanently fix this issue.

								new *Additional Place of Business (APOB)* in one go. c. End user is not able to see amended RC as database transaction is not getting completed within optimized time limit as a result master tables are not getting updated. This is happening with large firms who are adding 400+ new APOB in one go.	
2	**For a migrated taxpayer, the photo of primary authorised signatory and director got interchanged in Registration certificate (RC) when the TP applied for a core-field amendment.**	EVP (Services)	09.10.2023	1	No	Registration	Known	At the time of migration, member identifier generated by utility was not created correctly and as a result same identifier for two persons was generated. Subsequently the taxpayer applied for core field amendment, photo of the director got overridden with photo of director via batch job which is responsible for RC generation.	Data fix done.
3	**Change of effective date of cancellation of registration**	EVP (Services)	06.10.2023	1	No	Registration	Known	A GSTIN 08BOTPK4490J2Z6 has been cancelled with effect from 31-03-2020 but as	Data fix done.

	for GSTIN : 08BOTPK4490J2Z6							per order of Chief Commissioner State Tax, Rajasthan the GSTIN 08BOTPK4490J2Z6 was liable to be cancelled from effective date 05-06-2018.	
4	**Issue in core-amendment due to incorrect PAN details**	EVP (Services)	11.05.2023	1	No	Registration	Known	At the time of migration to GST, the taxpayer has submitted his old inactive PAN. The old / inactive PAN has been surrendered and the new PAN has not been updated in this GST registration. The functionality to edit PAN is not available in the portal. This has put the applicant in the state of deadlock as portal does not allow the amendment in the partnership of the said firm.	Data fix done (Current amendment application was deleted from the system to allow the user to file new amendment)
5	**Issue in registration end date for casual taxpayers**	EVP(Services)	13.04.2023	39	No	Registration	Known	The registration end date of casual/NRTP taxpayers for 39 users was showing as Null in the system. As the end registration date was null, users were facing issue in updating invoices for	Registration end date was updated in master table via data fix. For permanent fix, RQM 26172 has been raised.

								certain dates in GSTR-1.	
6	**Incorrect calculation of GSTR1-GSTR3B mismatch and incorrect creation of DRC01B.**	EVP (Services)	27.07.2023	2	No	Returns	Known	An incorrect DRC01B was getting created for June2023 when user tried to generate summary of GSTR1 for July 2023 before the due date of GSTR3B (June 2023) without filing June 2023. The spike calculation b/w GSTR-3B & GSTR-1 is based on auto-calculation. As the mismatch calculation happens only after filing GSTR3B but the TP has not filed GSTR3B (i.e., June 2023) so there is no data for mismatch of GSTR1-GSTR3B. And the current spike rule check is not blocking the user from generating summary of GSTR1 of current return period (i.e., July 2023) before due	Permanent fix is deployed in production

								date of previous return period GSTR3B (i.e., June 2023), due to which the system is trying the check directly for GSTR1-GSTR3B mismatch which does not exist, so as a fallback mechanism the system calculates the mismatch on GSTR1 filing data and GSTR3B save data of previous return period (i.e., June 2023).	
7	**Issue in filing GSTR-3B after opting for composition scheme**	EVP (Services)	10.10.2023	1	No	Returns	Known	While checking in database, it has been found that liability posted in the liability register was not paid by the tax payer. It had happened due to defect in the system application during 2017-18. Since the return in form GSTR-4 was not filed but only submitted for the tax period Oct-Dec 2017, therefore entries in the liability register	RQM#25614 has been raised to fix this issue.

								were deleted through utility and the taxpayer was enabled to file GSTR-3B of Dec 2017.	
8	**Reset cases in GSTR-3B (Partial commit happened on click of reset button while filing GSTR- 3B)**	EVP (Services)	12.09. 2023	2	No	Returns	Known	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). In the beginning, returns lying at submit stage were reset from the backend as lot of complaints were received on account of inadvertent	Permanent fix is not required because RESET button is removed from system. These are the cases raised by taxpayers prior to the implementation of RESET button.

								mistakes. Taxpayer clicked on "Reset" button with intention to clear liabilities posted in ledger and the submit entry posted in return database. Rollback happened in return database but entries in ledger didn't happened which were also supposed to be rolled back. Return period involved is 10/2017	
9	**Taxpayers were not able to pay GSTR-3B liability as 'Make Payment' button was not working**	EVP (Services)	02.06.2023	2	No	Returns	Known	Taxpayers were not able to pay his liabilities for GSTR3B by clicking on "MAKE PAYEMENT/POST CREDIT TO LEDGER" button, hence not able to file GSTR3B. Two taxpayers had submitted GSTR3B for tax period November 2017 and did not file GSTR3B. Now, interest has also been levied in GSTR3B and	Data fix done. As frequency of these types of cases are very less likely, therefore no code fix is required.

								due to this code change, taxpayers are unable file GSTR3B for the above said tax period. This issue is coming for users who had saved their GSTR3B in years when interest was not mandatory and not filed it yet. When they subsequently come to file the GSTR 3B, system notices that the format has changed and the interest is payable and hence not allowing them to file the saved return.	
10	**Electronic ITC Ledger incorrectly debited from new GSTIN instead of old GSTIN while filing ITC02.**	EVP (Services)	12.07.2023	1	No	Returns	Known	While filing ITC02 for transfer of ITC from the old GSTIN (closed) to new GSTIN, the system has transferred the amount from new GSTIN to old GSTIN. This has happened because the taxpayer has provided same	It was executed on 21-07-2023 vide ICR - 22036.

								phone number for both the GSTIN - Old (09ABHPC7139 C1ZW) & New (09BSMPS2087 J2ZY) and due to which system has encountered the issue.	
11	**Error in GSTR-7 filing-** **Deductor was unable to file GSTR-7 due to issue in flowing of rejected record from TDS/TCS received from (R2X)**	EVP (Services)	25.05. 2023	1	No	Returns	Known	GSTR-7 user had amended the 072021 records in 082021 return period because GSTR2X user had not taken any action in R2X on 072021 records but accepted the 082021 record auto-populated from amendment table of GSTR7. The original record in R2X was supposed to be deferred but due to technical glitch it had not so happened. GSTR2X user took action on 072021 records and rejected the 072021 record in 032023. Due to this the GSTR7 user was not able to file the return for the March,	It was executed on 15-06-2023 RQM-22154.

								2023 period	
12	**GSTR 7 Filing status of GSTR7 was struck in 'In Progress' stage.** **TDS/TCS Received Form not populated after GSTR-7 Filing** **Filing status of GSTR9 was not updated properly.** **Taxpayer had filed CMP08, but Filing Status was not updated to 'FIL'** **Filing status of GSTR8 by ECO was stuck up 'In Progress'.**	EVP (Services)	24.03.2023	GSTR7 Form – 5 case TDS/TCS Received Form – 3 case GSTR9 Form – 15 case CMP08 Form – 1 case GSTR8 Form – 1 case	No	Returns	Known	4. Due to non-updation of filing status of previous tax period's return filed in FORM GSTR7 by the deductor, the return of subsequent tax period could not be filed. 5. DB insertion was not happened into RETURN_FILING_STATUS table and not updated in cache. 6. Filing status not updated in Data base	4. GSTR7 : It was fixed vide ICR-22061 (RQM 10022) on 02-08-2023 and vide RQM-22154 on 15-06-2023 and return status is 'Filed' now. TDS/TCS: It was fixed on 23-06-2023 vide ICR-21213 (RQM-13465). 6. GSTR9/CMP08/GSTR8: It has been fixed.
13	**Error while auto-populating details in table 4A and 4B of GSTR-4**	EVP (Services)	14.07.2023	2	No	Returns	Known	Taxpayer attempted to file his GSTR4 Annual but auto population of data in table 4A and 4B from GSTR-4A was	It was executed on 18-07-2023 and 07-09-2023 vide ICR – 21971 & 22697.

	(Annual).							not successful. As per the existing implementation, data in table 4A & table 4B of GSTR-4 is auto-generated from GSTR-4A. .However this activity was not successful as the *SQL connection timeout exception* due to large data.	
14	**Incorrect data getting auto-drafted in table 5 of GSTR-4 Annual return.**	EVP (Services)	16.10.2023	2	No	Returns	Known	Taxpayer attempted to file his GSTR4 Annual Return but auto population of CMP08 data in table 5 of GSTR-4 Annual is getting populated incorrectly This has happened because total value for Taxable Amount, CGST & SGST of HBase has incorrect value. Proposed solution is to update the value of Taxable Amount, CGST & SGST with Actual value in	It has already been executed.

								HBase (GSTR4X Filing Summary table) by running an utility (ReturnR4CMP 08Utility).	
15	**Date format mismatch in Offline tool of ITC-01 (Invoice date format was different in offline tool than required.)**	EVP (Services)	03.10. 2023 & 17.10. 2023	3	No	Returns	Known	System is giving error "Type Mismatch" while adding invoice in ITC01 offline tool and taxpayer was unable to file ITC01-18(1)(c) within the due date. This had happened as taxpayers copied the invoice date into ITC01 Offline Tool and date format expected by the tool was incorrect. However, no proper validation exists for date field in the tool and mismatch runtime error was shown to user.	Defect was fixed on production via RQM-24876 & 25757 on 1-Oct-23. However, since the due date for filing ITC01-18(1)(c) was over, the ITC01 was reopened for filing.

16	**Correction in cash ledger balance due to credit/debit happened simultaneously.**	EVP (Services)	03.10.2023	21	No	Returns	Known	The issue has occurred due to debit and credit entry happening simultaneously in the cash ledger, due to which balance was not updated properly for 23 taxpayers. These 23 cases pertains to the period - Dec 2022 to June 2023. Out of 23 cases, 21 are registered taxpayers and 2 have already been cancelled. It is happening due to defect in the application which is being looked after separately	Data fix was done on 27 Oct 2023 via ICR#23364
17a	**Transfer of Cash Ledger Amount from Temporary Registration to GSTIN with same PAN.**	EVP (Services)	30.10.2023	1	No	Returns	Known	The challan amount of Rs.10,34,775/- was deposited in GST No.1723000000 17AR5(Temporary) meant for Advance Ruling. This amount cannot be used for any other purpose as there is no functionality for setting off against any demand or claiming refund.	Functionality to restrict payment *(more than required amount)* through Challan for Advance Ruling Temp ID users is in pipeline. Data fix is done for this particular case.

								The taxpayer has ignorantly deposited amount in Temp ID for Advance Ruling through Challan facility.	
17b	**Reversal of cash balance from provisional/inactive GSTIN to Active GSTIN**	EVP (Services)	12.09.2023	100	No	Returns	Known	While transferring amount through Form GST PMT-09 from cash ledger to another GSTIN registered on the same PAN, in 100 cases (Ledger reference numbers), amount was transferred to inactive taxpayers also who were not migrated to GST and have no credentials to carry out any business transaction on the portal. This error happened in past cases due to defect which has now been fixed. Ledger amount to be transferred to the active PAN of the GSTINs.	Permanent code fix has already been done vide CR#24869. The issues of impacted taxpayers have been fixed.

18	**For the category of "Excess cash ledger balance", in case deficiency memo is issued, the amount debited while applying refund application is not crediting back to the cash ledger.**	EVP (Services)	Different dates	3	No	Refund	Known	For the refund applications AA060323017870K dated 12.03.2023, AA290223072653 7 dated 24.02.2023 and AA080623067593Y dated 26.06.2023 (all belongs to the category of Excess cash ledger balance refund), the tax departments have issued Deficiency memo. However, the amount debited at the time of filing of refund applications were not credited to the Applicant's cash ledger due to technical issue.	Permanent solution is given in September 2023 wherein the option of issuance of Deficiency memo was removed for Excess cash ledger balance refund.
19	**Issue in status update of taxpayer on EWB portal.**	SVP (Tech)	10.08.23	1	No	E-way bill	Known	The status of taxpayer was BLOCKED on EWB portal due to non-filing of GSTR-3B. However, after filing the return GSTR-3B the status on EWB portal was not getting updated from "Blocked to Unblocked". The taxpayer was	The status was manually updated to UNBLOCKED.

								UNBLOCKED from NIC end, therefore on GST portal the status was manually updated to UNBLOCKED in our database. This happened during peak filing; because of batch load the user's "STATUS" was stuck in "Blocked" status. Reason is because of batch load the user's "STATUS" was stuck in "Blocked" for of which taxpayer is not able to generate E-way bill.	
20	**Export Invoices were not transmitted to ICEGATE from GST portal for IGST refund.**	EVP (Services)	30.10.2023	11,173	No	Refund	Known	The export invoices were not transmitted to ICEGATE because the export ledger is updated incorrectly by GST system. Export ledger is maintained for each taxpayer with the values of liability (Table 6) reported in GSTR 1 and the payment(Table	Team has already completed code fix, and the same is planned to be deployed during next window. Meanwhile, the DB scan has been done for similar cases between June to Oct 2023 – data fix will be done for

								3.1(a)) made in GSTR 3B. Invoices are transmitted to ICEGATE if Payment in GSTR 3B >= liability reported in GSTR 1. Invoices are not transmitted to ICEGAGE due to negative balance in the export ledger. The reason is that the SEZ invoices from Table 6B of GSTR 1 is computed twice by the GST system. It resulted in more liability and negative balance in export ledger. That's why, invoices are not getting transmitted to ICEGATE for the exporters who reported SEZ supply.	the impacted cases.
21	**Aadhar Authentication of Non-resident**	Will be decided in ITGRC	N. A.	1	No	Registration	Known	A foreigner is restricted from performing Aadhar authentication in GST system. As this GSTIN is having other directors	Code fix has to be done to allow residents to perform Aadhar authentication. This will take time and

								mentioned as "Promoter/Partner" tab, system is expecting for AA for refund functions. However, the CEO & MD of Air India is a foreign national but having Aadhar and wants to do Aadhar authentication. The following persons are required to do Aadhaar Authentication in GST system: 1. Primary Authorised Signatory (PAS); 2. Indian Citizen mentioned in Partners Promoters tab. In case, all the persons mentioned are non-resident, then system is not asking non-resident to do Aadhaar Authentication and Status of Aadhaar would be Aadhar validated if PAS has completed Aadhaar	if ITGRC agrees data fix can be done. When data fix is done, the status will be shown as Aadhar authenticated both to the taxpayer and tax officer.

								Authentication and system will allow taxpayer to file refund. In instant case (ticket no. 2023112111659366), the taxpayer has Indian Director and hence system is not allowing taxpayer to file refunds and treating Aadhaar as unauthenticated. The above has been developed as per the requirements received by us. This is as per the expected system behaviour.	

S. No.	Issue reported	Approved By	Date of Approval	No. of Cases Impacted	Financial Implication	Module	Correct Data Known / Not Known	Detail Description	Status
1	2	3	4	5	6	7	8	9	10
Cases having financial implications									
1	**Excess amount credited to the cash ledger of suppliers on account of TCS**	EVP (Services)	20.07.2023	1	Yes	Returns	Known	E commerce operator (ECO, GSTR8 user) has filed GSTR8 for the return period of Jul 2022 on 08th Aug 2022. Supplier has accepted this record for Jul 2022 return period and he has filed the return on 11th Aug 2022. Due to technical glitch, status was not updated as FIL in return filing status table. Because of this issue, system allows ECO to self-amend this record in Nov 2022. While doing self-amendment ECO has performed downward amendment. Supplier again accepted this amended record in Nov 2022 period through which he claimed the credit twice for the single record. During compute liability, entry went to ledger. But due to issue with Kafka the status was not updated to FIL in	It has been fixed.

								Return Filing Status table. Since status was not updated to FIL, GSTR8 user has changed the data which was already saved and it again got populated. Auto populated value at R2X user is hence greater than what GSTR8 user has filed. Due to that R2X user has claimed the excess amount which has to be recovered from R2X user.	
2	**Electronic ITC ledger credited while filing TRAN-2**	EVP (Services)	05.06.2023	369	Yes	TRAN	Known	Taxpayers who have filed their TRAN-2 return via DSC filing, during period from 29-09-2022 to 30-11-2022 got the electronic ledger credited as per their filing amount at the same time of filing instead of getting Electronic ITC Ledger after verification through BO- tax official flow.	The defect was fixed on 28th April 2023 via RQM 24409.
3	**Error in filing GSTR-3B due to balance liability**	EVP (Services)	10.07.2023	10	Yes	Returns	Known	In the initial period of implementation of the GST, in composition return filed in form GSTR-4, there were two stages of filing i.e. Submit & File. System used to	No changes is required to be made in the applicatio n

								compute late fee up to the date of submission of the return and the late fee for the period between Submit & File used to be carried forward to the next tax period. The upper celling of late fee was Rs. 5000/- per tax period. The addition of late fee of previous tax period should not have been accounted for the upper celling but system has kept a limit of Rs. 5000/- in this case also. Thus some tax payers had paid short late fee than actual. The defect was noticed later on and balance late fee liability was posted in the return due to be filed. Therefore the balance amount of late fee was recovered and tax payer filed the return without any error. This has happened because the cap of late fee of Rs. 5000/- was applicable for one tax period and not for any liability carried forward from the previous tax period.	software as GSTR-4 (Quarterly) has already been discontinued from April 2019.

4	**Redundant entries in ledger while filing GSTR-4(Annual)**	SVP (Technology)	23.06.2023	3	Yes	Returns	Known	Taxpayer has cleared the liability and filed his CMP08/R4X return but redundant(multiple) entries were inserted in ledger. In cases where sufficient balance was available in subsequent insertion, balance was deducted again and filing status was updated to" FIL". In cases where sufficient balance was not available in subsequent insertion, filing status was not updated to" FIL". Solution is to a) Remove redundant(multiple) entries from ledger and update filing status as "Filed" b) Refund of extra liability deducted (wherever applicable)	It was executed on 27-06-2023 vide ICR-21690. Yes; Refund of late fee of Rs. 500/- (CGST: Rs. 250/- & SGST: Rs. 250/-) has been done in one case. No refund was due in two cases.
5	**System error while filing GSTR-4(quarterly) form**	EVP (Services)	31.07.2023 & 10.08.2023	3	Yes	Returns	Known	System had computed the late fee liability at the time of "Compute Liability' in GSTR-4 (Quarterly) but later on not updated the same when taxpayer came to file the return and allowed to file the return with short paid late fee.	It was executed on 02-08-2023 and 11-08-2023 vide ICR-22228 and 22362 respectively.

								Thus, balance amount of late fee need to recovered from the taxpayer which can be paid by taxpayer voluntarily through Form GST DRC-03. Thereafter, the status of the return would be changed to 'FIL' in the relevant table in the database. Afterwards, taxpayer will be able to file future returns.	The defect was fixed permanently on 04-08-2023 vide ECR-22213 (RQM-24947)
6	**Data mismatch issue between Hbase & Ledger in GSTR-3B**	Will be decided by ITGRC.	N.A.	75,732	Yes	Returns	Known	6. Taxpayers & tax officers have raised tickets stating that the taxpayers have filed the GSTR 3B return but there is a mismatch in the data entered vis-à-vis payment made. 7. The table 6 of GSTR 3B i.e. the payment table is auto-populated from values in table 3 i.e. Outward supplies and table 4 i.e. ITC Availed. Post the payment of the liability, the values are then	Proposed solution: 1) The list of the cases may be provided to the field formations for recovery of the unpaid liability and the ITC values which have been claimed in the credit ledger vis a vis lesser or no values in hbase tables.

								posted to the respective ledgers i.e., the cash, ITC and liability ledgers. 8. On reporting of these values on the GST portal, the data is thereby stored in Hbase tables in the backend. Hbase is a type of database management technology used to store and handle big data systems. 9. On technical analysis of the issue reported it was found that in certain situations a technical glitch is occurring in the backend technological systems resulting in storing of different values in the Hbase tables in the backend and the ledger entries of the taxpayers. Further, in some rare cases system also allowed the returns to be filed	(This is the easiest solution with no technical development involved and the number of cases per tax officer would not be unmanageable). OR 2) The returns identified in the cases mentioned above may be reset by the system. After the reset of the returns, the taxpayers would be communicated via e-mail/SMS/Phone to file their returns with the correct values an

								without debiting the taxes from the respective ledgers. 10. In total, there are 1,31,907 cases of mismatch in data entries with 98,253 unique GSTNs across all financial years. Further, out of 1,31,907 cases, in 75,732 cases there is a possible revenue loss of Rs 4,822.96 crores on the below counts – a)either through no values or less than Hbase value entered in liability ledger; b)availing more value in ITC ledger than data available in Hbase	d correspondingly the tax officers would be informed so that they can facilitate and follow up on the return filings. This solution requires certain technical development
7	**System failure while filing GSTR-4 (quarterly) return**	EVP (Services)	05.06.23, 05.07.23, 17.07.23 & 29.08.23	13	Yes	Returns	Known	Taxpayer has done the compute liability before amnesty and system calculated his late fee liability as per the submission date. Now, taxpayer has tried to file the return in amnesty period and paid the earlier calculated liability but got	The defect was fixed permanently on 04-08-2023 vide ICR-22213 (RQM-24947). The cases were

								system error. Additionally filing status is not updated to FIL. This has happened because taxpayer has tried to reset the filing by clicking 'RESET' button, but there was a bug in the system that if more than one return period is in submitted status and taxpayer has tried to reset the filings then system has failed to reset the latest return period.	executed on 09-06-2023, 06-07-2023, 20-07-2023 & 31-08-2023 vide ICR-21471, 21814, 22036 & 22604 respectively.
8	**Recovery of excess amount credited than TDS deducted**	EVP (Services)	20.07.23	1	Yes	Returns	Known	While accepting the GST TDS for May 2022, excessive TDS appearing on the portal is higher than the amount deducted. Due to defect in the System application, excess amount has been credited to the cash ledger of deductee. Deductor had paid less tax than the amount credited to cash ledger. Team is analyzing the root cause.	It has been executed on 28-07-2023 vide ICR-22063 (RQM – 13465). An amount of Rs. 13,15,400.00/- (Rs. 6,57,700.00/- for each CGST and SGST) was debited from cash ledger of the

									taxpayer. Sufficient amount was available in the cash ledger of the taxpayer at the time of debit.
9	**Issue in filing status of GSTR-4 (quarterly) Return**	EVP (Services)	02.06.23	1	Yes	Returns	Known	Taxpayer had filed quarterly GSTR4 return for the period of Apr-Jun 2018-19 on 18th July 2018 and paid his liability but filing status was not updated to FILED. Hence, reset of this return was done on 15th Oct 2018. After reset, taxpayer again filed his GSTR4 return on 21st Oct 2018 by once again clearing his liabilities. Since the liability was paid twice, refund was to be given to the taxpayer.	It was executed on 07-06-2023 vide ICR-21424. Total amount of Rs. 5000/- (CGST: Rs. 2500/- , SGST: Rs. 2500/-) has been refunded.
10	**Error in filing GSTR-4 (Quarterly)**	EVP (Services)	23.05.23, 02.06.23 & 10.07.23	3	Yes	Returns	Known	The taxpayers were getting error while filing CMP-08 form "Liability for previous tax period is yet to be paid. Transaction handling was not proper due to	It was executed on 29-05-2023, 08-06-2023 and 18-07-2023 vide ICR

								mix of Transaction Handling Manager/ Non Transaction Handling Manager transactions 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 'Fil' in return filing status table without paying liability and without updating 'No' in column 'Is Open' of Return Liability Master table besides the rollback of liability setoff entries in ledger.	– 21343, 21471 and 21971 respectively, to reset the returns.
11	**Issue in updation of CWF flag when partial refund amount is sanctioned by the officer**	EVP (Services)	18.08. 2023	17	Yes	Refunds	Known	When Tax officer issues refund order partially sanctioning to Taxpayer and part to Consumer welfare fund (CWF), the amount sanctioned to CWF was crediting to Taxpayer's bank account. As per the current functionality, RFD_R1R2_MAP table contains the list of payment order (RFD 05) which is being used for generation of payment file to PFMS. The RFD 05	The issue has been fixed permanently. The 17 taxpayers were sent e-mail to pay back the wrongly credited amount. Out of 17, 5 taxpayers have paid back an amount of Rs. 752668/-

								details in this table is updated with CWF flag when complete amount is sanctioned to CWF. However, if part amount is sanctioned, CWF fla g is not updated. This resulted in disbursement of CWF amount into taxpayer's account.	(SGST-486815/-; CGST-225117/-; IGST-38368/- ; CESS-2368/-) through DRC 03. For the remaining 12 taxpayers, amount of Rs. 647861/- is to be recovered. Tax officers are communi cated to recover the said amount from remaining 12 taxpayers.
12	**System generated IGST refund applicatio ns (RFD 01s) for the duplicate records sent by ICEGAT**	EVP (Services)	03.10. 2023	393	Yes	Refu nds	Known	ICEGATE transmits shipping bill details to GST system for generation of RFD 01s for Risky exporters. In this case, ICEGATE has resent 1879 shipping bills for which refund applications were already generated. GST system generated duplicate RFD 01s	Total 393 refund applicatio ns amountin g to Rs 66.89 Cr were created. Out of these applicatio ns, for 365

	E.							for those shipping bills which were sent twice. GST system has duplicate check which contains Shipping bill number, SB date, SB port code, Customs invoice number and date. ICEGATE has transmitted 1879 shipping bills contrary to the data exchange protocol by swapping of MM and DD values. Ex – 6745216 dated 01.06.2023 has been retransmitted as 6745216 dated 06.01.2023. It was considered as new record by GST system and RFD 01s were created for those shipping bills.	applications (Rs 63.12 Cr) no actions were taken by the tax officer. These 365 applications were purged by the GST system. For the remaining 28 applications, the refund has been processed by tax officers.

S. No.	**Issue reported**	**Approved By**	**Date of Approval**	**No. of Cases Impacted**	**Financial Implication**	**Module**	**Correct Data Known / Not Known**	**Detail Description**	**Status**
1	**2**	3	4	5	6	7	8	9	10
Matters related to Court Directions									
1	**Change in effective date of cancellation as per HC order**	EVP (Services)	27.04.23	1	No	Registration	Known	The tax payer M/s Bansal Steels with GSTIN 07AFKPB3694Q1ZT applied for cancellation on 11.2.2019 wherein mistakenly the effective date of cancellation was mentioned as 1.2.2018 in the place of 1.2.2019 and the said cancellation application was approved by the Range officer on 12.2.2019. The taxpayer subsequently during 2022 filed application dated 1.7.2022 under section 161 of the CGST Act, 2017 for rectification of order u/s 29 of CGST Act, 2017 and also filed	Effective date of cancellation was updated from backend

								W.P. (C) 17439/2022 in the Hon'ble High court of Delhi. The Hon'ble High court vide order dated 1.3.2023 ordered that the effective date of cancellation be considered as 1.2.2019 instead of 1.2.2018 and in compliance the Range officer had passed order dated 15.3.2023 determining the effective of cancellation as 1.2.2019.	
2	**Reverting APL 01 to submitted status as APL 04/02 has been remanded back by Hon`ble High Courts**	EVP (Services)	Different dates	16	No	Appeal	Known	Requests have been received from various states to enable Appellate authority to restore APL 01 where either Appeal orders APL 04 or APL 02 have been remanded back by High Courts of different States. Functionality is not available for remand back to Appellate authority. The remand back functionality is still under development, therefore, the disposed appeal	Appeal application ARNs were restored to "Appeal Submission" stage. Functionality is developed and rolled out in production as a

								order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted" as per High Court Directions	permanent solution.
3	**Non-filing of ITC-01 within the prescribed period**	To be confirmed by ITGRC.	N.A	1	No	ITC-01	Known	The taxpayer M/s Anupam Electricals (GSTIN: 09AEXPA7281G1Z1) has opted out of composition scheme on 7th January, 2023. He was allowed to file ITC-01 form within 30 days of the said date. However, he could not file the form within the time period. There was no defect in the System Application but the taxpayer has got the relief from Hon'ble High Court.	To comply the orders of Hon'ble H.C order, the taxpayer shall be allowed to file the said form to claim the credit. The state confirmed that they have accepted the order and are not filing appeal. ITC amounting to Rs. 31,18,718/- has

									been credited to the ledger after filing of the said form.

Technical Issues Being Presented For Review Before 20th ITGRC (April- Oct. 2023)

S. No.	Types of Issues	Count
1	Technical issue with no financial Implications – Correct data known	21 *(S. No. 4 to 27)*
2	Technical issue affecting locally with financial implications – Correct data known	12 *(S. No. 29 to 43)*
3	Court Direction	3 *(S. No. 45 to 48)*

1. Technical Issues With No Financial Implications – Correct Data Known

1.1 Issue in opening core/non-core amendment application.

#	Heading	Details
1	**Issue Summary**	a. User unable to open core/non-core amendment application. b. End user was unable to see newly added *Additional Place Of Business (APOB)* . c. End user unable to see amended Registration Certificate.
2	**Issues Description**	a. End user is not able to open fresh core/non-core application as data from all the master tables is not getting loaded within optimized time limit. This is happening with large firms who are having high count of Additional Place Of Business. b. End user is not able to see list of newly added APOB in amended Registration Certificate as database transaction is not getting completed within optimized time limit, as a result master tables are not getting updated. This is happening with large firms who are adding 400+ new *Additional Place Of Business (APOB)* in one go. c. End user is not able to see amended RC as database transaction is not getting completed within optimized time limit as a result master tables are not getting updated. This is happening with large firms who are adding 400+ new APOB in one go.
3	**Reason**	Data loading issue from backend for core/non-core for large firms having high count of APOB.
4	**Status**	Data fix is being done as per ticket basis. This will be permanently fixed through RQM 26195.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	4

2. Issue in RC while filing core-amendment application.

#	Heading	Details
1	**Issue Summary**	For a migrated taxpayer, the photo of primary authorised signatory and director got interchanged in Registration certificate (RC) when the TP applied for a core-field amendment.
2	**Issues Description**	When a migrated taxpayer applied for core field amendment , photo of the director got overridden with photo of Primary Authorised Signatory in RC.
3	**Reason**	At the time of migration, member identifier generated by utility was not created correctly and as a result same identifier for two persons was generated. Subsequently the taxpayer applied for core field amendment, photo of the director got overridden with photo of director via batch job which is responsible for RC generation.
4	**Status**	Data fix done.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

3.Change in effective date of cancellation of registration

#	Heading	Details
1	**Issue Summary**	Change of effective date of cancellation of registration for GSTIN : 08BOTPK4490J2Z6
2	**Issues Description**	A GSTIN 08BOTPK4490J2Z6 has been cancelled with effect from 31-03-2020 but as per order of Chief Commissioner State Tax, Rajasthan the GSTIN 08BOTPK4490J2Z6 was liable to be cancelled from effective date 05-06-2018.
3	**Reason**	As per request received from CC, State Tax, Rajasthan.
4	**Status**	Data fix done.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

4. Issue in core-amendment due to incorrect PAN details

#	Heading	Details
1	**Issue Summary**	The issue pertains to the amendment of a promoter/partner details of M/S Jay Ess Kesar Corporation (GSTIN- 01AAAFJ7679L1Z3) . The PAN of an existing partner was an Inactive PAN. And therefore amendment could not be filed.
2	**Issues Description**	At the time of migration to GST, the taxpayer has submitted his old inactive PAN. The old / inactive PAN has been surrendered and the new PAN has not been updated in this GST registration. The functionality to edit PAN is not available in the portal. This has put the applicant in the state of deadlock as portal does not allow the amendment in the partnership of the said firm.
3	**Reason**	Current amendment application filed by the end user has invalidation error as PAN details of prompter/partner are not matching with Income Tax database and such applications don't get purged until taxpayers edit and resubmit it.
4	**Status**	Data fix done (Current amendment application was deleted from the system to allow the user to file new amendment)
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

5. Issue in registration end date for casual taxpayers

#	Heading	Details
1	**Issue Summary**	The registration end date of casual/NRTP taxpayers for 39 users was showing as Null in the system.
2	**Issues Description**	As the end registration date was null, users were facing issue in updating invoices for certain dates in GSTR-1.
3	**Reason**	As per the current code implementation, system is updating registration end date as null in the database in following scenarios if cancellation order is not passed or has been withdrawn: • Drop proceedings of suo -moto cancellation. • Rejection of self-cancellation application. • Withdrawal of self-cancellation application.
4	**Status**	Registration end date was updated in master table via data fix. For permanent fix, RQM 26172 has been raised.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	39

6. Generation of invalid DRC-01B.

#	Heading	Details
1	**Issue Summary**	Incorrect calculation of GSTR1-GSTR3B mismatch and incorrect creation of DRC01B.
2	**Issues Description**	An incorrect DRC01B was getting created for June2023 when user tried to generate summary of GSTR1 for July 2023 before the due date of GSTR3B (June 2023) without filing June 2023.
3	**Reason**	The spike calculation b/w GSTR-3B & GSTR-1 is based on auto-calculation. As the mismatch calculation happens only after filing GSTR3B but the TP has not filed GSTR3B (i.e., June 2023) so there is no data for mismatch of GSTR1-GSTR3B. And the current spike rule check is not blocking the user from generating summary of GSTR1 of current return period (i.e., July 2023) before due date of previous return period GSTR3B (i.e., June 2023), due to which the system is trying the check directly for GSTR1-GSTR3B mismatch which does not exist, so as a fallback mechanism the system calculates the mismatch on GSTR1 filing data and GSTR3B save data of previous return period (i.e., June 2023).
4	**Status**	Permanent fix is deployed in production.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	2

7. Issue in filing GSTR-3B after opting for composition scheme.

#	Heading	Details
1	**Issue Summary**	Taxpayer is not able to File GSTR-3B for month December 2017 because taxpayer has tried to file GSTR-4 for the period Oct-Dec 2017 but could not file and left the return at submit stage. Due to submission of the return liability was posted in the liability register. Since the liability was not discharge, the system has not allowed to file any return afterwards.
2	**Issues Description**	Due to defect in the system application, the tax payer was able to file composition return as well as normal return. While trying to file GSTR-3B for December 2017, since the liability of GSTR-4 was not discharged, the system has shown error that earlier liability posted in the ledger was not paid.
3	**Reason**	While checking in database, it has been found that liability posted in the liability register was not paid by the tax payer. It had happened due to defect in the system application during 2017-18.
4	**Status**	Since the return in form GSTR-4 was not filed but only submitted for the tax period Oct-Dec 2017, therefore entries in the liability register were deleted through utility and the taxpayer was enabled to file GSTR-3B of Dec 2017. RQM 25614 has been raised to fix this issue.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

8. Reset cases in GSTR 3B

#	Heading	Details
1	**Issue Summary**	Partial commit happened on click of reset button while filing GSTR- 3B
2	**Issues Description**	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). In the beginning, returns lying at submit stage were reset from the backend as lot of complaints were received on account of inadvertent mistakes.
3	**Reason**	Taxpayer clicked on "Reset" button with intention to clear liabilities posted in ledger and the submit entry posted in return database. Rollback happened in return database but entries in ledger didn't happened which were also supposed to be rolled back. Return period involved is 10/2017
4	**Status**	Permanent fix is not required because RESET button is removed from system. These are the cases raised by taxpayers prior to the implementation of RESET button.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	2

9. Reset of form GSTR-3B

#	Heading	Details
1	**Issue Summary**	Taxpayers were not able to pay GSTR-3B liability as 'Make Payment' button was not working.
2	**Issues Description**	Taxpayers were not able to pay his liabilities for GSTR3B by clicking on "MAKE PAYMENT/POST CREDIT TO LEDGER" button, hence not able to file GSTR3B. Two taxpayers had submitted GSTR3B for tax period November 2017 and did not file GSTR3B. Now, interest has also been levied in GSTR3B and due to this code change, taxpayers are unable file GSTR3B for the above said tax period.
3	**Reason**	This issue is coming for users who had saved their GSTR3B in years when interest was not mandatory and not filed it yet. When they subsequently come to file the GSTR 3B, system notices that the format has changed and the interest is payable and hence not allowing them to file the saved return.
4	**Status**	Data fix done. As frequency of these types of cases are very less likely, therefore no code fix is required.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	2

10. Incorrect debit and credit of ITC in the ledger.

#	Heading	Details
1	**Issue Summary**	Electronic ITC Ledger incorrectly debited from new GSTIN instead of old GSTIN while filing ITC02.
2	**Issues Description**	While filing ITC02 for transfer of ITC from the old GSTIN (closed) to new GSTIN, the system has transferred the amount from new GSTIN to old GSTIN.
3	**Reason**	This has happened because the taxpayer has provided same phone number for both the GSTIN - Old (09ABHPC7139C1ZW) & New (09BSMPS2087J2ZY) and due to which system has encountered the issue.
4	**Status**	It was executed on 21-07-2023 vide ICR -22036.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

11. Error in GSTR-7 filing.

#	Heading	Details
1	**Issue Summary**	Deductor was unable to file GSTR-7 due to issue in flowing of rejected record from TDS/TCS received from (R2X)
2	**Issues Description**	GSTR-7 user had amended the 072021 records in 082021 return period because GSTR2X user had not taken any action in R2X on 072021 records but accepted the 082021 record auto-populated from amendment table of GSTR7. The original record in R2X was supposed to be deferred but due to technical glitch it had not so happened.
3	**Reason**	GSTR2X user took action on 072021 records and rejected the 072021 record in 032023. Due to this the GSTR7 user was not able to file the return for the March, 2023 period
4	**Status**	It was executed on 15-06-2023 RQM- 22154.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

12a. Filing status/process not completed after filing returns

#	Heading	Details
1	**Issue Summary**	1. GSTR 7 Filing status of GSTR7 was struck in '*In Progress*' stage. 2. TDS/TCS Received Form not populated after GSTR-7 Filing 3. Filing status of GSTR9 was not updated properly. 4. Taxpayer had filed CMP08, but Filing Status was not updated to 'FIL' 5. Filing status of GSTR8 by ECO was stuck up '*In Progress*'.
2	**Issues Description**	1. Due to non-updation of filing status of previous tax period's return filed in FORM GSTR7 by the deductor, the return of subsequent tax period could not be filed. 2. DB insertion was not happened into RETURN_FILING_STATUS table and not updated in cache. 3. Filing status not updated in Data base
3	**Reason**	1. This had happened due to some issue in storm topology as it picked up the message from queue before updating the data due to which status was not updated to 'Processed'. 2. Post filing, due to duplicate record insertion (DB connectivity lost) in the batch table, the DB entries (whole transaction) were rolled back or reverted to the previous state/status, resulting in 'Ready to File' status in Filling table. 3. DB insertion was not happened into Return Filing Status table based on the status available in Cache 4. Entries got posted to Ledger tables, however, corresponding record is not updated from RTF to FIL in Return Filing Status table in return database. 5. Taxpayer tried to file the return during peak filing days and issue might have occurred due to high load.

12b. Filing status/process not completed after filing returns

#	Heading	Details
4	**Status**	1. GSTR7 : It was fixed vide ICR-22061 (RQM 10022) on 02-08-2023 and vide RQM- 22154 on 15-06-2023 and return status is 'Filed' now. 2. TDS/TCS : It was fixed on 23-06-2023 vide ICR-21213 (RQM- 13465). 3. GSTR9/CMP08/GSTR8: It has been fixed.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1. GSTR7 Form – 5 case 2. TDS/TCS Received Form – 3 case 3. GSTR9 Form – 15 case 4. CMP08 Form – 1 case 5. GSTR8 Form – 1 case

13. Error while auto-populating details in table 4A and 4B of GSTR-4 (Annual).

#	Heading	Details
1	**Issue Summary**	Error while auto-populating details in table 4A and 4B of GSTR-4 (Annual).
2	**Issues Description**	Taxpayer attempted to file his GSTR4 Annual but auto population of data in table 4A and 4B from GSTR-4A was not successful.
3	**Reason**	As per the existing implementation, data in table 4A & table 4B of GSTR-4 is auto-generated from GSTR-4A. .However this activity was not successful as the *SQL connection timeout exception* due to large data.
4	**Status**	It was executed on 18-07-2023 and 07-09-2023 vide ICR – 21971 & 22697.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	2

14. Incorrect data auto-drafted in table 5 of GSTR-4 annual return.

#	Heading	Details
1	**Issue Summary**	Incorrect data getting auto-drafted in table 5 of GSTR-4 Annual return.
2	**Issues Description**	Taxpayer attempted to file his GSTR4 Annual Return but auto population of CMP08 data in table 5 of GSTR-4 Annual is getting populated incorrectly.
3	**Reason**	This has happened because total value for Taxable Amount, CGST & SGST of HBase has incorrect value. Proposed solution is to update the value of Taxable Amount, CGST & SGST with Actual value in HBase (GSTR4X Filing Summary table) by running an utility (ReturnR4CMP08Utility).
4	**Status**	It has already been executed.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	2

15. Date format mismatch in Offline tool of ITC-01.

#	Heading	Details
1	**Issue Summary**	Invoice date format was different in offline tool than required.
2	**Issues Description**	System is giving error "Type Mismatch" while adding invoice in ITC01 offline tool and taxpayer was unable to file ITC01-18(1)(c) within the due date.
3	**Reason**	This had happened as taxpayers copied the invoice date into ITC01 Offline Tool and date format expected by the tool was incorrect. However, no proper validation exists for date field in the tool and mismatch runtime error was shown to user.
4	**Status**	Defect was fixed on production via RQM-24876 & 25757 on 1-Oct-23. However, since the due date for filing ITC01-18(1)(c) was over, the ITC01 was reopened for filing.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	3

16. Incorrect updation of cash ledger balance.

#	Heading	Details
1	**Issue Summary**	Correction in cash ledger balance due to credit/debit happened simultaneously.
2	**Issues Description**	The issue has occurred due to debit and credit entry happening simultaneously in the cash ledger, due to which balance was not updated properly for 23 taxpayers. These 23 cases pertains to the period - Dec 2022 to June 2023. Out of 23 cases, 21 are registered taxpayers and 2 have already been cancelled.
3	**Reason**	It is happening due to defect in the application which is being looked after separately.
4	**Status**	Data fix was done on 27 Oct 2023 via ICR#23364
5	**Financial Implications**	No Total amount credited to cash ledger: Rs. 2,76,329 /- (CGST TAX AMT: Rs. 1,32,102 /-,CGST FEE AMT: Rs.1,450/- ,CGST INT AMT: Rs. 493/-,SGST TAX AMT: Rs. 1,32,102/-,SGST FEE AMT: Rs. 2,450/-,SGST INT AMT: Rs. 625/-, IGST TAX AMT: Rs. 7,107/-). For 2 cancelled taxpayers, amount of Rs. 1000/- will be credited on ticket basis.
6	**No. of Impacted Cases**	21

17a. Cash ledger amount transfer from Temp Reg to GSTIN.

#	Heading	Details
1	**Issue Summary**	Transfer of Cash Ledger Amount from Temporary Registration to GSTIN with same PAN.
2	**Issues Description**	The challan amount of Rs.10,34,775/- was deposited in GST No.172300000017AR5(Temporary) meant for Advance Ruling. This amount cannot be used for any other purpose as there is no functionality for setting off against any demand or claiming refund.
3	**Reason**	The taxpayer has ignorantly deposited amount in Temp ID for Advance Ruling through Challan facility.
4	**Status**	Functionality to restrict payment *(more than required amount)* through Challan for Advance Ruling Temp ID users is in pipeline. Data fix is done for this particular case.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1 *(Similar issue was allowed by ITGRC in 19th meeting)*

17b. Reversal of cash balance from inactive to active GSTIN.

#	Heading	Details
1	**Issue Summary**	Reversal of cash balance from provisional/inactive GSTIN to Active GSTIN
2	**Issues Description**	While transferring amount through Form GST PMT-09 from cash ledger to another GSTIN registered on the same PAN, in 100 cases (Ledger reference numbers), amount was transferred to inactive taxpayers also who were not migrated to GST and have no credentials to carry out any business transaction on the portal.
3	**Reason**	This error happened in past cases due to defect which has now been fixed. Ledger amount to be transferred to the active PAN of the GSTINs.
4	**Status**	Permanent code fix has already been done vide CR#24869. The issues of impacted taxpayers have been fixed.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	100

18. Issue in re-crediting the amount post issuance of DM.

#	Heading	Details
1	**Issue Summary**	For the category of "Excess cash ledger balance", in case deficiency memo is issued, the amount debited while applying refund application is not crediting back to the cash ledger.
2	**Issues Description**	For the refund applications AA060323017870K dated 12.03.2023, AA2902230726537 dated 24.02.2023 and AA080623067593Y dated 26.06.2023 (all belongs to the category of Excess cash ledger balance refund), the tax departments have issued Deficiency memo. However, the amount debited at the time of filing of refund applications were not credited to the Applicant's cash ledger due to technical issue.
3	**Reason**	Technical issue. Permanent solution is given in September 2023 wherein the option of issuance of Deficiency memo was removed for Excess cash ledger balance refund.
4	**Status**	The amount has been re-credited to the cash ledger. Permanent solution is given in September 2023 wherein the option of issuance of Deficiency memo was removed for Excess cash leger balance refund.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	3

19. Issue in unblocking of GSTIN on EWB portal.

#	Heading	Details
1	**Issue Summary**	Issue in status update of taxpayer on EWB portal.
2	**Issues Description**	The status of taxpayer was BLOCKED on EWB portal due to non filing of GSTR-3B. However, after filing the return GSTR-3B the status on EWB portal was not getting updated from " Blocked to Unblocked". The taxpayer was UNBLOCKED from NIC end, therefore on GST portal the status was manually updated to UNBLOCKED in our database.
3	**Reason**	This happened during peak filing; because of batch load the user's "STATUS" was stuck in "Blocked" status. Reason is because of batch load the user's "STATUS" was stuck in "Blocked" for of which taxpayer is not able to generate E-way bill.
4	**Status**	The status was manually updated to UNBLOCKED.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

20. Non-transmission of invoices to ICEGATE.

#	Heading	Details
1	**Issue Summary**	Export Invoices were not transmitted to ICEGATE from GST portal for IGST refund.
2	**Issues Description**	The export invoices were not transmitted to ICEGATE because the export ledger is updated incorrectly by GST system. Export ledger is maintained for each taxpayer with the values of liability(Table 6) reported in GSTR 1 and the payment(Table 3.1(a)) made in GSTR 3B. Invoices are transmitted to ICEGATE if Payment in GSTR 3B >= liability reported in GSTR 1. Invoices are not transmitted to ICEGAGE due to negative balance in the export ledger.
3	**Reason**	SEZ invoices from Table 6B of GSTR 1 is computed twice by the GST system. It resulted in more liability and negative balance in export ledger. That's why, invoices are not getting transmitted to ICEGATE for the exporters who reported SEZ supply.
4	**Status**	Team has already completed code fix, and the same is planned to be deployed during next window. Meanwhile, the DB scan has been done for similar cases between June to Oct 2023 – data fix will be done for the impacted cases.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	11,173 Taxpayers are impacted.

21a. Aadhar Authentication of Non-resident.

#	Heading	Details
1	**Issue Summary**	GST system disallows M/s Air India to file a refund application/ transmitting the export invoices for non completion of Aadhar authentication(AA).
2	**Issues Description**	A foreigner is restricted from performing Aadhar authentication in GST system. As this GSTIN is having other directors mentioned as "Promoter/Partner" tab, system is expecting for AA for refund functions. However, the CEO & MD of Air India is a foreign national but having Aadhar and wants to do Aadhar authentication.
3	**Reason**	The following persons are required to do Aadhaar Authentication on 1 + 1 basis in GST system: 1. Primary Authorised Signatory (PAS); 2. Indian Citizen mentioned in Partners Promoters (Directors) tab. In case, all the persons mentioned are non-resident, then system is not asking non-resident to do Aadhaar Authentication. However, in case there are any Indian in the list of directors, the system insists on doing Aadhar authentication of Directors. In instant case (ticket no. 2023112111659366), the taxpayer has independent Indian Directors but CEO & MD is a foreign national. Hence, system is not allowing taxpayer to file refunds and treating Aadhaar as unauthenticated. The MD & CEO having Aadhar doesn't want to make a mis-declaration in the system of not having Aadhar in view of other Directors being independent directors with Indian nationality.
4	**Status**	The matter was taken up to LC, and LC has directed to make the suitable amendment on the portal to allow AA for foreign nationals holding Aadhar number. Data fix is in progress and code fix shall be done for future.
5	**Financial Implications**	No
6	**No. of**	1

21b. Aadhar Authentication of Non-resident.

Would you like to Authenticate Aadhaar or Upload E-KYC Documents of Partner/Promoter and Primary Authorized Signatory?

SEND AADHAAR AUTHENTICATION LINK | UPLOAD E-KYC DOCUMENTS

Select	Name	Citizen/Resident of India	Promoter/Partner	Primary Authorized Signatory	Designation	Email	Mol Nur
☑	GUNJAN CHAUDHRY	Yes	No	Yes	Head of taxation	p.oroskar@airindia.com	982
☐	VINOD SHANKAR HEJMADI	Yes	Yes	No	DIRECTOR	lovelish.arora@airindia.in	982
☐	Chandrasekaran Natarajan	Yes	Yes	No	Chairman	anubhav.jain@airindia.com	976
■	Campbell David Mcgregor Wilson	No	Yes	No	CEO & MD	satish.kamble@airindia.com	889
☐	Sanjiv Soshil Mehta	Yes	Yes	No	Independent Director	sanjiv.mehta@unilever.com	887
☐	Alice Geevarghese Vaidyan	Yes	Yes	No	Independent Director	alice_vaidyan@yahoo.com	982
☐	Prathivadibhayankara Rajagopalan Ramesh	Yes	Yes	No	Independent Director	prramesh51@gmail.com	984

2. Technical issue affecting locally with financial implications – Correct data known

1. Excess amount credited to cash ledger of supplier.

#	Heading	Details
1	**Issue Summary**	Excess amount credited to the cash ledger of suppliers on account of TCS.
2	**Issues Description**	E commerce operator (ECO, GSTR8 user) has filed GSTR8 for the return period of Jul 2022 on 08th Aug 2022. Supplier has accepted this record for Jul 2022 return period and he has filed the return on 11th Aug 2022. Due to technical glitch, status was not updated as FIL in return filing status table. Because of this issue, system allows ECO to self-amend this record in Nov 2022. While doing self-amendment ECO has performed downward amendment. Supplier again accepted this amended record in Nov 2022 period through which he claimed the credit twice for the single record.
3	**Reason**	During compute liability, entry went to ledger. But due to issue with Kafka the status was not updated to FIL in Return Filing Status table. Since status was not updated to FIL, GSTR8 user has changed the data which was already saved and it again got populated. Auto populated value at R2X user is hence greater than what GSTR8 user has filed. Due to that R2X user has claimed the excess amount which has to be recovered from R2X user.
4	**Status**	It has been fixed.
5	**Financial Implications**	Yes. Recovery of total amount Rs. 78666/- from both Supplier & ECO. Supplier: Rs. 77691/- ; ECO: Rs. 975.38/- has been done.
6	**No. of Impacted Cases**	1.

2. Electronic ITC ledger credited while filing TRAN-2

#	Heading	Details
1	**Issue Summary**	Due to a defect, Electronic ITC Ledger got credited while filing TRAN-2 return through DSC filing instead of being credited after the officer's approval.
2	**Issues Description**	Taxpayers who have filed their TRAN-2 return via DSC filing, during period from 29-09-2022 to 30-11-2022 got the electronic ledger credited as per their filing amount at the same time of filing instead of getting Electronic ITC Ledger after verification through BO- tax official flow.
3	**Reason**	In case now post credit if BO-Tax Officer approves the ITC, it would be again credited to taxpayer ledger. As per analysis, the old code logic in DSC scenario for ledger credit was still in place.
4	**Status**	The defect was fixed on 28th April 2023 via RQM 24409.
5	**Financial Implications**	Reversal of total amount Rs. 68,73,66,284.06 /- (CGST: Rs. 676,458,151.87 /- , SGST: Rs. 10,908,132.19 /- was done in 369 cases.
6	**No. of Impacted Cases**	369

3. Error in filing GSTR-3B due to balance liability.

#	Heading	Details
1	**Issue Summary**	Taxpayers were getting error while filing GSTR3B due to balance liability of late fee.
2	**Issues Description**	In the initial period of implementation of the GST, in composition return filed in form GSTR-4, there were two stages of filing i.e. Submit & File. System used to compute late fee up to the date of submission of the return and the late fee for the period between Submit & File used to be carried forward to the next tax period. The upper celling of late fee was Rs. 5000/- per tax period. The addition of late fee of previous tax period should not have been accounted for the upper celling but system has kept a limit of Rs. 5000/- in this case also. Thus some tax payers had paid short late fee than actual. The defect was noticed later on and balance late fee liability was posted in the return due to be filed. Therefore the balance amount of late fee was recovered and tax payer filed the return without any error.
3	**Reason**	The cap of late fee of Rs. 5000/- was applicable for one tax period and not for any liability carried forward from the previous tax period.
4	**Status/ Remark**	No changes is required to be made in the application software as GSTR-4 (Quarterly) has already been discontinued from April 2019.
5	**Financial Implication**	Yes, Late fee of Rs. 64,600/- (Rs. 32,300/- for each CGST and SGST) has been recovered from 8 taxpayers. 2 taxpayers have paid excess late fees and the same will be refunded on ticket basis.
6	**No. of Impacted Cases**	10 (8+ 2)

4. Redundant entries in ledger while filing GSTR-4(Annual)

#	Heading	Details
1	**Issue Summary**	Redundant entries in ledger while filing CMP08/R4(Annual) return
2	**Issues Description**	Taxpayer has cleared the liability and filed his CMP08/R4X return but redundant(multiple) entries were inserted in ledger. In cases where sufficient balance was available in subsequent insertion, balance was deducted again and filing status was updated to" FIL". In cases where sufficient balance was not available in subsequent insertion, filing status was not updated to" FIL". Solution is to a) Remove redundant(multiple) entries from ledger and update filing status as "Filed" b) Refund of extra liability deducted (wherever applicable)
3	**Reason**	System had allowed to file the return but subsequently System had made debit entry in the Liability Statement and also recovered amount from cash ledger in case of sufficient balance. .
4	**Status**	It was executed on 27-06-2023 vide ICR- 21690
5	**Financial Implications**	Yes; Refund of late fee of Rs. 500/- (CGST: Rs. 250/- & SGST: Rs. 250/-) has been done in one case. No refund was due in two cases.
6	**No. of Impacted Cases**	3

5. System error while filing GSTR-4(quarterly) form.

#	Heading	Details
1	**Issue Summary**	Taxpayer has got error while filing GSTR4 return form.
2	**Issues Description**	System had computed the late fee liability at the time of "Compute Liability' in GSTR-4 (Quarterly) but later on not updated the same when taxpayer came to file the return and allowed to file the return with short paid late fee. Thus, balance amount of late fee need to recovered from the taxpayer which can be paid by taxpayer voluntarily through Form GST DRC-03. Thereafter, the status of the return would be changed to 'FIL' in the relevant table in the database. Afterwards, taxpayer will be able to file future returns.
3	**Reason**	Taxpayers had initiated filing but completed the filing process at a later date.
4	**Status**	It was executed on 02-08-2023 and 11-08-2023 vide ICR- 22228 and 22362 respectively. The defect was fixed permanently on 04-08-2023 vide ECR- 22213 (RQM-24947)
5	**Financial Implications**	Yes. Recovery of late fee amounting to Rs. 1450/- has been done through DRC-03 in two cases. Return of one taxpayer would be opened after payment of the outstanding dues.
6	**No. of Impacted Cases**	3 (2+1)

6a. Data mismatch between Hbase & Ledger in GSTR-3B

#	Heading	Details
1	**Issue Summary**	Data mismatch issue between Hbase & Ledger in GSTR-3B
2	**Issues Description**	1. Taxpayers & tax officers have raised tickets stating that the taxpayers have filed the GSTR 3B return but there is a mismatch in the data entered vis-à-vis payment made. 2. The table 6 of GSTR 3B i.e. the payment table is auto-populated from values in table 3 i.e. Outward supplies and table 4 i.e. ITC Availed. Post the payment of the liability, the values are then posted to the respective ledgers i.e., the cash, ITC and liability ledgers. 3. On reporting of these values on the GST portal, the data is thereby stored in Hbase tables in the backend. Hbase is a type of database management technology used to store and handle big data systems. 4. On technical analysis of the issue reported it was found that in certain situations a technical glitch is occurring in the backend technological systems resulting in storing of different values in the Hbase tables in the backend and the ledger entries of the taxpayers. Further, in some rare cases system also allowed the returns to be filed without debiting the taxes from the respective ledgers. 5. In total, there are 1,31,907 cases of mismatch in data entries with 98,253 unique GSTINs across all financial years. Further, out of 1,31,907 cases, in 75,732 cases there may be a possibility of short payment of Rs 4,822.96 crores; due to a) either through no values or less than Hbase value entered in liability ledger; b) availing more value in ITC ledger than data available in Hbase

6b. Data mismatch between Hbase & Ledger in GSTR-3B

#	Heading	Details
3	**Reason**	1. Save request is processed after offset. Even though we have validation checks in place during offset to abort any save request in IP/REC state, there are few cases where it allows to save after offset. 2. Mismatch happening via G2B API NIL filing ('Zero' value is getting passed via API) while there might be some auto-populated / saved value. 3. User tries to perform NIL filing simultaneously via multiple browser tabs. When taxpayer opts 'yes' in questionnaire page for NIL filing of 3B in one tab and opts 'no' in other tab. 4. User tries to perform NON-NIL filing simultaneously via multiple browser tabs. When taxpayer opts 'No' in questionnaire page for NON- NIL filing of 3B in one tab and initiate the save request and done filing of GSTR3B with different data and opts 'No' in other tab and initiate the save request with different data. 5. Taxpayer has done offset, and Ledger gets inserted but filing status was not updated with 'FRZ' value due to database connectivity loss.

6c. Data mismatch between Hbase & Ledger in GSTR-3B

#	Heading	Details
4	**Financial Implications & No. of Impacted Cases**	

S.no	Type of issue	No of Cases	Revenue
1	Liabilities in Hbase but no value in ledger	37,725	Rs 4,079.26 crores
2	No ITC values in Hbase but values in Ledger	12,589	266.34 crores
3	ITC values both in ledger and Hbase but excess values in ledger	13,711	290.83 crores
4	Liability values both in ledger and Hbase but excess values in Hbase	11,707	186.53 Crores
	Total Cases	75,732	Rs 4,822.96 crores

6d. Data mismatch between Hbase & Ledger in GSTR-3B

#	Heading	Details
5	**Proposed Solution**	1) The list of the cases may be provided to the field formations for recovery of the unpaid liability and the ITC values which have been claimed in the credit ledger vis a vis lesser or no values in hbase tables. (This is the easiest solution with no technical development involved and the number of cases per tax officer would not be unmanageable). OR 2) The returns identified in the cases mentioned above may be reset by the system. After the reset of the returns, the taxpayers would be communicated via e-mail/SMS/Phone to file their returns with the correct values and correspondingly the tax officers would be informed so that they can facilitate and follow up on the return filings. This solution requires certain technical development.
6	**Status**	CR#22721 is created for permanent fix, development is in progress. The grievances/mismatch raised by impacted taxpayers on the portal are being addressed through return reset on ticket basis to avoid blocking of taxpayer in return filing.

7. System failure while filing GSTR-4 (quarterly) return.

#	Heading	Details
1	**Issue Summary**	Taxpayer has submitted the GSTR-4 return before amnesty period and tried to file the return in amnesty period but encountered 'system failure'.
2	**Issues Description**	Taxpayer has done the compute liability before amnesty and system calculated his late fee liability as per the submission date. Now, taxpayer has tried to file the return in amnesty period and paid the earlier calculated liability but got system error. Additionally filing status is not updated to FIL.
3	**Reason**	This has happened because taxpayer has tried to reset the filing by clicking 'RESET' button, but there was a bug in the system that if more than one return period is in submitted status and taxpayer has tried to reset the filings then system has failed to reset the latest return period.
4	**Status**	The defect was fixed permanently on 04-08-2023 vide ICR- 22213 (RQM-24947). The cases were executed on 09-06-2023, 06-07-2023, 20-07-2023 & 31-08-2023 vide ICR- 21471, 21814, 22036 & 22604 respectively.
5	**Financial Implications**	Yes. Excess late fee paid earlier amounting to Rs. 13190/- (Rs. 6595/- each under CGST & SGST head) has been refunded to all impacted taxpayers.
6	**No. of Impacted Cases**	13

8. Recovery of excess amount of TDS credited to supplier.

#	Heading	Details
1	**Issue Summary**	Recovery of excess amount credited than TDS deducted.
2	**Issues Description**	While accepting the GST TDS for May 2022, excessive TDS appearing on the portal is higher than the amount deducted.
3	**Reason**	Due to defect in the System application, excess amount has been credited to the cash ledger of deductee. Deductor had paid less tax than the amount credited to cash ledger. Team is analyzing the root cause.
4	**Status**	It has been executed on 28-07-2023 vide ICR- 22063 (RQM – 13465).
5	**Financial Implications**	Yes. An amount of Rs. 13,15,400.00/- (Rs. 6,57,700.00/- for each CGST and SGST) was debited from cash ledger of the taxpayer. Sufficient amount was available in the cash ledger of the taxpayer at the time of debit.
6	**No. of Impacted Cases**	1

9. Issue in filing status of GSTR-4 (quarterly) Return

#	Heading	Details
1	**Issue Summary**	Refund of liability paid twice by Taxpayer as filing was reset.
2	**Issues Description**	Taxpayer had filed quarterly GSTR4 return for the period of Apr-Jun 2018-19 on 18th July 2018 and paid his liability but filing status was not updated to FILED. Hence, reset of this return was done on 15th Oct 2018. After reset, taxpayer again filed his GSTR4 return on 21st Oct 2018 by once again clearing his liabilities. Since the liability was paid twice, refund was to be given to the taxpayer.
3	**Reason**	Due to defect in the System application, filing status of the return filed in Form GSTR-4 was not updated in the relevant database table. Later on, the taxpayer had reset the entries and filed the same again and paid the liability again. But, liability paid originally was not reversed. (whether the liability was given reset for the first time)
4	**Status**	It was executed on 07-06-2023 vide ICR- 21424.
5	**Financial Implications**	Yes, Total amount of Rs. 5000/- (CGST: Rs. 2500/- , SGST: Rs. 2500/-) has been refunded.
6	**No. of Impacted Cases**	1

10. Error in filing GSTR-4 (Quarterly)

#	Heading	Details
1	**Issue Summary**	Taxpayers are able to file GSTR4 without clearing liabilities. The taxpayers were getting error while filing CMP-08 form "Liability for previous tax period is yet to be paid'.
2	**Issues Description**	Transaction handling was not proper due to mix of Transaction Handling Manager/ Non Transaction Handling Manager transactions 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 'Fil' in return filing status table without paying liability and without updating 'No' in column 'Is Open' of Return Liability Master table besides the rollback of liability setoff entries in ledger.
3	**Reason**	This is due to the fact that after filing of the quarterly GSTR-4 form, although ARN has been generated and it is being shown as FILED to the taxpayer, the posting in the ledger has been rolled partially back due to technical issue (Transaction Handling Manager/ Non Transaction Handling Manager).
4	**Status**	It was executed on 29-05-2023, 08-06-2023 and 18-07-2023 vide ICR – 21343, 21471 and 21971 respectively, to reset the returns.
5	**Financial Implications**	Yes, Recovery of Late Fee of Rs. 700 /- (CGST=Rs.350/- & SGST=Rs.350/-) for one taxpayer(GSTIN-09BTZPS6713D3ZY). For rest two taxpayer there is No financial implication, as taxpayer has not paid any amount so reversal of late fee and interest is not applicable.
6	**No. of Impacted Cases**	3 (Recovery done on 28th June 2023 for 1 taxpayer)

11.Issue in crediting CWF amount for partially sanctioned refund cases

#	Heading	Details
1	**Issue Summary**	Issue in updation of CWF flag when partial refund amount is sanctioned by the officer
2	**Issues Description**	When Tax officer issues refund order partially sanctioning to Taxpayer and part to Consumer welfare fund (CWF), the amount sanctioned to CWF was crediting to Taxpayer's bank account.
3	**Reason**	As per the current functionality, RFD_R1R2_MAP table contains the list of payment order (RFD 05) which is being used for generation of payment file to PFMS. The RFD 05 details in this table is updated with CWF flag when complete amount is sanctioned to CWF. However, if part amount is sanctioned, CWF flag is not updated. This resulted in disbursement of CWF amount into taxpayer's account.
4	**Status**	The issue has been fixed permanently. The 17 taxpayers were sent e-mail to pay back the wrongly credited amount. Out of 17, 5 taxpayers have paid back an amount of Rs. 752668/- (SGST- 486815/-; CGST-225117/- ; IGST-38368/- ; CESS-2368/-) through DRC 03. For the remaining 12 taxpayers, amount of Rs. 647861/- is to be recovered. Tax officers are communicated to recover the said amount from remaining 12 taxpayers.
5	**Financial Implications**	Yes
6	**No. of Impacted Cases**	17(12+5).

12.Transmission of Shipping Bill details twice by ICEGATE

#	Heading	Details
1	**Issue Summary**	System generated IGST refund applications (RFD 01s) for the duplicate records sent by ICEGATE.
2	**Issues Description**	ICEGATE transmits shipping bill details to GST system for generation of RFD 01s for Risky exporters. In this case, ICEGATE has resent 1879 shipping bills for which refund applications were already generated. GST system generated duplicate RFD 01s for those shipping bills which were sent twice.
3	**Reason**	GST system has duplicate check which contains Shipping bill number, SB date, SB port code, Customs invoice number and date. ICEGATE has transmitted 1879 shipping bills contrary to the data exchange protocol by swapping of MM and DD values. Ex – 6745216 dated 01.06.2023 has been retransmitted as 6745216 dated 06.01.2023. It was considered as new record by GST system and RFD 01s were created for those shipping bills.
4	**Status**	Total 393 refund applications amounting to Rs 66.89 Cr were created. Out of these applications, for 365 applications (Rs 63.12 Cr) no actions were taken by the tax officer. These 365 applications were purged by the GST system. For the remaining 28 applications, the refund has been processed by tax officers.
5	**Financial Implications**	Yes
6	**No. of Impacted Cases**	In the 28 applications amounting to Rs 3.77 Cr, the tax officers rejected Rs 1.38 Cr and sanctioned Rs 2.38 Cr, which needs to be recovered from taxpayers. The tax officers and State nodal officers were sent email to recover the erroneous refund.

3. Court Directions

1. Change in effective date of cancellation as per HC order.

#	Heading	Details
1	**Issue Summary**	The tax payer M/s Bansal Steels with GSTIN 07AFKPB3694Q1ZT applied for cancellation on 11.2.2019 wherein mistakenly the effective date of cancellation was mentioned as 1.2.2018 in the place of 1.2.2019 and the said cancellation application was approved by the Range officer on 12.2.2019.
2	**Issues Description**	The taxpayer subsequently during 2022 filed application dated 1.7.2022 under section 161 of the CGST Act, 2017 for rectification of order u/s 29 of CGST Act, 2017 and also filed W.P. (C) 17439/2022 in the Hon'ble High court of Delhi. The Hon'ble High court vide order dated 1.3.2023 ordered that the effective date of cancellation be considered as 1.2.2019 instead of 1.2.2018 and in compliance the Range officer had passed order dated 15.3.2023 determining the effective of cancellation as 1.2.2019.
3	**Reason**	Taxpayer mistake in filing cancellation application.
4	**Status**	Effective date of cancellation was updated from backend
5	**Financial Implications**	No
6	**No. of Impacted Cases**	1

2. Reset of APL-02/APL-04 orders.

#	Heading	Details
1	**Issue Summary**	Reverting APL 01 to submitted status as APL 04/02 has been remanded back by Hon`ble High Courts
2	**Issues Description**	Requests have been received from various states to enable Appellate authority to restore APL 01 where either Appeal orders APL 04 or APL 02 have been remanded back by High Courts of different States. Functionality is not available for remand back to Appellate authority.
3	**Reason**	The remand back functionality is still under development, therefore, the disposed appeal order has to be given reset from the status of "Appeal disposed" to "Appeal Submitted" as per High Court Directions
4	**Status**	Appeal application ARNs were restored to "Appeal Submission" stage. Functionality is developed and rolled out in production as a permanent solution.
5	**Financial Implications**	No
6	**No. of Impacted Cases**	16 (Similar issue was allowed by ITGRC in 19th meeting)

3. Non-filing of ITC-01 within the prescribed period.

#	Heading	Details
1	**Issue Summary**	The taxpayer was unable to file application in Form GST ITC-01 to claim credit on stock within the prescribed period.
2	**Issues Description**	The taxpayer M/s Anupam Electricals (GSTIN : 09AEXPA7281G1Z1) has opted out of composition scheme on 7th January, 2023. He was allowed to file ITC-01 form within 30 days of the said date. However, he could not file the form within the time period.
3	**Reason**	There was no defect in the System Application but the taxpayer has got the relief from Hon'ble High Court.
4	**Status**	To comply the orders of Hon'ble H.C order, the taxpayer shall be allowed to file the said form to claim the credit. The state confirmed that they have accepted the order and are not filing appeal.
5	**Financial Implications**	Yes , ITC amounting to Rs. 31,18,718/- has been credited to the ledger after filing of the said form.
6	**No. of Impacted Cases**	1

THANK YOU!!

Goods And Services Tax Network

Agenda Item 7: 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 Jan'24 – May'24 vis-à-vis Jan'23 – May'23.

Figure 1: Monthly gross GST collection (in ₹ lakh crore)

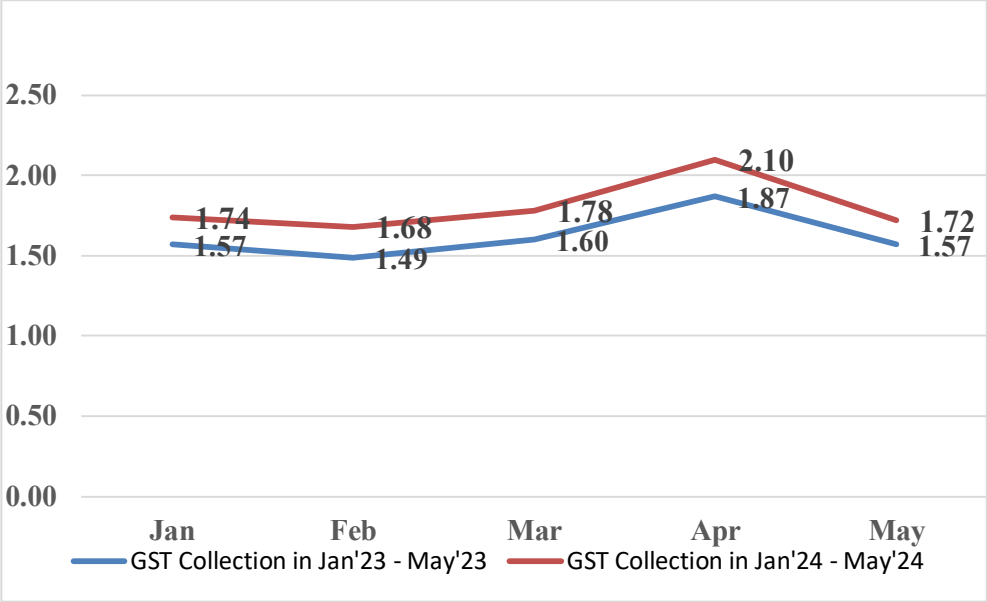


Table 1: Monthly gross GST collection (₹ crore)

GST Collection	Jan'24	Feb'24	Mar'24	Apr'24	May'24
CGST	32,685	31,785	34,532	43,846	32,409
SGST	40,895	39,615	43,746	53,538	40,265
IGST	88,550	84,098	87,947	99,623	87,781
Domestic	48,952	45,505	47,625	61,797	47,902
Imports	39,598	38,593	40,322	37,826	39,879
Comp Cess	11,976	12,839	12,259	13,260	12,284
Domestic	11,173	11,854	11,263	12,252	11,207
Imports	803	984	996	1,008	1,076
Total	**1,74,106**	**1,68,337**	**1,78,484**	**2,10,267**	**1,72,739**

2. Table 2 shows the IGST collected, refunded, and settled/apportioned during FY 2024-25 till May, 2024.

Table 2: IGST Collection/Settlement/Apportionment/Refund in FY 2023-24 & 2024-25

(Figures in Rs. Crore)

#	Particulars	2023-24	2024-25
1	Collections (+)	10,22,280	1,85,754
2	Recovery from IGST Ad-hoc apportionment (+)	-	-
3	Refunds (-)	1,46,730	32,898
4	Settlement (-)	8,99,067	1,63,160
	i. CGST	4,87,039	88,827
	ii. SGST	4,12,028	74,333
5	Ad-hoc Settlement (-)	-18,000	-
	i. CGST ad hoc	-9,000	-
	ii. SGST ad hoc	-9,000	-
6	**Net (1+2-3-4-5)**	-5,516	-10,304

Source: Pr. CCA, 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 May, 2024 and the compensation released till May, 2024 are shown in the table below:

Table 3: Compensation Cess collected and compensation released

(Figures in Rs. Crore)

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25#
Opening Balance	-	21,466	47,271	55,736	9,734	11,501	(25,787)	(19,711)
Add: Collected (net)	62,612	95,081	95,551	85,191	1,04,609	1,25,863	1,43,109	25,544
Less: Released	41,146	69,275	1,20,498	1,36,988	97,500	1,49,168	44,946	247

Add: Transfers from CFI to Cess Fund*	-	-	33,412	5,796	-	-	-	-
Balance	21,466	47,271	55,736	9,734	16,844	(11,804)	72,377$	5,586
Less: Interest and Principal of B2B Loan	-	-	-	-	5,343	13,983	92,088	-
Balance Carried forward	21,466	47,271	55,736	9,734	11,501	25,787	(19,711)	5,586

**Centre had transferred Rs. 33,412 crore from CFI to cess fund as part of an exercise to apportion balance IGST pertaining to 2017-18 on 01.06.2020. Centre had transferred Rs. 5,796 crore from CFI to cess fund as part of an exercise to apportion balance IGST pertaining to 2018-19 on 08.03.2022.*
 # upto May 2024

Table 4: Status of AG's certificate received and processed:

S. No.	Name of State/UT	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23(Q1)
1	Andhra Pradesh						
2	Arunachal Pradesh						
3	Assam						
4	Bihar						
5	Chhattisgarh						
6	Delhi						
7	Goa						
8	Gujarat						
9	Haryana						
10	Himachal Pradesh						
11	J & K						
12	Jharkhand						
13	Karnataka						
14	Kerala						
15	Madhya Pradesh						
16	Maharashtra						
17	Manipur						
18	Meghalaya						
19	Mizoram						
20	Nagaland						
21	Odisha						
22	Puducherry						
23	Punjab						
24	Rajasthan						
25	Sikkim						
26	Tamil Nadu						
27	Telangana						
28	Tripura						
29	Uttar Pradesh						
30	Uttarakhand						
31	West Bengal						

AG's certificate not received

AG's certificate received and GST compensation finalised

AG's certificate received and file is under process

States Revenue Comparison

4. The State-wise details of comparison of SGST revenue and the post settlement SGST revenue (including ad-hoc settlement) for FY 2024-25 (April-May) as compared to FY 2023-24 (April-May) may be seen in the Table 5.

Table 5: State-wise Revenue Comparison (Apr-May) (FY 2024-25) vs (Apr-May) (FY 2023-24)

(Amount Rs. in Crore)

State Code	State/UT	Pre-settlement (Apr'23-May'23)	Pre-settlement (Apr'24-May'24)	SGST Growth (%)	Post-Settlement (Apr'23-May'23)	Post-Settlement (Apr'24-May'24)	SGST Growth Post settlement (%)
1	Jammu and Kashmir	572	587	3%	1,479	1,612	9%
2	Himachal Pradesh	490	490	0%	1,056	1,102	4%
3	Punjab	1,498	1,723	15%	3,695	3,956	7%
4	Chandigarh	111	130	17%	382	404	6%
5	Uttarakhand	966	1,112	15%	1,521	1,631	7%
6	Haryana	3,415	4,122	21%	6,010	6,890	15%
7	Delhi	2,933	3,504	19%	5,852	6,723	15%
8	Rajasthan	3,127	3,395	9%	6,917	7,282	5%
9	Uttar Pradesh	5,860	6,856	17%	13,303	15,341	15%
10	Bihar	1,419	1,645	16%	4,402	4,986	13%
11	Sikkim	141	95	-32%	254	215	-15%
12	Arunachal Pradesh	182	145	-20%	440	386	-12%
13	Nagaland	57	60	5%	190	190	0%
14	Manipur	73	84	15%	241	240	0%
15	Mizoram	62	81	31%	187	209	12%
16	Tripura	110	116	6%	299	336	12%
17	Meghalaya	125	127	2%	321	343	7%
18	Assam	1,095	1,247	14%	2,592	2,850	10%
19	West Bengal	4,369	4,670	7%	7,393	8,061	9%
20	Jharkhand	1,605	1,670	4%	2,178	2,521	16%

State Code	State/UT	Pre-settlement (Apr'23-May'23)	Pre-settlement (Apr'24-May'24)	SGST Growth (%)	Post-Settlement (Apr'23-May'23)	Post-Settlement (Apr'24-May'24)	SGST Growth Post settlement (%)
21	Odisha	2,914	3,497	20%	4,035	5,064	26%
22	Chhattisgarh	1,462	1,591	9%	2,204	2,524	15%
23	Madhya Pradesh	2,274	2,548	12%	5,444	6,268	15%
24	Gujarat	7,436	8,064	8%	11,655	12,310	6%
25&26	Dadra and Nagar Haveli & Daman and Diu	109	133	23%	214	183	-15%
27	Maharashtra	18,012	20,440	13%	26,250	29,356	12%
29	Karnataka	7,321	8,156	11%	13,095	14,139	8%
30	Goa	419	473	13%	725	766	6%
31	Lakshadweep	1	1	-36%	25	9	-62%
32	Kerala	2,406	2,665	11%	5,374	5,547	3%
33	Tamil Nadu	6,783	7,596	12%	10,708	12,674	18%
34	Puducherry	78	95	21%	207	235	13%
35	Andaman and Nicobar Islands	62	49	-20%	119	132	10%
36	Telangana	3,271	3,699	13%	6,738	7,275	8%
37	Andhra Pradesh	2,396	2,861	19%	5,208	6,149	18%
38	Ladakh	47	44	-7%	88	85	-3%
97	Other Territory	38	33	-12%	168	143	-15%
	Grand Total	**83,239**	**93,804**	**13%**	**1,50,968**	**1,68,137**	**11%**

Trends in Return filing

5. The table 6 shows the trend in return filing in FORM GSTR-3B and GSTR-1 as on 13.06.2024 for return period Jan'24 to Apr'24. Tables 7 and 8 show the State wise filing for **these months.**

Table 6: Return filing (GSTR-3B/GSTR-1) as on 13.06.2024

Return Period	GSTR-3B (%)	GSTR-1(%)
Jan'24	98.1%	98.1%
Feb'24	96.8%	97.0%
Mar'24	95.7%	96.4%
Apr'24	92.8%	93.8%

Figure 3: GSTR-3B/GSTR-1 Filing as on 13.06.2024

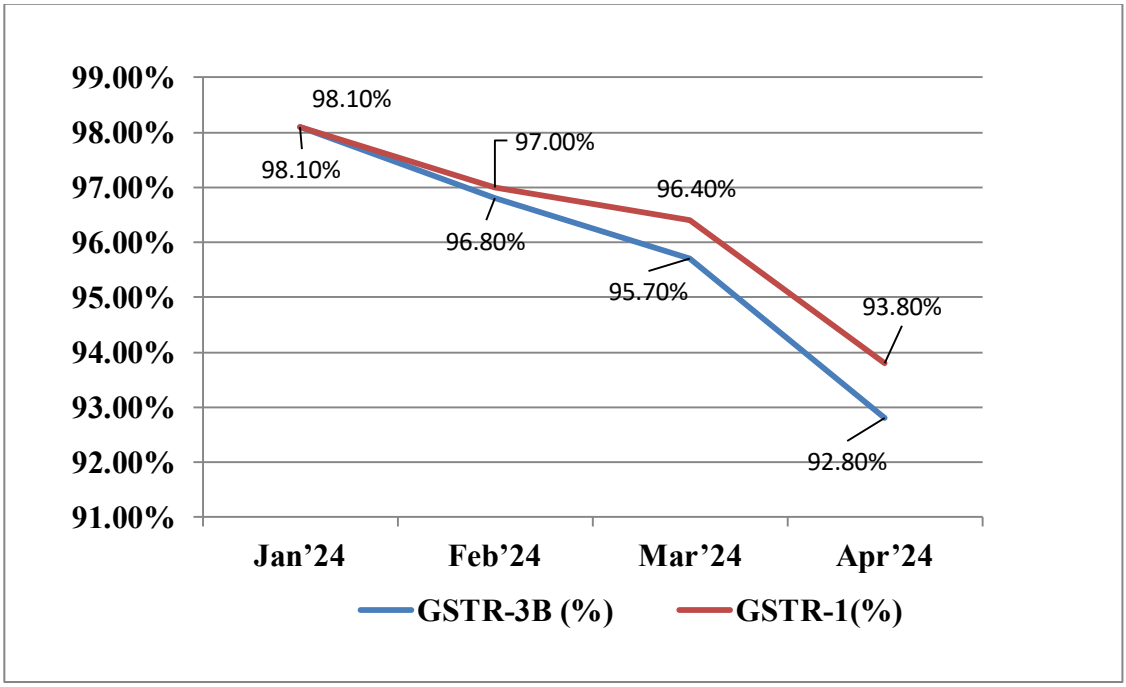


Table 7: State-wise Return filing (GSTR-3B) till 13.06.2024 (Jan'24-May'24)

	State/UT	Jan-24	Feb-24	Mar-24	Apr-24
1	Jammu and Kashmir	98.5%	97.5%	96.8%	93.9%
2	Himachal Pradesh	98.6%	97.3%	96.4%	93.2%
3	Punjab	98.6%	97.2%	97.0%	94.5%
4	Chandigarh	99.6%	98.3%	98.2%	95.6%
5	Uttarakhand	98.3%	96.5%	95.4%	92.4%

	State/UT	Jan-24	Feb-24	Mar-24	Apr-24
6	Haryana	98.1%	97.2%	96.5%	93.9%
7	Delhi	97.4%	96.1%	95.6%	93.2%
8	Rajasthan	99.0%	97.0%	97.1%	94.6%
9	Uttar Pradesh	97.9%	96.8%	95.9%	93.3%
10	Bihar	96.3%	93.3%	92.1%	89.0%
11	Sikkim	95.1%	93.1%	91.1%	85.0%
12	Arunachal Pradesh	96.0%	92.7%	87.9%	78.4%
13	Nagaland	94.6%	93.9%	91.9%	85.7%
14	Manipur	95.0%	91.5%	87.0%	80.6%
15	Mizoram	96.0%	95.2%	93.5%	89.0%
16	Tripura	98.2%	96.8%	95.3%	88.0%
17	Meghalaya	96.8%	93.8%	92.3%	88.8%
18	Assam	95.9%	93.5%	90.2%	84.0%
19	West Bengal	98.0%	96.8%	95.9%	92.9%
20	Jharkhand	97.6%	96.4%	95.0%	91.8%
21	Odisha	97.5%	95.4%	93.8%	90.0%
22	Chhattisgarh	98.2%	96.5%	94.0%	89.7%
23	Madhya Pradesh	98.6%	96.7%	95.8%	92.3%
24	Gujarat	100.0%	99.5%	99.0%	97.5%
25	Dadra and Nagar Haveli & Daman and Diu	98.8%	97.9%	96.6%	93.5%
27	Maharashtra	98.6%	97.0%	95.7%	92.3%
29	Karnataka	97.8%	96.6%	94.9%	92.0%
30	Goa	98.4%	96.3%	93.4%	89.1%
31	Lakshadweep	95.0%	92.8%	87.9%	85.2%
32	Kerala	97.5%	96.1%	94.3%	91.1%
33	Tamil Nadu	98.2%	97.6%	96.7%	94.5%
34	Puducherry	96.9%	96.0%	94.3%	91.2%
35	Andaman and Nicobar Islands	96.8%	94.3%	89.4%	83.9%
36	Telangana	97.2%	96.1%	94.1%	90.6%

	State/UT	Jan-24	Feb-24	Mar-24	Apr-24
37	Andhra Pradesh	96.9%	96.0%	94.3%	90.8%
38	Ladakh	102.2%	96.7%	96.6%	89.5%
97	Other Territory	81.5%	81.3%	81.3%	81.3%
Total		**98.1%**	**96.8%**	**95.7%**	**92.8%**

Table 8: State-wise Return filing (GSTR-1) till 13.06.2024 (Jan'24-May'24)

	State/UT	Jan-24	Feb-24	Mar-24	Apr-24
1	Jammu and Kashmir	98.5%	97.6%	97.4%	94.8%
2	Himachal Pradesh	98.2%	97.3%	97.2%	94.0%
3	Punjab	98.5%	97.3%	97.6%	95.2%
4	Chandigarh	99.6%	98.4%	98.9%	96.3%
5	Uttarakhand	98.1%	96.7%	96.3%	93.4%
6	Haryana	98.0%	97.4%	97.2%	95.0%
7	Delhi	97.3%	96.3%	96.4%	94.1%
8	Rajasthan	98.6%	96.9%	97.8%	95.1%
9	Uttar Pradesh	97.9%	96.9%	96.6%	94.2%
10	Bihar	96.3%	93.6%	92.8%	89.9%
11	Sikkim	95.1%	93.4%	92.2%	86.0%
12	Arunachal Pradesh	96.1%	93.2%	89.1%	79.5%
13	Nagaland	94.9%	94.2%	92.8%	86.9%
14	Manipur	95.3%	91.9%	87.9%	81.7%
15	Mizoram	96.1%	95.5%	94.2%	90.1%
16	Tripura	98.3%	97.1%	96.1%	89.2%
17	Meghalaya	96.8%	93.9%	93.0%	89.6%
18	Assam	96.0%	93.8%	91.3%	85.3%
19	West Bengal	98.0%	97.0%	96.6%	93.9%
20	Jharkhand	97.7%	96.6%	95.8%	92.8%
21	Odisha	97.5%	95.6%	94.7%	91.0%
22	Chhattisgarh	98.1%	96.7%	95.1%	90.9%

	State/UT	Jan-24	Feb-24	Mar-24	Apr-24
23	Madhya Pradesh	98.4%	96.8%	96.5%	93.1%
24	Gujarat	99.7%	99.5%	99.4%	98.0%
25	Dadra and Nagar Haveli & Daman and Diu	99.0%	98.3%	97.7%	95.4%
27	Maharashtra	98.6%	97.3%	96.7%	93.6%
29	Karnataka	98.0%	97.0%	95.8%	93.2%
30	Goa	98.7%	96.7%	94.6%	90.6%
31	Lakshadweep	95.5%	93.2%	89.3%	86.6%
32	Kerala	97.8%	96.6%	95.3%	92.6%
33	Tamil Nadu	98.4%	97.9%	97.4%	95.6%
34	Puducherry	97.2%	96.5%	95.1%	92.6%
35	Andaman and Nicobar Islands	97.0%	94.9%	91.1%	85.8%
36	Telangana	97.5%	96.5%	95.0%	91.9%
37	Andhra Pradesh	97.1%	96.4%	95.1%	92.1%
38	Ladakh	102.1%	96.9%	97.9%	90.6%
97	Other Territory	81.5%	81.3%	81.3%	81.3%
Total		**98.1%**	**97.0%**	**96.4%**	**93.8%**

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सत्यमेव जयते

Agenda for

53rd GST Council Meeting

22nd June, 2024

Volume-III

माल और सेवा कर परिषद
GOODS AND SERVICES TAX COUNCIL

GST Council Secretariat New Delhi

5th Floor, Tower-II, Jeevan Bharti Building, New Delhi
13th June, 2024

OFFICE MEMORANDUM

Subject: Notice for the 53rd GST Council Meeting to be held on 22nd June, 2024-reg

The undersigned is directed to refer to the above subject and to convey that the 53rd Meeting of the GST Council will be held on 22nd June, 2024 at New Delhi. The schedule of the meeting is as follows:-

Saturday, 22nd June, 2024 from 2.00 P.M. onwards

2. In addition, an Officers' Meeting will be held on 21st June, 2024 at New Delhi as per the following schedule:

Friday, 21st June, 2024 from 11.30 A.M. onwards

3. The venue of the meeting, agenda items and other details for the 53rd Meeting of the GST Council and officers' Meeting will be communicated in due course of time.

4. Kindly convey the invitation to the Hon'ble Member of the GST Council to attend the 53rd Meeting of the GST Council.

Sd/-
(Sanjay Malhotra)
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 proceedings of the Council.
5. CEO, GST Network

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Discussion on Agenda Items

Agenda Item 3 (Part-II): Issues recommended by the Law Committee for the consideration of the GST Council

Agenda Item 3 (xxxix): Agenda on rationalisation of the quantum of pre-deposit required to be paid for filing of appeals under GST.

Various representations have been received from the trade and industry, stating that the percentage of pre-deposit required under GST regime vis-à-vis erstwhile laws [i.e., service tax/ Central Excise or State Value Added Tax (VAT)] is significantly higher, and that the steep increase in pre-deposit percentages under GST vis-à-vis erstwhile regime is causing unnecessary blockage of funds and working capital impact for the taxpayers. It has also been mentioned that, as a consequence, this results in a financial burden on businesses and impacts resource allocation.

1.2 It has been requested that the quantum of pre-deposit under GST regime may be rationalised, as this affects working capital requirement of companies, who would be required to pay a pre-deposit equal to 10% of tax demand at the first appellate level (CGST/ SGST of Rs. 25 crores each or IGST of Rs. 50 crores) and an additional 20% of tax demand (CGST/ SGST of Rs. 50 crores each or IGST of Rs. 100 crores) before the appellate tribunal, for filing of appeals against demand orders passed by adjudicating authorities and appellate authorities respectively.

2. **Relevant provisions**:

2.1 **Section 107 of CGST Act, 2017:**

Section 107: Appeals to Appellate Authority.-

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

..

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

*(b) a sum equal to **ten per cent. of the remaining amount of tax in dispute** arising from the said order, subject to a maximum of **twenty-five crore rupees**, in relation to which the appeal has been filed.*

Provided *that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.*

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

2.2 **Section 112 of CGST Act, 2017:**

Section 112: Appeals to Appellate Tribunal.-

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within [1]three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

…

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

*(b) a sum equal to **twenty per cent. of the remaining amount of tax in dispute**, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, **subject to a maximum of fifty crore rupees** , in relation to which the appeal has been filed.*

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

2.3 **Section 20 of IGST Act, 2017:**

Section 20. Application of provisions of Central Goods and Services Tax Act. -

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,-

…

(xix) appeals and revision;

shall, mutatis mutandis, *apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:*

Provided …

…

Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.

2.4 **Section 11 of Goods And Services Tax (Compensation To States) Act, 2017:**

Section 11: Other provisions relating to cess.

*(1) The **provisions of the Central Goods and Services Tax Act**, and the rules made there under, including those relating to assessment, input tax credit, non-levy, short-levy, interest, **appeals**, offences and penalties, shall, as far as may be, mutatis mutandis, apply, in relation to the levy and collection of the cess leviable under section 8 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of central tax on such intra-State supplies under the said Act or the rules made there under.*

*(2) The **provisions of the Integrated Goods and Services Tax Act**, and the rules made there under, including those relating to assessment, input tax credit, non-levy, short-levy, interest, **appeals**, offences and penalties, shall, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 8 on the inter-State supply of goods and services, as they apply in relation to the levy and collection of integrated tax on such inter-State supplies under the said Act or the rules made there under:*

***Provided** that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.*

3. **Analysis:**

3.1 The matter has been examined. In this regard, data regarding pre-deposit required in different VAT/ Sales Tax law as well as under Service Tax, Customs and Central Excise (in percentage of disputed amount) and maximum amount of pre-deposit for filing of appeals before first and second appellate authority was collected, and it was noted that the same varied widely between different states. 3.2.1 It may be noted that in earlier laws like Central Excise and Service Tax, the amount of pre-deposit required to be paid in order to file an appeal, was 7.50% of the disputed amount at the first appellate level and an additional 2.50% at the second appellate level, bringing the total pre-deposit required to be deposited to only 10% of the amount in dispute. Similarly, it can be seen the maximum amount of pre-deposit was also capped at Rs. 10 crores. The amount of pre-deposit in GST is substantial jump over the amount under Central Excise/ Service Tax regime. At the same time, in various State VAT laws, it can be seen that different amounts of pre-deposit were required to be paid, and the maximum amount of pre-deposit was also different.

3.2.2 It is no doubt that GST is a new law, and a number of cases due to different interpretation of the law and the rules, are bound to emerge. Therefore, such a high requirement of pre-deposit can be burdensome for businesses, especially smaller ones, as it affects their working capital. Revisiting the percentage of pre-deposit requirement could ease the financial burden on appellants.

3.2.3 It is also important to note that as in the earlier regime under Service Tax, there was centralized registration for a taxpayer and accordingly, on any issue, one demand was issued against

the said centralized registration, unlike in GST, where separate demands are issued in respect of each GSTIN in different states. Therefore, the maximum amount of pre-deposit in Service Tax was applicable on this single demand for centralized registration. Now, with multiple registrations under GST regime, there are multiple orders that are issued, and the appellant has to file appeal against all those orders, and hence the maximum amount of pre-deposit applies on each one of them separately, thus making the total amount to be paid as pre-deposit as huge in certain cases.

3.2.4 The purpose of pre-deposits is to ensure that only genuine appeals are filed, discouraging frivolous litigation, however, the intention is not to put undue financial burden on the taxpayers by blocking huge amount of working capital for filing appeals. Therefore, there is a need to review the pre-deposit provisions under GST.

3.3 The matter was deliberated by the Law Committee in its meeting held on 30.05.2024. Law Committee felt that the percentage of pre-deposit as well as the maximum amount to be paid at both the first appellate and the second appellate levels need to be rationalized. Law Committee recommended to keep the quantum of pre-deposit for filing appeal with appellate authority at 10% of the tax in dispute (subject to a maximum of Rs.20 crores each in CGST and SGST and Rs 40 crore for IGST), whereas the amount of pre-deposit to be paid for filing appeals in Appellate Tribunal should be reduced to 10% of the tax in dispute (subject to a maximum of Rs. 20 crores each in CGST and SGST and Rs 40 crore for IGST). The Law Committee accordingly recommended the following amendments in CGST Act, 2017 and IGST Act, 2017.

3.4 **Amendments recommended by the Law Committee:**

3.4.1 Section 107 of CGST Act, 2017:

Section 107: Appeals to Appellate Authority.-

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

..

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of ~~twenty five~~ twenty crore rupees, in relation to which the appeal has been filed.

***Provided** that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.*

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

3.4.2 Section 112 of CGST Act, 2017:

Section 112: Appeals to Appellate Tribunal.-

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within [1]three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

...

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to ~~twenty~~ ten per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107*, arising from the said order, subject to a maximum of ~~fifty~~ twenty crore rupees , in relation to which the appeal has been filed.*

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

3.4.3 Similar amendments may also be made in respective SGST Acts.

3.4.4 Section 20 of IGST Act, 2017:

Section 20. Application of provisions of Central Goods and Services Tax Act. -

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,-

...

(xix) appeals and revision;

shall, mutatis mutandis, *apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:*

Provided …

…

***Provided** also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be ~~fifty~~ forty crore rupees and ~~one hundred~~ forty crore rupees respectively.*

4. It was also recommended that the above amendments may be made in a **prospective** manner, i.e. the reduced pre-deposit would be made applicable in cases where the appeal is yet to be filed, on the date of notification of the said amendments.

5. Law Committee further recommended that consequential amendments may also be made in FORM GST APL-01 and FORM GST APL -05 as detailed in **Annexure-A**.

6. Accordingly, the recommendations of the Law Committee as detailed above are placed before the GST Council, for approval.

Annexure-A

FORM GST APL – 01

[See rule 108(1)]

Appeal to Appellate Authority

15. Details of payment of admitted amount and pre-deposit:-

(a) Details of payment required

Particulars		Central tax	State/ UT tax	Integrated tax	Cess	Total amount	
(a) Admitted amount	Tax/Cess					<Total>	
	Interest					<Total>	
	Penalty					<total>	
	Fees					<total>	
	Other charges					<total>	
(b) Pre- deposit (10% of disputed tax /cess but not exceeding Rs. ~~25~~ 20 crore each inrespect of CGST, SGST, ~~or~~ cess, ~~or~~ and not exceeding Rs. ~~50~~ 40 crore in respect of IGST ~~and Rs. 25 20 crore in respect of cess~~)	Tax/Cess					<total>	<total>
(c) Pre- deposit in case of sub-section (3) of section 129	Penalty					<total>	

(b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess but not exceeding Rs. ~~25~~ 20 crore each in respect of CGST, SGST, ~~or~~ cess, ~~or~~ and not exceeding Rs. ~~50~~ 40 crore in respectof IGST ~~and Rs. 25 crore in respect of cess~~)

Sr. No.	Description	Tax payable	Paid through Cash/ Credit Ledger	Debit entry no.	Amount of tax paid			
					Central tax	State/UT tax	Integrated tax	Cess
1	2	3	4	5	6	7	8	9
1.	Integrated tax		Cash Ledger					
			CreditLedger					
2.	Central tax		Cash Ledger					
			CreditLedger					
3.	State/UT tax		Cash Ledger					
			CreditLedger					
4.	CESS		Cash Ledger					
			CreditLedger					

FORM GST APL – 05

[See rule 110(1)]

Appeal to the Appellate Tribunal

14. Details of payment of admitted amount and pre-deposit:

(a) Details of amount payable:

Particulars		Central tax	State/UT tax	Integrated tax	Cess	Total amount	
a) Admitted amount	Tax/ Cess					<Total>	<Total>
	Interest					<Total>	
	Penalty					<Total>	
	Fees					<Total>	
	Other charges					<Total>	
b) Pre-deposit ~~20~~ 10% of disputed tax/cess but not exceeding Rs.~~50~~ 20 crore each in respect of CGST, SGST, ~~or~~ cess ~~or~~ and not exceeding Rs.~~100~~ 40 crore in respect of IGST ~~and Rs.50 crore in respect of cess~~]	Tax/ Cess					<Total>	<Total>

(b) Details of payment of admitted amount and pre-deposit of ~~20~~ 10% of the disputed tax andcess but not exceeding Rs. ~~50~~ 20 crore each in respect of CGST, SGST, ~~or~~ cess ~~or~~ and not exceeding Rs.~~100~~ 40crore in respect of IGST ~~and Rs. 50 crore in respect of cess~~.

Sr. No.	Description	Tax payable	Paid through Cash/ Credit Ledger	Debit entry no.	Amount of tax paid			
					Integrated tax	Centra ltax	State/UT tax	Cess
1	2	3	4	5	6	7	8	9
1.	Integrated tax		Cash Ledger					
			Credit Ledger					
2.	Central tax		Cash Ledger					
			Credit Ledger					
3.	State/UT tax		Cash Ledger					
			Credit Ledger					
4.	CESS		Cash Ledger					
			Credit Ledger					

Agenda Item 3 (xl): Change in Payment table of Form GSTR-3B to provide for a separate table for RCM supplies and Section 9(5) supplies-reg.

Requests have been received to allow population of net negative liability from FORM GSTR-1 in Table 3 of FORM GSTR-3B, which may arise on account of issuance of credit notes, downward revision of invoices etc. Presently, even if the taxpayer has a net negative liability in the corresponding FORM GSTR-1, the portal does not allow the taxpayer to report negative tax liability in FORM GSTR-3B. It has been envisaged that in future, tax liability in FORM GSTR-3B may be locked as per the auto-populated details in FORM GSTR-1 i.e. be made non- editable.

2. The Law Committee deliberated on the requisite amendment in FORM GSTR-3B for the above and recommended that net negative liability (in case net liability as per Table 3 comes out to be negative) of a tax period may be shown in Payment Table of FORM GSTR-3B i.e. Table 6. This will require creation of a Negative Liability Ledger and the adjustment of liability from the Negative Liability Ledger is required to be incorporated in the payment Table 6 of FORM GSTR-3B. This requires changes in the existing payment table of FORM GSTR-3B.

3. Further, according to Circular No. 167/23/2021-GST dated 17.12.2021, section 9(5) liability to be paid by the E-commerce operators needs to be discharged in cash but in the existing payment table in FORM GSTR-3B, the same liability is auto populated in "other than reverse charge' section which can be paid through cash as well as through ITC. Thus, the "reverse charge" section in the existing payment table in FORM GSTR-3B needs to be changed to "Reverse charge & supplies made under sec 9(5)" to include the E-commerce liability under section 9(5) of the CGST Act, 2017, so that the said section 9(5) liability is mandatorily discharged in cash only.

4. It may also be noted that Table 6.2 of FORM GSTR-3B was never implemented on GST Portal and is also irrelevant as per current return design.

5. The Law Committee deliberated on the issue in its meeting held on 01.12.2023 and recommended that:

(i) Table 6.1 in FORM GSTR-3B may be substituted as follows:

~~**6.1 Payment of tax**~~

~~Description~~	~~Tax payable~~	~~Paid through ITC~~				~~Tax paid TDS./TCS~~	~~Tax/Cess paid in cash~~	~~Interest~~	~~Late Fee~~
		~~Integrated Tax~~	~~Central Tax~~	~~State/UT Tax~~	~~Cess~~				
~~1~~	~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~	~~9~~	~~10~~
~~Integrated Tax~~									
~~Central Tax~~									
~~State/UT Tax~~									
~~Cess~~									

6.1 Payment of tax

Description	Tax payable	Adjustment of negative liability of previous tax period	Net Tax Payable (2-3)	Tax paid through ITC				Tax paid in cash	Interest paid in cash	Late fee paid in cash
				Integrated tax	Central tax	State/UT tax	Cess			
1	2	3	4	5	6	7	8	9	10	11
(A) Other than (i) reverse charge and (ii) supplies made u/s 9(5)										
Integrated tax	<Auto>	<Auto>	<Auto>							
Central tax	<Auto>	<Auto>	<Auto>							
State/ UT tax	<Auto>	<Auto>	<Auto>							
Cess	<Auto>	<Auto>	<Auto>							
(B) Reverse charge and supplies made u/s 9(5)										
Integrated tax	<Auto>	<Auto>	<Auto>							
Central tax	<Auto>	<Auto>	<Auto>							
State/UT tax	<Auto>	<Auto>	<Auto>							
Cess	<Auto>	<Auto>	<Auto>							

(ii) Table 6.2 of FORM GSTR-3B may be omitted:

~~**6.2 TDS/TCS Credit**~~

~~Details~~	~~Integrated Tax~~	~~Central Tax~~	~~State/UT Tax~~
~~1~~	~~2~~	~~3~~	~~4~~
~~TDS~~			
~~TCS~~			

6. The proposal in para 4 above is placed for approval of the GST Council.

***

Agenda Item 3 (xli): Notifying Annual Return in FORM GSTR-9 for Financial Year 2023-24 and extending exemption from filing FORM GSTR-9 for taxpayers with turnover up to Rs. 2 crores.

Section 44 of the CGST Act provides for filing of Annual Return (FORM GSTR-9/9A) and Annual Reconciliation Statement (FORM GSTR-9C) by specified taxpayers for every financial year.

2. V*ide* Notification no. 56/2019 –CT dated 14th November, 2019, the Annual Return FORM GSTR-9 & Annual Reconciliation Statement FORM GSTR-9C were simplified for the Financial Years 2017-18 & 2018-19 by making few entries optional. Further, *vide* Notification No. 79/2020-CT dated 15th October, 2020, said forms were simplified for the Financial Year 2019-20 as well by making few entries/tables optional**.** Moreover, the said forms were simplified for FY 2020-21 *vide* Notification No. 30/2021-CT dated 30.07.2021, for FY 2021-22 *vide* Notification No.14/2022-Central tax dated 05.07.2022 and for FY 2022-23 *vide* Notification No. 38/2023-Central tax dated 04.08.2023. The details of relaxations provided in FY 2022-23 are enclosed as **Annexure A** to this note.

3. Further, vide notification No. 32/2023- CT, dated 31.07.2023, the filing of annual return (in **FORM GSTR-9/9A)** for the **FY 2022-23** was exempted for taxpayers having aggregate annual turnover upto two crore rupees.

4. Further, it is mentioned that w.e.f. 01.01.2022, sub-rule (4) of rule 36 of CGST Rules has been amended to restrict availment of input tax credit by a registered person in respect of such invoices and debit notes the details of which have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60 of CGST Rules. However, table 8A of FORM GSTR-9 still provides for auto-population of ITC as per FORM GSTR-2A of the registered person. In this regard, representations have been received that though rule 36(4) of CGST Rules provides for availment of input tax credit in FORM GSTR-3B as per details in FORM GSTR-2B; however, the table 8A of FORM GSTR-9 still requires auto-population of the ITC details from FORM GSTR-2A which will create anomalies in reconciliation of ITC availment in FORM GSTR-3B and FORM GSTR-9. Accordingly, it has been requested to amend table 8A of FORM GSTR-9 (along with corresponding entry in para 5 of the Instructions in FORM GSTR-9) to provide for auto-population of the same on the basis of FORM GSTR-2B rather than FORM GSTR-2A.

5. Also, it is mentioned that requisite changes (as detailed in **Annexure B)** are required in FORM GSTR-9 in view of insertion of table 14 & 15 and amendment thereof in FORM GSTR-1 vide Notification No. 26/2022 – Central Tax dated 26.12.2022 for reporting supplies made through e-commerce platforms including supplies taxable under section 9(5).

6. In light of the same, the Law Committee recommended the following in respect of Annual Return forms for FY 2023-24:

(i) The filing of annual return (in **FORM GSTR-9/9A**) for the FY 2023-24 may be exempted for taxpayers having aggregate annual turnover upto two crore rupees, as per the relaxation extended in previous FYs. The draft notification for the same is enclosed as **Annexure X**;

(ii) The relaxations provided in FY 2022-23 in respect of various tables of **FORM GSTR-9** and **FORM GSTR-9C, as detailed in Annexure A,** may be continued for FY 2023-24; and

(iii) Table 8A of FORM GSTR-9 may be amended as "*ITC as per GSTR-2B (table 3 thereof)*" along with corresponding entry in para 5 of the Instructions in the said FORM to provide for

auto-population of the table 8A on the basis of FORM GSTR-2B rather than FORM GSTR-2A. The draft changes in the said instructions are as follows:

Table No.	*Instructions*
8A	*The total credit available for inwards supplies (other than imports and inwards supplies liable to reverse charge but includes services received from SEZs) pertaining to the financial year for which the return is being furnished and reflected in FORM GSTR-2A (table 3 & 5 only) shall be auto-populated in this table. This would be the aggregate of all the input tax credit that has been declared by the corresponding suppliers in their FORM GSTR-1.* *For FY 2017-18, It may be noted that the FORM GSTR-2A generated as on the 1st May, 2019 shall be auto-populated in this table.* *For FY 2018-19, It may be noted that the FORM GSTR-2A generated as on the 1st November, 2019 shall be auto-populated in this table.* *For FY 2017-18 and 2018-19, the registered person shall have an option to upload the details for the entries in Table 8A to 8D duly signed, in PDF format in FORM GSTR-9C (without the CA certification).* *For FY 2019-20, it may be noted that the details from FORM GSTR-2A generated as on the 1st November, 2020 shall be auto-populated in this table.* *However, for FY 2023-24 onwards, the total credit available for inwards supplies (other than imports and inwards supplies liable to reverse charge but includes services received from SEZs) pertaining to the financial year for which the return is being furnished and reflected in table 3 of FORM GSTR-2B shall be auto-populated in this table.*

(iv) Requisite changes in FORM GSTR-9 may be carried out in view of insertion of table 14 & 15 and amendment thereof in FORM GSTR-1 vide Notification No. 26/2022 – Central Tax dated 26.12.2022 for reporting supplies made through e-commerce platforms including supplies taxable under section 9(5).

6.1. Draft Notification in respect of Sr. No. (ii), (iii) and (iv) above, is enclosed as **Annexure Y**.

7. In view of the above, the proposal in para 4 is placed for approval of the GST Council.

*****

Annexure A

The details of relaxations provided in FY 2022-23, which are proposed to be continued in FY 2023-24

Table 1: Simplification of FORM GSTR-9		
Table No.	**Details of relaxations in previous FYs**	**Status of relaxations in FY 2022-23, which may be continued for FY 2023-24**
4I to 4L	**2017-18, 2018-19, 2019-20 & 2020-21**: The registered person was given an option to either file 4B to 4E net of credit notes/ debit notes/ amendments or report such details separately in 4I to 4L. **2021-22:** It was informed by GSTN that tables 4B to 4E and tables 4I to 4L are being separately auto-populated from relevant tables of GSTR-1 and therefore, the said relaxation was not continued for FY 2021-22.	The relaxation was not continued for FY 2022-23.
5D, 5E and 5F	**2017-18, 2018-19, 2019-20 & 2020-21**: The registered person was given an option to either separately report his supplies as exempted, nil rated and non-GST supply or report consolidated information for all these three heads in the "exempted" row only. **2021-22**: The registered person was required to report Non-GST supply (5F) separately and was given an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only.	The relaxation on the pattern of 2021-22 was continued for 2022-23.
5H to 5K	**2017-18, 2018-19, 2019-20, 2020-21 & 2021-22**: The registered person was given an option to fill Table 5A to 5F net of credit notes/ debit notes/ amendments or report such details separately in 5H to 5K.	The relaxation was continued for FY 2022-23 as there is marginal or no revenue implication.
6B, 6C, 6D and 6E	**2017-18 & 2018-19**: The registered person was given an option to either report the breakup of input tax credit as inputs, capital goods and input services or report the entire input tax credit under the "inputs" row only. **2019-20, 2020-21 & 2021-22**: The registered person was required to report the breakup of input	The relaxation on the pattern of 2021-22 was continued for 2022-23.

	tax credit as capital goods and was given an option to either report the breakup of the remaining amount as inputs and input services or report the entire remaining amount under the "inputs" row only.	
7A to 7E	**2017-18, 2018-19, 2019-20, 2020-21 & 2021-22**:The registered person was given an option to either fill his information on reversals separately in Table 7A to 7E or report the entire amount of reversal under Table 7H only. However, reversals on account of TRAN-1 credit (Table 7F) and TRAN-2 (Table 7G) were to be mandatorily reported.	The relaxation was continued for FY 2022-23.
12 and 13	**2017-18, 2018-19, 2019-20, 2020-21 & 2021-22**: The registered person was given an option to not fill these tables. ➢ It was felt that this information is not essential for the tax administration.	The relaxation was continued for FY 2022-23.
15	**2017-18, 2018-19, 2019-20, 2020-21 & 2021-22**: The registered person was given an option to not fill this table. ➢ It was felt that tax administration already has all the data on refund and demands for the taxpayers.	The data is already available with tax officer in the form of MIS reports. Therefore, the relaxation on the pattern of 2021-22 was continued for 2022-23.
16A, 16B and 16C	**2017-18, 2018-19, 2019-20, 2020-21 & 2021-22**: The registered person was given an option to not fill these tables.	The relaxation was continued for FY 2022-23.
18	**FY 2017-18, 2018-19, 2019-20, 2020-21 & 2021-22**: The registered person was given an option to not fill this table.	Since HSN details are not communicated in GSTR-2A, and HSN requirements for suppliers may be different from that for the annual return filer, it may be difficult for the annual return filer to reconcile HSN wise details of inward supplies. Therefore, the relaxation was continued for FY 2022-23.

Table 2: Simplification of FORM GSTR-9C		
Table No.	**Details of relaxations in previous FYs**	**Status of relaxations in FY 2022-23, which may be continued for FY 2023-24**
5B to 5N	**2017-18, 2018-19, 2019-20, 2020-21 & 2021-22**: The registered person was given an option to not fill these tables. If any adjustments were required to be reported, then the same could be reported in Table 5O. ➢ It was felt that a number of big companies which have a presence in multiple States face a lot of challenges in reporting State wise unbilled revenue, unadjusted advances, deemed supply details, etc. It was also felt that, from an indirect tax administration point of view, this data may not be required. In fact, this table was to act as a pointer of the adjustments that taxpayers need to make to derive GST turnover from income tax / audited financial turnover. Since filing this data was a challenge, it was recommended that taxpayers may be given an option to either file the data row wise or directly report all adjustments through table 5O (adjustment tab).	The relaxation was continued for FY 2022-23.
Table 14	**2017-18, 2018-19, 2019-20, 2020-21 & 2021-22**: The registered person was given an option to not fill this table. ➢ Trade and industry have widely represented that neither the internal accounts nor the audited financial statements mandate maintaining of expense-head wise input tax credit.	The relaxation on the pattern of 2021-22 was continued for 2022-23.

Annexure B

Requisite Changes in GSTR-9 due to insertion of new tables in GSTR-1 and GSTR 3B.

(A) Impact of insertion of table 14 & 15 in GSTR-1 on GSTR-9 - Table 14 & 15 and amendment thereof have been inserted in GSTR-1 vide Notification No. 26/2022 – Central Tax dated 26-12-2022 for reporting supplies made through e-commerce platforms. It includes supplies taxable under Section 9(5) also. Corresponding changes in GSTR-9 of current financial year 2023-24 would also be required. Following changes in tables and instructions of the said return would be required:

1. Table 4 –
    a. Insertion of new row G1 after row G for reporting 9(5) supplies by ECO.

G1	Supplies on which e-commerce operator is required to pay tax u/s 9(5) (including amendments, if any) [E-commerce operator to report]					

    b. Minor change in row H.

H	Sub-total (A to G1 above)					

2. Table 5 –
    a. Insertion of new row C1 after row C for reporting 9(5) supplies by supplier.

C1	Supplies on which tax is to be paid by e-commerce operators as per section 9(5) [Supplier to report]					

    b. Minor changes in row N.

N	Total Turnover (including advances) (4N + 5M - 4G - 4G1 above)					

3. Instructions –

a. Instruction to be added for insertion of new row G1 of table 4.

4G1	Aggregate values of all the supplies (net of amendments) on which tax is to be paid by the e-commerce operators under section 9(5) is to be reported by e-commerce operator. Table 15 and 15A of FORM GSTR-1 may be referred for filling up these details.

b. Instruction to be added for insertion of new row C1 of table 5.

5C1	Aggregate values of supplies (net of amendments) made by suppliers through e-commerce operators on which e-commerce operators are liable to pay taxes under section 9(5) is required to be reported here by supplier. Table 14(b) and 14A(b) of FORM GSTR-1 may be referred for filling up these details.

c. Minor change in instruction to row N of table 5.

5N	Total turnover including the sum of all the supplies (with additional supplies and amendments) on which tax is payable and tax is not payable shall be declared here. This shall also include amount of advances on which tax is paid but invoices have not been issued in the current year. However, this shall not include the aggregate value of inward supplies on which tax is paid by the recipient (i.e. by the person filing the annual return) on reverse charge basis and supplies on which e-commerce operators are required to pay taxes under section 9(5).

d. Minor change in instruction to row A of table 8 for computation of ITC.

8A	The total credit available for inwards supplies (other than imports and inwards supplies liable to reverse charge but includes services received from SEZs and supplies received from E-commerce operators) pertaining to the financial year for which the return is being for and reflected in **FORM GSTR-2A** (table 3 & 5 only) shall be auto-populated in this table. This would be the aggregate of all the input tax credit that has been declared by the corresponding suppliers including e-commerce operators in their **FORM GSTR-1**. For FY 2017-18, It may be noted that the **FORM GSTR-2A** generated as on the 1st May, 2019 shall be auto populated in this table. For FY 2018-19, It may be noted that the **FORM GSTR-2A**generated as on the 1st November, 2019 shall be auto-populated in this table. For FY 2017-18 and 2018-19, the registered person shall have an option to upload the details for the entries in Table 8A to 8D duly signed, in PDF format in **FORM GSTR-9C** (without the CA certification). For FY 2019-20, it may be noted that the details from **FORM GSTR-2A** generated as on the 1st November, 2020 shall be auto-populated in this table.

Annexure X

Draft notification to exempt taxpayers having AATO upto Rs. 2 crores from the requirement of furnishing annual return for FY 2023-24

[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. --/2024 – Central Tax

New Delhi, the -- June, 2024

G.S.R. .....(E).— In exercise of the powers conferred by the first proviso to section 44 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Commissioner, on the recommendations of the Council, hereby exempts the registered person whose aggregate turnover in the financial year 2023-24 is up to two crore rupees, from filing annual return for the said financial year.

[F. No. CBIC-20001/2/2022-GST]

(Raghvendra Pal Singh)

Under Secretary

Annexure Y

Draft notification to notify Annual return for FY 2023-24

[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. --/2024 – Central Tax

New Delhi, the -- June, 2024

G.S.R... (E). –In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. **Short title and commencement**.- (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2024.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in **FORM GSTR-9**,

(A) in the table, -

(i) in Pt. II, -

(a) in Sl no 4,

(i) after the entry relating to serial number G, the following serial number and entry relating thereto shall be inserted, namely: -

G1	Supplies on which e-commerce operator is required to pay tax as per section 9(5) (including amendments, if any) [E-commerce operator to report]					

(ii) against serial number H, -for the letters and word "Sub-total (A to G above)", the letters, figures and word "Sub-total (A to G1 above)" shall be substituted.";

(b) in Sl no 5,

(i) after the entry relating to serial number C, the following serial number and entry relating thereto shall be inserted, namely: -

C1	Supplies on which tax is to be paid by e-commerce operators as per section 9(5) [Supplier to report]					

(ii) against serial number N, -for the letter,figures and word "Total Turnover (including advances) (4N + 5M - 4G above)", the letters, figures and word "Total Turnover (including advances) (4N + 5M - 4G - 4G1 above)" shall be substituted.";

(B) under the heading Instructions, -

i. in paragraph 4, -

a. after the word, letters and figures "or FY 2022-23", the word, letters and figures "or FY 2023-24" shall be inserted;

b. in the Table -

(I) after the entry relating to serial number 4G, the following serial number and entry relating thereto shall be inserted, namely: -

4G1	Aggregate values of all the supplies (net of amendments) on which tax is to be paid by the e-commerce operators under section 9(5) is to be reported by e-commerce operator. Table 15 and 15A of FORM GSTR-1 may be referred for filling up these details.

(II) after the entry relating to serial number 5C, the following serial number and entry relating thereto shall be inserted, namely: -

5C1	Aggregate values of supplies (net of amendments) made by suppliers through e-commerce operators on which e-commerce operators are liable to pay taxes under section 9(5) is required to be reported here by supplier. Table 14(b) and 14A(b) of FORM GSTR-1 may be referred for filling up these details.

(III) in second column, against serial numbers 5D, 5E and 5F, the following entries shall be inserted at the end, namely: –

'For FY 2023-24, the registered person shall report Non-GST supply (5F) separately and shall have an option to either separately report his supplies as exempted and nil rated supply or report consolidated information for these two heads in the "exempted" row only.';

(IV) in second column, against serial numbers 5H, 5I, 5J and 5K, for the figures and word "2021-22 and 2022-23", the figures and word "2021-22, 2022-23 and 2023-24" shall be substituted;

(V) in second column, against serial number 5N, after the letters and word "on reverse charge basis.", the letters, figures and word "and supplies on which e-commerce operators are required to pay taxes under section 9(5)." shall be inserted.";

ii. in paragraph 5, in the Table, in second column, -

a. against serial numbers 6B, 6C, 6D and 6E, for the letters and figures "FY 2019-20, 2020-21, 2021-22 and 2022-23", the letters, figures and word "FY 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24" shall respectively be substituted;

b. against serial numbers 7A, 7B, 7C, 7D, 7E, 7F, 7G and 7H, for the figures and word "2021-22 and 2022-23", the figures and word "2021-22, 2022-23 and 2023-24" shall be substituted;

c. against serial number 8A, -

1. after the words "received from SEZs", the words "and supplies received from E-commerce operators" shall be inserted,
2. after the words "corresponding suppliers", the words "including e-commerce operators" shall be inserted and
3. the following entry shall be inserted at the end, namely: -
"However, for FY 2023-24 onwards, the total credit available for inwards supplies (other than imports and inwards supplies liable to reverse charge but includes services received from SEZs) pertaining to the financial year for which the return is being furnished and reflected in table 3(I) of FORM GSTR-2B shall be auto-populated in this table."

iii. in paragraph 7, -

a. after the words and figures "filed upto 30th November, 2023.", the following entry shall be inserted, namely: -
"For FY 2023-24, Part V consists of particulars of transactions for the previous financial year but paid in the FORM GSTR-3B of April, 2024 to October, 2024 filed upto 30th November, 2024.";

b. in the Table, in second column, -

(I) against serial numbers 10 & 11, the following entry shall be inserted at the end, namely: -
"For FY 2023-24, 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 GSTR-1 of April, 2024 to October, 2024 filed upto 30th November, 2024 shall be declared here.";

(II) against serial number 12, -

(1) after the words, letters, figures and brackets "upto 30th November, 2023 shall be declared here. Table 4(B) of FORM GSTR-3B may be used for filling up these details.", the following entry shall be inserted, namely: -

"For FY 2023-24, aggregate value of reversal of ITC which was availed in the previous financial year but reversed in returns filed for the months of April, 2024 to October, 2024 filed upto 30th November, 2024 shall be declared here. Table 4(B) of FORM GSTR-3B may be used for filling up these details.";

(2) for the figures and word "2021-22 and 2022-23", the figures and word "2021-22, 2022-23 and 2023-24" shall be substituted;

(III) against serial number 13, -

(1) after the words, letters and figures "reclaimed in FY 2023-24, the details of such ITC reclaimed shall be furnished in the annual return for FY 2023-24,", the following entry shall be inserted, namely: -

"For FY 2023-24, 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, 2024 to October, 2024 filed upto 30th November, 2024 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 2023-24 as per second proviso to sub-section (2) of section 16 but was reclaimed in FY 2024-25, the details of such ITC reclaimed shall be furnished in the annual return for FY 2024-25.";

(2) for the figures and word "2021-22 and 2022-23", the figures and word "2021-22, 2022-23 and 2023-24" shall be substituted;

iv. in paragraph 8, in the Table, in second column, -

a. against serial numbers, -

(I) 15A, 15B, 15C and 15D,

(II) 15E, 15F and 15G,

(III)16A,

(IV)16B and

(V) 16C

for the figures and word "2021-22 and 2022-23" wherever they occur, the letters, figures and word "2021-22, 2022-23 and 2023-24" shall be substituted.";

b. against serial number 17 & 18, for the figures and word "2021-22 and 2022-23", the letters, figures and word "2021-22, 2022-23 and 2023-24" shall be substituted.";

3. In the said rules, in **FORM GSTR-9C**,-

(i) under the heading Instructions, -

(a) in paragraph 4, in the Table, in second column, for the figures and word,-

i. “2021-22 and 2022-23”, wherever they occur, the figures and word “2021-22, 2022-23 and 2023-24” shall be substituted, and
ii. “2020-21 and 2021-22", wherever they occur, the figures and word “2020-21, 2021-22, 2022-23 and 2023-24” shall be substituted;

(b) in paragraph 6, in the Table, in second column, against serial number 14, for the figures and word “2021-22 and 2022-23”, the figures and word “2021-22, 2022-23 and 2023-24” shall be substituted;

[F. No. CBIC-20001/2/2022-GST]

(Raghvendra Pal Singh)

Director

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide notification No. 3/2017-Central Tax, dated the 19thJune, 2017, published, vide number G.S.R. 610(E), dated the 19th June, 2017 and last amended, vide notification No. 40/2021-Central Tax, dated the 29th December, 2021, vide number G.S.R. 902(E), dated the 29th December, 2021.

Agenda Item 3 (xlii): Rolling out of Biometric based Aadhar Authentication of registration on Pan-India basis-reg.

Government has taken several policy and system-based measures on the to curb the menace of availment of fraudulent Input Tax Credit (ITC) on the basis of the fake invoices. Among various measures taken to tackle the menace of fake invoice and fake dealers, one such measure was to further strengthen GST registration process so that the registration is granted only to genuine suppliers of goods or services. In order to fulfil the intended objective, sub-rule (4A) of rule 8 of Goods and Service Tax Rules, 2017 ("CGST Rules") was substituted by Notification No. 4/2023 dated 31.03.2023 with effect from 26.12.2022, for biometric authentication of Adhaar number and in-person verification of the applicant before grant of registration in cases identified on the basis of data analytics and risk parameters. The same (as amended) is reproduced as under:

> *"(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier:*
>
> *Provided that 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 sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso".*

2. Sub-rule (4A) of rule 8 of CGST Rules provides that the applicants who have opted for authentication of Aadhar number will have to undergo authentication of Aadhar number while submitting the registration application. Further, proviso to the said sub-rule (4A) of rule 8 of CGST Rules provides for the risk based biometric-based Aadhaar authentication of registration applicants who have opted for authentication of Aadhar number. The provisions of the proviso has been made effective in the State of Gujarat vide Notification no. 27/2022-Central Tax dated 26.12.2022, in the State of Puducherry vide Notification number 31/2023-Central Tax dated 31.07.2023 and in the State

of Andhra Pradesh vide Notification number 54/2023-Central Tax dated 17.11.2023 for the purpose of conducting pilot of such biometric based Aadhaar authentication of applicants identified by Goods and Service Tax Network (GSTN) on the common portal on the basis of data analytics and risk parameters. Accordingly, the said pilot is being conducted in the States of Gujarat, Puducherry and Andhra Pradesh at GST Suvidha Kendras (GSKs) wherein the identified applicant has to visit GST Suvidha Kendra (GSK) for Biometric based Aadhaar Authentication and original document verification.

3. A study of the said pilot project has been conducted by Directorate General of Goods and Service Tax (DGGST) of CBIC to ascertain the feasibility of rolling out of the said project on Pan-India basis and to provide suggestions for improving the Bio-metric Aadhaar based authentication process. Besides, suggestions were also received from States of Gujarat and Andhra Pradesh. Broadly, two types of suggestions viz. Policy related suggestions and Systems related suggestions have been received. All these suggestions have been deliberated by the Law Committee in its meeting held on 18.03.2024. As regards Systems related suggestions, it was informed by GSTN that they have taken up the same for examination and necessary action for modifying/ improving the functionality on the system. The policy related suggestions were deliberated in the meeting of Law Committee which are mentioned as under:

3.1 **Rolling-out of the Biometric based Aadhar Authentication project on pan-India basis:**

3.1.1 As per the feedback from the State of Gujarat, the number of new applications for obtaining GST Registrations went down by almost 50% after the roll-out of Pilot project in Gujarat in November, 2023. It has further been informed that applications for new registration in the State of Gujarat have gone down by about 25% in first seven months of the pilot. Law Committee felt that as the pilot has been found to be successful and has helped in curbing fraudulent registration in the States where pilot has been launched, the same needs to be extended to other States/UTs also. Law Committee, accordingly, recommended that the Biometric based Aadhar Authentication for GST registration applicants may be rolled out on pan-India basis as a pre-emptive measure to deter such fraudulent registration applicants. Such rollout of the biometric based Aadhar Authentication on pan India basis may be done in phased manner, depending upon the preparedness of the tax authorities in various States/UTs.

3.2 **Insertion of second proviso in sub-rule (4A) of rule 8 of the CGST Rules:**

3.2.1 Presently, only those high-risk applicants who opt for authentication of Aadhaar number are required to visit GSKs for biometric-based Aadhaar authentication. However, the applicants who do not opt for Authentication of Aadhar Number are neither required Biometric based Aadhar Authentication nor are required to visit GSKs.

3.2.2 In this regard, Law Committee recommended that such applicants, who do not opt for Authentication of Aadhar Number, may also be required to visit the GSKs for photo capturing and document verification in order to ascertain the genuineness of such applicants and their documents. This will require **an amendment in sub-rule (4A) of rule 8 of CGST Rules, 2017 by inserting a second proviso** to the said sub-rule to make it mandatory for those applicants, as detailed below:

> "Provided further that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has not opted for authentication of Aadhaar number, shall be followed by 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 sub-rule and the application shall be deemed to be complete only after successful verification as laid down under this proviso."

3.3 Policy measures required for All India rollout of Biometric based Aadhar Authentication

3.3.1 GST Council in its 49th meeting dated 18.02.2023 recommended substitution of sub-rule (4A) of rule 8 of the CGST Rules, 2017 in order to mandate biometric-based Aadhaar authentication for high-risk applicants who opt for authentication of Aadhaar number. It also recommended amendment of sub-rule (5) of rule 8 of the said Rules in order to provide that acknowledgement shall be issued to the applicant only after completion of biometric-based authentication. In addition, the Council recommended amendment to rule 9 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. The Council had also recommended that the above-mentioned amendments to rules 8(4A), 8(5) and 9 may be made only in Gujarat GST Rules, 2017 and in the CGST Rules, 2017 at that stage. Further, the Council also recommended insertion of sub-rule (4B) in Rule 8 of the CGST Rules, 2017 to provide for exemption from biometric-based Aadhaar authentication in States/UTs where the biometric based Aadhar authentication was not being undertaken and for this, the Centre would need to issue a Notification under Rule 8(4B) for specifying all States and UTs, **except State of Gujarat**, where provisions of Rule 8(4A) would not apply. Subsequently, States of Andhra Pradesh and Puducherry were also notified, as mentioned in para 2 above, under the said sub-rule (4B) for making the provisions of sub-rule (4A) of rule 8 of the CGST Rules applicable in these States. Further, in the 50th meeting of GST Council, it was recommended

that the amendments in rule 8(5), rule 9(1) and rule 9 (2) of CGST Rules, as have been notified by Centre vide notification no. 26/2022-CT dated 26.12.2022, may also be notified by all States.

3.3.2 Therefore, considering the above, all the States/UTs **other than the States of Gujarat, Puducherry and Andhra Pradesh**, shall be required to substitute sub-rule (4A) of rule 8 of their respective SGST Rules on the same lines as done by the Centre vide notification no. notification no.04/2023 dated 31.03.2023, to implement the said biometric based Aadhar authentication for GST registration in their respective jurisdictions.

3.3.3 Further, all the **States including States of Gujarat, Puducherry and Andhra Pradesh, will also be required** to insert the second proviso in sub-rule (4A) of rule 8 of their respective SGST Rules as detailed in para 3.2.2 above.

3.3.4 Law Committee also recommended that Centre may notify all the remaining States/Union territories (UTs) for under sub-rule (4B) of rule 8 of CGST Rules for enabling the same. As per the present notification under sub-rule (4B) of rule 8 of CGST Rules, all States/UTs other than the States of Gujarat, Puducherry and Andhra Pradesh have been notified where proviso to sub-rule (4A) of rule 8 is not applicable. As for All India roll out of biometric-based Aadhaar authentication, none of the State/UTs need to be exempted from the applicability of the proviso to sub-rule (4A) of rule 8, **it is proposed that the existing notifications (Notification no. 27/2022-Central Tax dated 26.12.2022 as amended by Notification no.31/2023 dated 31.07.2023 and Notification no. 54/2023 dated 17.11.2023) issued by the Central Government under sub-rule (4B) of rule 8 of CGST Rules may be rescinded**.

4 Accordingly, agenda is placed before the GST Council for approval.

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Agenda Item 7 (Part-II): GST Appellate Tribunal - Status update and issues for approval

Introduction – Status Update

The GST Council in its 52nd meeting held on 07.10.2023, recommended amendments in Section 110 of the CGST Act to align the provisions of the CGST Act, 2017 (*in respect of Appointment of President and Member of the proposed GST Appellate Tribunals*) with the provisions of the Tribunal Reforms Act, 2021. Accordingly, the said amendments were carried out vide Central Goods and Services Tax (2nd Amendment) Act, 2023 and the same was enacted on 28.12.2023.

2. Thereafter, post the notification for the constitution of the Principal Bench and the State Benches of GSTAT, the process for appointment of the President of the GSTAT was initiated and Justice (Retd.) Sanjaya Kumar Mishra, former Chief Justice, High Court of Jharkhand was appointed as the President of Goods and Services Tax Appellate Tribunal vide order dated 01.05.2024**.** He assumed office on 06th May 2024.

3. In addition to the above, the process of search, selection and appointment of 63 Judicial Members, 32 Technical Members (Centre) and 1 Technical Member (State), to be done by the Centre, has also been initiated which is likely to be completed by mid-July. Similarly, 953 posts of subordinate staff have been sanctioned and the process of filling up of the said posts of supporting staff is under process. In addition to the above, work on search and selection of Technical Member (State) for the 31 State Benches is being carried out by the States vide the respective State level ScSCs constituted for the same. The States are required to formulate their respective ScSCs and carry out the process for selection of a panel of 2 names for each post of Technical Member (State); which will then be sent to the Appointments Committee of the Cabinet for selection and appointment of the 31 Technical Members (State).

4. For creation of physical and digital infrastructure, work in respect of identification of office space and development of office infrastructure of the Principal Bench and the State Benches of the GSTAT is being actively pursued. Similarly, it is proposed that filing of appeals in the GSTAT would be completely online and would be developed by GSTN and NIC.

Approval of the GST Council sought on Relaxation regarding eligibility of Technical Member (State) earlier provided by the GIC

5. Some states had requested for relaxation in the qualification of Technical Member (State). Section 110(1)(d), which also provides for relaxation in the qualification for Technical Member (State) is as follows:

110. (1) A person shall not be qualified for appointment as—

(a)…

(d) a Technical Member (State), unless he is or has been an officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank, not lower than that of 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, or equivalent, 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 in the State Government:

Provided that the State Government may, on the recommendations of the Council, by notification, relax the requirement of completion of twenty-five years of service in Group A, or equivalent, in respect of officers of such State where no person has completed twenty-five years of service in Group A, or equivalent, but has completed twenty-five years of service in the Government, subject to such conditions, and till such period, as may be specified in the notification.

6. Recommendation of the GST Council was required for the purpose of such relaxations by the States. The requests for relaxation were placed before the GIC and wherever approved the same has been communicated to the State Governments. A summary of relaxation granted to each state is given in **Annexure 1**.

7. It is requested that the Council ratify the approvals provided by the GIC on the proposals detailed above.

8. Further proposals have been received from the below mentioned States for relaxation in qualification and eligibility criteria as per section 110(1)(d) and proviso thereof:-

a) Gujarat, Maharashtra and Mizoram (to notify the rank of officer working in the State, not lower than the rank of the First Appellate Authority, who would be eligible for Technical Member (State));

b) Delhi and Chhattisgarh (to reduce the requirement of the officer having completed twenty-five years in the Government in Group A, or equivalent, to be eligible for Technical Member (State)).

9. The detailed summary of the same is placed in **Annexure 2** to the Agenda Note. It is requested that approval of the Council may be accorded on the relaxations sought by Gujarat, Maharashtra and Mizoram; and Delhi and Chhattisgarh.

10. Respective State Governments are required to notify the above stated relaxations in qualification and eligibility for the Technical Members (State). For the purpose of ensuring uniformity, a draft notification has been prepared and is being placed before the GST Council in **Annexure 3** for approval.

Approval of the Council sought for amendment of notifications issued earlier

11. As per section 109, the notification for constitution of the Principal Bench and another notification for the constitution of the State Benches were issued. In the notification of constitution of the State Benches, it is necessary to provide clarity on the location of the State Bench and also provide the location of the sitting associated with the bench.

12. Moreover, given the number of taxpayers in Goa and Puducherry, assigning a full sitting of division bench to Panaji and Puducherry is disproportionate. Accordingly, it is proposed that the Sittings in Panaji and Puducherry may be converted as Circuit Benches and benches in Mumbai and Chennai being converted to a full Bench.

13. A consolidated master notification covering all the above changes is being placed before the GST Council in **Annexure 4** for approval.

14. It is also necessary to notify the jurisdiction of each of the benches and sittings in cases where there are sittings in more than one location. Recommendations have been sought from the States. States are requested to forward the same so that the same can be notified with the approval of the Council in its next meeting.

Decision points

15. In light of the above, approval of the GST Council is sought for the following:

(a) Take on record status update as per paras 1-4 above.

(b) Approvals to the States regarding relaxation in qualifications and eligibility along with approval of the draft notification which may be issued by the States for the purpose of relaxation of qualification criteria for Technical Member State as per para 5-10 above.

(c) Approval of a master notification of GSTAT clearly notifying the GSTAT, the location of the Benches, the locations of the sittings associated with the Benches and the jurisdiction of the said Benches and associated sittings as per para 11-13 above. This includes notifying Puducherry and Panaji as circuit benches.

*****

ANNEXURE - 1

Relaxation	States to which approval granted	Remarks
As per proviso to Section 110(1)(d), relaxation has been sought to reduce the requirement of the officer having completed twenty-five years in the Government in Group A, or equivalent	Gujarat	Proposal of ***State of Gujarat*** for notifying an officer of the Commercial Tax Department of Gujarat, who has completed ***at least twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in the State Bench.
	Goa	Proposal of ***State of Goa*** for notifying an officer of the Commercial Tax Department of Goa, who has completed ***at least twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in the State Bench.
	Himachal Pradesh	Proposal of ***State of Himachal Pradesh*** for notifying an officer of the Commercial Tax Department of Himachal Pradesh, who has completed ***at least twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in the State Bench.
	Odisha	Proposal of ***State of Odisha*** for notifying an officer of the Commercial Tax Department of Odisha, who has completed ***fifteen years of service as GroupA or equivalent subject to overall twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in the State Bench.
	Rajasthan	Proposal of ***State of Rajasthan*** for notifying an officer of the Commercial Tax Department of Rajasthan, who has completed ***at least fifteen years as Group A or equivalent subject to overall twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in the State Bench.
	Uttarakhand	Proposal of ***State of Uttarakhand*** for notifying an officer of the Commercial Tax Department of Uttarakhand, who has completed ***at least twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in the State Bench.
	Haryana	Proposal of ***State of Haryana*** for notifying an officer of the Commercial Tax Department of Haryana, who has completed ***at least twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in the State Bench.
	Tamil Nadu	Proposal of ***State of Tamil Nadu*** for notifying an officer of the Commercial Tax Department of Tamil Nadu, who has completed ***at least fifteen years as Group A or equivalent subject to overall twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member

Relaxation	States to which approval granted	Remarks
		(State) in the State Bench.
	Bihar	Proposal of the **State of Bihar** for notifying an officer of the Commercial Tax Department of Bihar, who has completed ***at least twenty-five years of service in the Government, as Gazetted Officer,*** to be eligible for the appointment as Technical Member (State).
	Uttar Pradesh	Proposal of the **State of Uttar Pradesh** for notifying an officer of the State Tax Department of Uttar Pradesh, who has completed ***at least twenty-five years of service in the Government, as Gazetted Officer,*** to be eligible for the appointment as Technical Member (State).
	Andhra Pradesh	Proposal of ***State of Andhra Pradesh*** for notifying an officer of the Commercial Tax Department of Andhra Pradesh, who has completed ***at least twenty years as Group A or equivalent subject to overall twenty-five yearsof service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in the State Bench.

ANNEXURE - 2

Relaxation	States for which approval required	Remarks
As per proviso to Section 110(1)(d), relaxation has been sought to reduce the requirement of the officer having completed twenty-five years in the Government in Group A, or equivalent, to be eligible for Technical Member (State)	Delhi and Chhattisgarh	**(i) For Delhi**: Proposal for notifying an officer of All India Service (Group 'A') of AGMUT Cardre in the State Government of Delhi, who has completed at least ***fifteen years of service in the Government as Group A or equivalent, subject to overall twenty-five years of service***, to be eligible for the appointment as Technical Member (State) in State Bench. **(ii) For Chhattisgarh**: Proposal for notifying an officer of the Commercial/State Tax Department of Chhattisgarh, who has completed at least ***twenty-five years of service in the Government, as Gazetted Officer***, to be eligible for the appointment as Technical Member (State) in State Bench.
As per Section 110(1)(d), relaxation has been sought to notify the rank of officer working in the State, not lower than the rank of the First Appellate Authority, who would be eligible for Technical Member (State)	Maharashtra, Gujarat & Mizoram	**(i) Proposal of State of Maharashtra** for notifying the rank of an officer of the State of Maharashtra, not below the rank of "Joint Commissioner of Sales Tax or Joint Commissioner of State Tax", as a minimum qualifying rank of the officer who shall be eligible for Technical Member (State) subject to other conditions of section 110(1)(d) of the CGST Act, 2017; **(ii) Proposal of State of Gujarat** for notifying the rank of an officer of the State of Gujarat, not below the rank of "Joint Commissioner of Gujarat Value Added Tax or Gujarat Goods and Services Tax", as the minimum qualifying rank of the officer who shall be eligible for Technical Member (State) subject to other conditions of section 110(1)(d) of the CGST Act, 2017. **(iii) Proposal of State of Mizoram** to notify the Joint Commissioner as the minimum qualifying rank of the officer of the State of Mizoram, who shall be eligible for Technical Member (State), subject to other conditions of section 110(1)(d) of the CGST Act, 2017.

ANNEXURE - 3

[To be published in the Gazette of State of <State Name>**, <reference of section>]**

<State Name>
Government of <State Name>

Notification No. xx/202x – State Tax

<Place>, the <Date>

G.S.R.....(E).- In exercise of the powers conferred by clause (d) of sub-section (1) of section 110 of the Central Goods and Services Tax Act, 2017 (12 of 2017), and the proviso thereof, the Government of <State Name>, on the recommendations of the Council, in respect of the qualification of the officers of <State Name> for appointment as a Technical Member (State) in the State Benches of Goods and Services Tax Appellate Tribunal, hereby:

(i) relaxes the qualification from the requirement of "completion of twenty-five years of service in Group A, or equivalent" as per proviso to clause (d) of sub-section (1) of section 110 of Central Goods and Services Tax Act, 2017 (12 of 2017) to "<***as per the approval granted to the State by the council***>" for a period of ten years from the date of publication of this notification:

[*point (i) only is to be notified by Himachal Pradesh, Goa, Odisha, Rajasthan, Uttar Pradesh, Bihar, Uttarakhand, Tamil Nadu, Haryana, Andhra Pradesh, Delhi and Chhattisgarh*]

(ii) specifies "Joint Commissioner" in place of "Additional Commissioner" in clause (d) of sub-section (1) of section 110 of Central Goods and Services Tax Act, 2017 (12 of 2017).

[*point (ii) only is to be notified by Maharashtra and Mizoram*]

[*point (i) and (ii) both are to be notified Gujarat*]

2. All other conditions as contained in clause (d) of sub-section (1) of section 110 of Central Goods and Services Tax Act, 2017 (12 of 2017) shall also apply.

[F. No. State/no./name-GST]

(Name Name)

Under Secretary to the Government of <State Name>

ANNEXURE - 4

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINATY, PART II, SECTION 3, SUB-SECTION(i)]

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, dated June, 2024

G.S.R. (E).— In exercise of the powers conferred by the sub-sections (1), (3) and (4) of section 109 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supersession of the Ministry of Finance, Department of Revenue's notification numbers S.O.1(E), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 29th December, 2023, and S.O.4073(E), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 14th September, 2023 except as respect things done or omitted to be done before such supersession, the Central Government, on the recommendation of the Goods and Services Tax Council, hereby-

(i) establishes the Goods and Services Tax Appellate Tribunal (GSTAT), with effect from the 1st day of September, 2023;

(ii) constitutes the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi; and

(iii) constitutes the number of State Benches of the Goods and Services Tax Appellate Tribunal as specified in column (3) of the table below, with respect to the State specified in the corresponding entry in column (2) of the said table, at the location specified in corresponding entry in column (4) thereof, with the Sitting or Circuit Bench specified in column (5) thereof, namely:—

S.No.	State Name	No. of Benches	Location	Sitting / Circuit
(1)	(2)	(3)	(4)	(5)
1	Andhra Pradesh	1	Vishakhapatnam	Vijayawada
2	Bihar	1	Patna	-
3	Chhattisgarh	1	Raipur	Bilaspur
4	Delhi	1	Delhi	-
5	Gujarat	2	Ahmedabad	-
6	Dadra and Nagar Haveli and Daman and Diu		Surat	Rajkot
7	Haryana	1	Gurugram	Hissar
8	Himachal Pradesh	1	Shimla	-
9	Jammu and Kashmir	1	Jammu	Srinagar
10	Ladakh			
11	Jharkhand	1	Ranchi	-
12	Karnataka	2	Bengaluru	-
13	Kerala	1	Trivandrum	Ernakulum
14	Lakshadweep			
15	Madhya Pradesh	1	Bhopal	-

16	Goa	3	Mumbai	Panaji (Circuit)
17	Maharashtra		Pune	Thane
			Nagpur	Aurangabad
18	Odisha	1	Cuttack	-
19	Punjab	1	Jalandhar	Chandigarh
20	Chandigarh			
21	Rajasthan	2	Jaipur	-
			Jodhpur	-
22	Tamil Nadu	2	Chennai	Puducherry (Circuit)
23	Puducherry		Coimbatore	Madurai
24	Telangana	1	Hyderabad	-
25	Uttar Pradesh	3	Lucknow	-
			Varanasi	Prayagraj
			Ghaziabad	Agra
26	Uttarakhand	1	Dehradun	-
27	Andaman and Nicobar Islands	2	Kolkata	-
28	Sikkim			
29	West Bengal			
30	Arunachal Pradesh	1	Guwahati	Aizawl(Circuit) Agartala(Circuit) Kohima (Circuit)
31	Assam			
32	Manipur			
33	Meghalaya			
34	Mizoram			
35	Nagaland			
36	Tripura			

Explanations —

(i) Locations shown as 'Circuit' shall be operational in such manner as the President may order, depending upon the number of appeals filed by suppliers in the respective States/jurisdiction;

(ii) The Additional Sitting associated with the Bench shall be operated by one Judicial Member and one Technical Member.

[F. No. A-50050/150/2018-CESTAT-DoR]

_____, Jt. Secy.

Agenda Item 8 : Performance Report of the Anti-profiteering authorities for the 2nd quarter (July to September 2023) 3rd quarter (October to December 2023) and 4th quarter (January to March, 2024) for the information of the GST Council

The performance report of Anti-profiteering authorities at various levels for the 2nd quarter (July to September, 2023), 3rd quarter (October to December, 2023) and 4th quarter (January to March, 2024) of Financial Year 2023-24 at various levels, is as under:

2.1 Performance of Competition Commission of India (CCI):

Opening Balance	No. of Investigation Reports received from DGAP during the quarter	Disposal of Cases (During Quarter)				Closing Balance
		Total Disposal during quarter	No. of cases Where Profiteering established	No. of cases Where Profiteering not established	No. of cases referred back to DGAP	
Quarter 1st July, 2023 to 30th September, 2023						
176	**2**	**27**	**0**	**17**	**10**	**151**
Quarter 1st October, 2023 to 31st December, 2023						
151	**3**	**13**	**4**	**3**	**6**	**141**
Quarter 1st January, 2024 to 31st March, 2024						
141	**3**	**87**	**0**	**3**	**84***	**57**

Note- * 83 out of 84 cases which pertains to real estate sector were sent back to DGAP for re-investigation for re-working the profiteered amount in terms of judgement dated 29.01.2024 of Hon'ble Delhi High Court.

2.2 Performance of DG (Anti-profiteering):

Opening Balance (No. of cases)	Receipt	Disposal	Mode of disposal of cases		Closing Balance (No. of cases)
			Report to CCI confirming profiteering	Report to CCI for closure action	
Quarter 1st July,2023 to 30th September, 2023					
35	**15**	**2**	**1**	**1**	**48**
Quarter 1st October,2023 to 31st December, 2023					
48	**6**	**2**	**0**	**2**	**52**
Quarter 1st January,2024 to 31st March, 2024					
52	**87**	**3**	**3**	**0**	**136**

2.3 Performance report of the Standing Committee on Anti-profiteering:

Opening Balance (No. of cases)	Receipt	Disposal	Closing Balance (No. of cases)
Quarter 1st July, 2023 to 30th September, 2023			
44	**126**	**111**	**59**
*Reports for Quarter 1st October, 2023 to 31st December, 2023 and Quarter 1st January, 2024 to 31st March, 2024 are yet awaited.			

2.4 Performance report from the State Level Screening Committee:

Opening Balance (No. of cases)	Receipt	Disposal		Closing Balance (No. of cases)
		Cases referred to Standing Committee	Cases Rejected	
Quarter 1st July, 2023 to 30th September, 2023				
95	**135**	**7**	**89**	**134**
*Report from Karnataka, Kerala and Tamil Nadu has not been received				
Quarter 1st October, 2023 to 31st December, 2023				
134	**133**	**7**	**132**	**128**
*Report from Bihar, Karnataka, Kerala and Tamil Nadu has not been received				
Quarter 1st January, 2024 to 31st March, 2024				
128	**59**	**2**	**119**	**66**
*Report from Bihar, Haryana, Karnataka, Kerala, Odisha, Rajasthan, Tamil Nadu and Telangana has not been received				

3. During these quarters CCI has undertaken the following activities/initiatives-

(i). The Quarterly Performance report for the quarter 1st July, 2023 to 30th September, 2023 is submitted as under:-

i. The mandate to examine profiteering has been vested with Competition Commission of India (CCI) w.e.f. 01.12.2022, as per the Notification No. 23/2022- Central Tax dated 23.11.2022 issued by Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance. The required quorum in the CCI to proceed with the anti- profiteering matters has been restored w.e.f. 23.05.2023 with the joining of the Chairperson. Proceedings in anti-profiteering cases has commenced w.e.f. 22.06.2023.

ii. Total 27 Orders comprising of 17 Final Orders and 10 Interim Orders have been passed by the Commission during the quarter ending on 30.09.2023. As on 30.09.2023, 151 cases of anti-profiteering are pending with Commission.

iii. Nine Ordinary meetings of the Commission were held during the quarter ending on 30.09.2023 wherein 79 cases were taken up and necessary directions were given by the Commission.

iv. 15 hearings in 9 cases were accorded by the Commission during the quarter ending on 30.09.2023.

v. The erstwhile NAA had 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.

vi. For the quarter ending on 30.09.2023, out of 12 complaints, 4 complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to respective Screening Committees/Standing Committee for further action/examination and 8 complaints which related to other GST/Enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/Chief Commissioners for necessary action.

(ii). The Quarterly Performance report for the quarter 1st October, 2023 to 31st December, 2023 is submitted as under:-

i. The mandate to examine profiteering has been vested with Competition Commission of India (CCI) w.e.f. 01.12.2022, as per the Notification No. 23/2022- Central Tax dated 23.11.2022 issued by Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance. The required quorum in the CCI to proceed with the anti-profiteering matters has been restored w.e.f. 23.05.2023 with the joining of the Chairperson. Proceedings in Anti-Profiteering cases had commenced w.e.f. 22.06.2023 and the Commission has passed 40 orders in Anti-Profiteering cases till 31.12.2023.

ii. Total 13 Orders comprising of 7 Final Orders and 6 Interim Orders have been passed by the Commission during the quarter ending on 31.12.2023 in which profiteering of Rs. 31,32,068/- has been established. As on 31.12.2023, 141 cases of Anti-Profiteering are pending with Commission.

iii. Eight Ordinary meetings of the Commission were held during the quarter ending on 31.12.2023. Therefore, total 20 Ordinary meetings were held by the Commission w.e.f. 01.12.2022 till 31.12.2023.

iv. 13 hearings in 11 cases were accorded by the Commission during the quarter ending on 31.12.2023. In total 28 hearings in 20 cases were given by the Commission w.e.f. 01.12.2022 till 31.12.2023.

v. W.e.f. 01.12.2022 till 31.12.2023, the Commission has forwarded 115 complaints to the respective Authorities for further necessary action. For the quarter ending on 31.12.2023, out of 14 complaints, 6 complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to respective Screening Committees/Standing Committee for further action/examination and 8 complaints which related to other GST/Enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/Chief Commissioners for necessary action.

(iii) The Quarterly Performance report for the quarter 1st January, 2024 to 31st March, 2024 is submitted as under:-

i. The mandate to examine profiteering has been vested with Competition Commission of India (CCI) w.e.f. 01.12.2022, as per the Notification No. 23/2022- Central Tax dated 23.11.2022 issued by Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance. The required quorum in the CCI to proceed with the anti-profiteering matters has been restored w.e.f. 23.05.2023 with the joining of the Chairperson. Proceedings in anti-profiteering cases had commenced w.e.f. 22.06.2023 and the Commission has passed 44 orders in anti-profiteering cases till 31.03.2024.

ii. Total 4 Orders comprising of 3 Final Orders and 1 Interim Order have been passed by the Commission during the quarter ending on 31.03.2024. As on 31.03.2024, 57 cases of anti-profiteering are pending with Commission.

iii. DGAP made a detailed presentation before the Commission on 07.03.2024 relating to the implications of the Judgement of the Hon'ble Delhi High Court dated 29.01.2024. Further, DGAP vide letter dated 14.03.2024 intimated that opinion of the Legal Counsel was obtained by DGAP, which highlighted that square feet approach suggested by Hon'ble High Court was "justified and reasonable" in real estate cases.

Therefore, as directed by the Commission, 83 cases of real estate sector have been sent back to the DGAP for re-investigation for re-working the profiteered amount within a period of three months in terms of judgement dated 29.01.2024 of Hon'ble Delhi High Court.

iv. Eight Ordinary meetings of the Commission were held during the quarter ending on 31.03.2024. Therefore, total 28 Ordinary meetings were held by the Commission w.e.f. 01.12.2022 till 31.03.2024.

v. 3 hearings in 3 cases were accorded by the Commission during the quarter ending on 31.03.2024. In total 31 hearings in 22 cases were given by the Commission w.e.f, 01.12.2022 till 31.03.2024.

vi. W.e.f. 01.12.2022 till 31.03.2024, the Commission has forwarded 127 complaints to the respective Authorities for further necessary action. For the quarter ending on 31.03.2024, out of 12 complaints, 5 complaints relating to profiteering in terms of Section 171 of the CGST Act, 2017 were forwarded to respective Screening Committees/Standing Committee for further action/examination and 7 complaints which related to other GST/Enforcement issues were forwarded to the Jurisdictional State & Central GST Commissioners/Chief Commissioners for necessary action.

4. Accordingly, the quarterly performance report of the Anti-profiteering Authorities for the quarters i.e. 2nd quarter (July to September, 2023, 3rd quarter (October to December, 2023) and 4th quarter (January to March, 2024) of Financial Year 2023-24 is placed before the GST Council.

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Agenda Item 9 : Ad-hoc Exemptions Order(s) issued under Section 25(2) of Customs Act, 1962 to be placed before the GST Council for information

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

2. The details of the ad hoc exemption orders issued recently are as follows:

3.

Order No.	Date	Remarks
AEO No. 01 of 2024	01.02.2024	Exemption from Customs duty on import of technical documentation by M/s Indo-Russian Rifles Pvt. Ltd. (order copy enclosed).
AEO No. 02 of 2024	10.05.2024	Joint Counter Terrorism Training exercise (TARKASH-VII) between US special forces & NSG at Kolkata during April-May 2024 (order copy enclosed).
AEO No. 03 of 2024	31.05.2024	Waiver of Customs duty u/s 25(2) of the Customs Act, 1962 for import of 04 armoured vehicles by MEA (order copy enclosed).

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

F.No. 462/08/2023-Cus V
Ad-hoc Exemption Order No. 1 of 2024
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 the 1st February 2024

To,
The Chief Commissioner of Customs
Mumbai Zone-I
New Customs House
Ballard Estate
Mumbai-400001

Sir,

Subject: Exemption from Custom Duty on import of Technical Documentation by M/s Indo-Russian Rifles Private Limited (IRRPL) -reg.

The undersigned is directed to refer to a DO letter No. 2/10/2023-D(Proc-1)/47/Def Secy/23 dated 20.10.2023 (copy enclosed) received from Secretary, Ministry of Defense, Government of India seeking exemption from payment of duty in terms of Section 25(2) of the Customs Act, 1962, on import of Technical Documentation by M/s Indo-Russian Rifles Private Limited (IRRPL in short) imported *vide* bill of entry no. 3383275 dated 19.11.2022 and bill of entry no. 4809673 dated 26.02.2023.

2. In this regard, it is noted that:

i) IRRPL is an assault rifle-manufacturing facility in Korwa, Uttar Pradesh. This joint venture was incorporated in 2019 under Inter-Governmental Agreement for manufacturing AK-203 assault rifles for Indian Armed Force. It is a JV between Advanced Weapons and Equipment India Limited (42.5% stake), Mutitions India Limited (8% stake), Concern Kalashnikov (42% stake) and Rosoboronexport (7.5% stake).

ii) in accordance with an Inter Government Agreement signed between the Government of the Russian Federation and the Government of the Republic of India, a contract between MoD and IRRPL has been signed for procurement of assault rifles for a total cost of Rs. 5124.97 Crores including payment of Rs. 224.58 Crores for Transfer of Technology.

iii) in order to ingenuously manufacture AK 203 rifles in India, rifle kits are being supplied by Russia in 03 consignments. M/s IRRPL received two consignments from Russia on 19.11.2022 and 26.02.2023. Along with parts of the rifles, the Technical Documentation for manufacture of the rifles has also been received which contains drawing details, technical requirement etc. having technology information which are essential for assembly of rifles.

2.1 The Ministry of Defense has requested to waive the customs duty for the Technical Documentation imported *vide* bill of entry no. 3383275 dated 19.11.2022 and bill of entry no. 4809673 dated 26.02.2023.

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), on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods, referred to at Para 2.1 above, from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, 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 the 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.

Yours faithfully,

1/02/2024

(Megha Bansal)
Under Secretary to the Govt. of India

Copy to:

- Ms. Manisha Tewari, OSD(ASV), Room No-417, 4th Floor, 'C' Block, Directorate of Planning & Coordination, Department of Defence Production, Ministry of Defence, KG Marg, New Delhi-110001 (Email: dpoasv.ddp-mod@gov.in)
- Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi–110 002.
- Guard File.

1/02/2024

(Megha Bansal)
Under Secretary to the Govt. of India

F. No. 452/12/2022-Cus V
Ad-hoc Exemption Order No. 2 of 2024
Issued under section 25(2) of the Customs Act, 1962

CONFIDENTIAL

Government of India
Ministry of Finance
Department of Revenue

Room No. 227A, North Block, New Delhi – 110001
Dated the 10th May 2024

To,
The Chief Commissioner Customs,
Kolkata Zone

Sir,

Subject: Joint Counter Terrorism Training Exercise (TARKASH-VII) between US Special forces and NSG at Kolkata during April-May 2024 - reg.

The undersigned is directed to refer to-

(i) O.M. No. 23011/16/2023-PMA dated 09.04.2024 received from Under Secretary (PMA), Ministry of Home Affairs enclosing therewith a communication from NSG (copy enclosed) for *inter alia* providing exemption from duty and taxation for the weapons, equipment, accessories, ammunition and dangerous goods to be used for the Joint Counter Terrorism Training Exercise TARKASH-VII scheduled to be held in Kolkata during April-May 2024.

(ii) Ministry of External Affairs AMS Division letter No. WII/109/04/2024 dated 15.04.2024 forwarding therewith a Diplomatic Note dated 12.04.2024 of the US Embassy regarding the abovementioned training exercise TARKASH-VII (copy enclosed).

2. In the aforementioned communications, it is informed that:

(i) TARKASH-VII is scheduled to be conducted from 20.04.2024 to 17.04.2024 between US (SOF) and NSG in Kolkata.

(ii) The Embassy of US in India, *vide* Diplomatic Note 12.04.2024, has shared the details of the goods which will be used for TARKASH-VII.

(iii) The goods to be used for TARKASH-VII will arrive at Kolkata International Airport on or about 20.04.2024 via Military Air/Commercial Air and depart from the Kolkata International Airport on or about 17.04.2024 via U.S. Military Aircraft/Commercial Air.

(iv) In addition to the goods stated above, there may be specific spare part or parts that are not readily available and will have to be air shipped into India through Courier/Commercial Air/Military via air freight.

2.1 MHA has requested for exemption from the customs duties and IGST (where applicable) for the abovementioned goods imported for use in the Joint Counter Terrorism Training Exercise TARKASH-VII between NSG and US (SOF) team.

3. In view of the exceptional circumstances 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), on being satisfied that it is necessary in the public interest so to do, hereby exempts the subject goods imported for the purpose of TARKASH-VII Joint Counter Terrorism Training Exercise, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975, and, the whole of the integrated tax leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act, 1975, 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.

Yours faithfully,

(Komila Punia) 10/5/24

Deputy Secretary to the Government of India

Copy to:

1. The Under Secretary (PMA), Ministry of Home Affairs, Police -I Division, PMA Cell, Government of India
2. Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi–110 002.
3. Guard File.

Yours faithfully,

(Komila Punia) 10/5/24

Deputy Secretary to the Government of India

F. No. 462/02/2024-Cus V
Ad-hoc Exemption Order No. 3 of 2024
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 the 31 May 2024

To,
The Chief Commissioner Customs,
Mumbai Zone-II

Sir,

Subject: Waiver of Customs Duty under Section 25 (2) of Customs Act, 1962 for import of 04 Armored Vehicles by MEA - reg.

The undersigned is directed to refer to request vide O.M. dated 16.04.2024 and 10.05.2024 of Ministry of External Affairs (copies enclosed) seeking exemption from payment of Customs Duty in terms of Section 25 (2) of Customs Act, 1962 for import of 04 new right-hand drive armoured vehicles from Mercedes.

2. It has been informed that the Ministry of External Affairs handles the incoming visits of Foreign Heads of State/Government to India and these vehicles will be used exclusively during the incoming VVIP visits. The said vehicles are being procured from M/s Daimler AG Germany for Euro 21,78,672. It has been informed that the vehicles have been arrived at Nhava Sheva, JNPT.

3. Under the circumstances of public interest as mentioned above and in exercise of the powers conferred by sub-section (2) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts the said goods, i.e. 04 New right-hand drive Armored Vehicles, valued at Euro 21,78,672 (EURO Twenty one Lacs Seventy Eight Thousand and Six Hundred Seventy Two only) as per Annexure, 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 and Compensation Cess leviable thereon under section 3 of the Customs Tariff Act, 1975, subject to the conditions that the goods imported:

i. shall be used for the purpose for which it is being imported;
ii. shall not be put to any commercial use;
iii. shall not be sold, gifted, disposed of or used in any manner other

than that specified in this order, without prior permission of the Central Board of Indirect Taxes and Customs;

iv. shall be open for inspection by the Customs Officer;

4. An undertaking to comply with the conditions mentioned in Para 3 above shall be given by the Importer before the jurisdictional Commissioner of Customs for claiming benefit of exemption under this order at the time of clearance along with copies of documents pertaining to the import, such as the Bills of Entry, Bills of Lading, Invoices, etc.

5. This exemption order does not ipso facto exempt the goods from the requirements under other Acts to be fulfilled at the time of import.

6. Any infringement of conditions of the AEO shall invite further necessary action such as realization of Customs duty on the subject goods, penal action for such violations, etc.

7. This order shall be valid for imports made upto 30.11.2024.

Yours faithfully,

Enclosures: Annexure in 38 pages

31/05/2024

(Megha Bansal)
Under Secretary to the Government of India

Copy to:

1. Dr. Aseem Vohra, Deputy Chief of Protocol (C), Ministry of External Affairs, Room No. 2118A, Jawaharlal Nehru Bhawan, New Delhi-110011.
2. Principal Director (Customs), Central Receipt Audit Wing, Office of the Comptroller & Auditor General, 10, Bahadur Shah Zafar Marg, New Delhi–110 002.
3. Guard File.

Yours faithfully,

(Megha Bansal)
Under Secretary to the Government of India